

"THE EINSATZGRUPPEN CASE"

Military Tribunal II

Case No. 9

THE UNITED STATES OF AMERICA

—against—

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

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

ORDER CONSTITUTING TRIBUNAL II-A

HEADQUARTERS, EUROPEAN COMMAND

GENERAL ORDERS }
No. 100

12 SEPTEMBER 1947

Pursuant to Military Government Ordinance No. 7

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

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

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

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

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

BY COMMAND OF GENERAL CLAY:

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

OFFICIAL:

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

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MEMBERS OF THE TRIBUNAL

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

JOHN J. SPEIGHT, Member
Prominent Member of Alabama Bar.

RICHARD D. DIXON, Member
Judge of Superior Court of the State of North Carolina.

ASSISTANT SECRETARIES GENERAL

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



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



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



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



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

PROSECUTION COUNSEL

Chief of Counsel:

BRIGADIER GENERAL TELFORD TAYLOR

Deputy Chief Counsel:

MR. JAMES M. MCHANEY

Chief Prosecutor:

MR. BENJAMIN B. FERENCZ

Consultant:

MR. JAMES E. HEATH

Associate Counsel:

MR. JOHN E. GLANCY

MR. ARNOST HORLIK-HOCHWALD

MR. PETER W. WALTON

DEFENDANTS AND DEFENSE COUNSEL

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

I. AMENDED INDICTMENT*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT ONE — CRIMES AGAINST HUMANITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- vicinity of Sokal and Lutsk, Sonderkommando 4a murdered 300 Jews and 317 Communists.
- (F) In July or August 1941 in Fastov, Sonderkommando 4a murdered all the Jews between the ages of 12 and 60.
- (G) In September or October 1941 in the vicinity of Vyrna and Dederev, Sonderkommando 4a murdered 32 gypsies.
- (H) On 29 and 30 September 1941 in Kiev, Einsatzkommando 4a, together with the group staff and police units, murdered 33,771 Jews and confiscated their clothing and valuables.
- (I) On 8 October 1941 in Jagotin, Sonderkommando 4a murdered 125 Jews.
- (J) On 23 November 1941 in Poltava, Sonderkommando 4a murdered 1,538 Jews.
- (K) In about July 1941 in Tarnopol, Sonderkommando 4b murdered 180 Jews.
- (L) During the period from 13 September to 26 September 1941 in the vicinity of Kremenchug, Sonderkommando 4b murdered 125 Jews and 103 political officials.
- (M) During the period 4 October 1941 to 10 October 1941 in Poltava, Sonderkommando 4b murdered 186 persons.
- (N) From about 11 October 1941 to 30 October 1941 in the vicinity of Poltava, Sonderkommando 4b murdered 595 persons.
- (O) During the period 14 January 1942 to 12 February 1942 in the vicinity of Kiev, Sonderkommando 4b murdered 861 persons, including 139 Jews and 649 political officials.
- (P) During the period from February 1942 to March 1942 in the vicinity of Artemovsk, Sonderkommando 4b murdered 1,317 persons, including 1,224 Jews and 63 "political activists."
- (Q) During the period from 22 June 1941 to 10 November 1941 in its operational areas, Einsatzkommando 5 murdered 29,644 persons.
- (R) During July or August 1941 in Berdichev, Einsatzkommando 5 murdered 74 Jews.
- (S) During the period 7 September 1941 to 5 October 1941 in the vicinity of Berdichev, Einsatzkommando 5 murdered 8,800 Jews and 207 political officials.
- (T) On 22 and 23 September 1941 in Uman, Einsatzkommando 5 murdered 1,412 Jews.
- (U) During the period 20 October 1941 to 26 October 1941 in the vicinity of Kiev, Einsatzkommando 5 murdered 4,372 Jews and 36 political officials.
- (V) During the period from 23 November 1941 to 30 November 1941 in the vicinity of Rovno, Einsatzkommando 5 murdered 2,615 Jews and 64 political officials.
- (W) During the period from 12 January 1942 to 24 January

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT TWO — WAR CRIMES

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

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

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

COUNT THREE — MEMBERSHIP IN CRIMINAL ORGANIZATIONS

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

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

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

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

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

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

Nuernberg, 25 July 1947

II. ARRAIGNMENT*

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

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

There will be order in the Court.

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

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

OTTO OHLENDORF: Yes.

THE SECRETARY GENERAL: Be seated. Heinz Jost.

HEINZ JOST: Yes.

THE SECRETARY GENERAL: Erich Naumann.

ERICH NAUMANN: Yes.

THE SECRETARY GENERAL: Otto Rasch. Remain seated.

OTTO RASCH: Yes.

THE SECRETARY GENERAL: Erwin Schulz.

ERWIN SCHULZ: Yes.

THE SECRETARY GENERAL: Franz Six.

FRANZ SIX: Yes.

THE SECRETARY GENERAL: Paul Blobel.

PAUL BLOBEL: Yes.

THE SECRETARY GENERAL: Walter Blume.

WALTER BLUME: Yes.

THE SECRETARY GENERAL: Martin Sandberger.

MARTIN SANDBERGER: Yes.

THE SECRETARY GENERAL: Willy Seibert.

WILLY SEIBERT: Yes.

THE SECRETARY GENERAL: Eugen Steimle.

EUGEN STEIMLE: Yes.

THE SECRETARY GENERAL: Ernst Biberstein.

ERNST BIBERSTEIN: Yes.

THE SECRETARY GENERAL: Werner Braune.

WERNER BRAUNE: Yes.

THE SECRETARY GENERAL: Walter Haensch.

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

WALTER HAENSCH: Yes.

THE SECRETARY GENERAL: Gustav Nosske.

GUSTAV NOSSKE: Yes.

THE SECRETARY GENERAL: Adolf Ott.

ADOLF OTT: Yes.

THE SECRETARY GENERAL: Eduard Strauch.

EDUARD STRAUCH: Yes.

THE SECRETARY GENERAL: Emil Haussmann.

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

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

THE SECRETARY GENERAL: Waldemar Klingelhoefner.

WALDEMAR KLINGELHOEFER: Yes.

THE SECRETARY GENERAL: Lothar Fendler.

LOTHAR FENDLER: Yes.

THE SECRETARY GENERAL: Waldemar von Radetzky.

WALDEMAR VON RADEZKY: Yes.

THE SECRETARY GENERAL: Felix Ruehl.

FELIX RUEHL: Yes.

THE SECRETARY GENERAL: Heinz Schubert.

HEINZ SCHUBERT: Yes.

THE SECRETARY GENERAL: Mathias Graf.

MATHIAS GRAF: Yes.

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

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

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

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

¹ The defendant Haussman committed suicide on 31 July 1947.

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

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

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

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

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

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

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

DR. SURHOLT: Yes. I ask that.

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

[Mr. Ferencz continued reading the indictment.]

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

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

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

DEFENDANT OHLENDORF: Yes.

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

DEFENDANT OHLENDORF: Yes.

PRESIDING JUDGE MUSMANN: Have you read the indictment?

DEFENDANT OHLENDORF: Yes.

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

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

PRESIDING JUDGE MUSMANNO: You plead not guilty?

DEFENDANT OHLENDORF: Yes.

PRESIDING JUDGE MUSMANNO: Very well.

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

DEFENDANT JOST: Yes.

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

DEFENDANT JOST: Yes.

PRESIDING JUDGE MUSMANNO: Have you read the indictment?

DEFENDANT JOST: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JUDGE SPEIGHT: Otto Rasch.

DEFENDANT RASCH: Yes.

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

DEFENDANT RASCH: Yes. I know that.

JUDGE SPEIGHT: Are you represented by counsel?

DEFENDANT RASCH: Yes.

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

DEFENDANT RASCH: Yes.

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

DEFENDANT RASCH: Yes. I got it.

JUDGE SPEIGHT: Have you read the indictment?

DEFENDANT RASCH: I have read it.

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

DEFENDANT RASCH: Not guilty.

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

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

JUDGE SPEIGHT: Eduard Strauch.

DEFENDANT STRAUCH: Yes.

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

DEFENDANT STRAUCH: Yes.

JUDGE SPEIGHT: Are you represented by counsel?

DEFENDANT STRAUCH: Yes.

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

DEFENDANT STRAUCH: Yes.

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

DEFENDANT STRAUCH: Yes.

JUDGE SPEIGHT: Have you read the indictment?

DEFENDANT STRAUCH: Yes.

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

DEFENDANT STRAUCH: Not guilty.

III. OPENING STATEMENT OF THE PROSECUTION*

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

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

* Tr. pp. 30-60, 29 Sept. 1947.

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

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

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

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

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

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

These in short were the activities of the Einsatzgruppen.

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

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

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

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

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

NAZI DOCTRINE OF SUPERIOR AND INFERIOR RACES

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

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

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

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

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

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

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

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

and

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

This aim was openly admitted by the highest SS dignitaries.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE ORGANIZATION OF THE EINSATZGRUPPEN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ACTIVITIES OF THE EINSATZGRUPPEN

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

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

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

The Tribunal will recall how rapidly the Wehrmacht overran

* Trial of the Major War Criminals, vol. I, p. 230, Nuremberg, 1947.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EINSATZGRUPPE B

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

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

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

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

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

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

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

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

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

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

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

EINSATZGRUPPE C

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

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

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

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

in their resettlement, thanks to an extremely clever organization.

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

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

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

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

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

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

EINSATZGRUPPE D

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

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

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

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

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

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

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

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

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

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

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

JURISDICTION OF THE COURT

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

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

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

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

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

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

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

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

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

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

³ *Ibid.*, p. 206.

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

⁵ Bluntschi, “*Das Moderne Voelkerrecht der Zivilisierten Staaten*”.

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

THE NATURE OF THE CHARGES

COUNT ONE

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

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

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

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

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

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

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

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

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

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

In dealings between nations these principles were well-known,

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

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

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

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

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

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

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

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

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

Murder cannot be disguised as mercy.

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. OPENING STATEMENTS FOR THE DEFENSE

A. Opening Statement for the Defendant Ohlendorf*

DR. ASCHENAUER: Mr. President! High Tribunal!

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

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

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

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

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

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

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

The so-called General Regulations of Law No. 10

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

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

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

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

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

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

Here the following fundamental possibilities exist:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. *Self-Defense*

According to German Law

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

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

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

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

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

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

According to Soviet Law

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

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

II. State of Emergency

According to German Law

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

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

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

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

According to Soviet law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In accordance with this agreement and the "Barbarossa Order"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Finally, evidence will be submitted for the following:

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

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

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

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

Army units themselves carried out such executions.

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

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

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

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

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

DR. ASCHENAUER: Yes. That is so.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* Individual states composing the Reich.

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

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

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

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

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

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

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

- Office I: Organization and Personnel.
- Office II: Administration and Economy.
- Office III: SD Home Front (spheres of German life).
- Office IV: Secret State Police.
- Office V: Criminal.
- Office VI: SD Ausland (Foreign News Service).
- Office VII: Scientific Research.

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

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

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

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

² Subsection of an office (Amt).

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

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

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

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

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

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

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

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

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

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

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

Ohlendorf caused the following:

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

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

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

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

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

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

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

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

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

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

² Official publishers of the National Socialist Party.

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

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

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

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

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

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

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

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

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

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

B. Opening Statement for the Defendant Blobel*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

My task as defense counsel commands me here to point to

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

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

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

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

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

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

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

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

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

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

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

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

* Abortive attempt to assassinate Hitler and overthrow his government.

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

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

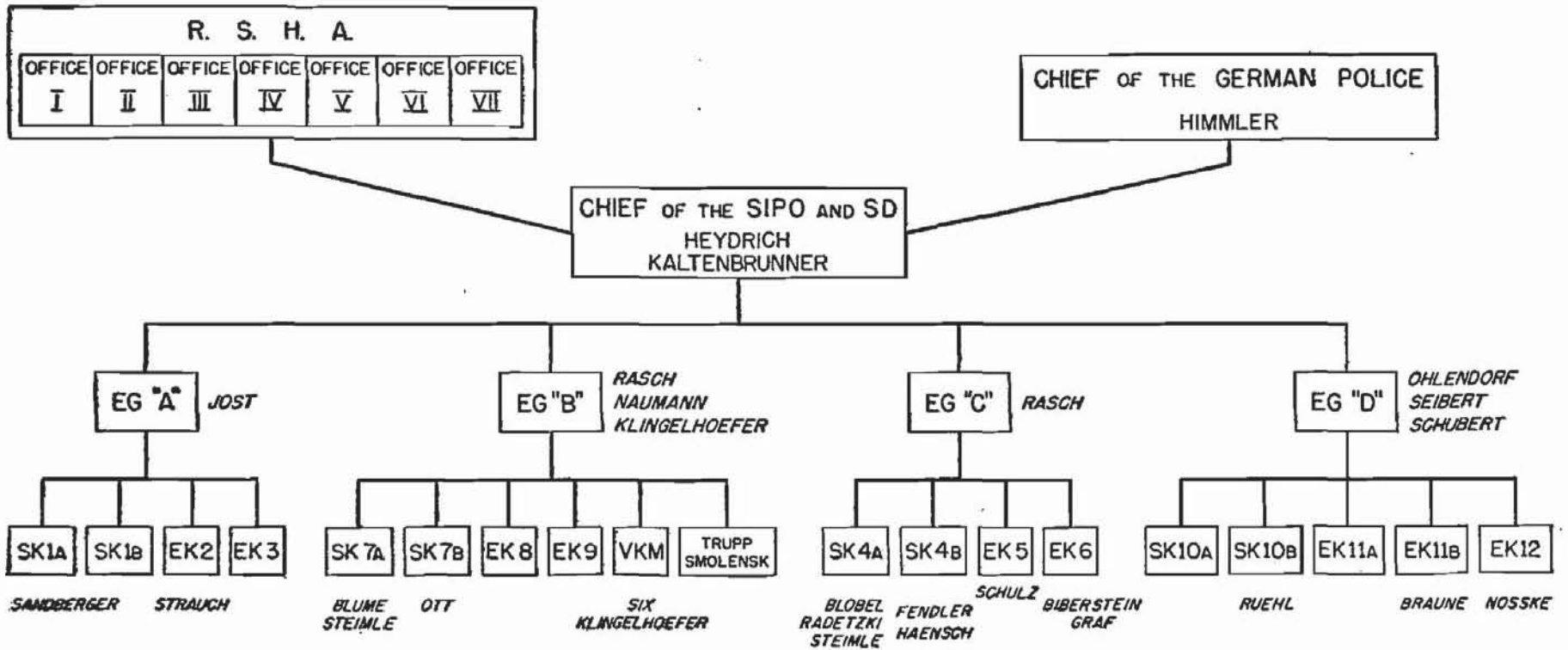
V. ORGANIZATION OF THE EINSATZGRUPPEN

a. Introduction

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

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

ORGANIZATIONAL CHART OF THE REICH SECURITY MAIN OFFICE AND THE EINSATZGRUPPEN



b. Evidence

Prosecution Documents

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

PARTIAL TRANSLATION OF DOCUMENT NO-2934 PROSECUTION EXHIBIT 78

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

[Stamp] War Room

The Chief of the Security Police and of the SD

Berlin, 11 July 1941

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

32 copies
19th copy

[Stamp] *Top Secret*

Operational Situation Report U.S.S.R. No. 19

I. Political survey.

In the Reich and in the occupied territories.

There are no special reports.

II. Reports of Einsatzgruppen and Einsatzkommandos.

For organizational reasons, the designations of the Einsatzgruppen are changed, effective immediately, as follows:

Einsatzgruppe Dr. Stahlecker = Einsatzgruppe A
Einsatzgruppe Nebe = Einsatzgruppe B, up to now C
Einsatzgruppe Dr. Rasch = Einsatzgruppe C, up to now B
Einsatzgruppe Ohlendorf = Einsatzgruppe D.

The designations of the Einsatzkommandos remain unchanged for technical reasons.

* * * * *

TRANSLATION OF DOCUMENT NO-2890
PROSECUTION EXHIBIT 5

AFFIDAVIT OF OTTO OHLENDORF, 24 APRIL 1947, CONCERNING THE
ORGANIZATION OF THE EINSATZGRUPPEN

AFFIDAVIT

I, Otto Ohlendorf, swear, depose, and state—

1. The Einsatzgruppen for the Eastern Campaign (Russia 1941) began as a result of an agreement between the Chief of the Security Police and Security Service on the one hand, and the Chiefs of the Supreme Command of the Armed Forces and the High Command of the Army on the other. As I remember it, this agreement was signed by Heydrich and a representative of the High Command of the Army. On the basis of this agreement between the Chief of the Security Police and Security Service, the Supreme Command of the Armed Forces and the High Command of the Army, the Einsatzgruppen were to take over the political security of the front areas, which, up to the time of the Russian campaign had been the charge of the army units themselves. The secret field police were to occupy themselves only with security within the troops to which they were assigned.

2. As far as I remember, this agreement took effect about three weeks before the start of the Russian campaign and was as follows:

a. The Chief of the Security Police and SD formed his own motorized military units in the form of Einsatzgruppen, which were divided into Einsatzkommandos and Sonderkommandos and were to be assigned in their entirety to the army groups or armies.

The chief of the Einsatzgruppen was the deputy of the Chief of the Security Police and SD, who was assigned to the commanders in chief of the army groups or armies.

b. The armies or army groups had to supply the Einsatzgruppen with quarters, food, repairs, gasoline, and the like. Each army group and the 11th Army, the latter as nucleus of another army group for the Caucasus, was assigned an Einsatzgruppe, which in turn was divided into Einsatzkommandos and Sonderkommandos.

3. During the Russian campaign there were four Einsatzgruppen, which bore the identifying letters A, B, C, and D. The

area of operation of each Einsatzgruppe was determined by the fact that the Einsatzgruppe was assigned to a certain army group or army, and marched with it. The Einsatzkommandos or the Sonderkommandos formed from them were assigned from time to time to areas designated by the army group or army. The Einsatzkommandos were divided into Sonderkommandos in order to have more small units available for the size of the area of operation.

The areas of operation of the Einsatzgruppen were as follows:

Einsatzgruppe A operated from its central points: Latvia, Lithuania, and Estonia, towards the east.

Einsatzgruppe B operated in the direction of Moscow in the area adjoining Einsatzgruppe A, to the south.

Einsatzgruppe C had the Ukraine, except for the part occupied by Einsatzgruppe D. At a later time, when Einsatzgruppe D advanced towards the Caucasus, Einsatzgruppe C was in charge of the entire Ukraine, insofar as it was not under civil administration.

Einsatzgruppe D had the Ukraine south of the line Chernovitsy, Mogilev-Podolski, Yampol, Ananov, Nikolaev, Melitopol, Mariupol, Taganrog, and Rostov. This area also included the Crimean Peninsula. At a later time, Einsatzgruppe D was in charge of the Caucasus area.

4. All of the Einsatzgruppen were made up of a number of Einsatzkommandos and Sonderkommandos. For example, Einsatzgruppe D, of which I was chief, had the Sonderkommandos 10a, 10b, 11a, 11b, and Einsatzkommando 12.

5. The personnel strength of the Einsatzgruppe varied. It usually consisted of a total of 500 to 800 men. Einsatzgruppe D belonged to the smaller of the Einsatzgruppen. The officers and noncommissioned officers of the Kommandos were composed of men on detached service from the state police, criminal police, and in limited numbers from the security service. Aside from these, the troops were largely made up of emergency service draftees [Notdienstverpflichtete] and of companies of the Waffen SS and order police.

6. The Einsatzgruppen had the following assignments: They were responsible for all political security tasks within the operational area of the army units and of the rear areas insofar as the latter did not fall under the civil administration. In addition they had the task of clearing the area of Jews, Communist officials, and agents. The last named task was to be accomplished by killing all racially and politically undesirable elements seized who were considered dangerous to the security. I know that the

Einsatzgruppen were assigned partly to the reconnaissance of guerrilla bands, fighting guerrilla bands, and to military tasks and, after completion of their basic assignments, were partly converted into combat units. All orders which pertained to the tactical and strategic situation or sphere of interest of the army groups or armies came from the commanding general, the chief of staff or counterintelligence officer of the army or army group to which the Einsatzgruppe was assigned. Orders concerning clearing out undesirable elements went directly to the Einsatzkommandos and came from the Reich Leader SS himself or by transmission through Heydrich. The commanders in chief were ordered by Hitler to support the execution of these orders. Through the so-called Commissar Order, the army units had to sort out political commissars and other similar undesirable elements themselves and hand them over to the Einsatzkommandos to be killed. The order pertaining to the sorting out of these elements from the prisoner-of-war camps was supplemented accordingly by executive orders from the High Command of the Army to the army units. The activity of the Einsatzgruppen and their Einsatzkommandos was carried out entirely within the field of jurisdiction of the commanders in chief of the army groups or armies under their responsibility.

7. The reports of the Einsatzgruppen went to the armies or army groups and to the Chief of the Security Police and SD. Normally weekly or biweekly reports were sent to the Chief of the Security Police and SD by radio and written reports were sent to Berlin approximately every month. The army groups or armies were kept currently informed about the security in their area and other current problems. The reports to Berlin went to the Chief of the Security Police and SD in the Reich Security Main Office. After the creation of the command [headquarters] staff of the Chief of the Security Police and SD in about May 1942, this [staff] prepared the subsequent reports. The command staff consisted basically of Gruppenfuehrer [SS Major General] Mueller, chief of office IV, and Obersturmbannfuehrer [SS Lieutenant Colonel] Nosske, group chief in office IV, to whom specialists of offices III, IV, and VI were available for coordinating the composition of the reports. Questions which had to do with the personnel of the group and with garrisons went to office I. Administrative questions and matters concerning equipment were taken care of by office II. Information concerning the spheres of life (SD) went to office III. The chief of office IV received reports on the general security situation, including Jews and Communists. Information about the unoccupied Russian areas went to office VI.

I have read the above statement, consisting of six (6) pages

in the German language and declare that this is the full truth to the best of my knowledge and belief.

I have had opportunity to make alterations and corrections in the above statement. I have made this statement freely and voluntarily, without any promise of reward and was subjected to no threat or duress.

Nuernberg, 24 April 1947. [Signature] OTTO OHLENDORF.

VI. AUTHENTICITY OF THE EINSATZGRUPPEN REPORTS

a. Introduction

The case-in-chief of the prosecution consisted entirely of contemporaneous documents with the exception of 48 affidavits, 34 of which were affidavits sworn to by the defendants before the indictment was filed. The principal proof offered by the prosecution in support of counts one and two of the indictment were more than ninety Einsatzgruppen reports. These reports were consolidated reports prepared by a special office of the RSHA in Berlin from the reports of the individual Einsatzgruppen. These top secret reports were distributed to a number of state and Party offices in Germany. Between July 1941 and April 1942 approximately 195 consolidated Einsatzgruppen reports were prepared in Berlin and distributed.

The defense alleged that the consolidated reports contained many inaccuracies and even willful exaggeration concerning the number of exterminated people. The defense also claimed that the author of the reports had no first-hand knowledge of the observations contained therein, that his identity was unknown, and therefore the documents constituted inadmissible hearsay evidence.

Selections from the evidence of the prosecution concerning the authenticity of the reports in describing the form in which they were compiled are set forth in pp. 97 to 102. Objections of the defense against the introduction of Einsatzgruppen reports as documentary evidence and extracts from the closing brief on behalf of the defendant Blobel, the closing statement on behalf of defendant Naumann, and from the testimony of the defendant Nosske follow in pp. 102 to 117.

b. Evidence

Prosecution Documents

Doc. No.	Pros. Ex. No.	Description of Document	Page
NO-2716	4	Affidavit of Heinz Hermann Schubert, 4 February 1947.	97
NO-4327	6	Affidavit of Kurt Lindow, 21 July 1947.	99
NO-4134	7	Extracts, 21 and 27 October 1941, from Operational Situation Report U.S.S.R. No. 126.	100

Testimony

Extracts from the testimony of defendant Nosske.....	113
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TRANSLATION OF DOCUMENT NO-2716
PROSECUTION EXHIBIT 4

AFFIDAVIT OF HEINZ HERMANN SCHUBERT, 4 FEBRUARY 1947*

I, Heinz Hermann Schubert, swear, depose and declare—

1. I was born in Berlin on 27 August 1914. I went to school at Eisenberg (Thuringia) and at Berlin-Lichterfelde, including a trade school. In March 1931 I left school having obtained my school certificate [Obersekundareife].

2. From April 1931 to August 1933 I worked for a lawyer. Later on I became a civilian employee in the Bremen office of the Reich Chancellery.

3. On 10 October 1934 I became a civilian employee with the SD and remained there until the end of the war. On 1 May 1934 I was taken over from the Hitler Youth into the Party and held membership card No. 3,474,350. On 10 October 1934 I became a member of the SS with the membership No. 107,326.

4. In October 1941 I was assigned to the Einsatzgruppe D. I did not take part in the courses and set-up of the Einsatzgruppe in Dueben which took place previously, neither did I take part in the beginning of the Russian campaign.

5. When arriving at Nikolaev in October 1941 I was ordered to a conference with gruppenfuehrer Otto Ohlendorf, who at that time was the chief of Einsatzgruppe D. Ten more men who had arrived in a transport together with me attended this conference. The purpose of this conference was that Ohlendorf wanted to find out for which post a man was suited and could be used. None of us was meant to be leader of an Einsatzkommando. We were delegated to different units, most of them went to an Einsatzkommando, while I stayed with the staff. We only got acquainted with the work of the Einsatzgruppen, Einsatz- and Sonderkommandos after having joined these units. When leaving Berlin we were not told about the activities of these units. I became Ohlendorf's adjutant.

6. During this period I learned that two new leaders came to Ohlendorf who later on received an Einsatzkommando each. After their arrival they had a lengthy conversation with Ohlendorf; I was not present. Based on my own experiences, I can say for certain that these two leaders during their conversation with Ohlendorf received instructions regarding their services. The reports of these leaders arriving at our headquarters were written in the manner prescribed by Ohlendorf and also contained information as to the number of Russians and Jews executed.

* Defendant Schubert testified on 5-6 January 1948 (Tr. pp. 4560-4738).

7. The Einsatzgruppe reported in two ways to the Reich Security Main Office, once through radio, then in writing. The radio reports were kept strictly secret and, apart from Ohlendorf, his deputy Standartenfuehrer Willy Seibert and the head telegraphist Fritsch, nobody, with the exception of the radio personnel, was allowed to enter the radio station. This is the reason why only the above-mentioned persons had knowledge of the exact contents of these radio reports. The reports were dictated directly to Fritsch by Ohlendorf or Seibert. After the report had been sent off by Fritsch, I received it for filing. In cases in which numbers of executions were reported a space was left open, so that I never knew the total amount of persons killed. The written reports were sent to Berlin by courier. These reports contained exact details and descriptions of the places in which the actions had taken place, the course of the operations, losses, number of places destroyed and persons killed, arrest of agents, reports on interrogations, reports on the civilian sector, etc.

8. When Ohlendorf was absent from the staff of the Einsatzgruppe, no reports were sent to Berlin. As a rule his deputy Seibert accompanied him on his journeys of inspection and I was ordered "to look after the house", without, however, being allowed to solve any problems which might occur. I was never initiated into secret orders and when Ohlendorf and Seibert were absent from the staff, no decisions could be made. I do not know whether Ohlendorf had any secret files or whether he had statements as to the total number of executions.

9. I do not know whether the Einsatzgruppen or the Einsatzkommandos received orders concerning the execution of Russian prisoners of war. If these orders had come in through the normal channels, I would have seen them. This, however, does not exclude that Ohlendorf had them as secret files in his office.

10. From summer 1942 until the end of 1944 I was Ohlendorf's adjutant in office III of the Reich Security Main Office and later on I worked under Dr. Hans Ehlich in office III B of the Reich Security Main Office. It is known to me that both of them received the compiled reports of the Einsatzgruppen which were issued as reports on the situation from the occupied eastern territories.

I have read the foregoing deposition consisting of 4 pages in the German language, and declare that it is the full truth to the best of my knowledge and belief. I have had the opportunity to make alterations and corrections in the above statement. I made this declaration voluntarily without any promise of reward and I was not subjected to any duress or threat whatsoever.

Nuernberg, Germany, 4 February 1947.

[Signed] HEINZ HERMANN SCHUBERT

TRANSLATION OF DOCUMENT NO-4327
PROSECUTION EXHIBIT 6

AFFIDAVIT OF KURT LINDOW, 21 JULY 1947*

I, Kurt Lindow, swear, state, and depose—

1. I was born on 16 February 1903 in Berlin and attended the Lessing-Gymnasium and the Kirchner Oberreal-School. I studied commercial science and law, without, however, passing the government examination, and was a business apprentice from 1922 to 1928. In April 1928 I joined the criminal police, Berlin, as a candidate and was transferred to Altona as assistant inspector later on where I remained until 1932. I was subsequently transferred to Elbing and later on to Hannover where I remained till 1938. In Hannover I was chief of the counter intelligence service, holding this office from 1935 to 1937. In 1938 I was retransferred to the political police later renamed state police, where I worked with the protective custody subdepartment from 1938 to 1940. Until 1941 I was attached to the counter-intelligence subdepartment and was transferred later on to the subdepartment dealing with Communists where I remained until the middle of 1944. At that time I received the order to report to the Reich Security Main Office, office I, and was attached to this office as instructor for the training of inspectors.

2. In 1935 I joined the SS; my membership number is 272,350. On 1 May 1937 I joined the Party, my membership number is 4,609,289.

3. In October 1941, till about middle of 1942, I first was deputy chief and later on chief of subdepartment IV A 1. This subdepartment dealt with communism, war crimes, and enemy propaganda; moreover, it handled the reports of the various Einsatzgruppen until the command staff was set up in 1942. The Einsatzgruppen in the East regularly sent their reports to Berlin by wireless or by letter. The reports indicated the various locations of the Gruppen and the most important events during the period under survey. I read most of these reports and passed them on to inspector Dr. Knobloch of the criminal police who made them up into a compilation which at first was published daily under the title "Operational Situation Reports U.S.S.R.". These reports were stencilled and I corrected them; afterwards they were mimeographed and distributed. The originals of the reports which were sent to the Reich Security Main Office were mostly signed by the commander of the Einsatzgruppe or his deputy.

4. The reports "Operational Situation Reports U.S.S.R.", Nos.

* Affiant did not testify.

114, 115, 118, 121, 122, 128, 138, 141, 142, 144, 159, as shown to me, are photostats of the original reports drawn up by Dr. Knobloch in subdepartment IV A 1 of which I was the chief. I recognize them as such by the red bordering, discernible on the photostat, by their size, the types, and partial bordering. I identify the handwritten initials appearing on the various reports as those of persons employed with the Reich Security Main Office, but considering that 6 years have elapsed since, I cannot remember the full names of these persons whose handwritten initials appear on the documents. From the contents of the handwritten notes I conclude that these were made by Dr. Knobloch, and moreover I notice that various parts of the above-mentioned reports are extracted from the original reports of the Einsatzgruppen to the Reich Security Main Office.

5. On the strength of my position as deputy chief and, later on, chief of subdepartment IV A 1, I consider myself a competent witness, able to confirm that the "Operational Situation Reports U.S.S.R." which were published by the chief of the security police and the security service under file mark IV A 1 were compiled entirely from the original reports of the Einsatzgruppen reaching my subdepartment by wireless or by letter.

I have read the above statement consisting of 3 (three) pages in the German language and declare that it is the full truth to the best of my knowledge and belief. I have had the opportunity of making alterations and corrections in the above statement. I made this statement voluntarily without any promise of reward and I was subjected to no duress or threat whatever.

Nuernberg, 21 July 1947 [Signed] KURT LINDOW

PARTIAL TRANSLATION OF DOCUMENT NO-4134
PROSECUTION EXHIBIT 7

EXTRACTS, 21 AND 27 OCTOBER 1941, FROM OPERATIONAL
SITUATION REPORT U.S.S.R. NO. 126

* * * * *

Chief of the Security Police
and the SD
-B. No. IV A 1-1 B/41-Top Secret
Berlin, 27 October 1941

[Stamp] Top Secret

50 copies
38th copy

Operational Situation Report No. 126

[Handwritten Note]: Was not dispatched [Initial]
I. Locations and signal communications.

The locations and signal communications as given in Daily Report No. 110 dated 22 October 1941 remained unchanged.

II. Reports of the Einsatzgruppen and Einsatzkommandos.

No reports of the Einsatzgruppen.

Reich Security Main Office
-II D 31/41-Secret

Berlin, 21 October 1941

[Stamp] SECRET

To the Office Chiefs and Group Chiefs,
Adjutant's Office of the Chief of the Security Police and
Security Service,
The Main Office
The Departments I, II, III, IV, V, VI, VII
The subdepartments I A 1, II A 1, II D 1, II D 2, II B 5,
IV A 1, IV B 4, IV D 3, IV E 5, VI C 1.

For information:

To the Adjutant's Office of the Reich Leader SS and Chief of the German Police.

Subject: Operation Barbarossa—Incorporation of the Office of the Operational Signal Officer [Einsatznachrichtenfuehrer] into the Command Staff [Kommandostab].

1. The Decree II Hb No. 11 II/41, top secret, dated 3 July 1941, is amended to the effect that the office of the operational signal officer of the Reich Security Main Office attached to group II D (operations room) is discontinued effective 26 October 1941.

2. Beginning that day, the tasks hitherto performed by the operational signal officer of the Reich Security Main Office will additionally be attended to by the Command Staff existing at office IV in the Main Office Building, 3 Prinz-Albrecht Street, room 320, telephone number: Postal 54, extension 318. Thus the command staff will be responsible both for the technical and material evaluation of the reports of the Einsatzgruppen and Einsatzkommandos employed in the Operation Barbarossa.

3. Beginning that day, all reports and communications received from the Einsatzgruppen A to D, after having been registered and marked according to subject, are to be transmitted by the main office (special mail center) without delay to the command

staff via office chief IV; reports coming in during the night to be submitted the next day at the beginning of office work.

BY ORDER:

[Signed] MUELLER
SS Brigadier General

[Seal of the Gestapo]
Certified true copy:
[Signature illegible]
SS Captain

c. Selections from Arguments and Evidence of the Defense

*OBJECTIONS OF THE DEFENSE AGAINST THE INTRODUCTION OF EINSATZGRUPPEN REPORTS AS DOCUMENTARY EVIDENCE ON 29 SEPTEMBER 1947 **

DR. ASCHENAUER (defense counsel for defendant Ohlendorf): I object against the submission of the Document NO-4134. This document contains obvious errors. On page 31 of the German document book it says, "Situation Report U.S.S.R. No. 126, dated 29 October 1941." On page 36 of this copy, German document book, I find the following: "Situation report, U.S.S.R. No. 126, 27th October 1941." On the same page, the following text is to be found: "The positions and news communications of daily report No. 110, 22 October 1941, remain unchanged." "Daily" report is evidently confused with "situation" report. Then the numbers 110 and 126 are not correct. It is also completely out of the question that from 22 October to 27 October, 16 situation reports or daily reports should be made out and passed on. Here there are obvious mistakes and I therefore ask that this document be refused.

MR. FERENCZ: As I understand the objection, your Honor, it is either a poor translation whereby something was translated as "daily report" instead of "operational report" or there is a number on the report which confuses the defense counsel. In the absence of a showing here of exactly what the defense counsel is talking about, I don't feel competent to comment on the particular objection. However, as a general matter, if there is such an error, I will certainly be glad to correct it. I am certain that there must be several errors in the presentation as we will give it. If there is anything more than purely formal objection, I wish the defense counsel would make that clear.

* Tr. pp. 76-81.

PRESIDING JUDGE MUSMANNO: Dr. Aschenauer, is the document, as you read it, at least clear as to intent, and you find objection only to some detail which perhaps later can be straightened out?

DR. ASCHENAUER: No, your Honor, I have the original in front of me now and here there are no typographical errors and this is not a matter of typographical errors nor of details. My objection refers to the probative value of the document. First of all, in the operational report 126, there are two different dates given. One date, 29 October 1941, on the first page of the document. In one of the further pages, the date 27 October 1941.

PRESIDING JUDGE MUSMANNO: Are you reading now from the original? That is, the photostat?

DR. ASCHENAUER: No, this is the original document which the prosecution is offering.

PRESIDING JUDGE MUSMANNO: Well, that's what I say. You are reading now from the original?

DR. ASCHENAUER: Yes.

PRESIDING JUDGE MUSMANNO: And the objections, I take it, are to the original document and not to the translation?

DR. ASCHENAUER: Yes, that's right. And if I say "operational report" is confused with "daily report" or "situation report", then it's completely out of the question that the number 110 is correct.

PRESIDING JUDGE MUSMANNO: Well, if you have no objection to the translation itself, then we don't see how your objection to the original can have any value, because the prosecution submits it as it is and if it is defective in any way then, of course, it's to your advantage that it's defective and, at the proper time, you will point that out in argument to the Tribunal when the issue must be decided. So, therefore, it does not go to the authenticity nor to the relevancy of the document. It's up to the prosecution to determine whether they wish to present in evidence a document which may be defective.

DR. BERGOLD (defense counsel for defendant Biberstein): I believe my colleague would have to object to something else. It isn't really the actual original, but the photostat of the original and, namely, that copy which the prosecution is submitting as evidence to the Tribunal. The objection of my colleague could, if I understand him correctly, mean that this is something which is not authentic and which perhaps, at the first look, might look like a forgery. Therefore, it seems necessary that the prosecution in this case does not submit the photostat, but the originals, so that it can be objected to or not.

PRESIDING JUDGE MUSMANNO: Well, the photostat is always taken at its face value unless it can be shown that there was some

mechanical difficulty in the actual photographing of the document. Do I understand you to say, Dr. Bergold, that you insist on the presentation of the original report itself, and how would that help you any more than the photograph would?

DR. BERGOLD: No, the photostat isn't always the same. Sometimes one can see, by looking at an original, that, for example, different kinds of paper were used so that the original might be composed of different reports. Or that various typewriter ribbons were used. But you can only see that by looking at the original. The photostat does not show these color differences nor does it show the differences in the quality of paper.

PRESIDING JUDGE MUSMANN: Well, Mr. Ferencz, what have you to say to this?

MR. FERENCZ: Your Honor, there are two different objections to this document. The first objection made is that document which we have offered as a photostat of the original has, on the first page, the date 29 October 1941, whereas, on one of the pages next to the end, it has the date 27 October 1941. It seems quite immaterial to me whether the date was 29 October or 27 October. We have offered the document for a completely different purpose.

The second objection, if that is what there is on the document, as you pointed out, is a matter which will be seen by the Court and which will be given weight in judging the probative value of this particular exhibit. The second objection made, however, is that this photostat copy may not be a true copy of the original. Either because—

Pardon me, I'd understood it as being an objection that there may have been some error in copying the original. However, I see that defense counsel does not agree with me.

PRESIDING JUDGE MUSMANN: Well, Dr. Bergold, just what is your objection? The Tribunal had also understood it that way.

DR. BERGOLD: No, I merely say that the photostat is surely correct, but sometimes one can only judge a doubtful document if one looks at the original and sees if the original in itself is a closed document or doesn't consist of several reports. The photostat is, of course, always correct. The photostat is unimpeachable. My request is merely to submit the original. Then we can decide whether we can maintain the objection or not.

MR. FERENCZ: I would like to point out that the certificate which goes with every exhibit certifies that it is a true photostatic copy of the original. In most other cases it has not been necessary to present the original. However, in order that these defendants are convinced that they have been given every opportunity, I have had the originals brought here from Berlin. They are available in my office and defense counsel are welcome, at any

time, to compare the photostatic copy with the original and I will be very glad to correct any errors.

PRESIDING JUDGE MUSMANNO: Very well. That answers it very completely.

DR. BERGOLD: I thank the prosecution for their cooperation.

* * * * *

*EXTRACT FROM THE CLOSING BRIEF FOR
DEFENDANT BLOBEL*

I

Documentary evidence in general

Case 9 has a special feature; it is the fact that this trial, at least as far as the submitting of evidence by the prosecution is concerned, is conducted with purely documentary evidence. Documentary evidence is frequently used in the Anglo-American way of conducting trials, but it is also used in German law and it is applied there in civil as well as in criminal law.

When considering the documents submitted by the prosecution as evidence, we have first of all a reason to discuss these documents in general and especially to raise considerable scruples which could be brought up against the unrestricted admitting of these documents as evidence.

Without doubt, every written article is a document which can be used as evidence, that is to say every article on which a human being expressed in writing, handwritten, typed or printed, an idea. Thus the documentary evidence consists of the setting-up of ideological contents. In its function as evidence, a document has either the character of an ordinary report document or that of a constitutive document. There is an additional viewpoint which is important in the classification of documents. A document may either designate somebody as the person from which the statement originates as his own, especially if the signature appears on it—the so-called signatory or signed documents—or it is submitted anonymously if the writer of the document cannot be identified—so-called anonymous documents. In the first case the document is “genuine” if it really originates from the person who is, in the document, said to be the writer; if it is not so, the document is “false”. In the second case it cannot be inquired whether it is “genuine” or “false” as long as the identity of the person who has drafted the document has not been established.

Most of the documents which were submitted as evidence and

which are to prove the guilt of the individual defendants concerning the punishable acts set forth in the indictment are the so-called situation reports U.S.S.R. and the so-called situation reports of the Chief of the Security Police and the SD (Reich Security Main Office).

According to the explanation given at the beginning, we are here concerned with report documents of the Reich Security Main Office; these documents attempt to furnish a survey of the activity of the units operating in the East—especially of the Einsatzgruppen, Einsatzkommandos, and Sonderkommandos—after 22 June 1941. Which units in this connection are concerned in detail will be discussed more thoroughly later on.

It will not and cannot be denied that the documents submitted are “genuine” evidence, that is to say, that the documents in question were actually drafted by the Reich Security Main Office. However, this does not exclude the established fact that the reported incidents may not be the pure truth, and actually all the defendants who up to now have testified under oath on the witness stand stated that these situation reports and operational situation reports of the Reich Security Main Office are highly unreliable, inaccurate and faulty, and that not only with regard to figures, but also with regard to the contents and the actual wording. (*Tr. pp. 434 ff., 537 ff., 624 ff., 1104-05, 2684, 3102 ff., 3490-91, 3495-96.*)

It is comprehensible, if, at least on the part of the prosecution, it is tried to invalidate the objection of the incorrectness of the documents by saying that if the defendants make statements to that effect, these statements cannot be true, because the documents speak for themselves and their value as evidence is established beyond any reasonable doubt. In view of the fact that the documents submitted constitute, with the exception of the affidavits made by the defendants themselves, nearly the entire evidence, such a defense which is directed against the trustworthiness and correctness of documents could be understood and perhaps could be considered as the only defense which would be of any purpose. However, the general objection is not based on technical reasons of expediency in connection with the procedure, but it is justified and was made in order to be able to master at all the highly responsible task of finding the objective truth.

In order to be able to judge the documents submitted in an objective manner, the following question must be raised and answered: How were the “Situation Reports U.S.S.R.” and the “Operational situation reports” of the Reich Security Main Office drafted? And the additional question: What sources of mistakes were thus provided and what effect did they have?

*Drafting of the Operational Situation Reports in the
Reich Security Main Office*

a. Construing of the Reports in the Reich Security Main Office

According to the result of the evidence taken up to now, especially the definitely trustworthy statements of the defendant Nosske as witness in his own case (*Tr. pp. 3490-91, 3495-96*), the following picture is given. The reports submitted as prosecution exhibits were drafted by the suboffice IV A 1—communism, war crimes, enemy propäganda—of office IV of the Reich Security Main Office in Berlin. Until about the end of April 1942 suboffice IV A 1 was the collection and evaluation center of all information and reports submitted by the Einsatzgruppen operating in Russia. In nearly daily reports—nearly 200 reports from July 1941 to April 1942—the original reports submitted to the Reich Security Main Office were summarized into the so-called operational situation reports U.S.S.R. The persons who were employed with the handling of the east reports were the suboffice chief Lindow and as collaborators Dr. Knobloch and Fumy. Only the Einsatzgruppen reported to Berlin and they sent either telegrams or written reports. (NO-4327, Pros. Ex. 6.) The reports which were sent by the Einsatzgruppen to suboffice IV A 1 for evaluation covered field III (living space [Lebensgebiete]) as well as IV (executive). This fact alone, namely that the suboffice specialized on executive matters in the Reich Security Main Office (IV) was thus forced to handle also fields which were completely unknown to it and also, in addition, were covering an extensive sphere, had to lead to insufficiencies and mistakes. To this the fact is added that suboffice IV A 1, having only a small staff of personnel, was not in a position to handle such an extensive additional task and besides that the technical facilities which in doubtful cases would have permitted to consult a map or to inquire at the unit concerned did not exist. As additional source of deficiencies the insufficiency of the communication installations should not remain unmentioned. Frequently the stations and Einsatz-areas were more than 1,000 kilometers distant from Berlin and therefore the transmission was rendered more difficult. It is true that a report transmitted by telegram or courier does not change its contents because it is being transmitted over a few additional hundreds of kilometers or is perhaps 2 weeks longer on its way. But in this connection the decisive fact is that according to experience, sources of mistakes cannot be eliminated completely where teletypes are concerned and that the transmission of

written reports is to a great extent subject to the contingencies of more or less rapidly functioning transport communications. The irregular arrival of the report which was a consequence thereof had to lead to considerable distortions and misrepresentations. In this connection the possibility that reports arrived by teletype and the same reports arrived a second time later on by courier also existed. The taking of evidence showed several examples of the fact that reports with a later date were registered earlier than reports which on account of their being longer on the way were received at a later time by the evaluation center. In cases of doubt it was considered better to use a figure twice, in any case always the higher one. On no account were the Einsatzgruppen and their detachments to represent a bad picture, because the reports in the Reich Security Main Office were compiled by order of Heydrich. It should be obvious that such insufficiency impairs the evidence value of documents drafted under such conditions to a considerable degree. But neither should a psychological element be overlooked. These insufficient conditions, which finally, in April 1942, brought about an essential change in the evaluation of the reports (Tr. pp. 3495-96) were known to all the persons handling these matters. In this way is it a surprise if they, on account of the hopelessness of being able to do away with these insufficiencies, being completely aware that only half of the material was to be shown anyway, simply did not care? They entered no risk—at least from the viewpoint of the conditions at that time—that any undesirable and unpleasant consequences should arise. Russia was far way. Furthermore, who was to check the reports and who was to complain? Third persons had no insight and the chief of the Einsatzgruppen with his detachment chiefs had other troubles and perhaps only a favor was done to him, because nobody was to be left out in case of promotions and awarding of orders. But it is irrelevant whatever the reasons for an untrue reporting may have been; it is a fact that during the course of the war this untrue reporting increased more and more. Himmler's statements in his Posen speech on 4 October 1943 are an important proof for that and nobody will be able to say that this warning was given without reason and and was not to be taken seriously. I quote:

“I now come to a fourth virtue which is very scarce in Germany—truthfulness. One of the major evils, which developed during the war, is untruthfulness in reports, statements, and informations, which subordinate offices send to their superior offices in civilian life, in the state, Party, and armed forces. Reports or statements are the base for every decision. The

truth is that in many branches one can assume in the course of this war that 95 out of 100 reports are plain lies or only half true or half correct." (*Blobel 11, Blobel Ex. 10.*)

b. Procedure of inclusion of the report in the situation report drafted by the Reich Security Main Office

The statements made hitherto were concerned only with the working conditions which existed in suboffice IV A 1. If the unsatisfactory conditions which prevailed there were already enough to cause this office to turn out piece work and incomplete results only, the sources of deficiency were further extended by the so-called report or information channel from subordinate to superior offices. We established—suboffice IV A 1 received the reports directly from the Einsatzgruppen. However, these reports were again only a summary of that which the individual detachments reported in writing, orally, or by teletype; added to this were other sources which, in case of measures to be taken by other, independently working units, or in case of cooperation of several units, were supplied. There is no doubt that the evaluation of the reports collected by the Einsatzgruppen was handled differently and was subject, to a great extent, to the attitude of the group chief and his departmental assistants. But this had taken place once already in a similar manner in most of the Einsatz- or Sonderkommandos, because it was not expedient to have the reports sent directly from the Teilkommando to the Einsatzgruppe, which might have resulted from a particularly difficult task or from special conditions of the area of operations. It was a rule to send the reports of the Teilkommandos first to the Kommando chiefs. He based his activity report to the Einsatzgruppen on the reports received by him, or he had them drafted by his assistant [Sachbearbeiter], according to the distribution of task which was in force in his detachment. If the exhibits submitted by the prosecution were identical with the above mentioned original reports and if they perhaps even bore the signature of the Kommando chief concerned, then objection against their correctness would have little hope to be successful; then the fact that the author of the document would have lied either when drafting the document or now in the trial because he is not brave enough to state the truth would be established.

The defense too—its interest in the establishing of the unrestricted truth is just as great as that of any other party in the trial—regrets that it is not possible to submit the original reports of the Einsatzgruppen and Einsatz or Sonderkommandos as documentary evidence.

*EXTRACTS FROM CLOSING STATEMENT OF THE DEFENSE ON BEHALF OF DEFENDANT NAUMANN*¹

* * * * *

III

Accordingly, only the Operational Situation Report of 21 April 1942 (NO-3276, *Pros. Ex. 66*), which contains the references to the executions from 6 to 30 March, falls within the time that Naumann was commander of the Einsatzgruppe.

To be sure, this document has been admitted as evidence. This admission as evidence, however, does not relieve the Court of the obligation of examining the value of this Operational Situation Report as evidence. It is true that according to Ordinance No. 7 the Military Tribunals are not bound to any rules governing the taking of evidence. By this, however, it was obviously not meant that the Military Tribunal can set itself above well established rules of taking evidence, well established rules which alone are a guaranty for an investigation of the truth, and with it for a just decision. This was also expressed by Military Tribunal IV in the recent verdict against Flick, et al., on page 7 of this verdict.²

1. This single document, which comes into consideration as evidence against Naumann insofar as executions within the territory of Einsatzgruppe B are mentioned therein, contains the following violations of the basic rules for the taking of evidence, which must be considered as well established and therefore must be observed if the truth is to be arrived at.

The contents of the document are not derived from the actual observations of the author of the document. The author of this document belonged neither to the staff of Einsatzgruppe B nor to a Sonderkommando or Einsatzkommando. He was not even in Russia, but compiled the document in the office in Berlin, for, as I have already mentioned the operational situation reports were prepared, in the form in which they are presented here, by members of office IV of the Reich Security Main Office in Berlin. It is not known from what records this document has been compiled. Furthermore, the identity of the author is not known, so that there is no knowledge about whether it was a reliable person who had compiled the operational situation reports with the requisite care.

It is also not known if the document was compiled from reports which were made by persons who were reporting on things they

¹ Complete closing statement is recorded in mimeographed transcript, 5 February 1948, pp. 5812-5862.

² *United States vs. Friedrich Flick, et al.* See Vol. VI.

had themselves observed. According to the evidence taken, this is even improbable. Therefore it is a matter of hearsay evidence, which is inadmissible according to the rules for taking evidence in all civilized countries, because hearsay evidence contains so many false sources that a just decision cannot be founded on it. Hearsay evidence itself is inadmissible according to all the recognized rules for the taking of evidence. But as we must assume, in this document it is a matter of hearsay evidence of the third, fourth, or even a higher degree. Furthermore, the document is not signed.

The authenticity of a document has to be proved furthermore according to the recognized rules of court procedure, and this by a witness who will be faced by the defendant and who then also states specifically under oath, where the document was found. This condition has also not been fulfilled. It is therefore more than doubtful whether the facts reported in the operational situation reports actually occurred.

Every defendant is favored by the legal assumption of innocence and a claim to a procedure in which all rules of the law of procedure are adhered to. It is in no way intended to disclaim the assertion that executions were carried out by the Einsatz- and Sonderkommandos subordinate to the Einsatzgruppe while Naumann was chief of Einsatzgruppe B. The defendant Naumann did not disclaim this assertion during his interrogation as a witness. But on account of the explained violations against recognized rules of procedure the offered document does not give proof of the fact that executions were carried out to the extent stated in the operational situation report, especially under the circumstances stated there. It can rather be merely considered as proved that executions took place in which the number of executed persons and the detailed circumstances have not been ascertained. Especially the numbers of executions appear much too high. This is shown by the fact that during the period covered by the report in the sphere of influence of Einsatzgruppe B, the Fuehrer order had been carried out for quite some time already under Nebe, the predecessor of Naumann as testified to by the defendants Blume and Steimle. It appears therefore as absolutely believable if Ott for instance, who in March 1941 was commander of Sonderkommando 7b with Einsatzgruppe B, declares that at the time he took over Sonderkommando 7b there was no further action to register any Jews.

Ott, just like Naumann, doubted the numbers mentioned in the Operational Situation Report dated 21 April 1943 while in the witness stand. The soundness of the reasoning given in this respect is not to be rejected offhand. Ohlendorf and Nosske also

doubted the reporting. Worth mentioning in this respect is that Ohlendorf too declared while in the witness stand that the execution of Jews and Communists happened in the first part of the campaign more often than in the year 1942. As evidence of the fact that the numbers mentioned in the operational situation reports do not have an absolute value as evidence, reference may finally be made yet to the affidavit of Fumy who is very well acquainted with the matter as he collaborated in the compilation of the operational situation report, and who due to his own observations is best able to judge whether these reports are reliable. If Naumann states therefore on the witness stand that according to its form the compilation of the Operational Situation Report dated 21 April 1942 is not at all familiar, then this appears credible; for this form obviously does not originate from the report of the Einsatzgruppe B. In its rebuttal the prosecution offered as proof for the numbers mentioned in the Operational Situation Report dated 21 April 1942 regarding executions carried out, the Documents U.S.S.R., 48 and 56, Prosecution Exhibits 234 and 235.

These documents have no value as evidence as I stated when the documents were offered. First of all I point out that the text of both documents corresponds in part word for word. The numbers mentioned also correspond exactly. Both documents are obviously parts of the same record. The contents of the documents have no connection at all with the acts of Naumann. There reference is rather made to how many dead were found in the mass graves, and that in a small percentage of cases, death was due to gunshot wounds. The cause of death is unknown otherwise. One should not overlook the fact that the less immediate vicinity of Smolensk in which the graves were found was twice within two years the theater of stubborn fighting. If one assumes that, insofar as gunshot wounds were the cause of death, these were due to executions, which is also not an established fact, then the further question arises, by whom and on whose orders these executions took place. I would also briefly like to mention in this respect that the victims of Katyn, for instance, were also mentioned in these reports, those, who according to German reports have always been designated as victims of executions carried out by Russian agencies. It has not been ascertained to this day who actually carried out these executions. Before the International Military Tribunal this question has also not been cleared despite the fact that three witnesses of the Russian prosecution and three witnesses of the German defense have been interrogated in this respect.

Aside from these arguments, which in themselves already show that the mentioned documents are absolutely without value as proof of the act incriminating Naumann, I would like to mention in addition that Naumann was active in Smolensk only during part of the period into which, according to the reports, the death of the bodies found would fall. Besides, any connection between the crimes mentioned in the reports and Naumann's activity is missing. None of the persons mentioned in the reports with the exception of Naumann was a member of the Einsatzgruppe. What Naumann is supposed to have done is also not mentioned in the reports.

The contents of the reports contain nothing but what was shown by the film offered by the prosecution as evidence. That is why I objected at the time against the acceptance of the film¹ as evidence and the Tribunal sustained this objection, too. Documents U.S.S.R., 48 and 56, and Prosecution Exhibits 234 and 235, have therefore no value at all as evidence in the proceedings against Naumann and are thus eliminated as evidence.

Only Prosecution Exhibit 76 remains as evidence, but due to the reasons already mentioned by me, it has only insignificant value as evidence.

*EXTRACTS FROM THE TESTIMONY OF DEFENDANT
NOSSKE²*

DIRECT EXAMINATION

* * * * *

[Tr. pp. 3493-6]

DR. HOFFMANN (counsel for defendant Nosske): I now return to your activity. You were then in charge of a department in this office, and what was the size of this department?

DEFENDANT NOSSKE: The department consisted of four people besides myself, one co-worker, one registrar, and two stenographers.

Q. And what was your task in detail?

A. My task was to deal with reports which had been sent us

¹The prosecution offered a film into evidence as Document No. U.S.S.R.-81, Prosecution Exhibit 173. Counsel for the defendants Naumann and Seibert objected to the showing of the film, and pointed out that it was without probative value. After seeing the film, the Tribunal sustained defense counsel's objection. (*Tr. p. 257.*)

²Complete testimony is recorded in mimeographed transcript, 4, 8, 9 December 47, pp. 3424-3687.

by the main office about partisan reconnaissance, activity and counter-measures, and to evaluate these reports, and to compile them clearly and concisely. Particular care had to be taken that the organizational form of the partisan groups was recognized, their tactics had to be established, the means with which they worked, and so forth, in order to inform the field agencies dealing with partisan reconnaissance how partisan activity was developing in the whole eastern territory.

Q. Did you have to combine any executive power with this activity?

A. No. Executive power could not arise out of this purely receptive activity. Furthermore, no directives were even prepared in this particular department. Directives could only be issued through the ordinary channel of command in existence, that was only through the office chief, the Chief of the Security Police, or Himmler himself.

PRESIDING JUDGE MUSMANN: Dr. Hoffmann, was it his office which prepared the operational reports, his office?

DR. HOFFMANN: Yes, as the witness says, but only those concerning partisan activity, whereas reports concerning shootings, based on the Hitler order we know of, went to Eichmann who was in charge of Jewish affairs.

PRESIDING JUDGE MUSMANN: But the operational reports covered all activities. Activities against partisans, activities against Jews, activity against saboteurs, everything?

DR. HOFFMANN: Yes, and perhaps the witness can comment on this again.

DEFENDANT NOSSKE: Your Honor, these activity reports which were issued in the Reich Security Main Office are to be distinguished from those which bear the title "Reports from Soviet Russia". These reports, about two hundred, which also are the subject of the indictment here were issued between June [1941] and about the end of April 1942. These reports contained everything, partisan warfare as well as Jewish actions and all the activities taking place in the occupied eastern territories reported by the Einsatzgruppen. These reports only appeared as top secret matters. In the spring, the basic change occurred; from this time on reports were not issued concerning Soviet Russia, but the new reports were called "Reports from the Occupied Eastern Territories". Already the name shows that there was a basic difference in these reports, and these new reports, which are also available here in the Document Center but which have not been introduced in evidence, contain these reports from the occupied eastern territories.

PRESIDING JUDGE MUSMANN: But who actually made up the

reports in that office, the reports that have been introduced here in the document books?

DEFENDANT NOSSKE: The reports which have been submitted in evidence here by the prosecution were issued by department IV A1. That is a subdepartment of office IV in the Reich Security Main Office. The people concerned are known, the man in charge was Lindow, and his collaborators were Dr. Knobloch and Fumy.

Q. And who?

A. Fumy and Dr. Knobloch.

Q. Then these three men are the ones who actually prepared the reports which we have here as evidence, Lindow, Knobloch, and Fumy?

A. That is correct.

DR. HOFFMANN: But until when, Witness?

A. These reports of events from U.S.S.R. came to a stop at the end of April 1942. The last copies bear number about 194 or 196. The reports from the occupied eastern territories which were issued after that, and only weekly, bear new numbers which begin with one.

PRESIDING JUDGE MUSMANN: Then, do I understand that the *modus operandi* was for these three men, either acting separately or collectively, to receive the reports from the field and then to combine them and issue them as reports from Berlin?

A. Yes, that is correct.

DR. HOFFMANN: But, Herr Nosske, that was not your activity, was it?

A. I had nothing to do with reports that have been submitted here as evidence by the prosecution. They had been concluded at a time before I joined the office.

Q. Do you know what the reason was for this new kind of reporting?

A. As my predecessor had told me, it was for the reason that the manner of reporting until then had been most unreliable, incorrect, and inaccurate. I myself personally learned from Fumy at a later date that these two people, Dr. Knobloch and Fumy, were so much overworked and had to work under such bad conditions that it can easily be explained why these reports were so inaccurate. Therefore, the evaluation of the reports later on was not only transferred to this one particular office but was distributed to a number of individual departments.

* * * * *

CROSS EXAMINATION

* * * * *

[Tr. pp. 3615-3618]

MR. WALTON: In your direct examination you said you first

went to a school in the suburbs of Berlin, and then you were called for duty in the Reich Security Main Office. What were you first told that you would have to do when you reported to the Reich Security Main Office? That is all I want to know.

DEFENDANT NOSSKE: I reported to office I, of the Reich Security Main Office and they told me there that no decision had been arrived at as to what use I was to be put to.

Q. Then you went ahead, and you said that you were ordered to be an inspector of some kind for a few months, or a few weeks, and after that, after you were relieved of this duty as an auditor or inspector. Then what were you assigned to do?

A. The expressions which you used are such that I must correct them, Mr. Prosecutor. Please do not mind if I do so. I was not an inspector. I was an examiner in examinations; that was a temporary job because they had nothing to do for me, and it was customary that they take practical experienced people to take part as examiners; they had to put questions in examinations.

Q. And after you had finished this task, you were relieved from it. What did you next do?

A. Then they told me in office I; "Now you go over to office chief IV, and report to him." I did so.

Q. What did you do? What duties were you assigned to in office IV?

A. They put me in charge of department IV-D-5.

Q. What did the department IV-D-5 concern itself with?

A. This was a small department which dealt with the evaluation of the reports about partisans in the eastern area.

Q. All right, then one of your duties in IV-D-5 was a review, a consolidation, and distribution of operational situation reports from U.S.S.R., wasn't it?

A. No. That is another question which I cannot answer in this form. They had nothing to do with distribution. I merely got the reports which were competent for my department. They were distributed by the main office.

Q. How often would these reports reach the Reich Security Main Office from each of the four Einsatzgruppen?

A. Very irregularly, but currently.

Q. Well, give us some approximate date? Every two weeks, every three weeks, every two months?

A. Such reports? Every day.

Q. All right. How often would your committee of your command staff meet for discussions and consolidation of these reports?

A. The conference took place once a week, but then not the reports from the East were discussed, but we read through those

excerpts which had been written by various departments about the messages from the East, and to which these departments made contributions. Every one came in there with the sheets, which had already been prepared, as a contribution.

Q. Do you know Dr. Knobloch, K-n-o-b-l-o-c-h?

A. Yes.

Q. Did you know Friedrich Rang, R-a-n-g?

A. Oh, yes.

Q. Did you know Kurt Lindow, L-i-n-d-o-w?

A. Yes.

Q. Did you collaborate with him in these reports?

A. Not with Lindow. During my time Lindow didn't have any idea about this. He sent reports, but how it was handled at my time Lindow didn't know. Rang was chief of a different group which had nothing to do with Russia. That was Rang, but he didn't know anything about these matters. I stayed with him in Mondorf, and I stayed with him in the same cell when I was interrogated by the British, and he always said he knew nothing about these matters. After I was relieved from my office he may have participated in these editorial meetings, I don't know, but about what happened during my time Rang didn't know anything, and he didn't work with me.

MR. WALTON: All right. At this time the prosecution in refutation of this statement which has been made by the witness, that one Friedrich Rang knew nothing about his activity and didn't attend any meetings of his command staff, should like to offer into evidence Document NO-5153, which will become Prosecution Exhibit 189, and which is an affidavit of the witness Friedrich Rang, and respectfully submit that a basis has been laid for the introduction of this affidavit.

PRESIDING JUDGE MUSMANNO: Is the affiant alive?

MR. WALTON: Yes. Well, I'll say, I think, yes, he was the last time I heard from him which was some time after he signed the affidavit.

* * * * *

VII. EVIDENCE AND ARGUMENTS ON IMPORTANT ASPECTS OF THE CASE

A. Selections from Evidence and Arguments of the Prosecution

I. INTRODUCTION

For the purpose of publication, the prosecution's case has been divided into four parts—

1. *The task of the Einsatzgruppen.* The prosecution alleged that it was the primary task of the Einsatzgruppen to carry out the Hitler order calling for the extermination of Jews, Communists, gypsies, and other racial or national groups considered by the Nazis as "racially inferior" or "politically undesirable". It was further alleged that another task of these Einsatzgruppen consisted in dispatching small detachments into prisoner-of-war camps in the East for the segregation and extermination of those inmates who were politically or racially undesirable.

Selections from the evidence of the prosecution on this point, consisting of contemporaneous documents and affidavits of the defendants, are set forth in pp. 119 to 140.

2. *The magnitude of the enterprise.* Of the contemporaneous documents on this point appearing in pp. 141 to 197, one document reports the killing of more than 220,000 people, another of more than 130,000, still others more than 91,000 persons, 80,000 persons, and 60,000 persons, respectively, and some report the killing of smaller numbers but the document reproduced here reports upon the killing of fewer than 10,000 persons.

3. *Methods of execution.* It was alleged by the prosecution that mass exterminations of Jews and other undesirables were carried out mainly by shooting, and that gas vans were also used for this purpose. Selections from the prosecution's evidence on this point set forth in pp. 198 to 216 include a contemporaneous document, an affidavit of an eyewitness, the German businessman Friedrich Graebe, and affidavits of several defendants.

4. *Membership in criminal organizations.* In count three of the indictment, all defendants were charged with membership in organizations declared to be criminal by the International Military Tribunal, namely, of the SS, the SD, and the Gestapo, respectively. The prosecution introduced in evidence extracts from the original SS personnel files. These files showed the duration of membership,

promotions, decorations, recommendations for promotion, etc., of the individual defendants.

An extract from the prosecution's brief on the scope of the declaration of criminality by the International Military Tribunal, of the Gestapo, the SS and SD, appears in pp. 216 to 221; and extracts from the testimony of the defendant Braune appear in pp. 323 to 328.

2. THE TASK OF THE EINSATZGRUPPEN

Prosecution Documents

Doc. No.	Pros. Ex. No.	Description of Document	Page
EC-307-1 ...	..... 11	Letter from Heydrich to the Chiefs of all Einsatzgruppen concerning "The Jewish Question in the Occupied Territories", 21 September 1939.	
NO-3414 ....	..... 14	Extract from operational order No. 8, 17 July 1941.	
710-PS .....	.....194	Letter from Goering to Heydrich concerning solution of Jewish question, 31 July 1941.	
NO-2856 ....	.....148	Affidavit of Otto Ohlendorf, 2 April 1947.	
NO-3644 ....	..... 26	Affidavit of Erwin Schultz, 26 May 1947.	
NO-4145 ....	..... 10	Affidavit of Walter Blume, 29 June 1947.	

TRANSLATION OF DOCUMENT EC-307-1 PROSECUTION EXHIBIT 11

LETTER FROM HEYDRICH TO THE CHIEFS OF ALL EINSATZGRUPPEN
CONCERNING "THE JEWISH QUESTION IN THE OCCUPIED TERRITORIES", 21 SEPTEMBER 1939

Pencil note:

Vol 232 f

Enclosure 4

Copy

The Chief of the Security Police
PP (II)-288/39 Secret.

Berlin, 21 September 1939.

Express Letter

To the Chiefs of all Einsatzgruppen of the Security Police
Re: The Jewish question in the occupied territory.

With reference to the conference which took place today in

Berlin, I would like to point out once more that the *total measures planned* (i. e., the final aim) are to be kept *strictly secret*.

A distinction is to be made between,

1. The final aim (which will take some time), and
2. Sections of the carrying out of this aim (which can be carried out within a short space of time).

The measures planned require the most thorough preparation both from the technical and the economic point of view.

It goes without saying that the tasks in this connection cannot be laid down in detail. The following instructions and directives simultaneously serve the purpose of urging the chiefs of the Einsatzgruppen to practical consideration.

I

The first necessity for the attaining of the final aim is the concentrating of the country Jews in the big towns. This is to be carried out immediately.

A distinction is to be made (1) between the territories of Danzig and West Prussia, Posen, Eastern Upper Silesia, and (2) the remaining occupied territories. As far as possible the territories enumerated under (1) are to be cleared of Jews, but the very least to be aimed at is the formation of very few "concentration" towns.

In the territories mentioned under (2) as few "concentration" points as possible are to be established in order to facilitate later measures. Care must be taken that only such towns be chosen as concentration points as are either railroad junctions or at least lie on a railway.

It is laid down on principle that Jewish communities of *less than 500 persons* are to be dissolved and to be sent to the nearest "concentration" town.

This decree does not concern the territory of Einsatzgruppe I which, lying east of Krakow, is bordered by Polanico, Jaroslav, the new demarcation line and the former Slovak-Polish frontier. Within this territory only a temporary census of Jews need be taken. The rest is to be done by the Jewish Council of Elders dealt with below.

II

Jewish Council of Elders

1. In every Jewish community a Jewish Council of Elders is to be set up which, as far as possible, is to be formed from persons in authority and rabbis who have remained behind. Up to 24 male Jews (according to the size of the Jewish community) are to form the Council of Elders. It is to be made fully responsible, within the meaning of the word, for the exact and punctual

carrying out of all instructions issued or to be issued.

2. In the event of the sabotaging of such instructions, the strictest measures are to be announced to the council.

3. The Jewish councils are to undertake a temporary census of the Jews—if possible arranged according to sex (ages (*a*) up to 16 years, (*b*) from 16 to 20 years, and (*c*) over) and according to the principal professions—in their localities, and to report thereon within the shortest possible period.

4. The Councils of Elders are to be advised of the days fixed and the appointed times of the evacuation, the possibilities of evacuation, and finally the evacuation routes. They are then to be made personally responsible for evacuation of the Jews from the country. The reason for the concentrating of Jews in the towns is to be that Jews have to a very great extent participated in franc-tireur attacks and pillage.

5. The Councils of Elders in the "concentration" towns are to be made responsible for the suitable accommodation of the Jews from the country. The concentration of the Jews in the towns will probably, in the interests of general security, call for certain regulations in these towns, e.g., that certain quarters of the town be altogether forbidden to the Jews; that in the interests of economic necessity, they be forbidden to leave the Ghetto, forbidden to go out after a certain hour in the evening, etc.

6. The Council of Elders is to be made responsible for the suitable feeding of the Jews during their transportation to the towns.

No objections are to be made if the departing Jews take their movable possessions with them, as far as this is technically possible.

7. Jews who do not comply with the order to move to the towns are, in certain cases, to be given a short respite. They are to be advised of the most strict punishment if they do not comply with this time limit.

III

All necessary measures are, on principle, always to be taken in the closest agreement and cooperation with the German civil administration and the competent local military authorities

When carrying out this action care is to be taken that the economic security of the occupied territories suffers no damage.

1. The needs of the army are to be the first consideration, e.g., it will hardly be possible, to begin with, to avoid leaving behind Jewish traders here and there who, for lack of other possibilities, must definitely remain behind for the provisioning of the troops. In such cases, however, the speedy Aryanization of these industries is to be aimed at, in agreement with the

competent local German administrative authorities, and the migration of the Jews completed.

2. It goes without saying that Jewish branches of industry and trade which are vital to the life of the community, the war effort, or the Four Year Plan must be maintained in order to safeguard economic interest in the occupied territories. In such cases, also, the quickest possible Aryanization is to be aimed at and the migration of the Jews completed.

3. Finally, the food question in the occupied territories is to be taken into consideration. For example, if possible, land belonging to Jewish settlers is to be farmed with their own by the neighboring German or Polish peasants, in an official capacity, so that the gathering in of the harvest still in the fields or the continued cultivation can be safeguarded. With regard to this important question, contact is to be made with agricultural expert consultants of the chief of civil administration.

4. In all cases where the interests of the security police on one hand and the German civil administration on the other are not in agreement, the individual measures in question are to be reported to me as quickly as possible before their execution and my decision awaited.

IV

The chiefs of the Einsatzgruppen will report to me continually regarding the following circumstances:

1. Census of Jews in their districts (if possible in the above-mentioned groups). The numbers are to be divided into Jews who will be migrating from the country and those who are already in the towns.

2. Names of towns selected as "concentration" points.

3. The time limits set for the migration of the Jews to the towns.

4. Summary of all Jewish branches of industry and trade which are vital to the life of the community, the war effort, or the Four Year Plan.

If possible the following facts are to be established:

a. The type of undertaking (together with estimate of the possibility of the adaptation of the undertaking to one vital to the life of the community, the war effort, or the Four Year Plan).

b. Which of these undertakings it is most urgent to Aryanize (to avoid damage of any kind)? How is it proposed to effect the Aryanization? Germans or Poles (this decision is dependent on the importance of the industry).

c. What is the number of the Jews employed in these industries (among those in the influential positions)? Can the industry be maintained without any more ado after the evacuation of the

Jews, or does this require the allocation of German or Polish workers? To what extent? Insofar as it is necessary to bring in Polish workers, care must be taken to obtain them principally from the former German Provinces, so that the Polish element there is consequently broken up. This question can only be dealt with through the intervention and cooperation of the organized German labor offices.

V

In order to attain the aims which have been set, I expect the fullest cooperation from all forces of the security police and the security service.

The neighboring chiefs of the Einsatzgruppen must immediately get into touch with one another, in order that the territories in question may be dealt with in their entirety.

VI

The OKH [Army High Command], the Plenipotentiary for the Four Year Plan (for the attention of State Secretary Neumann), the Reich Ministries of the Interior (for the attention of State Secretary Stuckart), for Food and Economy (for the attention of State Secretary Landfried), as well as the chiefs of the civil administration of the occupied territories have received a draft copy of this decree.

[Signed] HEYDRICH

Certified:

[Signed] SCHMIDT

Chancellery Employee

True copy:

[Signed]

Major of the General Staff

TRANSLATION OF DOCUMENT NO-3414
PROSECUTION EXHIBIT 14

EXTRACT FROM OPERATIONAL ORDER NO. 8, 17 JULY 1941

The Chief of the Security Police and the SD

2 1 B/4 1-top secret IV A 1 C

[stamp] top secret

Berlin, 17 July 1941

[crossed out by hand]

530 copies

276th copy

Operational Order No. 8

Subject: Directives for the Kommandos of the Chief of the Security Police and the SD which are to be detailed to the

permanent prisoner-of-war camps [Stalags] and transit camps [Dulags].

Appendices: 2 stitched enclosures, 1 and 2, 1 loose enclosure.

I am enclosing directives for the purging of the prisoner camps which contain Soviet Russians. These directives have been formulated in agreement with the Supreme Command of the Armed Forces—Prisoners of war department—(see enclosure 1). The commanders of the prisoner-of-war and transit camps (Stalags and Dulags) have been informed by the Supreme Command of the Armed Forces.

I request that a Kommando consisting of one SS Leader and 4–6 men be detailed for the prisoner-of-war camps in that area. If additional forces are needed to carry out the required tasks, I am to be informed at once. I draw attention, however, to the fact that the state police offices in the Reich, which are not concerned, are so understaffed that further forces cannot be taken from them.

In order to facilitate the execution of the purge, a liaison officer is to be sent to Generalmajor [Brigadier General] von Hindenburg, Commander in Chief of the prisoner-of-war camps in the Military District I, East Prussia, in Koenigsberg, Prussia, and to Generallieutnant [Major General] Herrgott, Commander in Chief of the prisoner-of-war camps in the General Government in Kielce.

The following are to be detained at once as liaison officers: criminal Councilor Schiffer, regional Gestapo headquarters Stettin, to Brigadier General von Hindenburg* in Koenigsberg, Prussia, and criminal Commissar Raschwitz, with the commander of the Security Police and of the SD in Krakow, to Major General Herrgott in Kielce.

The duty of those liaison officers is to coordinate from time to time, and especially in the initial stages of the action, the operations of the Kommandos uniformly and in accordance with those directives, and to see that there are smooth communications with the offices of the armed forces.

For the execution of the tasks assigned to the Kommandos in the prisoner-of-war camps, I attach—as enclosure 2—directives for the Kommandos of the chief of the Security Police and of the SD to be detailed to the permanent [prisoner-of-war] camps (Stalags), of which the Supreme Command of the Armed Forces and, therefore, also the regional commanders and camp commanders have been informed.

Before carrying out the executions, the leaders of the Einsatz-

* Oskar von Hindenburg, son of the former Reich president.

kommandos are to contact, in each case, the heads of the regional Gestapo headquarters which has jurisdiction or the commanders of the area competent for their camp, with regard to carrying them out. The executions must not be carried out in the camp itself or in its immediate neighborhood. They are not public and are to be carried out as inconspicuously as possible.

With regard to the screening of the transit camps in the newly occupied territories, separate instructions are being issued to the chiefs of the Einsatzgruppen of the Security Police and the SD. The transit camps which lie in the areas of the additional Einsatzkommandos detailed by the commanders of the Security Police and the SD and of the state police offices are to be screened by those.

A list of the permanent prisoner-of-war camps existing as of now is attached as enclosure 3.

Supplement—I request that the chiefs of the Einsatzgruppen try to execute the purge of the transit camps with their own forces as far as possible.

Supplement—for the state police office Stettin.

The attached directives are to be handed over to Criminal Councilor Schiffer, who is to report immediately to Brigadier General von Hindenburg in Koenigsberg, Prussia.

Supplement—for the commander of the Security Police and of the SD in Krakow.

The attached directives are to be given to the criminal police Commissioner Raschwitz, who is to report immediately to Major General Herrgott.

Distribution :

To—

- a. The Commander of the Security Police and of the SD, *Krakow*
- b. The Commander of the Security Police and of the SD, *Radom*
- c. The Commander of the Security Police and of the SD, *Warsaw*
- d. The Commander of the Security Police and of the SD, *Lublin*
- e. The Regional Gestapo Headquarters, *Koenigsberg, Prussia*
- f. The Regional Gestapo Headquarters, *Tilsit*
- g. The Regional Gestapo Headquarters, *Zichenau-Schroettersburg*
- h. The Regional Gestapo Headquarters, *Allenstein*
- i. The Regional Gestapo Headquarters, *Stettin*

For information:

To the Reich Leader SS and Chief of the German Police

To the Chief of the Security Police and of the SD
To office Chiefs I, II, III [?], IV, and VI
To the Subdepartments IV D 2 and IV D 3

To—

The Higher SS and Police Leader North—East *Koenigsberg-Prussia*

The Higher SS and Police Leader *Krakow*

The Inspector of the Security Police and of the SD *Koenigsberg-Prussia*

The Commander of the Security Police and of the SD in the General Government, *Krakow*

To the—

Einsatzgruppe A

Sonderkommando 1 a

Sonderkommando 1 b

Einsatzkommando II

Einsatzkommando III

Einsatzgruppe B

Sonderkommando 7 a

Sonderkommando 7 b

Einsatzkommando VIII

Einsatzkommando IX

Einsatzgruppe C

Sonderkommando 4 a

Sonderkommando 4 b

Einsatzkommando V

Einsatzkommando VI

Einsatzgruppe D

Sonderkommando 10 a

Sonderkommando 10 b

Einsatzkommando XI

Einsatzkommando XII

[Signed] HEYDRICH

certified:

[Signed] WOLFERT

Office clerk

[Stamp] Secret State Police

Copy

Top Secret

Enclosure 1

Directives for the segregation of civilians and suspicious prisoners of war from the Eastern campaign, in the prisoner-of-war camps lo-

cated in the occupied territories, in the zone operations, in the General Government, and in the camps of the Reich territory.

I. *Purpose*

The Wehrmacht must immediately free itself of all those elements among the prisoners of war who must be regarded as bolshevist influences. The special situation of the campaign in the East therefore demands *special measures* [Italics original] which have to be carried out in a spirit free from bureaucratic and administrative influences and with an eagerness to assume responsibility.

While the regulations and orders of the prisoners of war system were hitherto based exclusively on considerations of a *military* nature, now the *political* goal must be attained, namely, to protect the German people from Bolshevist agitators and to gain a firm grip on the occupied territory at the earliest possible moment.

II. *Means to attain the objective*

A. The inmates of the camps containing Russians, therefore, have first to be segregated within the camps according to the following point of view:

1. Civilians;
2. Soldiers (inclusive those who doubtlessly have dressed in civilian clothes);
3. Politically intolerable elements from 1 and 2;
4. Persons from 1 and 2 who seem to be particularly trustworthy and who are, therefore, suitable for employment for the reconstruction of the occupied territory;
5. Ethnic groups among the civilians and soldiers.

B. While the rough separation pursuant to A 1 to 5 is made by the camp authorities themselves, the Reich Leader SS will make available for the segregation of the persons pursuant to A 3 and 4.

"Einsatzkommandos of the security police and security service."

They are directly subordinated to the chief of the security police and security service [SD], especially trained for their special assignment, and take their measures and make their investigations within the framework of the camp regulations according to directives which they have received from the chief of the security police and the security service.

The commanders, particularly their counterintelligence officers, are duty bound to cooperate closely with the Einsatzkommandos.

III. *Further treatment of the segregated groups*

A. Civilians, if unsuspected, remain segregated in the camp until their repatriation to the occupied territory appears possible.

The date for it is fixed by the competent armed forces commander (respectively the commander of the army [group] rear area) after approval by the competent agencies of the chief of the security police and security service. The main condition for repatriation is that the person in question can with certainty be utilized for labor at his or her native place, or in labor units to be set up specifically.

The armed forces commander (respectively the commander of the army [group] rear area) is responsible for supplying guards during the transport. As far as possible the camp will provide an escort detachment.

As for "suspects" see II A 3.

B. *Military personnel*

Because of a possible employment within the Reich territory, Asiatics have to be separated from soldiers of European appearance. Officers in many cases will have to be segregated as "suspects". On the other hand officers, in order to prevent them from influencing the enlisted personnel, are to be separated from them at an early stage.

A special order will be issued regarding the final assignment of military personnel. Already here it must be stressed that *no* Asiatics and persons speaking the German language are to be considered for employment in Germany.

C. As for the persons segregated as "suspects" (see II A 3) the Einsatzkommando of the security police and the security service will make further decisions.

Should some persons who were regarded as suspects later on turn out to be nonsuspects, they are to be sent back to the other civilians or soldiers in the camp.

The request of the Einsatzkommandos for the surrender of any other persons must be complied with.

D. *Trustworthy persons* are first to be employed for segregating suspects (II A 3) and for other tasks of the camp administration. (Special reference is made to "Volga-Germans".)

If they are particularly fit for reconstruction work in the occupied territory, a request for release made by the Einsatzkommando of the security police and security service may be denied only if there is any special interest in an individual person from a counterintelligence viewpoint.

E. *Ethnic groups*, e. g. Ukrainians, White Russians, Lithuanians, Latvians, Estonians, Finns, Georgians, and Volga-Germans. Separation of both soldiers *and* civilians, unless these are sent to the occupied territory in the near future, anyway.

As to the employment of the individual ethnic groups, a special order will be issued.

Enclosure 2.

Berlin, 17 July 1941.

Office IV

Directives for the Kommandos of the Chief of the Security Police and the Security Service to be detailed to the permanent prisoner-of-war camps [Stalags].

The Kommandos will be detailed in accordance with the agreement between the chief of the security police and the security service and the Supreme Command of the Armed Forces, of 16 July 1941 (see encl. 1).

Within the framework of the camp regulations the Kommandos are operating independently by virtue of special authorization and in accordance with the general directives issued to them. It goes without saying that the Kommandos will keep closest contact with the camp commander and the counterintelligence officer attached to him.

The task of the Kommandos is the political screening of all inmates of the camp and the segregation and further treatment of—

a. elements which are undesirable for political, criminal, or other reasons,

b. those persons who can be used in the reconstruction of the occupied territories.

No aids can be made available for the Kommandos in the performance of their task. The "German Register of Wanted Persons", the "list compiled by the Office for the Investigation of Domiciles", and the "Special Register of Wanted Persons, U.S.S.R." will be of very little use in most cases; the "Special Register of Wanted Persons, U.S.S.R." is not sufficient because only a small proportion of the Soviet Russians classified as dangerous are listed therein.

The Kommandos, therefore, will have to rely on their own specialized knowledge and ability, on their own clues and self-acquired experiences. For this reason they will not be able to start on their task until they have accumulated sufficient material.

For the time being and also later on, the Kommandos in performing their tasks will utilize to the fullest possible extent the experience which the camp commanders have accumulated from observation of the prisoners and from interrogation of camp inmates.

Furthermore, the Kommandos must endeavor right at the start to single out those elements among the prisoners which appear to be reliable, regardless of whether or not they are Communists,

so as to utilize them for their information service inside the camp and later on, if advisable, also in the occupied territories.

It must be possible through the employment of these confidential agents and by making use of any other means available to single out, as a first step, all those elements among the prisoners which are to be segregated. By a short interrogation of the singled-out persons and, possibly, by questioning other prisoners, the Kommandos will be in a position to take the final decision in each individual case.

The statement of *one* confidential agent is as such not sufficient proof to class a camp inmate as suspicious. Somehow or other, a confirmation should be obtained if possible.

Above all, it is necessary to find out all important officials of the state and the Party, in particular—

Professional revolutionaries.

The official of the Comintern.

All influential party officials of the Communist Party.

Of the Soviet Union and its subdivisions in the central committees, the regional and district committees.

All People's Commissars and their deputies.

All former Political Commissars in the Red Army.

The leading personalities on the central and intermediate level of the state administration.

The leading personalities of the economy, the Soviet-Russian intellectuals.

All Jews.

All persons found to be agitators or fanatical Communists.

As already mentioned, it is no less important to sort out those persons who may be used for the reconstruction, the administration, and economic management of the conquered Russian territories.

Finally, it will be necessary to sort out those persons who will yet be wanted for the conclusion of further investigations, no matter whether of a political nature or otherwise, and for the clarification of questions of general interest. This category includes in particular all higher state and Party officials who are able to give information regarding the measures and working methods of the Soviet-Russian state, the Communist Party or the Comintern, owing to their position and their knowledge.

Finally when making any decisions the racial origin has to be taken into consideration.

The leader of the Einsatzkommando will transmit a weekly brief report to the Reich Security Main Office by teletype or express [special delivery] letter. This report will contain—

1. A *short* account of the operations of the past week.

2. Number of persons definitely regarded dangerous (statement of numbers sufficient)
3. List of names of persons classed as—
Officials of the Comintern,
important party officials,
People's Commissars,
Political Commissars,
leading personalities,
giving a concise description of their positions.
4. Number of persons to be classed as unsuspected.
 - a. Prisoners of war.
 - b. Civilians.

On the strength of these operational reports the Reich Security Main Office will communicate further measures to be taken at the earliest possible moment.

In order to carry out successively the measures indicated in these instructions, the Kommandos will request the camp authorities to surrender the prisoners in question.

Camp authorities have been instructed by the Supreme Command of the Armed Forces to comply with such requests (see encl. 1).

Executions must not be carried out in or near the camp. If the camps are in the General Government close to the frontier, prisoners are to be moved to former Soviet territory, if possible, for special treatment.

In the event of executions being necessary for reasons of camp discipline, the leader of the Einsatzkommando has to get in touch with the camp commander for this purpose.

The Kommandos are required to keep records of the completed special treatments. These records must contain serial numbers, surnames and first names, date and place of birth, military rank, trade or profession, last place of residence, reason for the special treatment, and date and place of the special treatment (sheaves of files).

As regards the carrying out of the executions, the removal of reliable civilians and the eventual drafting of confidential agents into the occupied territories to be employed by the Einsatzgruppen, the leader of the Einsatzkommando will get in touch with the leader of the nearest local Gestapo headquarters or with the commander of the security police and the security service and, via the latter, with the chief of the Einsatzgruppe in question in the occupied territories.

As a matter of principle, such communications must be transmitted to the Reich Security Main Office IV A 1 for information.

Exemplary conduct on and off duty, smoothest possible co-

operation with the camp commandant, careful scrutiny is enjoined on the leaders of the Einsatzkommandos and all members.

The members of the Einsatzkommandos have at all times to bear in mind the special importance of the tasks set them.

[stamp] Top Secret

Enclosure 3

Amt IV

Berlin, 21 August 1941

List of the prisoner-of-war camps in the area of Military District I and the General Government

Military District I

1. Officer's [PW] camp [Oflag] 63. .in Proekuls
2. Officer's [PW] camp [Oflag] 53. .in Heydekrug
3. Officer's [PW] camp [Oflag] 60. .in Schirwindt
4. Officer's [PW] camp [Oflag] 52. .in Schuetzenort (Ebenrode)
5. Officer's [PW] camp [Oflag] 56. .in Prostken
6. Officer's [PW] camp [Oflag] 68. .in Suwalki
7. Permanent PW
 camp [Stalag] 331. .in Fischborn-Turosel
8. Officer's camp 57. .in Ostrolenka

General Government

1. Permanent PW camp 324. .in Ostrov-Mazowiecka
2. Permanent PW camp 316. .in Siedlce
3. Permanent PW camp 307. .in Biala-Podlaska
4. Permanent PW camp 319. .in Chelm
5. Permanent PW camp 325. .in Zamosc
6. Permanent PW camp 327. .in Jaroslaw

The officer's camps are at present used as Stalags.

The transit camps are, according to the communication by the Supreme Command of the Armed Forces, in the zone of operations and are from time to time moved nearer to the front as locally required. Their present location may be found by inquiry at the Quartermaster General, Department Prisoners of War—telephone: Anna 757 (military line)—Captain Sohn.

TRANSLATION OF DOCUMENT 710-PS
PROSECUTION EXHIBIT 194

LETTER FROM GOERING TO HEYDRICH CONCERNING SOLUTION OF
JEWISH QUESTION, 31 JULY 1941

The Reich Marshal of the Greater German Reich
Plenipotentiary for the Four Year Plan
Chairman of the Ministerial Council for National Defense

Berlin, 31 July 1941

To The Chief of the Security Police and the Security Service,
SS Gruppenfuehrer Heydrich

Complementing the task that was assigned to you on 24 January 1939, which dealt with arriving at—through furtherance of emigration and evacuation—a solution of the Jewish problem, as advantageously as possible, I hereby charge you with making all necessary preparations in regard to organizational and financial matters for bringing about a complete solution of the Jewish question in the German sphere of influence in Europe.

Whenever other governmental agencies are involved, these are to cooperate with you.

I charge you furthermore to send me, before long, an over-all plan concerning the organizational, factual, and material measures necessary for the accomplishment of the desired solution of the Jewish question.

[Signed] GOERING

TRANSLATION OF DOCUMENT NO-2856
PROSECUTION EXHIBIT 148

AFFIDAVIT OF OTTO OHLENDORF, 2 APRIL 1947*

I, Otto Ohlendorf, swear, depose, and state—

1. I was Chief of Einsatzgruppe D from the time of its formation in June 1941 until June 1942. The areas detailed to me for the purpose of special tasks included parts of Bessarabia and also the region to the south, and including the following cities: Chernovitsy, Mogilev-Podolski, Yampol, Ananev, Berezovka, Nikolaev, Melitopol, Mariupol, Rostov on the Don, and also the peninsula of the Crimea. Some of the places within the area detailed to me were Odessa, Kherson, Simferopol, and also the racial German regions in the Landau and Speyer area. I can no longer remember other names which outline more sharply the area detailed to me.

2. The staff of Einsatzgruppe D consisted of only a few persons. The former Standartenfuehrer Willy Seibert was my Chief III [Leiter III]. Since he was the senior officer from point of service after me, he was entrusted by me with the duties of a deputy

* Defendant Ohlendorf testified in Court with respect to his affidavit on 9 October 1947 (Tr. p. 573).

during my absence. One of his tasks was the composition of all reports which went to the higher headquarters, to the Reich Security Main Office, Berlin, and to the 11th Army. In rare cases only, if very important reports had to be written, I dictated them myself, and later informed Seibert of the contents as a routine matter. Seibert had full access to all the secret files, including these which were designated as top secret. In cases where reports bear my signature these can just as well have been written by Seibert as by me. Reports which are signed by Seibert were as a rule written by him during my absence from the Einsatzgruppe. Seibert was acquainted with all the duties and problems within the framework of Einsatzgruppe D. Only two people could have had complete knowledge of the number of executions which took place, namely Seibert and myself. I tried to keep the number secret in order to prevent the Kommandofuehrer from making a contest of it and reporting larger numbers than had actually been executed. The former Obersturmfuehrer Heinz-Hermann Schubert was my adjutant and assigned to managing the business room. The registry, the dispatching and registering of mail, and the daily business routine were under him. My staff consisted further of a physician, Dr. Otto Schnopfhausen, an economist [Wirtschaftsfuehrer] a technical advisor, a radio officer who at the same time took dictation for radio messages, and several clerical workers and orderlies.

3. On the basis of orders which were given by former Brigadefuehrer Streckenbach, Chief of Amt I of the RSHA, by order of the head of the RSHA, to the chiefs of the Einsatzgruppen and the Kommandofuehrer at the time of the formation of the Einsatzgruppen in Pretzsch (in Saxony) and which were given by the Reich Leader SS to the leaders and men of the Einsatzgruppen and Einsatzkommandos who were assembled in Nikolaev in September 1941, a number of undesirable elements composed of Russians, gypsies, and Jews and others were executed in the area detailed to me. All Jews who were arrested as such were to be executed within my area. It was my wish that these executions be carried out in a manner and fashion which was military and suitably humane under the circumstances. For this reason I personally inspected a number of executions, for example, executions which were carried out by Kommando 11b under the direction of Dr. Werner Braune, executions by Kommando 11a under Sturmbannfuehrer Zapp in Nikolaev, and a smaller execution by Kommando 10b under the leadership of Alois Persterer in Ananew. For technical reasons (e.g., because of road conditions) it was not possible to inspect all mass executions. Insofar as I was prevented from inspections for personal reasons, I ordered members

of my staff to represent me at these. I remember that Schubert inspected an execution which was carried out by Kommando 11b under Braune's direction in December 1941 in Simferopol. The only people whom I generally assigned to inspections were, except for Schubert, Willy Seibert and Hans Gabel. The latter was captain of the protective police [Schutzpolizei] and commander of the protective police company attached to me. Details, such as whether and to which executions I sent the two last named, I can no longer remember.

I have read the above statement in the German language consisting of 4 pages and declare that it is true and correct to the best of my knowledge and belief. I have had opportunity to make alterations and corrections in the above statement. I have made this statement voluntarily and freely, without any promise of reward, and I was subjected to no compulsion or duress of any kind.

Nuernberg, 2 April 1947 [Signed] OTTO OHLENDORF

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TRANSLATION OF DOCUMENT NO-3644
PROSECUTION EXHIBIT 26

AFFIDAVIT OF ERWIN SCHULZ, 26 MAY 1947*

I, Erwin Schulz, swear, declare, and depose—

1. I was born on 27 November 1900, in Berlin. I attended the "Koelnisches Gymnasium" [senior high school] from 1906 until 1918, and then went into the army. After returning from my military duties which lasted from 11 April 1918 to 26 February 1919, I resumed my studies at the Koelnisches Gymnasium and matriculated there. I then studied law at the University of Berlin for two semesters; was forced, however, to leave the university owing to financial difficulties. I joined the staff of the Dresdner Bank in Berlin, and went to Hamburg approximately in July 1923. On 5 November 1923, I joined the security police, Bremen, and remained with this organization until 1938. I was then transferred to the state police in Bremen. I became a Regierungsrat [governmental counsellor] in 1938. I remained with the State Police, Bremen, until 1939. After that time, I transferred to the state police in Reichenberg, Sudetengau, and in 1940 was transferred to Hamburg, where on 12 April 1940 I became commissar-inspector of the security police and the SD. Effective from 1 March 1941, I

* Defendant Schulz testified on 17, 18, 20, and 21 October 1947 (Tr. pp. 908-1188).

was transferred to Berlin to the RSHA Geheimes Staatspolizeiamt [Gestapo Headquarters] and became group chief for education and training at office I. At the same time, I was commissioned to take care of official matters pertaining to, and on behalf of, the Commandant of the Fuehrer school of the Security Police in Berlin-Charlottenburg. In February 1943 I was appointed chief of office I, when my predecessor Streckenbach was called to the Waffen SS. With effect from 1 May 1944 I became Commander of the Security Police in Salzburg, and kept this position until the end of the war. Approximately three weeks before the end of the war I was appointed SS and Police Leader for the Gau Salzburg, by Kaltenbrunner.

2. I became a member of the NSDAP on 1 May 1933. My Party membership number is 2902238. I became a member of the SS on 20 April 1935. My SS membership number is 170484.

3. When I was Commander of the Fuehrer school of the Security Police in Berlin-Charlottenburg and chief of group I B at the RSHA, I received, in May 1941, an order by either Streckenbach or Heydrich to keep the current class under training available for mobilization. Approximately at the same time, I was instructed to take over the leadership of the Einsatzkommando 5, which at that period was activated in Pretzsch. The Einsatzkommando 5 was a part of Einsatzgruppe C. The current class, trained at the Fuehrer school, was ordered to Pretzsch in order to be later divided up and assigned to the individual Einsatzkommandos. I myself was in Pretzsch only temporarily, as, at this time, I was engaged with my personal move from Hamburg to Berlin and also with official matters pertaining to the RSHA. It was approximately during the first ten days in June 1941 that the chiefs of the Einsatzgruppen and leaders of the Kommandos were called to the RSHA, Prinz Albrecht Palace, in order to hear a speech by Heydrich, in which he outlined the policy to be adopted and gave us some outlines concerning the carrying out of the tasks imposed upon the Einsatzgruppen.

4. On or about 23 June 1941, the Einsatzgruppe C, consisting of Sonderkommandos 4a and 4b, and the Einsatzkommandos 5 and 6 started to march in the direction of Gleiwitz. In the beginning of July, I cannot remember the exact date, we marched into Lvov. It became known there that a number of persons from Lvov had been killed before the retreat of the Russian troops. Shortly after our arrival in Lvov, Dr. Rasch, Chief of the Einsatzgruppe C, informed us that Jewish officials and inhabitants of Lvov had participated in these killings. A military command post within the city had already created a local militia. Dr. Rasch who was working in closest cooperation with the militia, had in-

structed Kommando 4b and after their departure, Kommando 6, to support the militia. Participants and suspected persons were arrested on the same or following day. In addition, the Kommando Schoengarth (BdS Krakow) was put into action.

5. After the completion of these arrests approximately 2,500 to 3,000 people had been collected in the stadium which was situated right next to the quarters of the Einsatzgruppe C. Among those arrested, there were, so I was told, also non-Jews who had been suspected of having participated in the murders. On the following day we were informed by Dr. Rasch, that a Fuehrer order had come into force according to which guilty persons or even strongly suspected persons were to be shot as reprisals for these murders. As far as I remember, the OKW order that all political officials and Soviet-Russian commissars, if one could lay hands on them, were to be shot, was also published at that time. Approximately 4 days after our arrival, the executions of the persons arrested were started. Dr. Rasch was supervising these executions which were carried out by Einsatzkommando 6, under Standartenfuehrer Kroeger (Dr.). I myself saw Dr. Rasch on the field where the executions were being carried out, and Sturmbannfuehrer Dr. Hoffmann, chief of staff of Dr. Rasch, also confirmed the fact that Dr. Rasch was present at the executions.

6. When I returned to my unit, Einsatzkommando 5, at midday of the same day, I was told by one of my leaders that Dr. Rasch had given orders that Kommando 5 was to take over the carrying out of the executions for that afternoon. I immediately tried to get in touch with Dr. Rasch, but only succeeded in speaking to his chief of staff, Dr. Hoffmann, who confirmed the order. I was going to try and rescind the order as far as my Kommando was concerned, I did not, however, succeed. I repeated the order in front of my leaders and the troops and gave instructions that the executions were to be carried out in a serious and dignified manner. Useless tortures were to be avoided. I personally ascertained that the physician of the Einsatzgruppe C, Dr. Kroeger (a brother of the leader of the Einsatzkommando 6), was present during the executions. I was convinced that I had done all in my power to carry out the executions in a military and humane way. My Kommando shot approximately 90 to 110 people.

I had subdivided my Kommando into three platoons; each platoon consisted of about 50 men. The persons to be executed were transported by trucks to the place of execution. At each time there were about 18 to 22 persons. I no longer remember the exact number in the trucks. The first platoon was placed face to face with the persons about to be executed, and about three men each aimed at each person to be shot. I myself was present at the

first volley of the execution, with my face turned away. When the first volley had been fired, I turned around and saw that all persons were lying on the ground. I then left the place of execution and approached the place where the second and third platoons were gathered. The first platoon which had carried out the shootings was recalled, I inspected the men, and then returned to my quarters. I noticed there that the detainees who were in the stadium next to the quarters, some of whom were still to be executed, were driven across the stadium by members of the armed forces and tortured. I did not succeed in apprehending those responsible for the tortures.

In order to terminate this spectacle, I had the rear door of the stadium opened and the detainees could march out through it. The members of the armed forces who had participated in this affair disappeared as well. As the remainder of the persons to be executed had also escaped, I informed my Kommando by means of a driver that the executions were terminated.

7. About 6 or 7 days after the executions we started to march towards Dubno. On or about 14 July we marched further towards Zhitomir, which we could not reach, however. On or about 25 July we arrived in Berdichev. In the beginning of August, I, together with the other leaders of the Kommandos, was ordered to Zhitomir, where the staff of Dr. Rasch was quartered. Rasch informed us that Obergruppenfuehrer Jeckeln had been to see him and had transmitted an order by the Reich Leader SS, implying that all Jews were to be shot. Only in cases where Jews were required for purposes of labor, consideration as to their executions should be given. Jewish women and children were, if necessary, to be shot as well, in order to prevent acts of revenge.

8. As I did not favor this kind of warfare, I tried, evading official channels, to get in touch with Streckenbach and Heydrich directly, which I succeeded in doing at the end of August. I managed to be recalled as leader of the Einsatzkommando 5. On or about 26 September my successor, Obersturmbannfuehrer Meier, arrived at the headquarters of the Kommando in Skvira; I handed over the leadership of the Kommando to him and returned to Berlin.

I have read the above statement consisting of seven (7) pages written in the German language and declare that it is true, according to the best of my belief and knowledge. I had the opportunity to make amendments and corrections in the above statement. I made this declaration voluntarily without promises of reward and was neither threatened nor coerced to do so.

Nuernberg, 26 May 1947

[Signed] ERWIN SCHULZ

TRANSLATION OF DOCUMENT NO-4145
PROSECUTION EXHIBIT 10

AFFIDAVIT OF WALTER BLUME, 29 JUNE 1947*

AFFIDAVIT

I, Walter Blume, swear, depose, and state—

1. I was born on 23 July 1906 in Dortmund. I attended the elementary school and the Real gymnasium and graduated in Dortmund in 1919. I then studied law for three years at the Universities of Bonn, Jena, and Muenster and passed my first law examination. Then followed a further three years' training in Hamm and Dortmund and, in 1932, I passed the bar examination in Berlin. In April 1933 I obtained my doctor's degree at Erlangen. I was thereupon engaged by the commissioner of police in Dortmund for information purposes and remained there until about May 1934. Shortly before the Roehm revolt I was appointed as a government administration officer to act as chief of the State Police Office at Dortmund. After the Roehm revolt I was transferred to the then Prussian Secret State Police Office. I remained there until spring 1935. Until autumn 1937 I was in charge of the State Police Office at Halle/Saale and until the beginning of 1939 I was in charge of the State Police Office at Hannover. I was in charge of the State Police Office in Berlin until immediately before the beginning of the Russian campaign. In June 1941 I was assigned to Dueben and until approximately the middle of August I was chief of the Sonderkommando 7a in Einsatzgruppe "B". In August 1941 I was recalled to the Reich Security Main Office as personnel referent and remained there until June or July 1942. After an assignment which occupied me for 11½ months in Feldes, I became inspector of the security police in Duesseldorf. I carried on this employment until August 1943. I then went to Athens as commander in chief of the security police and remained there for about one year. After that I was for a time without employment and was later ordered to take over the frontier police in office I of the Reich Security Main Office. At the beginning of 1945 I was sent by office IV to Bad Blankenburg, in order to take over the direction of the censorship department there and extend it. I could not complete this assignment, as I withdrew in the direction of Salzburg to the Waffen SS and was taken prisoner along with them. After spending a year as a prisoner in American hands, I was released from prison, having remained silent on the subject

* Defendant Blume testified in Court on 31 October, 4 and 5 November 1947 (*Tr. pp. 1754-1927*).

of my activity in the security police, and until my arrest in the summer of 1947 I lived under my own name as a servant to a farmer.

2. I have been a member of the NSDAP since 1 May 1933. My party number is 3,282,505. I have been a member of the SS since the summer of 1934 or 1935. My SS number is 267,224.

3. During the setting up of the Einsatzgruppen and Einsatzkommandos during the months of May-June 1941 I was at Dueben. During June, Heydrich, Chief of the Security Police and SD, and Streckenbach, head of office I of the Reich Security Main Office, held lectures on the duties of the Einsatzgruppen and Einsatzkommandos. At this time we were already being instructed about the tasks of exterminating the Jews. It was stated that eastern Jewry was the intellectual reservoir of bolshevism and, therefore, in the Fuehrer's opinion, must be exterminated. This speech was made to a small, selected audience. Although I cannot remember the individuals present, I assume that many of the Einsatzgruppen chiefs and Einsatz- and Sonderkommandos chiefs were present. I heard another speech by Heydrich in the Prinz Albrecht Palace in Berlin, in the course of which he again emphasized these points.

4. As chief of Sonderkommando 7a I carried out one execution in the course of my duty. I remember one occasion on which between 70 and 80 people were executed in Vitebsk and another occasion on which a similar number were executed in Minsk. On the latter occasion I only received a direct order from Nebe, chief of Einsatzgruppe B, to find out whether this execution had taken place. I was not present during the whole execution, but convinced myself that it was carried out. In both cases a kind of trench was dug; the persons destined to die were placed in front of it and shot with carbines. About 10 people were shot simultaneously by an execution force of 30 to 40 men. There was no doctor present at the execution, but the leader of the execution force who was responsible made sure that the people were dead. Coups de grace were not necessary. Neither was there in my unit any specialist in the art of shooting in the neck. I did not take part in any further mass execution.

5. I received all orders regarding executions, direction, and duties of Sonderkommando 7a, which was subordinate to me in Dueben or in the Prinz Albrecht Palace in Berlin. During the campaign I never received any further orders.

6. I do not know by whom the reports of the Einsatzgruppen were compiled in Berlin.

Nuernberg, 29 June 1947

[Signed] WALTER BLUME

3. THE MAGNITUDE OF THE ENTERPRISE

Prosecution Documents

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NO-3359	84	Extracts from operational situation report U.S.S.R. No. 190, 8 April 1942.	196
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PARTIAL TRANSLATION OF DOCUMENT NO-3154
PROSECUTION EXHIBIT 23

EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 80,
11 SEPTEMBER 1941

The Chief of the Security Police and of the Security Service
IV A 1 - B. No. 1 B/41 top secret

Berlin, 11 September 1941

Top Secret

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Operational Situation Report U.S.S.R. No. 80

I. Political Survey

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II. Reports of Einsatzgruppen and Einsatzkommandos

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Observations Made and Measures Taken by the Security Police

Besides the thorough liquidation of the Party organization and the operations to clear the country of Jews who constitute the most evil disintegration factor, the executive operations by Einsatzgruppe C at present also include, above all, the fight against the partisan nuisance, from the well-organized band and the individual sniper down to the systematic rumor monger.

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Since, however, primarily in the large towns, the ever increasing security tasks cannot be solved by the Einsatzkommandos alone, since they are too weak for this purpose, mounting importance is being attached to the creation and organization of a regular police service. Well screened, particularly reliable Ukrainians are employed for this purpose; moreover, a network of confidential agents, predominantly composed of ethnic Germans, has been created with great success. In the Kolchoses these tasks have mostly been conferred upon the Kolchos managers, the Starostes.

At Kirovo the development has reached a stage where the men enlisted for this purpose are already receiving their pay from the municipality from funds seized from Jews and are obtaining their rations from a small farm that has been especially allocated to them.

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PARTIAL TRANSLATION OF DOCUMENT NO-3155
PROSECUTION EXHIBIT 38

EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 111,
12 OCTOBER 1941

The Chief of the Security Police and the Security Service (SD)
B. No. IV A 1 — 1 B/41 — top secret

Berlin, 12 October 1941

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Operational Situation Report U.S.S.R. No. 111

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II. *Reports from the Einsatzgruppen and Einsatzkommandos*
Einsatzgruppe A. Sonderkommando 1a
Location Tallin, reports:

Jews in Esthonia

At the beginning of 1940 about 4,500 Jews were living in Esthonia. About 1,900 to 2,000 of them were living in Tallin, larger Jewish communities were at Tartu, Narva, and Parnu, while only few Jews were living out in the flat country.

The deportations carried out by the Russians, as far as they concerned Jews, cannot be established in numbers. According to inquiries made so far, Jewry had hardly been affected by them.

With the advance of the German troops on Esthonian territory, about half of the Jews made preparations for flight and, as these Jews had collaborated with the Soviet authorities, they left

the country with them going east. Only few of them were seized in Tallin because their escape route had been cut off. After the occupation of the country, there were probably still about 2,000 Jews left in the country.

The Esthonian self-defense units, which had been formed when the Wehrmacht marched in, started immediately to arrest Jews. Spontaneous demonstrations against Jewry did not take place because there was no substantial enlightenment of the population.

The following orders were therefore issued by us:

1. The arrest of all male Jews over 16.
2. The arrest of all Jewesses fit for work between the ages of 16 and 60, who were utilized to work in the peat bogs.
3. Collective billeting of female Jewish residents of Tartu and vicinity in the synagogue and a tenement house in Tartu.
4. Arrest of all male and female Jews fit for work in Parnu and vicinity.
5. Registration of all Jews according to age, sex, and fitness for work for the purpose of billeting them in a camp which is in the stage of preparation.

All male Jews over 16, with the exception of physicians and the appointed Jewish elders, were executed by the Esthonian self-defense units under supervision of the Sonderkommando. As for the town and country district of Tallin, the action is still under way as the search for the Jewish hideouts has not yet been completed. The total number of Jews shot in Esthonia is so far 440.

When these measures are completed, about 500 to 600 Jewesses and children will still be alive.

The village communities are already now free from Jews.

For the Jews residing at Tallin and vicinity a camp is at present being prepared at Harku (District Tallin), which after receiving the Jews from Tallin is to be expanded to contain all Jews from Esthonia. All Jewesses fit for work are employed with farm work and cutting of peat on the property of the nearby prison so that the questions of feeding and financing are solved.

As an immediate measure the following order was issued:

1. Marking of all Jews over six with a yellow star, at least 10 cm. large to be attached on the left side of the breast and on the back;
2. Prohibition to exercise a public trade;
3. Prohibition to use sidewalks, public communications, and to frequent theaters, cinemas, and restaurants;
4. Seizure of all Jewish property;
5. Prohibition to attend schools.

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Einsatzgruppe C

Location Kiev, reports:

Security Police Measures

Sonderkommando 4a now has reached the total number of more than 51,000 executions. Apart from the special action in Kiev of 28 and 29 September, for which 2 Kommandos of the Police Regiment South were detached, all executions carried out so far were made by that special Kommando without any assistance from outside. The executed persons were mainly Jews, a minor part was political officials as well as saboteurs and looters.

In the period between 7 September and 5 October, 207 political officials, 112 saboteurs and looters as well as 8,800 Jews were liquidated by Einsatzkommando 5.

Special Kommando 4 b, in the period between 13 and 26 September, executed 103 political officials, 9 saboteurs and looters, and 125 Jews.

Einsatzkommando 6, in the period between 14 and 27 September, executed 13 political officials, 32 looters and saboteurs, as well as 26 Jews.

These were the motives for the executions carried out by the Kommandos: Political officials, looters and saboteurs, active Communists and political representatives, Jews who gained their release from prison camps by false statements, agents and informers of the NKVD [National Commissariat for Internal Affairs], persons who, by false depositions and influencing witnesses, were instrumental in the deportation of ethnic Germans, Jewish sadism and revengefulness, undesirable elements, partisans, Politruks, dangers of plague and epidemics, members of Russian bands, armed insurgents—provisioning of Russian bands, rebels and agitators, drifting juveniles, Jews in general.

On 26 September, the security police took up its activities in Kiev. That day 7 interrogation Kommandos of Einsatzkommando 4a started their work in the civilian prisoner camp, in the prisoner-of-war camp, in the Jewish camp, and in the city itself. Thus, among other things, in the camp for civilian prisoners and prisoners of war, 10 political commissars were found and interrogated in detail. Conforming to the old Communist tactics, these guys denied all political activity. Only when confronted with trustworthy witnesses, five commissars yielded and confessed, i.e., they admitted the position they had held, but did not make any statements beyond this. They were shot on 27 September. In one case a Jewish Politruk [political leader] tried to ransom himself by offering gold. The man was taken to his apartment, loosened a few tiles of the floor, dug about 50 cm. deep and produced a counter

weight of a clock. That weight contained 21 gold coins. The Jew was shot.

Furthermore, 14 partisans were found, among them leading persons. They, too, adhered to their tactics of silence during the interrogation. Again, their status was proved by testimony. In some cases a confession was obtained. A partisan leader who had made propaganda for the defense of Kiev also made the attempt to ransom himself by offering gold. In this case gold watches and ruble notes were hidden behind a stove. All accused were shot.

Three Jewish party officials who also tried to ransom themselves by offering gold were liquidated. The gold was seized.

PARTIAL TRANSLATION OF DOCUMENT NO-3140
PROSECUTION EXHIBIT 30

EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 106,
7 OCTOBER 1941

The Chief of the Security Police and the SD
R No. IV A 1—1 B/41—top secret

Berlin, 7 October 1941

48 copies
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[rubber stamp] Top Secret

Operational Situation Report U.S.S.R. No. 106

I. Political Survey

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II. Report of the Einsatzgruppen and Kommandos

No reports were received from the *Einsatzgruppe A.*
Einsatzgruppe B.
Station Smolensk.

I

March and Assignment

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II

Administration

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III

Public Feeling and General Attitude of the Population

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Einsatzgruppe C

Station Kiev

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Einsatzgruppe C

Station Kiev

I

Kiev

A Vorkommando of the Sonderkommando 4a led by SS 1st Lieutenants [Obersturmfuehrer] Haefner and Janssen, 50 men strong, arrived on 19 September 1941 with the fighting troop in Kiev. The Haupt [Main] Kommando of the Sonderkommando 4a reached Kiev on 25 September 1941 after SS Colonel [Standartenfuehrer] Blobel had already been in Kiev on 21 and 22 September. The Vorkommando of the group staff, Captain of the Police Krumme, SS 1st Lieutenants [Obersturmfuehrer] Dr. Krieger and Breun and SS Sergeant [Oberscharfuehrer] Braun arrived in Kiev on 21 September 1941. The group staff followed on 25 September 1941.

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The Wehrmacht first of all systematically secured public buildings, factories, and stocks of the scarcest goods, so that no large scale plunder occurred either by members of the Wehrmacht or by the population. Reports on mines and other explosive material in public buildings and apartment houses were made by the population in great numbers from the very first day of the occupation of Kiev. On 20 September 1941 a delayed action mine exploded in the citadel where an artillery staff was quartered. Among others, General of the Artillery von Seydlitz was killed by this.* On 24 September 1941 an explosion occurred in the offices of the German Rear Area Military Headquarters which developed during the day into a large fire, particularly through the lack of water. A large part of the city center and several large buildings in the suburbs were destroyed by further explosions and resulting fires. In order to control the fire, the Wehrmacht was forced to blow up more buildings to prevent the fire from spreading to other districts respectively buildings. As a result of these necessary explosions, the offices of the group staff and of the Sonderkommando 4a had to be evacuated among others. The office building of the group staff (formerly a castle, later a boarding school for girls and for several years, office building of the NKVD [Political National Commissariat for Internal Affairs]) suffered considerably by the necessary explosions. The clearing away of the rubble and repair work will require some time.

In the office building of the group staff, the Vorkommando found in an intensive search of the office rooms approximately 75

* Apparently a case of mistaken identity. General von Seydlitz-Kurzbach was captured by the Russians at Stalingrad, February 1943. He subsequently became vice chairman of the "Free German" National Committee and chairman of the Union of German officers.

so-called "Molotov cocktails" (explosives) and rendered them harmless. In another case, the search group of the armed forces found about 70 centner [7,716 pounds] of explosives in the Lenin Museum which were to be detonated by a short wave transmitter. Meanwhile the responsible authorities succeeded in limiting the large fire to the district where it had occurred, and also in controlling it. According to testimony from parts of the population, there exists in Kiev a Red sabotage battalion as well as numerous members of the NKVD and of the Communist Party, which have orders to commit continuous acts of sabotage. In the last days there occurred no more acts of sabotage, like explosions or fires. Extensive counter-measures for this purpose were successfully taken.

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As a result of the destruction of buildings in particular and of the evacuation of the endangered districts ordered by the authorities, approximately 25,000 persons were deprived of shelter and had to spend the first few days of the occupation outdoors. The inconveniences resulting from this were accepted by the population with calm. No serious incidents or panic occurred. Meanwhile the evacuated apartments, as far as they were not destroyed by fires or explosions, have again been put at the disposal of the population. Besides an adequate number of apartments has been evacuated through the liquidation of approximately 35,000 Jews on 29 and 30 September 1941, so that now shelter for the homeless is secured and has meanwhile also been allocated.

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II

Executions and Other Measures

Partly because of the better economic situation of the Jews under the Bolshevik regime and their activities as informers and agents of the NKVD, partly because of the explosions and the resulting fires, the public feeling against the Jews was very strong. As an added factor it was proved that the Jews participated in the arson. The population expected adequate retaliatory measures by the German authorities. Consequently all Jews of Kiev were requested, in agreement with the city commander, to appear on Monday, 29 September by 8 o'clock at a designated place. These announcements were posted by members of the Ukrainian militia in the entire city. Simultaneously it was announced orally that all Jews were to be moved. In collaboration with the group [Gruppen] staff and 2 Kommandos of the police regiment South, the Sonderkommando 4a executed on 29 and 30 September, 33,771 Jews. Money, valuables, underwear and clothing were secured and placed

partly at the disposal of the NSV [Nazi Party Public Welfare Organization] for use of the racial Germans, partly given to the city administration authorities for use of the needy population. The transaction was carried out without friction. No incidents occurred. The "Resettlement measure" against the Jews was approved throughout by the population. The fact that in reality the Jews were liquidated was hardly known until now, according to up-to-date experiences it would, however, hardly have been objected to. The measures were also approved by the Wehrmacht. The Jews who were not yet apprehended as well as those who gradually returned from their flight to the city were in each case treated accordingly.

Simultaneously a number of NKVD officials, political commissars, and partisan leaders was arrested and liquidated.

The Bandera* men had lost their impact through the arrests before Kiev effected by the Kommandos and their activity was reduced to the mere distribution of leaflets and the posting of placards. Three arrests were effected, further arrests are planned.

Communications with the local authorities were immediately established by the group staff as well as the Sonderkommando 4a and the Einsatzkommando 5 also stationed in Kiev. A constant cooperation with these authorities was accomplished and the actual problems were discussed in daily consultations.

On the activity of the Einsatzkommando must be reported in detail in separate action reports, because of the great extent of the material.

III

Zhitomir, actions against Jews

After the confinement of the Jews to a restricted area which had been carried out by the rear area military headquarters [Feldkommandantur] following a suggestion of the Sonderkommando 4a, a considerable calm was noticed at the markets and so forth. Simultaneously a number of until now persistent rumors died down and it seemed as if also Communist propaganda had lost much ground through the confinement of the Jews. It appeared however already after a few days that a mere spacial confinement of the Jews without construction of a ghetto was not sufficient and that the old troubles started again. Complaints were received in many offices about the insolent attitude of Jews on their working places. It was established that the Jewish district was the origin of an active propaganda among Ukrainians, saying that the Red Army would soon reconquer the territories taken from it. The local militia was

* Ukrainian independence movement, named after its leader.

shot at from ambush at night and also at day. It was further found out that Jews exchanged their belongings for money and left the town in order to settle in the Western Ukraine—that is, in territories already under a civil administration.

All these facts were observed, the Jews in question, however, could only be arrested in very few cases, as they had sufficient means to escape apprehension. Therefore a conference on this matter took place on 18 September 1941 with the Feldkommandantur [(rear area) military headquarters], in which it was decided to liquidate the Jews of Zhitomir completely and radically, as all warnings and special measures had been unsuccessful up to date.

On 19 September 1941 the Jewish district was evacuated starting at 4 o'clock in the morning, after having been surrounded and closed the evening before by 60 men of the Ukrainian militia. The transportation was carried out by 12 trucks which had been placed at the disposal partly by the Feldkommandantur, partly by the city administration of Zhitomir. After the transport had been carried out and the necessary preparations had been made with the help of 150 prisoners, a total of 3,145 Jews were registered and executed. 50,000-60,000 pounds of underwear, clothing, footwear, cooking utensils and so forth could be transferred for use to the deputy of the NSV in Zhitomir, Boss. Confiscated valuables and money were transferred to the Sonderkommando 4a.

Einsatzgruppe D.
Station Nikolaev.

PARTIAL TRANSLATION OF DOCUMENT NO-3157
PROSECUTION EXHIBIT 68

EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 128,
3 NOVEMBER 1941

Berlin, 3 Nov. 1941

The Chief of the Security Police and the SD
B. No. IV A 1-1 B/41-Top Secret

[rubber stamp] Top Secret

55 copies
51st copy

Operational Situation Report U.S.S.R. No. 128

I. Locations and signal communications

The locations and signal communications stated in the report No. 126 of 29 October 1941 remain unchanged.

II. Reports of the *Einsatzgruppen* and *Kommandos*

Reports of the *Einsatzgruppen A* and *B* were not received.

Einsatzgruppe C

Station Kiev

A. Agriculture

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B. Executive Activities

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

Among these are approximately 8,000 persons who through investigations, were convicted of anti-German or Bolshevistic activities.

The remainder was liquidated as a retaliatory measure.

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

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

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

Besides, the *Kommandos* have also carried out in numerous cases military actions. Separate platoons of the *Kommandos* have repeatedly combed the woods searching for partisans, on request of the army, and have there accomplished quite successful work.

Besides, prisoners of war moving on the highways were systematically overtaken and all these elements liquidated who did not possess identification papers and who were suspected of committing, when liberated, acts of sabotage against the German Army, the German authorities, or the population. In numerous cases

there were also carried out systematic searches of parachutists with the result that approximately a total of 20 parachutists was captured, among them one Russian who at his interrogations also gave information extremely important to the army.

Finally is to be mentioned the taking charge of prisoners of war from the prisoner collecting point and the prisoner of war transit camps although on these occasions considerable disagreements with the camp commander occurred at times.

C. Churches

* * * * *

D. Collaboration with the Wehrmacht and the GFP

[*Secret Field Police*]

Concerning the relation of the Einsatzgruppe and its Kommandos to other offices and authorities, its relation to the Wehrmacht is especially noteworthy. The Einsatzgruppe succeeded in establishing, from the very beginning, excellent terms to all army headquarters. This made it also possible that the Einsatzgruppe never operated in the rear of the military zone, but that even on the contrary the request was frequently uttered by the army to operate as far in the front as possible. It even occurred in a great number of cases that the support of the Einsatzkommandos was requested by fighting troops. Advance detachments of the Einsatzgruppe participated also at every large military action. They entered the newly captured locality with the fighting troops. In all cases the utmost support hereby has been given. It is worth mentioning in this connection the participation in the capture of Zhitomir, where the first tanks on entering the city were immediately followed by 3 cars of Einsatzkommando 4a.

As a result of the successful work of the Einsatzgruppe, the security police is also highly regarded, in particular by the army staff. The liaison officers stationed at the AOK [army headquarters] are loyally instructed on all military operations, and apart from this, they receive the utmost assistance. The commander of the AOK 6, Field Marshal von Reichenau has also repeatedly praised the work of the Einsatzkommandos highly, and accordingly supported the interests of the SD at his staff. The extraordinary success of the Kommandos was a contributing factor to this, e.g., the capture of Major General Sokolov, then also the information concerning a plan to blast a bridge through action of parachutists, and the transmission of other important military information.

Only concerning the Jewish problem a complete understanding with the subordinated Wehrmacht offices could not be reached until a quite recent time. This appeared most clearly at the taking over of the prisoners camps. As a particularly clear example the conduct

of a camp commander in Vinnitsa is to be mentioned who strongly objected to the transfer of 362 Jewish prisoners of war carried out by his deputy and even started court martial proceedings against the deputy and 2 other officers. Unfortunately it often occurred that the Einsatzkommandos had to suffer more or less hidden reproaches for their steadfast attitude on the Jewish problem. Another difficulty was added by the order from the OKH [Army High Command] prohibiting the SD altogether to enter the Dulag [PW transit camp]. These difficulties probably have been overcome now by a new order from the OKW [Supreme Command of the Armed Forces], because now it is stated clearly in this order that the Wehrmacht has also to cooperate in the solution of this problem, and in particular, that the necessary authorizations must be granted the SD to the fullest extent. However it became evident just in these last days, that this policy-making order still did not reach the subordinated offices. In future a further cooperation and assistance by the Wehrmacht offices can be expected, as far as the sector of the AOK 6 is concerned. Field Marshal von Reichenau on 10 October 1941 issued an order which states clearly that the Russian soldier has to be considered on principle a representative of bolshevism and has also to be treated accordingly by the Wehrmacht.

No difficulties whatsoever resulted from the cooperation with the GFP [Secret Field Police]. To be sure it was observed that the GFP preferably handled matters concerning the security police only—evidently because of a lack of other tasks, however, these defects were always eliminated following a consultation. Besides the latest order of the chief of the field police has probably eliminated any remaining doubts. The exchange of information material between the SD and the GFP took place without any friction, and the original doubts whether the GFP would not retain some of the cases were not justified. Besides it has already been ordered at the AOK's and the staffs that matters concerning the security police have to be immediately transferred to the Kommandos.

As far as counterintelligence bureaus are in existence in the rear, the work there is running smoothly. The counterintelligence officers visit the Gruppe and Kommandos regularly in order to transfer files, as well as to receive advice.

As the work of the security police has been carried out without friction and has won high recognition, it can be assumed that this pleasant relationship will also be maintained in future.

Reports of the *Einsatzgruppe D* were not received.

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PARTIAL TRANSLATION OF DOCUMENT L-180
PROSECUTION EXHIBIT 34

EXTRACTS FROM REPORT OF EINSATZGRUPPE A COVERING THE
PERIOD FROM 23 JUNE 1941 TO 15 OCTOBER 1941

[Pencilled] Personal property of SS Lieutenant General [Obergruppenfuehrer] Wv. 31 January 1942

[Rubber stamp] Top Secret

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EINSATZGRUPPE A

Comprehensive Report up to 15 October 1941

- I. *Table of Contents*
- II. *Activities in police matters*
 - A. Organizational measures
 - B. Clearing and securing the operational area
 - C. Counterespionage
 - D. Control over persons and indexing
 - E. Criminal police work
- III. *Situation Report*
 - A. Situation before the invasion by German forces
 - B. General conditions in the spheres of life up to 15 October 1941
 - C. Jewish influence on the general conditions of life in the eastern territory [Ostland]
- IV. *Grievances and proposals for their remedy*

Einsatzgruppe A, after preparing their vehicles for action, proceeded to their area of concentration as ordered on 23 June 1941, the second day of the campaign in the East. Army Group North consisting of the 16th and 18th armies and Panzer [armored] Group 4 had begun their advance the day before. Our task was

to hurriedly establish personal contact with the commanders of the armies and with the commander of the army of the rear area. It must be stressed from the beginning that cooperation with the armed forces was generally good, in some cases, for instance with Panzer Group 4 under General Hoepner, it was very close, almost cordial. Misunderstandings which cropped up with some authorities in the first days were cleared up mainly through personal discussions.

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At the start of the eastern campaign it became obvious for the security police that its special work had to be done not only in the rear areas, as was provided for in the original agreements with the high command of the army, but also in the combat areas, and this for two reasons—on the one hand, the development of the rear area of the armies was delayed because of the quick advance and on the other hand, the undermining Communist activities and the fight against partisans took place mainly within the areas of actual warfare—especially when the Luga sector was reached.

To carry out security police tasks, it was desirable to enter into the larger towns together with the armed forces. We had our first experiences in this direction when a small advance Kommando under my leadership entered Kovno together with the advance units of the armed forces on 25 June 1941. When the other larger towns, especially Lepaya, Yelgava, Riga, Tartu, Tallin, and the larger suburbs of Leningrad were captured, a Kommando of the security police was always with the first army units. Above all, Communist functionaries and Communist documentary material had to be seized, and the armed forces themselves had to be safeguarded against surprise attacks inside the towns; the troops themselves were usually not able to take care of that because of their small numbers. For this purpose the security police, immediately after capture, formed volunteer detachments of reliable inhabitants of all three Baltic provinces who carried out their duties successfully under our command. As an example it may be mentioned that the armed forces suffered considerable losses through guerrillas in Riga, on the left of the Dvina [Daugava] river; on the right bank of the Dvina river, however, after these volunteer detachments had been organized in Riga, not a single soldier was injured, although members of these Latvian detachments were killed and wounded in fighting against dispersed Russians.

Similarly, native anti-Semitic forces were induced to start pogroms against Jews during the first hours after capture, though this inducement proved to be very difficult. Following out orders, the security police was determined to solve the Jewish question with all possible means and determination most decisively. But

it was desirable that the security police should not put in an immediate appearance, at least in the beginning, since the extraordinarily harsh measures were apt to still even German circles. It had to be shown to the world that the native population itself took the first action by way of natural reaction against the suppression by Jews during several decades and against the terror exercised by the Communists during the preceding period.

After reaching the Dvina River and therewith Riga, the Einsatzgruppe detached itself at first from the further advance of the Army Group North, and concentrated its forces on the pacification of the Lithuanian and Latvian area, and later of the old Russian area which was reached at Opochka. The work carried out here took on many shapes.

In view of the constant changes in German troops and the fluctuation within the German authorities, which was caused by the transfer of the rear area of the armed forces to the rear area of the army, and later to the civil administration, i.e., to the commander of the armed forces, the personnel and thus the views of the German authorities changed far too often and far too quickly. In the security police this had to be avoided as far as possible which led us to adopt the policy of keeping, if at all possible, the same commanders in the same localities. Thereby the security police gained a considerable advantage over all other agencies, because it knew the facts and the people. As a matter of fact, they alone among all authorities on the German side may claim to have achieved a certain steadiness. The Lithuanians, Latvians, and the Estonians, who have a fine feeling for such matters, soon came to acknowledge this fact and acted accordingly.

Under these circumstances the security police tried to guide political, economic, and cultural matters according to definite policies, and to advise the other German authorities on these subjects. It was just in the political sphere particularly, that several competent authorities pursued different aims. It was regrettable that the Ministry for Eastern Affairs had not given clear directives from the beginning. As it is, in spite of our efforts, the situation in the Baltic provinces is not clear up to date. The example of Estonia is typical of this fluctuation. In agreement with the Reich Security Main Office, the Einsatzgruppe brought with them the Estonian Dr. Mae as presumptive political adviser for the Estonians. In order to avoid a pernicious muddle, as happened in Lithuania and Latvia, and in order to obtain the appointment of Dr. Mae or to avoid his removal negotiations had to be carried out with one after the other, the division moving into Tallin, the army corps competent for Tallin, the local administrative headquarters Tallin, the administrative area headquarters Tallin, the

18th Army, the Army Group North, the Commander of the Army Group Rear Area with the Army Group North, the Commissioner General respectively his deputy, and with the representative of the Ministry for Eastern Affairs.

After the conquest of Lithuania and Latvia, the Einsatzkommandos 2 and 3 were separated from the Commander of the Army Group Rear Area and were left in Lithuania and Latvia for essential assignments respectively. The commanders of Einsatzkommandos 2 and 3 have remained permanently in Kovno [Kaunas] and Riga since the beginning of July.

Contact was also established with the Reich Commissioner as soon as he was appointed and likewise with the commissioners general by the Einsatzgruppe and by the Einsatzkommando. Cooperation with the Reich Commissioner depended on (a) a delay in the inquiry addressed to the Reich Security Main Office as to how the interpolation at the Reich Commissioner's [Office] should be effected, and (b) the negotiations of the Higher SS and Police Leader who on his own account had initiated negotiations with the Reich Commissioner with regard to the interpolation of the police. No initiative of our own was admissible therefore until the questions to (a) and (b) had been settled. It was intended to get in touch with the Reich Commissioner with regard to this question at a convenient moment. Occasions for this will doubtlessly occur.

When the advance of the Army Group North was halted in Estonia and at Luga and when heavy fighting and severe Russian attacks against the center and the right wing ensued, the Einsatzgruppe again teamed up with the armies, in particular the 4th Panzer group, because the struggle against the partisans who now began to appear in great numbers was and still is a special task for the security police. The area to the north of Pskov and between Lake Peipus and Lake Ilmen with far extending forest and swamps was really an ideal area for Russian partisan warfare. The difficulties of the territory further impeded activities even for the smaller units. After the failure of purely military activities such as the placing of sentries and combing through the newly occupied territories with whole divisions, even the armed forces had to look out for new methods. The Einsatzgruppe made it its special task to search for new methods. Soon, therefore, the armed forces adopted the experiences of the security police and their methods of combating the partisans. For details I refer to the numerous reports concerning the struggle against the partisans.

The activities of the security police were rendered more difficult during the further course of the struggle against the partisans because the vehicles either could not be used or were to be pre-

served for the advance on Leningrad, which was always expected at that time.

* * * * *

A. *The Baltic Area*

I. *Organizational measures*

1. *Formation of auxiliary police and native police guards*

In view of the extension of the area of operations and the great number of security police assignments to be carried out, it was intended from the very beginning to obtain the cooperation of the reliable sector of the population for the fight against vermin—that is mainly the Jews and Communists. Beyond our directing of the first spontaneous actions of self-clearing, which will be reported about elsewhere, care had to be taken that reliable people should be put to the clearing job and that they were appointed auxiliary members of the security police. The difference of the situation in each part of the area of operations also had to be taken into account.

In Lithuania activist and nationalist people have formed themselves into so-called partisan units at the beginning of the eastern campaign, in order to take active part in the fight against bolshevism. According to their own report they suffered 4,000 killed.

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2. *Reconstruction of prisons*

The prisons in the Baltic countries were found to be either empty or occupied by Jews or Communists who had been apprehended by home guard units.

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Whenever the prisons were too small because of the large number of people who were to be arrested, provisional concentration camps were established. The construction of larger concentration camps is in preparation.

The schedules attached as enclosure 5 show the present occupancy of the prisons.

II. *Clearing and safeguarding of the area of operations*

1. *Instigation of self-clearing operations*

Considering that the population of the Baltic countries had suffered very heavily under the government of bolshevism and Jewry while they were incorporated in the U.S.S.R., it was to be expected that after the liberation from that foreign government, they (i.e., the population themselves) would render harmless most of the enemies left behind after the retreat of the Red Army. It was the duty of the security police to set in motion these self-

clearing movements and to direct them into the correct channels in order to accomplish the purpose of the clearing operations as quickly as possible. It was no less important in view of the future to establish the unshakable and provable fact that the liberated population themselves took the most severe measures against the Bolshevik and Jewish enemy quite on their own, so that the directive by German authorities could not be found out.

In Lithuania this was achieved for the first time by partisan activities in Kovno. To our surprise it was not easy at first to set in motion an extensive pogrom against Jews. Klimatis, the leader of the partisan unit mentioned above, who was used for this purpose primarily, succeeded in starting a pogrom on the basis of advice given to him by a small advanced detachment [Vorkommando] operating in Kovno, and in such a way that no German order or German instigation was noticed from the outside. During the first pogrom in the night from 25 to 26 June, the Lithuanian partisans did away with more than 1,500 Jews, set fire to several synagogues or destroyed them by other means and burned down a Jewish dwelling district consisting of about 60 houses. During the following nights about 2,300 Jews were made harmless in a similar way. In other parts of Lithuania similar actions followed the example of Kovno, though smaller and extending to the Communists who had been left behind.

These self-clearing operations went smoothly because the army authorities, who had been informed, showed understanding for this procedure. From the beginning it was obvious that only the first days after the occupation would offer the opportunity for carrying out pogroms. After the disarmament of the partisans the self-clearing operations automatically ceased.

It proved much more difficult to set in motion similar clearing operations in Latvia. The essential reason was that the entire stratum of national leaders had been assassinated or deported by the Soviets, especially in Riga. It was possible though, through similar influences, for the Latvian auxiliary police to set in motion a pogrom against Jews also in Riga. During this pogrom all synagogues were destroyed and about 400 Jews were killed. As the population of Riga quieted down quickly, further pogroms were not feasible.

So far as possible, both in Kovno and in Riga evidence by film and photography was established that the first spontaneous executions of Jews and Communists were carried out by Lithuanians and Latvians.

In Esthonia, by reason of the relatively small number of Jews, no opportunity presented itself for the instigation of pogroms. The Esthonian home guard rendered harmless only some individual

Communists whom they especially hated, but generally they limited themselves to carrying out arrests.

2. *Combating communism*

Everywhere in the area of operation counteractions against communism and Jewry took first place in the work of the security police.

Soviet officials and functionaries of the Communist Party had fled with the Soviet Army. In view of the experiences made during the bolshevist oppression which lasted more than one year, the population of the Baltic countries realized that all remainders of communism left behind after the retreat of the Red Army had to be eliminated. This basic attitude facilitated the work of the security police with regard to clearing operations in this sphere, especially since actively nationalist people cooperated in these operations, viz., in Lithuania the partisans, in Latvia and Esthonia the home guards.

* * * * *

b. *Search for and arrest of Communists*

Aside from these combing operations a systematic search was made for Communist functionaries, Red Army soldiers, and persons more seriously suspected because of their activities for communism and who had been left behind. In some places, the home guards had spontaneously rendered harmless the most infamous Communists.

Using all available units of the detachments and home guard formations, and with the help of the German regular police, large scale operations were carried out in the larger towns resulting in many arrests and combing operations.

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The extent of this clearing operation, in line with the counteractions against communism, may be seen in the survey on enclosure 8 which gives the number of people executed.

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3. *Action against Jewry*

From the beginning, it was to be expected that the Jewish problem in the East could not be solved by pogroms alone. In accordance with the basic orders received, however, the clearing activities of the security police had to aim at a complete annihilation of the Jews. Sonderkommandos reinforced by selected units—in Lithuania partisan detachments, in Latvia units of the Latvian auxiliary police—therefore performed extensive executions both in the towns and in rural areas. The operations of the execution detach-

ments were performed smoothly. When attaching Lithuanian and Latvian detachments to the execution squads, men were chosen whose relatives had been murdered or deported by the Russians.

Especially severe and extensive measures became necessary in Lithuania. In some places—especially in Kovno—the Jews had armed themselves and participated actively in guerrilla warfare and committed arson. Besides these activities, the Jews in Lithuania had collaborated most actively hand in glove with the Soviets.

The sum total of the Jews liquidated in Lithuania amounts to 71,105.

During the pogroms in Kovno, 3,800 Jews were eliminated, in the smaller towns about 1,200 Jews.

In Latvia as well the Jews participated in acts of sabotage and arson after the invasion of the German Armed Forces. In Daugavpils [Dvinsk] so many fires were started by the Jews that a large part of the town was lost. The electric power station burned down to a mere shell. The streets which were mainly inhabited by Jews remained unscathed.

In Latvia up to now 30,000 Jews were executed in all. Five hundred were rendered harmless by pogroms in Riga.

Most of the 4,500 Jews living in Esthonia at the beginning of the eastern campaign fled with the retreating Red Army. About 200 stayed behind. In Tallin alone there lived about 1,000 Jews.

The arrest of all male Jews of over 16 years of age has been nearly concluded. With the exception of the doctors and the elders of the Jews who were appointed by the special [Sonder] Kommandos, they were executed by the self-protection units [home guard] under the supervision of special [Sonder] detachment 1a. Jewesses in Parnu and Tallin of the age groups from 16 to 60 who are fit for work were arrested and put to peat-cutting or other labor.

At present a camp is being constructed in Harku, in which all Esthonian Jews are to be assembled, so that Esthonia will be free of Jews in a short while.

After the carrying out of the first larger executions in Lithuania and Latvia it soon became apparent that an annihilation of the Jews without leaving any traces could not be carried out, at least not at the present moment. Since a large part of the trades in Lithuania and Latvia are in Jewish hands and others carried on nearly exclusively by Jews (especially those of glaziers, plumbers, stove-builders, cobblers) many Jewish craftsmen are indispensable at present for repairing installations of vital importance, for the reconstruction of towns destroyed, and for work of military importance. Although the employers aim at replacing Jewish labor with Lithuanian or Latvian labor, it is not yet possible to replace

all employed Jews especially not in the larger towns. In cooperation with the labor offices, however, all Jews who are no longer fit for work are being arrested and shall be executed in small batches.

In this connection it should be mentioned that some authorities of the civil administration offered resistance, at times even a strong one, against the carrying out of larger executions. This resistance was answered by calling attention to the fact that it was a matter of carrying out basic orders.

Apart from organizing and carrying out measures of execution, the creation of *ghettos* was begun in the larger towns at once during the first days of operations. This was especially urgent in Kovno because there were 30,000 Jews in a total population of 152,400. Therefore, at the end of the first pogrom a Jewish committee was summoned who was informed that the German authorities so far had not seen any reason to interfere in the quarrels between Lithuanians and Jews. The sole basis for creating a normal situation would be to construct a Jewish ghetto. Against remonstrations made by the Jewish committee, it was declared that there was no other possibility to prevent further pogroms. On this the Jews at once declared themselves ready to do everything in their power to transfer their co-racials to the town district of Viliampol which was intended as a Jewish ghetto and with the greatest possible speed. This town district lies in the triangle between the Memel river and a tributary; it is connected with Kovno by a bridge only and can, therefore, easily be locked off.

In Riga the so-called "Moscow suburb," ["Moskauer Vorstadt"] was destined as a ghetto. This is the worst dwelling district of Riga, already now mostly inhabited by Jews. The transfer of the Jews into the ghetto district proved rather difficult because the Latvians dwelling in that district had to be evacuated and residential space in Riga is very crowded. 24,000 of the 28,000 Jews living in Riga have been transferred into the ghetto so far. In creating the ghetto, the security police restricted themselves to mere police duties, while the establishment and administration of the ghetto as well as the regulation of the food supply for the inmates of the ghetto were left to civil administration; the labor offices were left in charge of Jewish labor.

In the other towns with a larger Jewish population ghettos shall be established likewise.

Marking of the Jews by a yellow star, to be worn on the breast and the back which was ordered in the first instance by provisional orders of the security police, was carried out within a short time on the basis of regulations issued by the commander of the rear army area and later by the civil administration.

The number of Jews executed up to the present may be seen in the schedule on enclosure 8.

[Marginal note: *Encl. 8.*]

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[Marginal note: *Encl. 9.*]

* * * Copies of the latest experience reports are attached as enclosure 9. [This enclosure reveals (signature) the name of the commander of the Einsatzgruppe, Dr. Stahlecker, SS Brigadefuehrer and Brigadier General of the Police.]

5. *Other jobs of the Security Police*

1. Occasionally the conditions prevailing in the mental hospital necessitated operations of the security police. Many institutions had been robbed of their whole food supplies by the retreating Russians. Often the guards and nursing personnel had fled. The inmates of several institutions broke out and became a danger to the general security; therefore,

in Aglona (Lithuania)	544	mental patients
in Mariyampole (Lithuania)	109	mental patients
in Magutovo (near Luga)	95	mental patients

a total of 748 mental patients

was liquidated.

Sometimes the armed forces agencies asked us to clean out in a similar way other institutions which were wanted as billets. However, as interests of the security police did not require any intervention, it was left to the armed forces to take the necessary action with their own forces.

2. The Einsatzkommandos dealt to a large extent with the search for deportees and with the exhumation of people who had been murdered by the Russians. For reasons of propaganda, the propaganda squadrons of the armed forces and sometimes of the foreign press were made to participate.

In Esthonia the exhumation of Esthonians murdered by the Russians was organized more extensively. In view of the extent of the work which had been done here, a central office was established in Tallin, in order to organize searches for the whereabouts of deported and murdered persons under the systematic guidance of the security police.

The extent of this work is shown by the fact that from Tallin alone 30,000 men had been reported missing.

* * * * *

* * * In order to eliminate the most heavy cases of crime until

preventive measures can be introduced, professional criminals are being taken into the care of the Einsatzkommandos and executed whenever the case warrants such measures.

* * * * *
* * * Einsatzgruppe B liquidated so far 7,620 Jews in Borisov.
* * * * *

The Situation in Lithuania

As the population did not receive any information with regard to its future fate, the national-minded part is still thinking of a future Lithuanian state of its own. An effort to assimilate the Lithuanian people to the Germanic peoples does not, so far, make itself felt.

* * * * *

The active anti-Semitism which flared up quickly after the German occupation did not falter. Lithuanians are voluntarily and untiringly at our disposal for all measures against Jews, sometimes they even execute such measures on their own.

* * * * *

The faculties of arts and sciences should be closed altogether. There is some need though for the medical faculty and some of the technical branches. More than 60 percent* of the dentists were Jews; more than 50 percent of the other doctors as well. The disappearance of these brings about an extreme shortage of doctors, which cannot be overcome even by bringing in doctors from the Reich.

* * * * *

In Kurland the ordinance of the naval commander in Lepaya, Captain Dr. Kavelmacher of the German Navy, had caused some unrest. This ordinance announced measures of reprisal against the population of Lepaya in case of attacks against German soldiers. It read as follows:

“For each and every case of a known or unknown culprit firing on German soldiers, certain people of Lepaya shall be arrested and shot at once under martial law. Similarly for each and every attempt of sabotage whether effective or not, part of the Latvian population living near the place of the act of sabotage shall be arrested and shot under martial law.”

This ordinance was published in the Lepaya paper “Das Kurlaendische Wort.” The population of Lepaya is, therefore, most upset, as may be understood. The fear is abroad that further actions may be provoked by hostile people (Communist or Jewish).

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* Original German document read 80 percent but, due to clerical error, translation of document which was submitted in court read 60 percent.

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Enclosure 1a: Total strength of Einsatzgruppe A

	990	<i>Percent</i>
Armed SS (Waffen SS).....	340	34.4
Motorized personnel.....	172	17.4
Administration	18	1.8
Security service (SD).....	35	3.5
Criminal police (Kripo).....	41	4.1
Secret state police (Gestapo).....	89	9.0
Auxiliary police.....	87	8.8
Regular police.....	133	13.4
Female employees.....	13	1.3
Interpreters	51	5.1
Teletype operators.....	3	0.3
Radio operators.....	8	0.8

Enclosure 1b: Composition of the Einsatzkommandos

Einsatzkommando	1a		1b		2		3	
		Percent		Percent		Percent		Percent
Interpreters		13.7	6	5.4	18	10.8	8	5.6
Wireless operators ..	2	1.9	1	.9	2	1.2	1	.7
Teletype operators						1.8		
Reservists	25	24	26	23.7	41	23.6	32	22.9
Motorized personnel .	23	22.1	34	30.9	50	29.4	34	24.3
Administration	3	2.9	2	1.8	4	2.4	1	.7
Security service	8	7.8	3	2.7	8	4.8	10	7
Criminal police	11	10.5	6	5.4	13	7.8	10	7
Secret state police ...	18	16.2	12	11	26	15.6	29	20.6
Auxiliary police			20	18.2			15	10.5
Female employees ...	1	.9			4	2.4	1	.7
Total	* 105		110		* 170		141	

* The addition in the original report is incorrect.

* * * * *

Enclosure 5: Occupation of Prisons

Prisons in Lithuania

Einsatzkommando 3 at present engaged in ascertaining the number of occupants of prisons in Lithuania.

In Kovno under arrest are—

In the central prison..... 520 persons, including 50 Jews

In the police prison 69 persons, including 3 Jews

* * * * *

Enclosure 8: Survey of the number of executed persons

	Area	Jews	Communists	Total
Lithuania	Kovno town and surroundings.	31,914	80	31,994
	Shaulyai	41,382	763	42,145
	Vilnyus	7,015	17	7,032
Total ...		80,311	860	81,171
Latvia	Riga town and surroundings.			6,378
	Yelgava			3,576
	Lepaya			11,860
	Valmera			209
	Daugavpils	9,256	589	9,845
Total ...		30,025	1,843	31,868
Esthonia		474	684	1,158
White Ruthenia		7,620		7,620
Lithuania		80,311	860	81,171
Latvia		30,025	1,845	31,868
Esthonia		474	684	1,158
White Ruthenia		7,620		7,620
Total ...		118,430	3,387	121,817

To be added to these figures:

In Lithuania and Latvia Jews annihilated by pogroms.....	5,500
Jews, Communists and partisans executed in old Russian area	2,000
Lunatics executed	748
	<hr/>
[Correct total—130,065]	* 122,455
Communists and Jews liquidated by State Police and Security Service Tilsit during search actions.....	5,502
	<hr/>
	135,567
[Map showing "Number of persons liquidated in the Baltic countries as per 25.10.1941" is also included in Enclosure 8.]	

Enclosure 9:

Reports on Activities and Experiences in Counteractions against
Partisans. [*First Report*]

17.8.1941

Einsatzgruppe A of the Security Police and the Security Service
Staff

Report on Activities and Experiences in Counteractions against
Partisans

When it was decided to extend the German operations to Leningrad and also to extend the activities of Einsatzgruppe A to this town, I gave orders on 18 July 1941 to parts of Einsatzkommandos 2 and 3 and to the group staff to advance to Novoselye, in order to prepare these activities and to be able to advance as early as possible into the area around Leningrad and into the city itself. The advance of the forces of Einsatzgruppe A which were intended to be used for Leningrad was effected in agreement with and on the express wish of Panzer Group 4.

The Kommando which was formed for action towards Leningrad was trained for operations in Leningrad during the first days after the advance to Novoselye. However, as an advance to Leningrad is not to be expected at the time planned previously, the parts of Einsatzkommandos 2 and 3 which were concentrated in Novoselye were used for extensive operations of clearing and pacifying in the area of Panzer Group 4, in agreement with this group. This is done mainly in the area limited by the connection line between Pog—Gora—Novoselye—Osyeryevo—Snossyednov.

In their operations it was intended to arrest in the first instance any remaining Communist functionaries, and other active Communists and Jews. As nearly all Jews and Communist function-

* Total in the original report is incorrect.

aries had fled with the retreating Soviet forces, only 6 Jews and 10 Communists were arrested and executed.

* * * * *

At the start the following procedure was followed:

In villages, in the area where partisans had not been ascertained before, one behaved friendly towards the population. In view of the generally known shortage of bread one usually succeeded very quickly in finding one or several villagers who could be used as confidence men. They were promised bread provided they would give information concerning partisans or if they would inform the nearest units of the German Army or police of any partisans appearing in the future. The network of information, thus built up yielded much information for the Einsatzgruppe A, thus enabling them to surround more narrowly the quarters of the partisans.

In particular, information was obtained concerning villagers who had given food or provisional shelter to partisans. On the basis of these reports a great many villages were combed out. After a village had been surrounded, all the inhabitants were forcibly shepherded into one square. The persons suspected on account of confidential information and other villagers were interrogated, and thus it was possible in most cases to find the people who helped the partisans. These were either shot off hand or if further interrogations promised useful information, taken to headquarters. After the interrogation they were shot.

In order to obtain a deterring effect, the houses of those who helped the partisans were burned down on several occasions. The population which had congregated was told of the reasons for the punitive measures. At the same time they were threatened that the whole village would be burned down if partisans were helped once more and if partisans appearing in the village were not reported as quickly as possible.

The tactics, to put terror against terror, succeeded marvelously. From fear of reprisals, the peasants came a distance of 20 kilometers and more to the headquarters of the Teilkommando of Einsatzgruppe A on foot or on horseback in order to bring news about partisans, news which was accurate in most of the cases. During the clearing operations which were made on account of these reports, 48 helpers of partisans, including 6 women, were shot so far.

In this connection a single case may be mentioned, which proves the correctness of the principle "terror against terror." In the village of Yachnova it was ascertained on the basis of a report made by the peasant Yemelyanov and after further interrogations and other searches that partisans had been fed in the house of

Anna Prokovieva. The house was burned down on 8 August 1941 at about 21 hours, and its inhabitants arrested. Shortly after midnight partisans set light to the house of the informer Yemelyanov. A detachment sent to Jachnowa on the following day ascertained that the peasant woman Ossipova had told the partisans that Yemelyanov had made the report which had caused our action.

Ossipova was shot and her house burned down. Further, two 16-year-old youths from the village were shot because, according to their own confession, they had rendered information and courier service to the partisans. Obviously, it was on account of these punitive measures that the partisans left the forest camp near the village. The camp was found in the course of our operation.

* * * * *

[Signed] DR. STAHLCKER
SS Brigadefuehrer and Brigadier General of Police.

Riga, 29 September 1941

The Commander of the Security Police and the Security Service
Einsatzgruppe A

Report on Experiences in Counteractions Against Partisans

* * * * *

The Einsatzkommandos of Einsatzgruppe A of the security police participated from the beginning in the fight against the partisans. Close collaboration with the armed forces and the exchange of experiences which were collected in the fight against partisans, brought about a thorough knowledge of the origin, organization, strength, equipment, and system used by the Red partisans as time went on.***

* * * * *

The main results of this work were the following:

I. *Origin and organization of the partisans.*

* * * * *

IV. *Counteractions against the partisans.*

* * * * *

As it was vitally necessary to obtain hints and information concerning abode and direction of the partisans from the population, the latter had to be forced by the use of the most severe measures, to supply useful information and reports. In the knowledge that the Russian has been accustomed from old to ruthless measures on the part of the authorities, the most severe measures were applied. He who helped the partisans to obtain food and shelter, rendered them information services, or who knowingly gave false information was shot or hanged. Houses where partisans obtained food or shelter were burned down. Where a larger number of vil-

lagers helped the partisans in such a way, the whole village was burned down as punishment and in order to create terror.

* * * * *

Escaped Red Army soldiers who have found their way through the German lines procure civilian clothes as quickly as possible and get in touch with partisans. It has been ascertained that these Red Army soldiers form the fighting backbone of the partisan units. It does not seem, therefore, expedient to treat Red Army members found in civilian clothing as prisoners of war and to collect them in prisoner-of-war camps. But an interrogation and survey has to be carried out as thoroughly as possible. It has further to be considered in each and every case, whether Red Army members found in civilian clothes should be separated from regular prisoners of war, and should be brought into the assembly camps for civilian internees. Furthermore, it seems expedient to advise escaped Red Army soldiers through posters to give themselves up at the nearest army unit within a short time after the posting of such posters, say within 3 days. Should they not comply with this order they should be dealt with as partisans; that means they should be shot without making such exception dependent on proof that they actually knew of the order.

To conclude, attention should be drawn to the necessity of interrogating captured partisans thoroughly before they are liquidated so that we increase our knowledge on organization, abode, strength, armament, and plans of the partisans. Sometimes it may become necessary to take advantage of the opportunity to use third degree interrogation methods.

* * * * *

[Signed] DR. STAHLCKER
SS Brigadier General

PARTIAL TRANSLATION OF DOCUMENT NO-2825
PROSECUTION EXHIBIT 59

EXTRACTS FROM SITUATION REPORT U.S.S.R. NO. 133,
14 NOVEMBER 1941

The Chief of Security Police and the Security Service
Berlin, 14 November 1941

Journal No. IV A 1-1 B/41-Top Secret
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Situation Report U.S.S.R. No. 133

I. *Locations and information channels*

The locations and information channels reported in Situation

Report No. 132 dated 12 November 1941 remain unchanged.

* * * * *

II. *Extract from resolution passed by the Central Committee of the Communist Party of the Soviet Union on the anniversary of the October revolution*

* * * * *

III. *Reports made by the Einsatzgruppen and Einsatzkommandos*
Einsatzgruppe A.

Location: Krasnog vardeisk.

Organization of Partisans in Riga

* * * * *

Einsatzgruppe B.

Location: Smolensk

Information Services

1. *Situation in newly occupied area*

* * * * *

2. *Morale and general conduct of the population*

* * * * *

The public execution of a partisan leader and 3 Bolshevik terrorists had a quieting effect on the civilian population of Mogilev. Numerous civilian inhabitants were present at the execution by hanging and it appeared to make a deep impression on them that from the German side measures will now be taken against partisans and Bolshevik functionaries, which they can also witness themselves. At any rate this action is proved to have made far more of an impression on the civilian population than some executions published by means of posters have done. On the other hand the population exhibited much more indifference to the total liquidation of Jews, for example the Vitebsk Ghetto. They soon became used to the disappearance of the Jews without being influenced in either a positive or negative way.

* * * * *

Activities

1. *General situation*

* * * * *

3. *Operations against party functionaries, agents, saboteurs, and Jews*

In Mogilev, the female worker Nina Lissunova was arrested. She has an elementary school education (up to fourth grade) and worked in a silk factory in Mogilev. She was a deputy to the Soviet Supreme Council and had participated in 8 meetings of the Soviet Council in Moscow.

On 11 October 1941 the Russian, Feodor Karjago from Shklov, and three more Russians were shot for Communist agitation.

On the same day the Russians, Wassilio Bertjew, Wladimir Berendovski, and Andrey Sinjakov were shot, who had attempted to build up an organization for the purpose of Communist activities and had already acquired revolvers.

On 14 October 1941 the Russians Michael Sokischevski, Vassily Terisov, Maxim Rudakov, Georgi Charsevu, and Markar Amsalovich were shot, who under the Soviet regime had been active as Party functionaries and had handled large numbers of people over to the NKVD, as well as assisting in deportations.

On 16 October 1941 the Russian girl Anna Garbuson was shot for particularly violent expressions of hostility against Germany while a member of the NKVD.

On the same day the Jews Stanislaus Bonski and Tolya Ahonin were liquidated for being former NKVD agents; the Jews Simon Alexandrovich, Schuster Peiser, and Michael Sakei were shot for being in possession of explosive ammunition.

On the same day the Jewess Cadine Orlov was executed for being found without a Jewish badge and refusing to move into the ghetto.

On 18 October 1941 the Jews Lova Wasmann, Ferna Birkmann, Jakob Saravo, Abraham Linden, Abraham Baraniche, Salomon Katzmann, and Behr Katzmann, as well as the Jewess Fenia Leikina, were liquidated for refusing to wear the Jewish badge and spreading inflammatory propaganda against Germany.

On 20 October 1941 the Jew Stanilow Naum and the Jewish couple Alter were liquidated. They had hidden themselves in Mogilev outside the ghetto.

On 14 October 1941 the Jew Isaak Pjaskin was shot by the Vorkommando of the Einsatzkommando 9. He had been a political collaborator with the Red Army and was found on the road to Vyazma in suspicious circumstances.

On 17 October 1941 the woman Maria Spirina was shot for sniping activities.

On 21 October 1941 the Jew Joel Ljubavin was shot after he had been found not far from Vyazma in a Russian bunker and in possession of fire arms.

* * * * *

5. "*Special Operations*".

Eighty-three of the several hundreds of inmates of the forced labor camp in Mogilev were liquidated on 15 October 1941 as being racially inferior elements with an Asiatic strain. The responsibility for their retention in the rearward army area could no longer be taken.

According to a report of the 691st Infantry Regiment, the Jews

in Asmoni supported in every manner possible the *partisans* still holding out in the immediate neighborhood. During a mopping-up operation in that neighborhood on 9 October 1941, 81 Jews were shot who had offended against the regulations made by the German occupying forces. Russian uniforms were found in several Jewish dwellings.

As a result of numerous complaints about their provocative behavior, a total number of 2,200 Jews of all ages were liquidated in Gorki (northeast of Mogilev) and surroundings during a mopping-up operation in 8 localities. They were for the most part Jews who had immigrated from the district of Minsk, and, like the rest, had committed offenses against the regulations made by the German forces. The operation was carried out in close cooperation with the military police.

In Mstislavl, about 80 km. east of Mogilev, 900 Jews were liquidated who had offended against the regulations of the German forces, had harbored passing *partisans*, and had provided them with food and clothing.

On 19 October 1941 a large scale operation against the Jews was carried out in Mogilev with the aid of the police regiment "Mitte". Through this 3,726 Jews of both sexes and all ages were liquidated. These measures were necessary because, since the town of Mogilev was occupied by German troops, the Jews [verb missing] the authority of the occupying forces and in spite of the measures already taken against them, they not only failed to desist in this action but continued their anti-German activities (sabotage, support of *partisans*, refusal to work, etc.) to such an extent and with such persistence that in the interests of establishing order in the rearward areas it could no longer be tolerated.

On 23 October 1941, to prevent further acts of sabotage and to combat the *partisans*, a further number of Jews, 279 of both sexes, from Mogilev and surroundings were liquidated.

The Sonderkommando 7a carried out 173 liquidations during the period covered by this report.

6. *Confiscation of material*

* * * * *

7. *Confiscation of money and other things*

During the period covered by this report, the Einsatzkommando 8 confiscated a further 491,705 rubles as well as 15 gold rubles. They were entered in the ledgers and passed to the administration of Einsatzkommando 8. The total amount of the rubles so far secured by the Einsatzkommando 8 now amounts to 2,511,226 rubles.

8. *Organization measures*

The ghetto built in Mogilev by Einsatzkommando 8 could for the main part be returned to the city administration, since Mogilev can be considered practically free from Jews after the last operations. The few remaining Jews are accommodated in a forced labor camp and are there ready to be used as skilled artisans. The Sonderkommando 7a has set up a police service [Ordnungsdienst] and a Jewish council in Rzhev.

9. *Liquidations*

According to the reports at hand—the reports of Sonderkommando 7b and Einsatzkommando 9 and Vorkommando Moscow have yet to follow—the liquidations during the report period reached the following figures:

a. Staff and Vorkommando Moscow.....	2,457
b. Sonderkommando 7a	1,517
c. Sonderkommando 7b	1,822
d. Einsatzkommando 8	28,219
e. Einsatzkommando 9	11,452
Sum total of persons liquidated by Einsatzgruppe B up to now..	45,467
* * * * *	*

PARTIAL TRANSLATION OF DOCUMENT NO-2832 PROSECUTION EXHIBIT 79

EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 135, 19 NOVEMBER 1941

The Chief of the Security Police and Security Service
B.No. IV A 1 - 1 B/41 — top secret

Berlin, 19 November 1941

[stamped] Top Secret

60 copies

60th copy

Operational Situation Report U.S.S.R. No. 135

I. *Locations and Communications*

Date: 19 November 1941

Higher SS and Police Commander North 101
(Pruetzmann)

Location: Riga.

Einsatzgruppe A (Dr. Stahlecker)

Location: Krasnogvardeisk.

Communications: Radio communications, teletype communications Riga.

Sonderkommando 1a
(Sandberger)

Location: Tallin, Narva, Tartu, Parnu and
Ahrensburg (Oesel) [Sarema].
Communications: Radio communications Narva, teletype
communications Tallin,
Army Post Office No. 15 119

Sonderkommando 1b
(Ehrlinger)

Location: Tossno, Medved, Nestonya, Staraya-
Russa.
Communications: Radio communications Tossno,
Army Post Office No. 15 119

Einsatzkommando 2
(Strauch)

Location: Parts in Riga, Shaulyai and Lepaya.
Communications: Radio communications Riga, teletype
communications Riga and Lepaya,
Army Post Office No. 15 447

Einsatzgruppe 3
(Jaeger)

Location: Daugavpils, Kovno, Vilnyus, Barano-
vichi, Minsk.
Communications: Radio and teletype communications
Vilnyus and Kovno,
Army Post Office No. 15 641

Higher SS and Police Commander Center (102)
(von dem Bach)

Location: Mogilev.

Einsatzgruppe B (Naumann)

Location: Smolensk, Vorkommando at Moshaisk.
Radio communications, courier service
via Warsaw and telephone service
via communication service Smolensk.
Communications: Radio communications Smolensk,
Army Post Office No. 37 857

Sonderkommando 7a
(Steimle)

Location: Rzhev and Kalinin.
Communications: Radio communications Rzhev,
Army Post Office No. 05 607

Sonderkommando 7b

(Rausch)

Location: Nachkommando at Bryansk, Vorkommando at Tula.
Communications: Radio communications Orel,
Army Post Office No. 18 555

Einsatzkommando 8

(Bradfish)

Location: Mogilev with Squads at Vitebsk,
Gomel, Arsha and Krichev,
Army Post Office No. 37 857

Einsatzkommando 9

(Schaefer)

Location: Vyazma with squads at Gzhatsk and
Smolensk.
Communications: Radio communications Vyazma,
Army Post Office No. 37 857

Sonderkommando "Moscow"

Location: Maloyaroslavets
Communications: Radio communications Maloyaroslavets.

Higher SS and Police Commander South (103)

(Jeckeln)

Location: Krivoi-Rog.
Communications: Teletype communications Lvov.

Einsatzgruppe C (Dr. Rasch)

Location: Kiev.
Communications: Teletype communications via Lvov,
from there courier service, radio
communications Kiev,
Army Post Office No. 32 704

Sonderkommando 4a

(Blobel)

Location: Kiev, Vorkommando Kharkov.
Communications: Radio communications Dnepropetrovsk,
Army Post Office No. 22 789

Sonderkommando 4b

(Braune)

Location: Poltava, squads en route for Slaviyansk
and/or Kramatorskaya.

Communications: Radio communications Poltava,
Army Post Office No. 34 310

Einsatzkommando 5
(Meyer)

Location: Kiev, squads in Zhitomir, Rovno and
Vinnitsa.

Communications: Radio communications Kiev,
Army Post Office No. 35 102

Einsatzkommando 6
(Kroeger)

Location: Dnepropetrovsk.

Communications: Radio communication Dnepropetrovsk,
Army Post Office No. 35 979

Higher SS and Police Commander for special purposes
(Korsemann)

Location: Rovno.

Einsatzgruppe D (Ohlendorf)

Location: Simferopol.

Communications: Radio communications,
Army Post Office No. 47 540

Sonderkommando 10a
(Seetzen)

Location: Taganrog, Nachkommando at Mariu-
pol, Melitopol and Berdyansk.

Communications: Radio communications Taganrog,
Army Post Office No. 47 540

Sonderkommando 10b
(Persterer)

Location: Feodosiya, Vorkommando at Kerch,
Teilkommando at Alushta and Su-
dak.

Communications: Radio communications whilst en route,
Army Post Office No. 47 540

Einsatzkommando 11a
(Zapp)

Location: Yalta, Teilkommando outside Sevasto-
pol and Bakhchisarai and Yevpa-
toriya,
Army Post Office No. 47 540

Einsatzkommando 11b

Location: En route to Simferopol,
Army Post Office No. 47 540

Einsatzkommando 12

(Nosske)

Location: Stalino, Teilkommando in Novoche-
kassk.

Communications: Radio communications Michailovka,
Army Post Office No. 47 540

Reports of the Einsatzgruppen and Kommandos.

Einsatzgruppe A

Location Krasnogvardeisk.

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Reports from *Einsatzgruppe B* have not been received.

Einsatzgruppe C

Location Kiev.

"Atmosphere" and Situation in Kiev

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Executory Activities

In the course of the systematic mopping-up operations and the complete rounding-up of all Jews and Communists in the neighborhood of Kiev, the Sonderkommando 4a dispatched a number of Teilkommandos who were able to complete their tasks without any difficulties and in cooperation with the competent local commanders of the German Wehrmacht. Thus, on 22 October 1941 at Koselets apart from 11 Communists and partisans which had been handed over by the Wehrmacht, 125 Jews were executed, who were the rest of a population which, before the war, had numbered over 2,000. On this occasion the Ukrainian militia, recruited at Koselets, made itself useful in the rounding-up and by procuring the necessary manpower for making the pits.

On 23 October 1941 a Teilkommando of Sonderkommando 4a visited the town Chernigov which, before the war, had a population of 70,000, of which only 40,000 remain today. Of more than 10,000 Jews not more than 260 have stayed behind. The town itself was a sight of almost complete destruction, and it is said that the inner part was set on fire by the Jews before the German troops entered the town. Apart from 8 Communists and partisans who again were handed over by the local commander of the Wehrmacht, the Kommando shot 116 Jews on 23 October 1941 and 144 on the following day. When the same Kommando again passed Chernigov on 23 October 1941, 49 Jews could be arrested

who, after the executions on 24 October 1941, had believed the danger had passed and had returned from their flight. On the same day, too, request of the director of the mental asylum at Chernigov to liquidate 270 incurables was complied with.

In Oster, on 29 October 1941, 215 Jews, partisans as well as a few functionaries of the Communist Party, were arrested and executed.

The attempt of Sonderkommando 4a to take action against Nezhin, where approximately 325 Jews are living, failed three times since it was impossible to reach this place on roads which were covered with mud after the rain and thus impassable for motor vehicles.

For the same reason the plan of Sonderkommando 4a, to have a stronger unit follow the Vorkommando already sent to Kharkov, had to be deferred for the time being.

In the course of the investigations made in Kiev in connection with the winding-up of the illegal party machinery of the Communist Party, further arrests could be made by Sonderkommando 4a. The arrest of the Ukrainian Michael Tschernisch, a member of the secret Kyrov-Rayon-Party-Committee, led to the finding and seizing of approximately 50 kilos of leaflets and propaganda pamphlets, which were intended for the illegal activities of the Communist Party in the Ukraine.

From 11 until 24 October 1941 Sonderkommando 4b carried out 205 executions. These were 11 political functionaries, 13 saboteurs and looters, and 181 Jews.

During the time from 25 October till 30 October 1941 Sonderkommando 4b executed 7 political functionaries, 2 saboteurs and looters, and 381 Jews.

According to a report of Sonderkommando 4b there is a mental asylum at Poltava with 865 inmates; attached to it is a farm of 1,200 morgen, the produce of which is used to feed the insane and the staff living there. In view of the extremely critical food situation in Poltava—for instance there is no full-cream milk to be had for the three large military hospitals—the commander of Sonderkommando 4b, in agreement with the 6th Army and the local commander of the Wehrmacht, contacted the woman doctor in charge of the asylum with the object of reaching an agreement on the execution of at least part of the insane.

The woman doctor in charge quite understood that the problem should be solved in this manner, but objected that the measure would cause unrest among the population which ought not to be disregarded, especially since the Soviets—naturally for propaganda reason—had given all conceivable assistance to this asylum. A way out of this difficulty was found by deciding that the execu-

tion of 565 incurables should be carried out in the course of the next few days under the pretext that these patients were being removed to a better asylum in Kharkov. It can be taken for granted that the remaining 300 patients [light cases] will be released shortly from the asylum. A commissioner appointed by the local commander will take care of the vacant parts of the building, the furniture, linen, and clothing, while a Kreislandwirtschaftsfuehrer [Kreis Agriculturalist] will take care of the farm.

The work of Sonderkommando 4b at Poltava was handicapped severely by extremely unfavorable weather and road conditions since a number of neighboring villages, from where the appearance of partisans and Communist elements had been reported, could not be reached with any of the motor vehicles available. Activities had therefore to be confined to the area of Poltava itself. Cooperation with the Wehrmacht and the Ukrainian police ran smoothly. As to the activities of the Bandera group, no observations of importance could be made in the area of Sonderkommando 4b. On the other hand the Melnik group is beginning to become rather active. Obviously attempts are being made to exclude German influence and to establish a free and independent Ukraine. For the time being, however, factual reports cannot be made. On 2 November 1941 the total number of executions carried out by Einsatzkommando 5 was 21,258. Included in this number are 36 political functionaries, 32 saboteurs and looters, and 4,372 Jews who were shot between 20 October and 26 October inclusive. In the week from 26 October to 1 November 1941 inclusive, Einsatzkommando 5 executed 40 political functionaries, 16 saboteurs and looters, and 2,658 Jews. Included in this number are (1) 414 hostages, shot as a reprisal for various incendiary crimes, (2) 1,391 executions carried out by a Teilkommando of Einsatzkommando 5, which had returned from the area of Skvira-Pogrebishche-Plyskiv.

Since 5 October 1941, Einsatzkommando 6 is busy in the district of the Dnepr bend. Apart from extensive rural districts the following towns, all of a definitely industrial character and densely populated, were dealt with: Dnepropetrovsk, Dneprodzerzhinsk (150,000 inhabitants), Verchnedneprovsk (30,000 inhabitants), Novo Moskovsk (30,000 inhabitants), Zaporozhe (350,000 inhabitants) and Nikopol (60,000 inhabitants). In the area of Einsatzkommando 6 the total number of town dwellers is around 1.2 million, not including those of smaller places. Naturally the amount of work to be accomplished is proportionately high and can hardly be accomplished with the forces available. Apart from the cases which are really of interest to the security police there is the work, unfortunately unavoidable, to be done in connection

with the immense number of denunciations with which the Einsatzkommando is simply swamped. Here the low level of the moral character of the population becomes apparent; almost everyone of the inhabitants considers it necessary and of merit if, for selfish interests, he denounces his relatives, friends, etc., as having been Communists, to the German police.

During the time covered by the report, Einsatzkommando 6 was able to find out about a number of functionaries, however, again and again it appeared that here too the most active people had escaped in time. After a long search an NKVD murderer of the worst kind could be arrested on 26 October. Lately, partisans and saboteurs have caused the Einsatzkommando 6 more trouble than formerly. Five different depots of arms, including two of some extent, could be discovered and destroyed. On a large-scale operation, which took place on 22 October 1941, against partisans in a forest district on the other side of the Dnepr ended with the arrest of 9 partisans, some of whom were armed and others had buried their weapons. The execution by shooting of these partisans contributed considerably to pacify this district.

On 24 October 1941 a similar action was carried through by the Einsatzkommando 6 in cooperation with the military police, in a large forest district, the result of this was only the discovery of some arms and other supplies of the partisans.

Of approximately 100,000 Jews originally living in Dnepropetrovsk about 70,000 escaped before the German troops entered the town. Of the remaining 30,000 approximately 10,000 were shot on 13 October 1941 by a detachment of the higher SS and police leader.

Up to the day of report a further 1,000 Jews were shot by Einsatzkommando 6; in view of the lack of skilled workers, it was in this connection impossible to avoid sparing, for the time being, the lives of Jewish partisans, who were urgently needed for repair work, etc. Steps are being taken for the extermination of 1,500 inmates of the provincial lunatic asylum.

Finally it is desired to pass on a report of the commander of Einsatzkommando 6, according to which the behavior of Italian and Hungarian troops has often caused annoyance to the German authorities. It was noticed for instance that Italians and Hungarians had abundant supplies of German cigarettes which they sold at exorbitant prices to our soldiers. For instance Italians selling them in the street are demanding 2 RM for 6 cigarettes.

Einsatzgruppe D

Location: Simferopol

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TRANSLATION OF DOCUMENT 3257-PS*
PROSECUTION EXHIBIT 43

EXTRACTS FROM UNSIGNED MEMORANDUM ADDRESSED TO GENERAL THOMAS, CHIEF OF THE INDUSTRIAL ARMAMENT DEPARTMENT, 2 DECEMBER 1941

Vol. 226-3
Armament in the Ukraine Inspector

- In the field, 2 December 1941

Secret

To General of the Infantry, Thomas,
Chief of the Industrial Armament Department [Wi Rue Amt]
in the OKW

Berlin W
Kurfuerstenstr 63-67.
1 enclosure.

* * * * *

The Jewish population remained temporarily unmolested shortly after the fighting. Only weeks, sometimes months later, specially detached formations of the police executed a planned shooting of Jews. This action as a rule proceeded from east to west. It was done entirely in public with the use of the Ukrainian militia and unfortunately in many instances also with members of the armed forces taking part voluntarily. The way these actions which included men and old men, women, and children of all ages were carried out was horrible. The great masses executed make this action more gigantic than any similar measure taken so far in the Soviet Union. So far about 150,000 to 200,000 Jews may have been executed in the part of the Ukraine belonging to the Reich Commissariat (RK); no consideration was given to the interests of economy.

Summarizing, it can be said that the kind of solution of the Jewish problem applied in the Ukraine which obviously was based on the ideological theories as a matter of principle had the following results:

- a. Elimination of a part of partly superfluous eaters in the cities.
- b. Elimination of a part of the population which hated us undoubtedly.

* For more complete translation of document, see *Nazi Conspiracy and Aggression*, Vol. V, pp. 994-997, U. S. Government Printing Office, Washington, 1946.

c. Elimination of badly needed tradesmen who were in many instances indispensable even in the interests of the armed forces.

d. Consequences as to foreign policy—propaganda which is obvious.

e. Bad effects on the troops which in any case get indirect contact with the executions.

f. Brutalizing effect on the formations which carry out the executions—regular police.

Scooping off the agricultural surplus in the Ukraine for the purpose of feeding the Reich is, therefore, only feasible if traffic in the interior of the Ukraine is diminished to a minimum. The attempt will be made to achieve this—

1. by annihilation of superfluous eaters (Jews, population of the Ukrainian big cities, which like Kiev do not receive any supplies at all);

2. by extreme reduction of the rations allocated to the Ukrainians in the remaining cities;

3. by decrease of the food of the farming population.

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PARTIAL TRANSLATION OF DOCUMENT NO-2827
PROSECUTION EXHIBIT 74

EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 143,
8 DECEMBER 1941

The Chief of the Security Police and of the SD
B. No. IV A 1 — 1B/41 — Top Secret

Berlin, 8 December 1941

[Stamp] Top Secret

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Operational Situation Report U.S.S.R. No. 143

I. Locations and Lines of Communication.

The locations and lines of communication reported in Operational Situation Report No. 141 of 3 December 1941 have remained unaltered.

II. Reports from the Einsatzgruppen and Kommandos.

Einsatzgruppe A

Location: Riga.

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Einsatzgruppe B

Location: Smolensk.

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Einsatzgruppe C

Location: Kiev.

Activity of the Bandera movement in the district of Zhitomir

* * * * *

Bandera movement in Zaporozhe.

* * * * *

General Situation in Zaporozhe.

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Security Police Measures of the Einsatzkommando

The number of executions carried out by Sonderkommando 4 amounted on 9 November 1941 to 57,243.

On 7 November 1941, a Teilkommando of the SK 4 shot 385 Jews in Gornostaipol, according to martial law. These Jews had, for the greater part, been driven together into G. from the surrounding villages. On its way back to Kiev, the same Kommando shot 120 Jews in Dymier and 30 Jews in Ostor in the same day. This action was carried out in cooperation with the Wehrmacht offices without any mishap.

Between 31 October 1941 and 5 November 1941 the SK 4b shot a total of 740 persons, according to martial law. Among these were 3 political officials, 1 saboteur, 137 Jews, and 599 mental deficient. This action also was carried out quite smoothly according to the preparations made. The farm which was set free by the shooting of the greater part of the inmates of the insane asylum in Poltava is available, primarily, for the military hospitals there. The underwear, clothing, and other wearing apparel collected on this occasion have also been handed over mainly to the hospitals. The remaining 200 curable inmates are going to be employed on the farm.

A Teilkommando of the SK 4b has started clearing out the prison camp at Losovoya.

The total figure of persons shot by the Einsatzkommando 5 under martial law was 29,644 as of 10 November 1941.

During the period 2 November to 8 November 1941, inclusive, 15 political officials, 21 saboteurs and looters, 10,650 Jews, and 414 hostages were shot by EK 5.

The shooting of hostages was carried out in agreement with the town commandant of Kiev as a retribution for increasing cases of arson and sabotage. The town commandant made known to the population the shooting of those hostages by proclamation and, among other things, pointed out that a multiple number of

persons would be shot for each new case of arson or sabotage. Furthermore, he drew the attention of all inhabitants to their duty to report to the police without delay any suspicious observation.

During the period 9 to 15 November 1941, inclusive, the EK 5 carried out 1,509 shootings according to martial law. In this figure are included 57 political officials, 30 saboteurs, and 1,422 Jews.

On 6 and 7 November 1941, the *Jew action* was carried out in Rovno which had been planned long beforehand. It was possible to shoot approximately 15,000 Jews on this occasion. The organization of this action was in the hands of the constabulary according to orders of the higher SS and police leader. The Aussenkommando Rovno of the Einsatzkommando 5 played an integral part in carrying out this operation.

In the period between 26 October to 2 November 1941, the EK 6 shot 26 political officials, 10 saboteurs and looters, and 43 Jews according to martial law.

In the period 26 October to 2 November 1941 the EK 6 shot 26 political officials, 10 saboteurs and looters, and 43 Jews according to martial law.

[last 2 paragraphs are identical]

In the period 3 to 9 November 1941, 20 political officials, 3 saboteurs, and 113 Jews, and in the period 10 to 16 November 1941, 4 political officials, 10 saboteurs and looters, and 47 Jews were shot. The number executed by the EK 6 in the period 17 to 25 November 1941 amounts to a total of 105. Among these were 24 political officials, 20 saboteurs and looters, and 61 Jews.

Einsatzgruppe D

Location: Simferopol

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PARTIAL TRANSLATION OF DOCUMENT NO-2834
PROSECUTION EXHIBIT 87

EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 150,
2 JANUARY 1942

Chief of Security Police and Security Service
B. No. IV A 1 — 1 B/41 — Top Secret

Berlin, 2 January 1942

[stamped] Top Secret!

65 copies
51st copy

Operational Situation Report U.S.S.R. No. 150

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Einsatzgruppe D

Reports:

* * * * *

4. *Jews*

Simferopol, Yevpatoriya, Alushta, Karasubazar, Kerch and Feodosiya and other districts of the western Crimea have been cleared of Jews. From 16 November through 15 December 1941, 17,645 Jews, 2,504 Krimtschaks, 824 gypsies, and 212 Communists and partisans have been shot. Altogether 75,881 persons have been executed. Rumors about executions in other areas rendered action at Simferopol very difficult. Reports about actions against Jews gradually filter through from fleeing Jews, Russians, and also from unguarded talks of German soldiers.

PARTIAL TRANSLATION OF DOCUMENT NO-3279
PROSECUTION EXHIBIT 21

EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 155,
14 JANUARY 1942

The Chief of the Security Police and the Security Service
IV A 1 - B/No. 1 B/41 Top Secret

Berlin, 14 January 1942
65 copies
51st copy

Operational Situation Report U.S.S.R. No. 155

I. *Locations and Signals Communications*

Date: 4 January 1942.

* * * * *

II. *Reports of the Einsatzgruppen and Einsatzkommandos*

Einsatzgruppe A

Location: Krasnogvardeisk

* * * * *

Jews. Efforts are being made to purge the eastern territory of Jews as completely as possible.

Shootings were carried out in such a way as to attract as little public attention as possible. Up to the present, this method was successful almost everywhere. Even in towns where large scale shootings had been carried out, time and place of the killings of the Jews never transpired. In the population and even among the remaining Jews the impression prevailed that the Jews had been resettled in other parts of the eastern territory.

Esthonia has already been cleansed of Jews.

In *Latvia*, Jews remained only in Riga and Dvinsk [Daugavpils]. The number of Jews left in Riga—29,500—was reduced to 2,600 by an action carried out by the Higher SS and Police Leader "Ostland". In Dvinsk there are still 962 Jews left who are urgently needed for the labor supply.

In *Lithuania*, an effort had to be made to purge the rural districts and the small towns thoroughly of Jews. Apart from basic considerations, this was an urgent necessity also because Communist elements—in particular terror groups and parts of the Polish Resistance Movement—established contact with the Jews, instigating them to sabotage work and to offer resistance. The Jews in turn repeatedly attempted to work up anti-German feeling in the originally loyal and willing Lithuanian circles. Several times sentries were fired at from the Kovno Ghetto.

The Jews were particularly active in Zagare. There, on 2 October 1941, 50 Jews escaped from the ghetto which was already cordoned off. Most of them could be recaptured and shot in the course of a large scale search which was carried out immediately. In course of the subsequent preparations for the wholesale execution of the Zagare Jews, at a prearranged signal they attacked the guards and the men of security police Einsatzkommando while on the transport to the place of execution. Several Jews who had not been searched thoroughly enough by the Lithuanian guards drew knives and pistols and uttering cries like "Long live Stalin!" and "Down with Hitler!" they rushed upon the police force of whom 7 were wounded. Resistance was broken at once. After 150 Jews had been shot on the spot, the transport of the remaining Jews to the place of execution was carried through without further incident.

In several Lithuanian places, the Jewish quarters had become sources of epidemics owing to bad living and nutritional conditions. The spread of the diseases which had broken out in the ghettos was prevented by the thorough extermination of the Jews.

In Lithuania, there are at present only 15,000 Jews left in Kovno who are urgently needed for the manpower supply, 15,000 in Vilnyus, and 4,500 in Shaulyai.

In *White Ruthenia*, the purge is in progress. The number of the Jews in the area handed over to the civil administration is at present approximately 139,000. 33,210 Jews were shot by Einsatzgruppe A since it had taken over the official duties in White Ruthenia.

* * * * *

Retaliatory actions

In the village of Audrini near Rezekne 6 Russians had been

in hiding for months according to a preconceived plan; some time ago they had shot 3 Latvian auxiliary policemen on duty. On 2 January, at the order of Einsatzgruppe A of the security police and the security service, the village was completely burned down after removal of all foodstuffs, etc., and all the villagers shot. Three hundred one men were publicly shot in the market square of the neighboring town, Rezekne. All these actions were carried out without incident.

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PARTIAL TRANSLATION OF DOCUMENT NO-2662
PROSECUTION EXHIBIT 13

LETTER FROM HEYDRICH TO RIBBENTROP, REICH MINISTER OF
FOREIGN AFFAIRS, 23 APRIL 1942; EXTRACTS FROM ATTACHED
OPERATIONAL SITUATION REPORT U.S.S.R. NO. 11

The Chief of the Security Police and the Security Service
IV A 1 - B No. 24 B/41 Top Secret

Berlin, SW 11, Prinz-Albrecht-Strasse 8, 23 April 1942

Telephone: Local 120040

Long Distance calls: 126471

[Stamp]

Foreign Office

D II 100, Top Secret

Received: 27 April 1942

1 Enclosure

[Stamp]

Top Secret

To the Reich Minister of Foreign Affairs
Herr von Ribbentrop
Berlin W 8

My dear Reich Minister,

I am forwarding to you, herewith, as enclosure the Operational Situation Report No. 11 of the Einsatzgruppen of the Security Police and the Security Service [SD] in the U.S.S.R. for your information.

Heil Hitler!

[Signature] HEYDRICH

[Handwritten note] Special File Russia

[Handwritten] re D II 100
Top Secret

Office: Reich Ministry of Foreign Affairs

[Stamp] Top Secret

Subject: Letter of the Chief of the Security Police and the Security Service dated 23 April 1942—File No. IV A 1 — B No. 24 B/41 top secret—with Operational Situation Report No. 11 of the Einsatzgruppen of the Security Police and the Security Service in the U.S.S.R.

Subdepartment D II

Submitted for jurisdictional reasons.

The letter has not yet been submitted to the Reich Minister of Foreign Affairs.

Berlin, 25 April 1942

[Signed] BRUNS

[Stamp] Top Secret

Pages 2 and 3 of the report contain a brief summary of its essential contents.

Through Herr State Under Secretary Luther to—

Office of State Secretary *

Herr State Under Secretary, Political Department

Herr Deputy Ministerial Director, Political Department

Herr Envoy von Tippelskirch

Pol I M

Pol V

Pol VI (page 19)

D IX

D VIII

D III

Chief Inf.

Department Ru (pages 18 and 19)

[A number of illegible
handwritten notes,
initials, dates, etc.]

For information.

Berlin, 28 April 1942

2. To be filed.

[Stamp] Top Secret

100 copies
4th copy

[Handwritten] D II 100 42 top secret

* Ernst von Weizsaecker, defendant in Case 11. See vols. XII, XIII and XIV.

*Operational Situation Report No. 11 of the Einsatzgruppen of
the Security Police and the Security Service (SD) in U.S.S.R.*

Period covered—1 March till 31 March 1942

Index

- I. Locations
- II. Executive operations
 - A. Partisans
 - B. Communists
 - C. Jews
- III. Attitude and behavior of the population
- IV. Movements for national independence
- (Survey of the most important events next page)
- * * * * *

I. Locations

The locations of the Einsatzgruppen of the Security Police and the SD remained unchanged. The locations are—

Einsatzgruppe A: Krasnogvardeisk

Einsatzgruppe B: Smolensk

Einsatzgruppe C: Kiev

Einsatzgruppe D: Simferopol

II. Executive operations

* * * * *

C. Jews

The way of handling the Jewish question was entirely different in the various sections of the front.

Since the greater part of the Ostland is free of Jews, and the few Jews who are left because they are urgently needed for labor units are housed in ghettos, the task of the Security Police and the SD consisted in tracing Jews who were hiding out in the country. Repeatedly Jews were seized, who had left the ghetto without permission or did not wear the yellow star.

In Riga, among others, three Jews who had been transferred from the Reich to the ghetto and who had escaped, were recaptured and publicly hanged in the ghetto.

In the course of the greater action against Jews, 3,412 Jews were shot in Minsk, 302 in Vileika, and 2,007 in Baranovichi.

The population welcomed these actions, when they found out, while inspecting the apartments, that the Jews still had great stocks of food at their disposal, whereas their own supplies were extremely low.

Jews appear again and again, especially in the sphere of the black market. In the Minsk canteen which serves the population with food and is operated by the city administration, 2 Jews had committed large-scale embezzlements and bribes. The food which was obtained in this way was sold on the black market.

Furthermore, one Jew was arrested because of strong suspicion of espionage. This man is a well-known painter and sculptor, who—because he painted portraits of a great number of German officers—was admitted to almost all German troop units in Minsk.

Besides the measures taken against individual Jews operating in a criminal or political manner, the tasks of the Security Police and the SD in the other areas of the eastern front consisted in a general purging of larger localities. Alone in *Rakov*, e. g., 15000 Jews were shot, and 1224 in *Artenovsk*, so that these places are now free of Jews.

In the Crimea 1,000 Jews and gypsies were executed.

III. Public Opinion and Attitude of the Population

* * * * *

TRANSLATION OF DOCUMENT 3428-PS PROSECUTION EXHIBIT 111

SECRET MEMORANDUM FROM KUBE, GENERAL COMMISSIONER OF WHITE RUTHENIA, TO GAULEITER LOHSE, REICH COMMISSIONER OF OSTLAND, 31 JULY 1942, CONCERNING ACTIONS AGAINST PARTISANS AND LIQUIDATION OF JEWS IN WHITE RUTHENIA

[Stamp] Secret

[Stamp] Department IIa No. 2407/428

The General Commissioner for White Ruthenia

Department Gauleiter/G.-507/42 Secret

(To be quoted in the reply)

To the Reich Commissioner for the Eastland

Gauleiter Heinrich Lohse

Riga

[Handwritten] HS 10 August 1942

[Stamp]

The Reich Commissioner for the Eastland

Journal Nr. 1122/42 Secret

Secret

[Stamp]

Reich Commissioner

Ostland, 7 August 1942

Main Department II Pol.

[Handwritten] II Administration

[Handwritten]

To be referred to me with previous correspondence

Jr. 12 August

correspondence furnished

Sr. 19 August

Subject: Actions Against Partisans and Anti-Jewish Action in
the District General White Ruthenia

In every encounter with partisans in White Ruthenia, it has been established that in the former Soviet part of the district general as well as in the former Polish part the Jews together with the Polish Resistance Movement in the East and the Red Army men of Moscow are the mainstay of the partisan movement. As a result of this, and in view of the danger to the whole economy, the treatment of the Jews in White Ruthenia is a predominantly political matter which, therefore, should not be solved according to economic but political angles. During detailed consultations with the SS Brigadefuehrer Zenner and the extremely capable Chief of the SD, SS Obersturmbannfuehrer Dr. jur. Strauch, we found that we had liquidated approximately 55,000 Jews in White Ruthenia during the last 10 weeks. In the Minsk-Land area, the Jewry was completely exterminated, without endangering the allocation of labor in any way. In the prevailing Polish Lida area, 16,000 Jews, in Slonim 8,000 Jews, etc., were liquidated. The preparations for the liquidation of the Jews in the Glebokie area were completely disrupted by the arbitrary action by the rear army area, which has already been reported to your office. In the rear army area—I was not contacted—10,000 Jews were liquidated who were scheduled for extermination by us anyway. In the city of Minsk about 10,000 Jews were liquidated on 28 and 29 July, 6,500 of whom were Russian Jews—mainly old people, women, and children—the remainder consisted of Jews unfit for work, most of whom had been sent to Minsk from Vienna, Brno, Bremen, and Berlin in November of the previous year at the Fuehrer's orders.

The Slutsk area was also ridded of several thousand Jews. The same applies to Novogrudok and Vileika. Radical measures still remain to be taken for Baranovichi and Hanzevichi. In Baranovichi, about 10,000 Jews are still living in the town alone, 9,000 of whom will be liquidated next month. In the town of Minsk, 2,600 Jews from Germany have been left over. Besides, all the 6,000 Jews and Jewesses are still alive who have been working, during the action, with the units who had employed them previously. Even in the future the largest Jewish labor force will be in Minsk, since the centralization of armament industries and the burden on the railways makes this necessary for the time being. In all other areas the number of Jews utilized for labor by the SD and myself will be fixed at 800 at the outside but at 500 if possible so that after the completion of the action 8,600 Jews will remain in Minsk and approximately 7,000 in the

10 remaining territories, including the territory Minsk-Land, which is already free from Jews. The danger that the partisans will, in future, derive any important support from the Jews will then have ceased to exist. I myself and the SD would certainly much prefer that the Jewish population in the district general of White Ruthenia should be eliminated once and for all when the economic requirements of the Wehrmacht have fallen off. For the time being, the necessary requirements of the Wehrmacht who is the main employer of the Jewish population are still being considered. The clear anti-Jewish attitude of the SD and the difficult task of the units in White Ruthenia to deliver again and again new Jewish transports from the Reich to their destination, both put an undue strain on the physical and spiritual strength of men of the SD and diverts them from their real purpose, which lies in the White Ruthenian region itself.

I should therefore be grateful if the Reich Commissioner could see his way to stop further Jewish transports until the partisan threat has finally been overcome. I must make 100 per cent use of the SD against partisans and against the Polish Resistance Movement, both of which demand the use of the full strength of the SD units, which are none too strong as it is.

After the conclusion of the anti-Jewish action in Minsk, Dr. Strauch, SS Lieutenant Colonel, reported to me tonight, with justifiable wrath, that without any order from the Reich Leader SS and without notification of the commissioner, a transport of 1,000 Jews has suddenly arrived from Warsaw for use in this air fleet area.

I should like to ask the Reich Commissioner (who has already been advised by teletype), in his capacity as the highest authority in the Ostland, to stop such transports. The Polish Jew is, exactly like the Russian Jew, an enemy of all that is German. He represents a politically dangerous factor, the political danger of which exceeds by far his value as a specialized worker. Under no conditions must Wehrmacht agencies of the army or the Luftwaffe, be allowed to import, without the approval of the Reich Commissioner, into an area under civil administration, Jews from the General Government who might endanger the entire political work and security of the district general. I am in full agreement with the commander of the SD in White Ruthenia, that we are to liquidate every Jewish transport which has not been ordered or announced by our superior officers, so as to avoid further unrest in White Ruthenia.

The Commissioner General for White Ruthenia

[Signed] KUBE

PARTIAL TRANSLATION OF DOCUMENT NO-3339
PROSECUTION EXHIBIT 93

EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 170,
18 FEBRUARY 1942

Chief of the Security Police and SD
IV A 1 - B. No. 1 B/41 Top Secret

Berlin, 18 February 1942.

[Stamp] Top Secret

65 copies
1st copy

Operational Situation Report U.S.S.R. No. 170

I. *Locations and signal communications*

The locations and signal communications given in Operational Situation Report No. 168 of 13 February 1942 are unchanged.

II. *Reports of Einsatzgruppen and Einsatzkommandos*

Einsatzgruppe A reports—

* * * * *

Einsatzgruppe D reports—

1. *General situation*

* * * * *

2. *Work of the security police*

The northern parts of the Crimea in particular were the scene of security police work. Four Teilkommandos are engaged in combing the area village by village. These are for the most part villages with 150-300 inhabitants, mainly Russians and Ukrainians. Apart from carrying out executive duties, the Teilkommandos set up *advance message centers* in the villages. From time to time the confidential agents [V-men] were questioned, who had to report on all persons who had moved into this territory, and similar events. On the whole, it can be said that comparatively few unreliable elements exist in the rural territories of the northern sector. Important officials, etc., have not been apprehended as yet, but mainly Jews who were in hiding and, in isolated cases, partisans. By the end of February, one combing-through of the occupied Crimea will have been finished; certain important areas and the towns in particular are being regularly rechecked.

The search for isolated Jews who have up to now avoided being shot by hiding themselves or by giving false personal data were continued. From 9 January to 15 February, more than 300 Jews were apprehended in Simferopol and executed. By this, the number of persons executed in Simferopol increased to almost 10,000

Jews, about 300 more than the number of Jews registered. In the other Kommando areas as well, 100–200 Jews were still disposed of in each instance.

Besides the work rendering harmless *Communist Officials and NKVD agents*—of whom over 100 were apprehended in each of the separate sectors of activity—the search for partisans in the Bakhchisarai, Yalta, and Karasubazar sectors is of primary importance. While the ambushes and attacks on the highways of west Crimea decreased somewhat as a result of the convoy system and stronger security measures, several attacks on villages occurred. Keush was attacked during the night 7–8 February by 300 partisans, and 8 houses were set on fire. The partisans were repelled with the help of a Tartar self-defense company and of an army unit. On 9 February, 150 partisans, who were provided with arm bands of the kind the Tartar Company uses, attacked the village of Stzlia, which was plundered. Reports to the army stressed repeatedly that stronger action against the partisans was absolutely necessary before the beginning of the warmer season. Several large-scale operations are being prepared now on the basis of the reconnaissance in this region. In the eastern sector, in particular in the Karasubazar area, four surprise attacks were made on German trucks. One of these was made by 200 partisans who wore snow jackets at the time.

On 1 February, the village of Kasanli was occupied. The Tartar Company liberated the village and shot 6 partisans and 2 commissioners. An attempt to occupy Ortalan was repulsed by the Tartar Company. An attack on Chokrak planned for 9 February with the purpose of freeing 40 prisoners of war held there was prevented by investigations made by the Kommando. On 3 February, 6 parachutists were dropped near Karasubazar. Kommando action together with the Tartar Company prevented the parachutists, who were able to fight their way through to the partisans, from taking jettisoned batteries and explosives with them. "Molotov cocktail" and other booty were taken.

Several actions are also planned for the eastern sector on the basis of data made available by the Wehrmacht.

In the northern sector of the Crimea, a partisan group consisting of seven men was taken. These were trying to break through to the Ukraine, allegedly to receive special orders in Nikolaev.

Between 1 and 15 February, 1,451 persons were executed, of which 920 were Jews, 468 Communists, 45 partisans, and 12 looters, saboteurs, and asocials. Total up to now is 86,632.

Reports by Einsatzgruppen B and C have not been submitted.

* * * * *

PARTIAL TRANSLATION OF DOCUMENT NO-3359
PROSECUTION EXHIBIT 84

EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 190,
8 APRIL 1942

The Chief of the Security Police and of the SD

IV A 1 - 1 B/41 top secret

Berlin, 8 April 1942

[rubber stamp] Top Secret

I. *Locations and lines of communications*

date: 8 April 1942

* * * * *

II. *Reports from Einsatzgruppen and Einsatzkommandos*

Einsatzgruppe A

Location: Krasnogvardeisk.

* * * * *

There are no reports from Einsatzgruppe B.

Einsatzgruppe C

Location: Kiev.

Within the territory of the Commander of the Security Police and of the SD for the Ukraine 1,315 people were given "special treatment" during the period from 1 March 1942 until 3 April 1942. 185 of them were political officials, 121 were saboteurs, and 1,009 were plunderers.

Einsatzgruppe D

Location: Simferopol

General situation

* * * * *

Security Police measures. The intensive security police measures taken in the Einsatzgebiet effected that all villages, especially those on the Crimea, have now been combed through at least once. The extensive work, supported by village militia which has been cleaned up and reorganized, was quite successful. The completed system of special agents and lines of communication, as well as the active cooperation of the population, which has reached large proportions, did their share in achieving this result.

After the cleaning up of the Einsatzgebiet, especially after the Crimea has been cleaned up of pockets of resistance and enemy troops, Bolshevik officials, who have hidden and camouflaged themselves, are being rendered harmless in increasing numbers.

Except for small units, which occasionally show up in the

north of Crimea, there are no more Jews, Krimchaks, and gypsies in this territory. Wherever they have been able to camouflage themselves as individuals by means of false passes etc., they will be recognized anyway, sooner or later, as experiences of the past weeks have proved.

* * * * *

Inhabitants of the village of Laki near Bakhchisarai were in constant contact with partisan groups; they gave them billets at night and supplied them with food. On 23 March a penal action against this village produced such huge quantities of food that the partisans would have been able to live on this until the next harvest. The 15 main participants, among them the mayor, were shot, all inhabitants were evacuated and the village was burned down.

In the second half of March a total of 1,501 people were executed. Among these were 588 Jews, 405 Communists, 247 partisans, and 261 asocial people including gypsies. Total number shot up to date, 91,678.

* * * * *

TRANSLATION OF DOCUMENT 2273-PS*
PROSECUTION EXHIBIT 36

EXTRACT FROM DRAFT OF MEMORANDUM BY EINSATZGRUPPE A,
CONCERNING LIQUIDATION OF JEWS

Draft
Top Secret
Einsatzgruppe A

[page 56]

III

Jews

The systematic mopping up of the eastern territories embraced, in accordance with the basic orders, the complete removal, if possible, of Jewry. This goal has been substantially attained—with the exception of White Russia—as a result of the execution up to the present time of 229,052 Jews. The remainder still left in the Baltic Provinces is urgently required as labor and housed in ghettos.

* * * * *

* For more complete translation of document, see *Nazi Conspiracy and Aggression*, vol. IV, pp. 944-949, U. S. Government Printing Office, Washington, 1946.

4. METHODS OF EXECUTION

Prosecution Documents

Doc. No.	Pros. Ex. No.	Description of Document	Page
501-PS	32	Extracts from correspondence, 16 May 1942, concerning execution vans used by the Einsatzgruppen in the east.	198
2992-PS	33	Affidavits of Hermann Friedrich Graebe, 10 November 1945, concerning the execution of Jews in Russia.	199
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NO-3055	28	Affidavit of Heinz Hermann Schubert, 24 February 1947, concerning the extermination of Jews in Russia.	207
NO-4314	29	Affidavit of Ernst Biberstein, 2 July 1947.	209
NO-3824	31	Affidavit of Paul Blobel, 6 June 1947, concerning extermination in Russia.	211
NO-4234	163	Affidavit of Karl Rudolf Werner Braune, 8 July 1947, concerning execution of Jews in Russia.	214

TRANSLATION OF DOCUMENT 501-PS* PROSECUTION EXHIBIT 32

EXTRACTS FROM CORRESPONDENCE, 16 MAY 1942, CONCERNING EXECUTION VANS USED BY THE EINSATZGRUPPEN IN THE EAST

Field Post Office No. 32704
B No. 40/42

Kiev, 16 May 1942

* For more complete translation of document, see *Nazi Conspiracy and Aggression*, Vol. III, pp. 418-422, U. S. Government Printing Office, Washington, 1946.

Top Secret

To: SS Lieutenant Colonel Rauff
Berlin, Prinz-Albrecht-Str. 8

[Handwritten]

pers.

R/29/5 Pradel n.R.

b/R

[Handwritten] Sinkkel [?] b.R.

p 16/6

The overhauling of vans by groups D and C is finished.

* * * * *

I ordered the vans of group D to be camouflaged as house trailers by putting one set of window shutters on each side of the small van and two on each side of the larger vans, such as one often sees on farm houses in the country. The vans became so well known, that not only the authorities, but also the civilian population called the van "death van," as soon as one of these vehicles appeared. It is my opinion that the van cannot be kept secret for any length of time, not even camouflaged.

The Saurer van which I transported from Simferopol to Taganrog suffered damage to the brakes on the way. The Sonderkommando in Mariupol found the collar of the combined oil-air brake broken at several points. By persuading and bribing the home motor pool we managed to have a form machined, on which the collars were cast. When I came to Stalino and Gorlovka a few days later, the drivers of the vans complained about the same faults. After having talked to the commandants of those commands I went once more to Mariupol to have some more collars made for those cars too. As agreed two collars will be made for each car, six collars will stay in Mariupol as replacements for group D and six collars will be sent to SS 2d Lieutenant Ernst in Kiev for the cars of group C. The collars for the groups B and A could be made available from Berlin, because transport from Mariupol to the north would be too complicated and would take too long. Smaller damage to the cars will be repaired by experts of the commands, that is of the groups in their own shops.

* * * * *

PARTIAL TRANSLATION OF DOCUMENT 2992-PS*
PROSECUTION EXHIBIT 33

AFFIDAVITS OF HERMANN FRIEDRICH GRAEBE, 10 NOVEMBER 1945,
CONCERNING THE EXECUTION OF JEWS IN RUSSIA

I, Hermann Friedrich Graebe, declare under oath—

* For more complete translation of document, see *Nazi Conspiracy and Aggression*, Vol. V, pp. 696-703, U. S. Government Printing Office, Washington, 1946.

At Wiesbaden, on 10 November 1945, I made two statements describing as an eye-witness the execution of Jews on the former airport near Dubno, Ukraine, and the herding together, ill-treatment and killing of men, women, and children of the former ghetto at Rovno, Ukraine.

By way of corollary to these statements I depose as follows:

(1) The SS-man acting as the executioner on the edge of the pit during the shooting of Jewish men, women, and children on the airport near Dubno wore an SS uniform with a grey armband about 3 cm. wide on the lower part of his sleeve with the letters "SD" in black on it, woven in or embroidered.

(2) SS Major Dr. Puetz was in charge of the carrying out of the operation at Rovno during the night of 13 July 1942. I knew Dr. Puetz personally as the "Kommandeur der SP u. SD" (Commander of the Security Police and Security Service) of Rovno, for I had had several discussions with him with a view to preventing a pogrom against the Jews at Sdolbunov, Mysoch, and Ostrog. Dr. Puetz was introduced to me by the Area Commissioner Georg Marschall. In addition I definitely remember that a nameplate was fixed on the outside of the door to his office bearing his name and rank.

On the morning of 14 July I recognized three or four SS-men in the ghetto, whom I knew personally and who were all members of the security service in Rovno. These persons also wore the armband mentioned above. I cannot recall their names, but in my opinion, the foreman Fritz Einsporn must know their names as, to my knowledge, he corresponded with them.

I made the foregoing statement in Wiesbaden, Germany, on 13 November 1945. I swear before God, that this is the absolute truth.

[Signed] Fr. Graebe

HERMANN FRIEDRICH GRAEBE

I, Hermann Friedrich Graebe, declare under oath—

From September 1941 until January 1944 I was manager and engineer-in-charge of a branch office in Sdolbunov, Ukraine, of the Solingen building firm of Josef Jung. In this capacity it was my job to visit the building sites of the firm. The firm had, among others, a site in Rovno, Ukraine.

During the night of 13 July 1942, all inhabitants of the Rovno Ghetto, where there were still about 5,000 Jews, were liquidated.

I would describe the circumstances of my being a witness of the dissolution of the ghetto, and the carrying out of the pogrom [Aktion] during the night and the morning, as follows:

I employed for the firm, in Rovno, in addition to Poles, Germans, and Ukrainians about 100 Jews from Sdolbunov, Ostrog, and My-

soch. The men were quartered in one house, 5 Bahnhofstrasse, inside the ghetto, and the women in another at the corner of Deutsche Strasse, No. 98.

On Saturday, 11 July 1942, my foreman, Fritz Einsporn, told me of a rumor that on Monday all Jews in Rovno were to be liquidated. Although the vast majority of the Jews employed by my firm in Rovno were not natives of this town, I still feared that they might be included in this pogrom which had been reported. I therefore ordered Einsporn at noon of the same day to march all the Jews employed by us—men as well as women—in the direction of Sdolbunov, about 12 km. from Rovno. This was done.

The Jewish Council of Elders had learned of the departure of the Jewish workers of my firm. The Council went to see the commanding officer of the Rovno Security Police and SD, SS Major [SS Sturmbannfuehrer] Dr. Puetz as early as the Saturday afternoon to find out whether the rumor of a forthcoming Jewish pogrom—which had gained further credence by reason of the departure of Jews of my firm—was true. Dr. Puetz dismissed the rumor as a clumsy lie, and for the rest had the Polish personnel of my firm in Rovno arrested. Einsporn avoided arrest by escaping from Sdolbunov. When I learned of this incident I gave orders that all Jews who had left Rovno were to report back to work in Rovno on Monday, 13 July 1942. On Monday morning I myself went to see the commanding officer, Dr. Puetz, in order to learn, for one thing, the truth about the rumored Jewish pogrom and secondly to obtain information on the arrest of the Polish office personnel. SS Major Puetz stated to me that no pogrom whatever was planned. Moreover such a pogrom would be stupid because the firms and the Reichbahn [Reich (state) Railroad] would lose valuable workers.

An hour later I received a summons to appear before the area commissioner of Rovno. His deputy, Stabsleiter and Cadet Officer [Ordensjunker] Beck, subjected me to the same questioning as I had undergone at the SD. My explanation that I had sent the Jews home for urgent delousing appeared plausible to him. He then told me—making me promise to keep it a secret that a pogrom would in fact take place on the evening of Monday, 13 July 1942. After lengthy negotiation I managed to persuade him to give me permission to take my Jewish workers to Sdolbunov—but only after the pogrom had been carried out. During the night it would be up to me to protect the house in the ghetto against the entry of Ukrainian militia and SS. As confirmation of the discussion he gave me a document, which stated that the Jewish employees of the Jung firm were not affected by the pogrom.

On the evening of this day I drove to Rovno and posted myself with Fritz Einsporn in front of the houses in the Bahnhofstrasse

in which the Jewish workers of my firm slept. Shortly after 2200 hours the ghetto was encircled by a large SS detachment and about three times as many members of the Ukrainian militia. Then the electric arc lights which had been erected in and around the ghetto were switched on. SS and militia squads of 4 to 6 men entered or at least tried to enter the houses. Where the doors and windows were closed and the inhabitants did not open at the knocking, the SS-men and militia broke the windows, forced the doors with beams and crowbars and entered the houses. The people living there were driven on to the street just as they were, regardless of whether they were dressed or in bed. Since the Jews in most cases refused to leave their houses and resisted, the SS and militia applied force. They finally succeeded, with strokes of the whip, kicks, and blows with rifle butts in clearing the houses. The people were driven out of their houses in such haste that small children in bed had been left behind in several instances. In the street women cried out for their children and children for their parents. That did not prevent the SS from driving the people along the road, at running pace, and hitting them, until they reached a waiting freight train. Car after car was filled, and the screaming of women and children and the cracking of whips and rifle shots resounded unceasingly. Since several families or groups had barricaded themselves in especially strong buildings, and the doors could not be forced with crowbars or beams, these houses were now blown open with hand grenades. Since the ghetto was near the railroad tracks in Rovno, the younger people tried to get across the tracks and over a small river to get away from the ghetto area. As this stretch of country was beyond the range of the electric lights, it was illuminated by signal rockets. All through the night these beaten, hounded, and wounded people moved along the lighted streets. Women carried their dead children in their arms, children pulled and dragged their dead parents by their arms and legs down the road toward the train. Again and again the cries "Open the door! Open the door!" echoed through the ghetto.

About 6 o'clock in the morning I went away for a moment, leaving behind Einsporn and several other German workers who had returned in the meantime. I thought the greatest danger was past and that I could risk it. Shortly after I left, Ukrainian militia men forced their way into 5 Bahnhofstrasse and brought 7 Jews out and took them to a collecting point inside the ghetto. On my return I was able to prevent further Jews from being taken out. I went to the collecting point to save these 7 men. I saw dozens of corpses of all ages and both sexes in the streets I had to walk along. The doors of the houses stood open, windows were smashed. Pieces of clothing, shoes, stockings, jackets, caps, hats, coats, etc., were lying in

the street. At the corner of a house lay a baby, less than a year old with his skull crushed. Blood and brains were spattered over the house wall and covered the area immediately around the child. The child was dressed only in a little skirt. The commander, SS Major Puetz, was walking up and down a row of about 80-100 male Jews who were crouching on the ground. He had a heavy dog whip in his hand. I walked up to him, showed him the written permit of Stabsleiter Beck and demanded the seven men whom I recognized among these who were crouching on the ground. Dr. Puetz was very furious about Beck's concession and nothing could persuade him to release the seven men. He made a motion with his hand encircling the square and said that anyone who was once here would not get out. Although he was very angry with Beck, he ordered me to take the people from 5 Bahnhofstrasse out of Rovno by 8 o'clock at the latest. When I left Dr. Puetz, I noticed a Ukrainian farm cart, with two horses. Dead people with stiff limbs were lying on the cart. Legs and arms projected over the side boards. The cart was making for the freight train. I took the remaining 74 Jews who had been locked in the house to Sdolbunov.

Several days after 13 July 1942, the area commissioner of Sdolbunov, Georg Marschall, called a meeting of all firm managers, railroad superintendents, and leaders of the Organization Todt and informed them that the firms, etc., should prepare themselves for the "resettlement" of the Jews which was to take place almost immediately. He referred to the pogrom in Rovno where all the Jews had been liquidated, i. e., had been shot near Kostopol.

I make the above statement in Wiesbaden, Germany, on 10 November 1945. I swear by God that this is the absolute truth.

[Signed] HERMANN FRIEDRICH GRAEBE

* * * * *

TRANSLATION OF DOCUMENT NO-2993
PROSECUTION EXHIBIT 67

AFFIDAVIT OF ADOLF OTT, 24 APRIL 1947*

I, Adolf Ott, swear, depose and state—

1. I was born on 29 December 1904 in Waidhaus, Oberpfalz. I attended school in Lindau, Bodensee, from 1910 to 1922. From 1922 until October 1934 I worked for various firms in Lindau and was also employed by the German Labor Front [Deutsche Arbeitsfront] administrative office in Lindau. In October 1935 I left this last position and became a member of the security service. From 1935 to 1945 I held various positions within the security service.

* Defendant Ott testified in Court on 9, 10 and 11 December 1947 (Tr. pp. 3688-3798).

At the end I was administrative subdistrict officer with the Neustadt office on Weinstrasse, later Saarbruecken.

2. I became a member of the NSDAP in the year 1922 or 1923. My Party number is 2433. I became a member of the SS in the summer of the year 1931. My SS number is 13294.

3. On 15 February 1942 I was ordered to Sonderkommando 7b of Einsatzgruppe B. I became leader of this Kommando and successor to Lt. Colonel [Obersturmbannfuehrer] Rausch. My deputy was Dr. Auinger. When I left the Kommando in January 1943, I was relieved by Obersturmbannfuehrer Georg Raabe. Among other things I took part in the action "Eisbaer" [Ice bear], which was under the direction of Colonel (Army), Ruebsam. This action had the task of combating [guerrilla] bands in the Bryansk region.

4. During the time I was Kommando leader of the Kommando 7b, about 80 to 100 executions were carried out by this Kommando. I remember one execution which took place in the vicinity of Bryansk. The people to be executed were handed over to my unit by the local commandant. The corpses were temporarily buried in the snow and later buried by the army. The valuables which were collected from these people were sent to Einsatzgruppe B. This was ordered by command of Naumann, the head of Einsatzgruppe B, and the same was true for other executions.

[No paragraph 5 in original document.]

6. The distribution of personnel within Sonderkommando 7b was approximately as follows:

It consisted of about 10 members of the SD about 40-45 members of the Gestapo, about 10 members of the criminal police, 20 to 30 men of the Waffen SS and auxiliary personnel, so that the total strength can be estimated at about 100 men.

7. In June 1942, without having received an order to do so, I opened an internment camp in Orel. In my opinion people ought not to be shot right away for comparatively small misdeeds. For this reason I put them in this internment camp, in which the people had to work. I determined the length of time that these people had to work. I determined the length of time that these people should remain in the camp on the basis of examination and investigations of the individual cases which were made by Kommando. It happened too that people were released. The highest number of inmates that I had in this camp was 120 persons.

8. It is known to me that, aside from my unit, other units carried out executions in the vicinity of Orel and Bryansk. For example, the Secret Field Police under the leadership of Criminal Commissar Kukafka and the Counterintelligence Group Widder carried out frequent executions.

I have read the above statement, consisting of three (3) pages in the German language, and declare that this is the full truth to the best of my knowledge and belief. I have had opportunity to make changes and corrections in this statement. I have made this statement voluntarily, without any promise of reward, and was subjected to no threat or duress.

Nuernberg, 24 April 1947

[Signed] ADOLF OTT

TRANSLATION OF DOCUMENT 2620-PS
PROSECUTION EXHIBIT 9

AFFIDAVIT OF OTTO OHLENDORF, 5 NOVEMBER 1945,* CONCERNING
THE EXTERMINATION PROGRAM OF THE EINSATZGRUPPEN

I, Otto Ohlendorf, being first duly sworn, declare—
I was Chief of the Security Service (SD), Office III of the main office of the Chief of the Security Police and the SD (RSHA), from 1939 to 1945. In June 1941 I was designated by Himmler to lead one of the Einsatzgruppen, which was then being formed, to accompany the German armies in the Russian campaign. I was the Chief of the Einsatzgruppe D. Chief of the Einsatzgruppe A was *Stahlecker*, department chief in the Foreign Office. Chief of Einsatzgruppe B was Nebe, chief of office V (criminal police) of the main office of the Chief of the Security Police and the SD. (RSHA) Chief of Einsatzgruppe C was first Rasch (or Rasche) and then *Thomas*. Himmler stated that an important part of our task consisted of the extermination of Jews—women, men, and children—and of Communist functionaries. I was informed of the attack on Russia about four weeks in advance.

According to an agreement with the Armed Forces Supreme Command and Army High Command, the Einsatzkommandos within the army group or the army were assigned to certain army corps and divisions. The army designated the areas in which the Einsatzkommandos had to operate. All operational directives and orders for the carrying out of executions were given through the Chief of the Security Police and the SD (RSHA) in Berlin. Regular courier service and radio communications existed between the Einsatzgruppen and the Chief of the Security Police and the SD.

The Einsatzgruppen and Einsatzkommandos were led by personnel of the Gestapo, the SD or the criminal police. Additional men were detailed from the regular police and the Waffen SS. Einsatzgruppe D consisted of approximately 400 to 500 men and had about 170 vehicles at its disposal. When the German army in-

* Defendant Ohlendorf testified in Court on 8, 9, 14, and 15 October 1947 (*Tr. pp. 475-756*).

vaded Russia, I was leader of the Einsatzgruppe D in the southern sector, and in the course of the year, during which I was leader of the Einsatzgruppe D, it liquidated approximately 90,000 men, women, and children. The majority of those liquidated were Jews, but there were among them some Communist functionaries too.

In the implementation of this extermination program, the Einsatzgruppen were subdivided into Einsatzkommandos, and the Einsatzkommandos into still smaller units, the so-called Sonderkommandos and Teilkommandos. Usually, the smaller units were led by a member of the SD, the Gestapo or the criminal police. The unit selected for this task would enter a village or city and order the prominent Jewish citizens to call together all Jews for the purpose of resettlement. They were requested to hand over their valuables to the leaders of the unit and shortly before the execution to surrender their outer clothing. The men, women, and children were led to a place of execution which in most cases was located next to a more deeply excavated antitank ditch. Then they were shot, kneeling or standing, and the corpses thrown into the ditch. I never permitted the shooting by individuals in group D, but ordered that several of the men should shoot at the same time in order to avoid direct personal responsibility. The leaders of the unit or especially designated persons, however, had to fire the last bullet against those victims which were not dead immediately. I learned from conversations with other group leaders that some of them demanded that the victims lie down flat on the ground to be shot through the nape of the neck. I did not approve of these methods.

In the spring of 1942, we received gas vehicles from the Chief of the Security Police and the SD in Berlin. These vehicles were made available by office II of the RSHA. The man who was responsible for the cars of my Einsatzgruppe was Becker. We had received orders to use the cars for the killing of women and children. Whenever a unit had collected a sufficient number of victims, a car was sent for their liquidation. We also had these gas vehicles stationed in the neighborhood of the transient camps into which the victims were brought. The victims were told that they would be resettled and had to climb into the vehicle for that purpose. When the doors were closed and the gas streamed in through the starting of the vehicle, the victims died within 10 to 15 minutes. The cars were then driven to the burial place where the corpses were taken out and buried.

I have seen the report of Stahlecker (L-180), concerning Einsatzgruppe A, in which Stahlecker asserts that his group killed 135,000 Jews and Communists in the first four months of the program. I know Stahlecker personally, and I am of the opinion that

the document is authentic. I was shown the letter which Becker wrote to Rauff, the head of the Technical Department of office II, in regard to the use of these gas vehicles. I know both these men personally and am of the opinion that this letter is an authentic document.

[Signed] OHLENDORF

Subscribed and sworn to before me this fifth day of November 1945 at Nuernberg, Germany.

[Signed] Smith W. Brookhart
Lt. Col. I.G.D.

TRANSLATION OF DOCUMENT NO-3055
PROSECUTION EXHIBIT 28

AFFIDAVIT OF HEINZ HERMANN SCHUBERT, 24 FEBRUARY 1947,
CONCERNING THE EXTERMINATION OF JEWS IN RUSSIA*

I, Heinz Hermann Schubert, swear, declare, and depose—

1. I was born on 27 August 1914 in Berlin. I attended schools in Eisenberg-Thuringia and Berlin-Lichterfelde, including the vocational school. I left school in March 1931, having received the Obersekundareife [certificate after attending equivalent to 10th year of secondary school]. From April 1931 until August 1933 I worked in a lawyer's office. From 1933 on I was civil servant at the delegation of the Free Hanseatic City of Bremen to the Reich. On 10 October 1934 I became civil servant of the security service. On 1 May 1934 I was transferred by the Hitler Youth to the Party, and my membership number is 3,474,350. On 10 October 1934 I joined the SS, membership number 107,326.

2. In October 1941 I was assigned to the Einsatzgruppe D. Otto Ohlendorf was the chief of the Einsatzgruppe and Willy Seibert his deputy. I was assigned as adjutant to Ohlendorf and stayed in this position from the time of my arrival until the end of June 1942. At this time Ohlendorf as well as I was recalled to the Reich Main Security Office in Berlin.

3. In December 1941—I do not remember the exact date—I was assigned by Ohlendorf or Seibert to supervise and inspect the shooting of about 700 to 800 people, which was to take place in the close vicinity of Simferopol. The shooting was undertaken by the special Kommando 11b, one of the formations of the Einsatzgruppe D. My task in connection with the shooting consisted of three parts—

a. to see that the location of the shooting be remote enough, so that there could be no witnesses to the shooting;

* Defendant Schubert testified on 5 and 6 January 1948 (*Tr. pp. 4560-4738*).

- b. to supervise that the collection of money, jewels, and other valuables of the persons who were to be shot be completed without the use of force; and that the persons, designated for this by the special Kommando 11b, hand over the collected items to the administration leaders and their deputies in order to have them passed on to Einsatzgruppe D;
- c. to supervise, that the execution be completed in the most human and military manner possible, exactly according to Ohlendorf's orders.

After the execution I had to report personally to Ohlendorf that the execution had been carried out exactly according to his orders.

4. As commissioner of Ohlendorf I followed his orders. I went to the gypsy quarter of Simferopol and supervised the loading of the persons who were to be shot into a truck; I took care that the loading was completed as quickly as possible, and that there were no disturbances and unrest by the native population. Furthermore, I took care that the condemned persons were not beaten while the loading was going on. Since it was my task to supervise the whole execution, I could only stay a short time at each phase of it.

5. The place which was designated for the shooting of these Russians and Jews was several kilometers outside of Simferopol and about 500 meters off the road in an antitank ditch. Among other things I ascertained that the traffic in that region was stopped by persons designated for this and was detoured on side roads. When the condemned persons arrived at the place of execution, they were ordered to leave their money, their valuables, and papers at a place designated for this. I watched that none of the deposited items were kept by the SS and regular police who were designated for the collection. The depositing of this property by the condemned persons was finished without the use of force. I supervised this phase carefully, in order that all the valuables could be handed over to the Einsatzgruppe D for subsequent remittance to Berlin.

6. For a short time, when the people who were to be shot were already standing in their positions in the tank ditch, I supervised the actual shooting, which was carried out in strictest conformity with Ohlendorf's order—in a military and human manner as far as possible. The people were shot with submachine guns and rifles. I know that it was of the greatest importance to Ohlendorf to have the persons who were to be shot killed in the most human and military manner possible, because otherwise—in other methods of killing—the moral strain would have been too great for the execution squad.

I have read this statement, consisting of three pages in the

German language and declare that it is the whole truth to the best of my knowledge and belief. I had the opportunity to make changes and corrections in the above statement. I made this statement of my own free will without any promise of reward, and I was not subjected to any threat or duress whatsoever.

Nuernberg, Germany, the 24 February 1947.

[Signed] HEINZ HERMANN SCHUBERT

TRANSLATION OF DOCUMENT NO-4314
PROSECUTION EXHIBIT 29

AFFIDAVIT OF ERNST BIBERSTEIN,* 2 JULY 1947

I, Ernst Emil Heinrich Biberstein, swear, state, and declare—

1. I was born on 15 February 1899 in Hilchenbach in the district of Siegen-Westphalia. Originally my surname was Szymanowski. I attended the elementary school in Muehlheim on the Ruhr and in Neumuenster-Holstein, and afterwards a classical high school where I passed my final examination in 1917. From 1917 until March 1919 I served with the army as a private in the infantry. From March 1919 to 1921 I studied protestant theology. I passed my first theological examination in April 1921 and then went for 6 months to a preachers' seminary; after that I was a curate for 12 months. My first post as a pastor I got on 28 December 1924 in Kating Schleswig-Holstein, which I held until November 1927. From then on until November 1933 I was a pastor in Kaltenkirchen Schleswig-Holstein, in the district of Begeberg. From November 1933 until August 1935, I was "Kirchenprobst" or "Superintendent" [presiding minister of the Provincial Protestant Church] in Bad Segeberg, Holstein. In August 1935 I was called to the Reich Ministry of Church Affairs in Berlin as a theological expert where I functioned until I was drafted in the army on 10 March 1940. In the army I took part in the Holland and France campaigns as a corporal. On 22 October 1940 I was draft deferred by the Reich Plenipotentiary of Internal Administration and was assigned to the Chief of the Security Police and of the SD. Taking effect 1 June 1941 and up to June 1942, I was head of the state police station of Oppeln. In June 1942 I was sent to Russia as leader of the Einsatzkommando 6 under Einsatzgruppe C in Kiev. However, my departure for Russia was delayed until September 1942. Between June 1943 and early 1944 I was unattached. From

* Biberstein testified in Court on 20, 21 November 1947 (*Tr. pp. 2687-2866*), 24, 25 November 1947 (*Tr. pp. 2988-3004*).

February 1944 until April 1945, I was working in the Economic Department of the Supreme Commissioner in Trieste. From there I returned to Neumuenster where I was arrested on 1 July 1945.

2. I have been a member of the NSDAP since 1926, my Party number being 40,718. I have been a member of the SS since 13 September 1936 with an SS member's number 272, 692. From 1934 until 1935 I was "Kreisschulungsleiter" [Party indoctrination director] in Bad Segeberg.

3. During my time of office as commander of Einsatzkommando 6, between September 1942 and June 1943 about 2,000 to 3,000 executions were performed in the area of my Einsatzkommando. I personally superintended an execution in Rostov which was performed by means of a gas truck. The persons destined for death—after their money and valuables, sometimes the clothes also, had been taken from them—were loaded into the gas truck which held between 50 and 60 people. The truck was then driven to a place outside the town where members of the Kommando had already dug a mass grave. I myself saw the unloading of the dead bodies, their faces were in no way distorted, death came to these people without any outward signs of spasms. There was no physician present at unloading to certify that the people were really dead. The gas truck was driven by the driver Sackenreuter of Nuernberg who had been most carefully instructed about the handling of the gas truck, having been through special training courses.

4. During my time of office as chief of Einsatzkommando 6, I had two officers for the administration, first, 1st Lieutenant Niegbur and afterwards 2d Lieutenant Homann. The latter told me one day that the Einsatzkommando had a surplus of 100,000 marks derived from people to be executed who had to hand over their money and valuables.

5. Since my Einsatzkommando was operating in various towns where there were sometimes only few persons up for execution at a time, the gas truck was not used always. I also witnessed an execution carried out with firearms. The persons to be executed had to kneel down on the edge of a grave and members of my Kommando shot them in the back of the neck with an automatic pistol. The persons thus killed mostly dropped straight into the pit. I had no special expert for these shots in the neck. No physician was present either at this form of execution.

6. From my time of office as chief of the state police station in Oppeln I know that "top secret" orders had been issued to the effect that we had to detach men for searching for Bolshevik agitators in prisoner-of-war camps. These men selected by these Kommandos were sent to the Auschwitz concentration camp. I do not know what happened to them in Auschwitz.

I have made the foregoing deposition consisting of three (3) pages in the German language and declare that it is the full truth to the best of my knowledge and belief. I have had the opportunity to make alterations and corrections in the above statement, and I made this declaration voluntarily without any promise of reward and I was not subjected to any duress or threat whatever.

Nuernberg, 2 July 1947 [Signed] ERNST BIBERSTEIN

TRANSLATION OF DOCUMENT NO-3824
PROSECUTION EXHIBIT 31

AFFIDAVIT OF PAUL BLOBEL,* 6 JUNE 1947, CONCERNING
EXTERMINATION IN RUSSIA

I, Paul Blobel, declare, swear, and depose—

I was born in Potsdam on 13 August 1894. I attended the grammar school and vocational school in Remscheid until 1912. Thereafter, I served as an apprentice with a mason and carpenter and during the years 1912 and 1913 I attended the school of architecture in Wuppertal. Until the outbreak of the First World War, I worked as a carpenter. From 1914 to 1918, I served as an engineer at the front and was discharged in 1918 with the rank of a Vizefeldwebel [staff sergeant]. Until 1919 I was unemployed and lived in Remscheid. During the years 1919-1920, I attended again the school of architecture in Barmen. From 1921 to 1924, I worked for different firms and in 1924 I established myself as an independent architect in Solingen. During the bad times in Germany, during the years 1928-1929 I did not get any orders, and from 1930 to 1933 I was on unemployment relief in Solingen. After that time I was employed for office work with the city administration and stayed there until spring 1935. In June 1935 I came to the SD main sector Duesseldorf, where I remained until May 1941. Finally, I was section leader for Duesseldorf. I was then assigned to the Reich Security Main Office in Berlin.

2. I became a member of the NSDAP on 1 December 1931. My membership number is 844,662. Since January 1932 I have been a member of the SS, my membership number being 29,100. I was further a member of the Reich Colonial League [Reichskolonialbund], Air Protection League [Luftschutzbund], National Socialist Welfare Association [NSV], and for a time I was a member of the Reich Association for creative arts [Reichsbund der bilden-

* Defendant Blobel testified on 28, 29, and 30 October 1947 (*Tr.* pp. 1495-1753).

den Kuenste]. My rank in the General SS is sergeant, in the SD it has been, since 1940, colonel.

3. In June 1941 I became chief of the Sonderkommando 4a. This Sonderkommando was assigned to the Einsatzgruppe C, the latter was under the command of Dr. Rasch. The Einsatz area assigned to me was within the sphere of the 6th Army, which was under the command of Field Marshal von Reichenau. In January 1942, I was removed from the post of chief of the Sonderkommando 4a and was transferred to Berlin for disciplinary reasons. There I had no assignment for a time. I was under the supervision of office IV, under the former [SS] Major General Mueller. In the fall of 1942, I was assigned to go to the occupied eastern territories as Mueller's deputy and to wipe out the traces of the mass graves of people executed by the Einsatzgruppen. This was my task until summer of 1944.

4. After that, I was transferred to the commander in Styria, and it was planned that I should work there as liaison officer between the Reich Security Main Office and [SS] Major General Roesener in the combat against the partisans. This task was, however, not assigned to me.

In December 1944, I got sick and from February until April I was in a hospital in Marburg [Maribor] on the Drava. There I received the order to report in Berlin on 11 April 1945. In April 1945 I reported to Kaltenbrunner and went to the area of Salzburg. Thus I escaped further orders. At the beginning of May 1945 I was captured, together with the unit, in Rastadt.

5. During the period of my service as chief of the Sonderkommando 4a, from the time of its organization in June 1941 until January 1942, I was assigned on various occasions to the execution of Communists, saboteurs, Jews, and other undesirable persons. I can no longer remember the exact number of the executed persons. According to a superficial estimate—the correctness of which I cannot guarantee—I presume that the number of executions in which the Sonderkommando 4a took part lies somewhere between 10,000 and 15,000.

6. I witnessed several mass executions, and in two cases I was ordered to direct the execution. In August or September 1941 an execution took place near Korosten. 700 to 1,000 men were shot, and Dr. Rasch was present at the execution. I had divided my unit into a number of execution squads of 30 men each. First, the subordinated police of the Ukrainian militia, the population, and the members of the Sonderkommando seized the people, and mass graves were prepared. Out of the total number of the persons designated for the execution, 15 men were led in each case to the brink of the mass grave, where they had to kneel down, their faces

turned toward the grave. At that time, clothes and valuables were not yet collected. Later on this was changed. The execution squads were composed of men of the Sonderkommando 4a, the militia, and the police. When the men were ready for the execution, one of my leaders who was in charge of this execution squad gave the order to shoot. Since they were kneeling on the brink of the mass grave, the victims fell, as a rule, at once into the mass grave. I have always used rather large execution squads, since I declined to use men who were specialists for shots in the neck. Each squad shot for about one hour and was then replaced. The persons who still had to be shot were assembled near the place of the execution and were guarded by members of those squads which at that moment did not take part in the executions. I supervised personally the execution which I have described here, and I saw to it that no excesses took place.

7. The Sonderkommando 4a killed women and children, too. In September or October 1941, the Einsatzgruppe C under Dr. Rasch placed a gas van at my disposal, and one execution was carried out by means of that gas van. This was a 3-ton truck which could be sealed hermetically and held about 30 to 40 people. After about 7 or 8 minutes all persons in this truck who were exposed to the poisonous gases were dead. I personally saw the corpses when they were unloaded from the gas van.

8. During the last days of September 1941 the Sonderkommando 4a in cooperation with the group staff of the Einsatzgruppe C and two units of the police regiments stationed in Kiev carried out the mass execution of Jews in Kiev. I think that the figure of 33,771, mentioned to me as the number of persons executed in Kiev, is too high. In my opinion not more than half of the mentioned figure were shot.

9. Since, during the period from June 1941 until January 1942, I was several times seriously ill and confined to various hospitals, I cannot be charged with responsibility for all the executions of the Sonderkommando 4a. During the period of my absence the Kommando was taken over by Dr. Rasch, Waldemar von Radezky, and SS Captain Dr. Beyer; under their direction a number of mass executions took place, too.

I have read the foregoing deposition consisting of five pages, in the German language, and declare that it is the full truth to the best of my knowledge and belief. I have had the opportunity to make alterations and corrections in the above statement. I made this declaration voluntarily without any promise of reward and I was not subject to any duress or threat whatsoever.

Nuernberg, 6 June 1947.

[Signed] PAUL BLOBEL

TRANSLATION OF DOCUMENT NO-4234
PROSECUTION EXHIBIT 163

AFFIDAVIT OF KARL RUDOLF WERNER BRAUNE,* 8 JULY 1947,
CONCERNING EXECUTION OF JEWS IN RUSSIA

I, Karl Rudolf Werner Braune, make the following statements and confirm them with my word of honor.

1. I was born on 11 April 1909 in Mehrstaedt. There I went to school from 1915 to 1920, and in Sonderhausen from 1920 to 1928, and there passed the baccalaureate examination [Abiturium] in the year 1928. Until 1933 I studied law in Bonn, during the summer semester 1930 in Munich, and from the winter 1930 until 1932 in Jena. In July 1932 in Jena I passed the examination in law school. There I passed, in January 1933, the examination for the doctor's degree. I completed my further law training in Sonderhausen, Meiningen, Sonneberg, and finally in Berlin, where I passed, in May 1936, the final ("Assessor") examination. Since I had to earn part of the expenses of my training, I had worked since November 1934 also with the security service. In accordance with promises given to me I became an official in the Ministry of the Interior and kept on working for the SD, whereas officially I was listed at the state police. In June 1938 I became Regierungs-assessor, and in September 1938 I started to work as deputy of the chief at the state police Muenster and at the same time as section leader [Abschnittsfuehrer] in the security service, section Muenster. At that time I worked primarily on matters of the security service and, therefore, the state police made a complaint against me, since I neglected my duties at the state police intentionally. In April 1939 I was transferred as deputy of the chief of the state police to Koblenz and stayed there for about one year. In April 1940 I became chief of the office of the state police in Wesermuende. Also in this position I remained for about one year. In April or May 1941 I became chief of the state police in Halle on the Saale [Saale River] until I was transferred to the Einsatzgruppe D in October 1941. I went to Odessa and became then chief of the Kommando 11b. In November I led this Kommando into the Crimean Peninsula. In August or September I was detached from this Kommando, and in October 1942 I returned to my post in the homeland, to the state police in Halle. In January 1943 I was appointed to an honorary office in the Reich student leadership [Reichsstudentenfuehrung]. I became chief of the German academic exchange service [Deutscher Akademischer Austausch-

* Defendant Braune testified on 25, 26 November 1947 and 1, 2 December 1947 (*Tr. pp. 3004-3223*).

dienst], incorporated association in Berlin. I kept this position until January 1945. At the end of the year 1944 I was transferred to Norway, and at the beginning of 1945 I took up the office of commander of the security police and of the security service in Oslo. I remained in this position until the end of the war.

2. I have been a member of the NSDAP since July 1931, my Party number being 581,277. I have been a member of the SS since 18 November 1934, my SS number being 107,364. I was a member of the SA from November 1931 until November 1934.

3. During the time I was chief of the Einsatzkommando 11b, a number of Jews were executed. I can still remember exactly an execution which took place in Simferopol, a few days before Christmas. The 11th Army had ordered that the execution in Simferopol should be finished before Christmas. For this reason the army placed trucks, gasoline, and personnel at our disposal. I personally drove with the chief of the Einsatzgruppe D, Otto Ohlendorf, to the place of the execution which was situated outside of the city. The place of the execution was isolated in order to avoid that the civilian population would unnecessarily become witness of a spectacle. Already previously—I don't know anymore whether immediately before the execution or already in the internment camp—money and valuables were taken away from the persons to be executed. Immediately before the execution the outer garments, that is, heavy winter overcoats and similar things, were taken away from the persons to be executed. They kept their other clothes. The persons to be executed were then assembled near the place of the execution and were posted in small groups before an antitank ditch, their faces turned away from the ditch. The execution commando [squad], which in the individual case was composed of 8 or 10 men of the police company attached to us, was posted on the other side of the antitank ditch and the persons who were designated to be executed were shot dead from behind as quickly as possible.

4. In the spring of 1942 a gas truck was placed at the disposal of my unit, but I did not use it for executions. In my opinion an execution by shooting is more honorable for both parties than killing by means of a gas truck. This is the reason why I refused to use the gas truck.

I have read the foregoing deposition consisting of 2 pages in the German language and declare that it is the full truth to the best of my knowledge and belief. I have had the opportunity to make alterations and corrections in the above statement. I made this declaration voluntarily without any promise of reward and I was not subjected to any duress or threat whatsoever. Since I did not make this deposition under oath, but confirmed it only with my

word of honor, I declare that I am ready to repeat this statement before a court under oath.

Nuernberg, Germany, 8 July 1947.

[Signed] DR. WERNER BRAUNE

5. MEMBERSHIP IN CRIMINAL ORGANIZATIONS

EXTRACTS FROM THE TRIAL BRIEF OF THE PROSECUTION ON THE SCOPE OF THE DECLARATION OF CRIMINALITY AGAINST THE GESTAPO, SD, AND SS

Introduction

In count three of the indictment all of the defendants, in the case before the Tribunal, are charged with having been members of two or more organizations declared criminal by the International Military Tribunal.

The individual defendants are charged with membership in the following organizations* :

Ohlendorf	SD and SS
Jost	SD and SS
Naumann	SD and SS
Rasch	Gestapo, SD, and SS
Schulz	Gestapo and SS
Six	SD and SS
Blobel	SD and SS
Blume	Gestapo, SD, and SS
Sandberger	SD and SS
Seibert	SD and SS
Steimle	SD and SS
Biberstein	Gestapo, SD, and SS
Braune	Gestapo, SD, and SS
Haensch	SD and SS
Nosske	Gestapo and SS
Ott	SD and SS
Strauch	SD and SS
Klingelhoefner	SD and SS
Fendler	SD and SS
Radetzky	SD and SS
Ruehl	Gestapo and SS
Schubert	SD and SS
Graf	SD and SS

* In order to prove the membership of the defendants in the SS, SD, and Gestapo respectively, the prosecution introduced extracts from the SS personnel files of all defendants. These personnel files established the date of membership, SS number in the organization, promotions, decorations, etc.

Consequently, count three of the indictment encompasses an important part of the charges against the defendants. It, therefore, might be appropriate to analyze the criteria which establish the guilt of an individual for having been a member of a criminal organization.

I. LIABILITY FOR MEMBERSHIP IN CRIMINAL ORGANIZATIONS

A. General

* * * * *

B. The SS

When declaring the SS a criminal organization, the International Military Tribunal ruled—

“In dealing with the SS the Tribunal includes all persons who had been officially accepted as members of the SS including the members of the Allgemeine SS [General SS], members of the Waffen SS [Armed SS], members of the SS Totenkopf Verbände [“Death Head” Units], and the members of any of the different police forces who were members of the SS. The Tribunal does not include the so-called SS riding units. *Der Sicherheitsdienst des Reichsfuehrers SS (commonly known as the SD) is dealt with in the Tribunal’s judgment on the Gestapo and SD.*

“The Tribunal declares to be criminal within the meaning of the Charter the group composed of those persons who *had been officially accepted as members of the SS* as enumerated in the preceding paragraph who became or remained members of the organization with *knowledge* that it was *being used for the commission of acts declared criminal by Article 6* of the Charter, or who were personally implicated as members of the organization in the commission of such crimes, excluding, however, those who were drafted into membership by the State in such a way *as to give them no choice in the matter*, and who had committed no such crimes.”¹ [Emphasis supplied.]

When enumerating the criminal activities of the SS, the Tribunal expressly stated “The Einsatzgruppen engaged in wholesale massacres of the Jews.” and—

“It is impossible to single out any one portion of the SS which was not involved in these criminal activities. The Allgemeine SS was an active participant in the persecution of the Jews * * *.”² Thus it is established that only voluntary members of the SS—and it should be noted that SS members who were in the SD and those who were members of the Allgemeine SS are specifically men-

¹ Trial of the Major War Criminals, vol. I, p. 273, Nuremberg, 1947.

² Ibid., p. 271.

* * * All members of the Security Police and SD joined the organization voluntarily under no other sanction than the desire to retain their positions as officials.”¹

Thus, it is established that *all* members of the Gestapo and the SD were voluntary members of these organizations. As Control Council Law No. 10 (*d*) is based on the declaration of criminality of organizations by the International Military Tribunal, these findings cannot be challenged by the defendants.

The International Military Tribunal, in its conclusion about the criminality of the Gestapo and the SD, found—

“The Gestapo and SD were used for purposes which were criminal under the Charter involving the persecution and extermination of the Jews, * * *. In dealing with the Gestapo the Tribunal includes all executive and administrative officials of Amt [Office] IV of the RSHA [Reich Security Main Office] or concerned with Gestapo administration in other departments of the RSHA and *all local Gestapo officials serving both inside and outside of Germany*, * * *. In dealing with the SD the Tribunal includes *Aemter III, VI, and VII of the RSHA* and all other members of the SD, including all local *representatives and agents, honorary or otherwise*, whether they were technically members of the SS or not, but not including honorary informers who were not members of the SS, and members of the Abwehr [Counterintelligence Corps] who were transferred to the SD.

“The Tribunal declares to be criminal within the meaning of the Charter the group composed of those members of the Gestapo and SD holding the positions enumerated in the preceding paragraph who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes.”² [Emphasis supplied.]

Knowledge of, or personal implication in the commission of acts declared criminal by Article 6 of the Charter is, besides membership in the SD or Gestapo, the only prerequisite for criminal liability.

As to the proof of membership, it should be noted that the International Military Tribunal found that all members of the Security Police and the SD were full-fledged members of the SD.³ Thus it is established that every member of an Einsatzgruppe, all of which were units of the Security Police and SD, automatically is to be considered a member of the SD within the meaning of the judg-

¹ Ibid., p. 264.

² Ibid., pp. 267-268.

³ Trial of the Major War Criminals, vol. I, Nuremberg, 1947; compare pp. 264, 265, 267.

ment of the International Military Tribunal and consequently within the meaning of Control Council Law No. 10.

II. CONNECTION BETWEEN GESTAPO AND SD

The International Military Tribunal has left no doubt about the close collaboration which existed between these two criminal organizations. After having permitted the SD to present its case separately because of a claim of conflicting interests, the Tribunal decided, after having examined the evidence, to consider the case of the Gestapo and the SD together.¹ The International Military Tribunal found that these two organizations were first linked together in 1936 when both were placed under the command of Heydrich.² The creation of the RSHA (27 Sept 1939) represented the formalization, at the top level, of the relationship under which the SD served as the intelligence agency for the Security Police. A similar coordination existed in the local offices—one of the principal functions of the local SD units was to serve as the intelligence agency for the local Gestapo units. In the occupied territories, the formal relationship between local units of the Gestapo and SD was slightly closer. Members of the Gestapo, Kripo (criminal police), and SD were joined together into military type organizations—the Einsatzgruppen.³ The International Military Tribunal concluded from the evidence before it that “from a functional point of view both the Gestapo and the SD were important and closely related groups within the organization and the SD.”⁴

Thus it is patently clear that the contention of several of the defendants—that they having been SD experts of the different Einsatzgruppe and their subunits had no connection whatsoever with Department IV (Gestapo) of these units—is entirely without foundation.

III. THE RSHA (Reich Security Main Office).

Most of the defendants were at different times and in different positions officials of the RSHA. The International Military Tribunal found—

“The SS Central Organization had 12 main offices. The most important of these were the RSHA * * *.”⁵

And—

“The RSHA was divided into seven offices (Aemter), two of which (Amt I and Amt II) dealt with administrative matters. The security police were represented by Amt IV, the head office of the Gestapo, and by Amt V, the head office of the criminal

¹ Ibid., p. 262.

² Ibid.

³ Ibid., pp. 262-3.

⁴ Ibid., p. 264.

⁵ Ibid., p. 269.

police. The SD were represented by Amt III, the head office for SD activities inside Germany, by Amt VI, the head office for SD activities outside of Germany and by Amt VII, the office for ideological research. Shortly after the creation of the RSHA, in November 1939, the security police was 'coordinated' with the SS by taking all officials of the Gestapo and criminal police into the SS at ranks equivalent to their positions."*

* * * * *

B. Selections from Evidence and Argument of the Defense

I. INTRODUCTION

This section contains defense materials which are mainly of a general nature. They have been arranged under two headings—Extracts from the testimony of the defendants Ohlendorf, Haensch, and Braune (pp. 223 to 328)—General defenses and special issues (pp. — to —).

Ohlendorf's testimony represents the general view of the defendants who admitted knowledge and execution of the Hitler order. Haensch's testimony exemplifies the line of those who denied execution or even knowledge of the order. Braune's testimony illustrates the position of a number of defendants to the effect that many of the executions were carried out on direct orders of the army of occupation.

Superior orders. All defendants argued that they acted under superior orders and had no means of opposing or refusing to execute them. An extract from the closing statement on behalf of the defendant Naumann, dealing with this defense, appears in pp. 329 to 339.

Justification of the Hitler order. Several defendants further declared that they considered the order itself justified. The theory was that the Jews were bearers of bolshevism and enemies of National Socialism, and that it was, therefore, necessary to exterminate the Jews in Russia. An expert opinion by Dr. Reinhard Maurach, Professor of Criminal Law at Munich University, dealing primarily with these points, was submitted by the defense. Extracts from it are reprinted pp. 339 to 355.

Justification because of killing of noncombatants by Allied bombing. It was further argued that in World War II, the Allies killed large numbers of the noncombatant German population by bombing, and that, therefore, the defendants could hardly be criminally charged with the killings, pursuant to superior orders, of noncombatants. An extract from the testimony of the defendant

* Ibid., p. 263.

Ohlendorf on this argument is set forth in pp. 355 to 358.

Justified action against partisans and reprisal measures. Some defendants alleged that as far as the actions of Einsatz units under their respective command were concerned, most of the killings constituted death penalties for illegal partisan activities, or reprisal measures which were justified according to international law. This line of defense was particularly emphasized by those defendants who denied knowledge and execution of the Hitler order. The following selections on this plea appear in pp. 358 to 366; an extract from the radio speech of Marshal Stalin of 3 July 1941, and extracts from the closing statements on behalf of the defendants Sandberger and Ott.

The defense of self-defense and necessity was treated in detail by defense counsel for the defendant Ohlendorf in his opening statement. This opening statement appears earlier in this volume, pp. 54 to 82.

The prosecution dealt with these various defenses in its closing statement, which is set forth below, pp. 369 to 383.

2. EXTRACTS FROM THE TESTIMONY OF THE DEFENDANTS OHLENDORF, HAENSCH, AND BRAUNE

EXTRACTS FROM THE TESTIMONY OF DEFENDANT OHLENDORF*

DIRECT EXAMINATION

DR. ASCHENAUER (Counsel for defendant Ohlendorf): What is your name?

DEFENDANT OHLENDORF: Otto Ohlendorf.

Q. When and where were you born?

A. On 4 February 1907, in Hoheneggelsen, District of Hannover.

Q. What was the profession of your father?

A. My father was an owner of a farm.

Q. Do you have any brothers or sisters?

A. I am the youngest of four.

Q. What is the profession of your brothers and sisters?

A. My oldest brother is a scientist; my second brother owns a farm; my sister has a business.

Q. What was the political opinion in your parents' house?

A. My father was an old National Liberal, and later he was at times a liaison official of the German People's Party.

Q. What was the religious attitude in your parents' home?

* Complete testimony is recorded in mimeographed transcript, 8, 9, 14, 15 October 1947, pp. 475-756.

A. My parents were both practicing protestants.

Q. Where did you spend your childhood and adolescence?

A. Up to the last school year, I lived in my home town and worked on the farm in my leisure hours.

Q. You emphasize the fact that you worked on your father's farm. Does that have any special significance in your development?

A. Unconsciously, I got to know the conditions and ways of handling a farm and got to know the human conditions in a farm district, that is, the cooperation and living together of farmers, industrial workers, peasants, merchants, tradesmen, and people of other trades. The rest of the time my professional development proceeded along with my political development. These conditions of administration, culture, religion, and education, as I got to know them in that village, always remained with me, and they became the leading motives for my own philosophy.

Q. What kind of education did you have?

A. After a few years of public school and high school, I graduated from the Gymnasium.

Q. Where and what did you study?

A. I studied in Leipzig, in Goettingen, and my fields were law and economics. Later, after my graduation, I spent one year in Italy studying the Fascist system and the Fascist philosophy of international law.

Q. Are you married?

A. Yes.

Q. Since when?

Q. Since 1934.

Q. Do you have any children?

A. Yes. I have 5 children from 2 to 11 years of age.

Q. When did you become a member of the Nazi Party?

A. In 1925.

Q. How did you come to enter the Nazi Party?

A. I have been interested in politics from my earliest days on. When I was 16 years old, I was director of a youth group of the German National People's Party; but I was not sufficiently bourgeois and involved in the class system not to turn my back very quickly on this bourgeois party, since its special interests and political methods could not appeal to me. However, on the other hand, I was too closely connected with the moral, religious, and social philosophy of the traditional bourgeoisie to become a Marxist for instance. But at that time I recognized that the social demands were a truly national problem, a problem, that is to say, concerning the whole people, and I recognized that the national demands were also a truly social problem. These two points of view seemed likely to find the best solution in National Socialism

in my opinion. In addition, I was attracted very much by the principle of achievement and the fact that active people were taken as criterion for building up the social organism, which was symbolically expressed in the term "Worker's Party". The doctrine of the national idea was also attractive to me, that is, the doctrine that peoples are independent organisms which by themselves and in themselves have to solve their own problems.

Q. What activity did you engage in in the Nazi Party?

A. In 1925 and 1926 I did everything which had to be done by every member in the relatively small organization at that time. I was head of a district group. I sold papers. I posted posters. I participated in discussions and spoke in gatherings. I went from house to house and from man to man.

Q. Were you at that time a member of the SS too?

A. From what I have just said, it can be gathered that at that time the various functions were not separated as yet. There were not yet any suborganizations of the Party. Thus, the question of participating in the functions of the SS was not a question of becoming a member. Rather, I, together with four other members of the Party, was detailed for service in the new SS functions, but since I left my home town shortly afterwards, I did not get to perform that service. I was merely crossed off the list and, therefore, never found out under what number I was registered.

Q. What was your activity in the Party after 1926?

A. In 1926 there were the first differences between myself and my superiors in the Party. I did not agree with my superiors' personal and factual views. Therefore, from 1926 to 1933 I did not work within the official party. On the other hand, on my own, especially in the years 1927 to 1931 as a student in Goettingen, I was very actively engaged in spreading national socialism by arranging gatherings by myself, by arranging discussions, and especially I conducted training courses. These courses were probably the first which were systematically started in the Party.

* * * * *

DR. ASCHENAUER: What was your activity in the Party after 1933?

DEFENDANT OHLENDORF: After the assumption of power in 1933, I was Referendar at the district court in Hildesheim, and as such I lived in my home town once more. I led my own district group in my own town again temporarily. I directed the professional group for law at the district court at Hildesheim. Furthermore, again I conducted training courses among the officials in the clear consciousness that the influx of a lot of non-National Socialists into the Party could no longer be prevented, which made a clarification of the Fascist and Nazi doctrines all

the more necessary. During this time this theme was the subject of my speeches, and despite the efforts, I could not prevent this influx of many non-National Socialists into the Party. This activity lasted until October 1933.

Q. When did you join the Institute for World Economics in Kiel?

A. October 1933.

Q. How did that come about?

A. My inclinations were always divided between politics and learning. Since I knew on how little National Socialism was actually based, I was very pleased to accept an offer from Professor Jessen which enabled me to combine learning and economics. He offered me a position at the Institute for World Economics in Kiel as his personal assistant, and at the same time gave me the opportunity of building up a department of National Socialism and Fascism. Thus it was our common goal to examine Fascism scientifically, and at the same time to enrich the substance of National Socialism. Personally, it was my intention to study philosophy and sociology and prepare for an academic post in economics.

Q. How long were you active as a research assistant?

A. I was with Professor Jessen from October 1933 to March 1934, and I remained at Kiel without him until the fall of 1934.

Q. How was it that your activity terminated so shortly?

A. About New Year of 1934 Professor Jessen and I had objected very strenuously against National Bolshevistic tendencies of the Party at Kiel, especially, because these National Bolshevik circles had built up an organization in almost all Reich Ministries. As the result of this fight on our part I was, in February 1934, arrested at the request of the Party with several other students. Professor Jessen evaded this arrest because he was sick. He had to leave Kiel since his opponents and my opponents, especially in the Ministry of Culture actually held the power. After Professor Jessen left, the Ministry of Culture demanded in the fall of 1934 that I be dismissed from Kiel, because I was a factor of political unrest there.

Q. What did this event mean for your scientific plans, for your scholastic plans?

A. Since the departments of the Ministry of Culture were against me, my scholastic career was at an end.

Q. What activity did you decide to engage in now?

A. Jessen and I took up the fight against these people with other groups in the Party and formulated the plan to build the commercial high school in Berlin into an economics institute in order to fight these National Bolshevik forces which were espe-

cially active in economics, in order to oppose them with real representatives of National Socialism. Jessen was to be provost of this school, and I was to aid him in building up the school. For this purpose I went to Berlin in December 1934, but these plans fell through also because of the Party, in this case on the part of Rosenberg. In the paper, the "Voelkischer Beobachter," an article appeared against Jessen which called a book by Jessen antinational. Rosenberg objected to Jessen. The Culture Minister, Rust, did not dare to make him director of the school. Thus my scholastic plans were definitely at an end, but simultaneously my political activity was also at an end, insofar as the director of the Reich School of National Socialist Economics, Dr. Wagner, warned me, at the request of an organization in Munich, against attacking National Socialist politics in my speeches, such speeches which were especially directed against the policies of the Reich Food Office would no longer be tolerated.

Q. How long did you remain in the Institute for Applied Economic Sciences?

A. Now I was without any professional goal, directed a library in the Institute for Applied Economic Sciences and furthermore held meetings with students. I had already described them briefly, but those forces also destroyed my student meetings so that I was definitely at an end in Berlin.

Q. Are you speaking of the time 1935-1936?

A. Yes.

Q. In May 1936, you entered into the service of the SD. How did that come about?

A. This same Professor Jessen who had called me to Kiel and Berlin now offered me a post in the SD, namely, specialist on economics, a position which had been offered to him too. Until that time I was not familiar with the SD. Professor Jessen arranged a meeting with the leader of the SD, at that time Professor Hoehn, and in this discussion I told him what my political opinions were, and to my surprise he answered that these very political critical opinions concerning practical National Socialism were just what the SD was looking for. Since there was no more public criticism, this would be an organization which would have as its mission to inform the leading organizations of the Party and the state about National Socialist developments, and especially as regards wrong tendencies, abuses, etc.

Q. What was the concrete mission assigned to the SD?

A. I was told to build up an economic news service, to create an organization which would be in a position to give all the information in the field of economics which was essential for National Socialist leaders to know concerning mistaken developments. This

was the motive which induced me to enter the SD and thus the SS in 1936.

Q. Now, before going into any more important questions concerning the charges of the prosecution, I would like to finish the story of your professional career. How did your position in the SD develop further?

A. The position in the SD was somewhat different from what I had expected. The chief of the SD had exaggerated to me insofar as he described an SD, which in reality did not yet exist. The whole central organization which I found consisted of about twenty young people without any typists, without any registry, without any aids at all, and with no Reich-wide organization. No one even knew what they wanted in detail. Such individual cases were dealt with, which happened to come along in such an embryonic organization. The natural interests of the chief were practically the entire content of the SD. He was a political scientist and university teacher, and thus the SD was first concerned with universities and political science. Here I began to work in the field of economics, laid the basis for an information service in which information was gathered about economic factors in Germany, and I tried to find specialists who would be in a position to analyze the economic tendencies, to evaluate them and sum them up. This work found approval, and around the turn of the years 1936-37, I became Chief of Staff of the SD Inland, that is, representative of the chief, with the special mission of transferring the system I had developed to the other fields. The basis for comprehensive information service was worked out and organized. In 1936 we already find a small scale picture of the later office III of the Reich Security Main Office. The SD Central Department II-2 had three groups which encompassed all the spheres of national life—group I, culture, learning, education, and folkdom; group II, law and administration, questions of Party and State, universities and student organizations; group III, all departments of economics.

Q. Did you have any difficulty in your work?

A. The difficulties developed very rapidly when Himmler noticed what was being developed here. The difficulties came from the cultural sphere and from the economic sphere. In the years 1936 and 1937, the development of the Four Year Plan and the success of the ideologies of the Reich Food Estate as the allegedly only National Socialist policies had gained strong influence within the middle class. Hundreds of thousands of plants were closed. I intervened in this development with my young SD. We not only tried to understand these developments and to point out the catastrophic consequences, but we also took a hand personally

by personal conferences which we backed up with our information material so that many difficulties arose in the closing down of these plants. At the same time we tried to point out to Himmler the damaging effects of these measures. And now the first sharp difference of opinion arose, because the Reich Food Estate under Darre¹ was the actual basis and support of Himmler's ideologies, and therefore, he objected to my reports as being against Darre. He was not familiar with the factual problems. Since we also took a hand in the cultural problems and objected to the retirement of the old professors by the Party and called attention to the fact that the opportunistic young careerists were certainly not fit to replace the wisdom of the old professors, Himmler called me on the carpet for the first time. He called me a pessimist and this clung to me all the time. Besides, Himmler stated that the SD had no business in these questions, but that they were to be left to the Party. In the year 1937 the chief of the SD, Professor Hoehn, was dismissed through the intervention of Streicher.²

After the director was gone, the mission of the SD was to be changed, and therefore those persons were put on the shelf who had so far determined the line of new development. Since I was not prepared to give up my ideas on the subject as I saw it, I was myself put on the shelf and again restricted to the economic department. Since I no longer saw any chance for the development of the SD in this position and did not want to work on other tasks, I asked for my release. Heydrich refused this, but after long negotiations I succeeded, in the spring of 1938, in getting permission to leave the SD as a full-time occupation and to become an official in the economic administration.

In June 1938, I became business manager of the Reichsgruppe Handel³ and in November 1939, I became the chief business manager of this group. During this time I only worked in the SD sporadically, for after giving up my full-time work, my fellow-defendant Seibert became my deputy in the economic group and now actually directed the work.

Q. Why did you accept a position in the Reich Group Commerce?

A. I have already mentioned that the most decisive factor in

¹ Richard Walther Darre, Reich Minister for Food and Agriculture, 1933-1945; Head of the Reich Food Estate, 1934-1945. Defendant in case of Ernst von Weizsaecker, et al. See vols. XII, XIII, and XIV.

² Gauleiter of Franconia, editor in chief of the antisemitic newspaper "Der Stuermer". Defendant before the International Military Tribunal. See Trial of the Major War Criminals, Vols. I-XLII Nuremberg, 1947.

³ The German Economy, under National Socialist rule, was organized into seven Reich groups (Reichsgruppen) one of which was the "Reichsgruppe Handel"—Reich Group Commerce. See case of Ernst von Weizsaecker, et al., vols. XII, XIII and XIV.

those years, 1936, 1937, and 1938, was that unemployment was not only overcome but that, as a result of the accumulation of tasks through the Four Year Plan, about one million businesses of the middle class were actually threatened. We had taken up this question since in our opinion it was the mission of National Socialism to fight collectivization but not by proletarianizing the independent middle classes and, by dissolving independent plants, to increase this collectivization. In attempting to prevent this I found that only the professional representatives of commerce shared my views, and so I went to this Reich Group Commerce in order to pursue in practical policy the aims which could no longer be pursued in the SD.

DR. ASCHENAUER: Your Honor, before I proceed with questioning my witness, I would like to clarify a few mistakes which were made in the translation. A list of incorrect points becomes evident from the comparison between the English and German.

I would like to point out that Ohlendorf was the staff leader of Professor Hoehn and not staff leader in the SD.

Two—it was said—alleged National Socialist policies in the Reich Food Estate * * * “alleged” was not translated.

Furthermore, leaving the SD Main Office was mentioned, not leaving the SD itself. The words “main office” were left out. These three things were incorrect.

PRESIDING JUDGE MUSMANNO: Dr. Aschenauer, your remarks, of course, will be incorporated into the record and we can assure you that the correct version will appear in the final transcript, because everything which is stated here in Court is automatically recorded on a film and from that the transcript is eventually prepared.

DR. ASCHENAUER: Yes. Thank you very much, your Honor.

Herr Ohlendorf, how did it come about that in spite of your very responsible task in the Reich Group Commerce in September 1939 you became the Chief of the Office SD Inland in the Reich Security Main Office?

DEFENDANT OHLENDORF: The SD Main Office had collapsed in 1938 because in the meantime the Gestapo, because of the complete centralization of the political police forces by the Reich Leader SS and Chief of the German Police, had by then been extended so far that apart from the immediate fighting of opponents in the executive, they also kept the information service exclusively in their own hands.

The intelligence service about opponents which had been legitimized by the Party as the SD had, in the years 1936 and 1937, been more and more restricted, and in 1938, through the decree concerning the separation of functions, which defined the com-

petencies of the State Police and SD, it was finally dissolved.

The second reason was that the Reich Leader SS, Himmler, tried now to take up his old plans and form a State Security Corps by one decisive measure. Having delimited the functions of the Gestapo and the SD, he now wanted to include them in one new organization, the Reich Security Main Office. This was to be the first step in the founding of the State Security Corps. This idea he later extended to such an extent that even the inner administration was to be taken over into the State Security Corps. The SS, the police, the SD and the internal administration were supposed to be taken over into the State Security Corps and the SS was supposed to be responsible for all this. That was the beginning.

Now the difficulty for him was that he dared not tell the Party about his plans because the Party had legitimized the SD as an information service, because the SD was a Party affiliation through the SS but it was never prepared to grant the state the right of such an assignment and even perhaps legitimize it through the Party.

Now, of course, the information service concerning opponents had been dropped, and with it the information service which the Party had legitimized as the SD. Now there existed a double difficulty with regard to the Party. One did not want to give up the SD as an information service because the Party was already developing its own information service and would now have had the possibility of claiming this information service officially too, because the Reich Leader SS no longer had an intelligence service to offer them.

On the other hand, Himmler wanted to take over the intelligence service from the Party in order to amalgamate it with the Gestapo in the State Security Corps, but this never succeeded. Up to the collapse, the Reich Security Main Office, as an institution, was never an official agency, but the official one remained the Security Police, that is, the Gestapo and the criminal police. The Main Security Police Office was not dissolved, although in the Reich Security Main Office, the state police formed office IV and the criminal police formed office V. The SD Main Office also continued to exist as an official party institution, although internally the administration was handled in Office I and Office II of the State organization. This Reich Security Main Office, therefore, was only an internal administrative set-up of the Reich Leader SS to prepare his State Protection Corps, but it never became an official agency within the State or Party. Thus, through a decree, it was expressly forbidden to use the letterhead of "Reich Security Main Office" for any external correspondence.

Now Himmler was confronted with the difficulty of preventing the Party from extending its own information service and on the other hand, therefore, of keeping the SD in this form as a façade towards the Party. As the information service concerning opponents was dissolved, and as Central Department II-1 of the SD, which had carried on research concerning opponents, no longer existed, all that remained in the SD were the embryonic beginnings of the sphere information service, namely Central Department II-2. As the Reich Leader SS did not really intend to extend the sphere information service which had already caused so much difficulty, and as Heydrich did not intend to develop the SD with regard to organization and personnel to the necessary extent, the solution of an external facade was sufficient for him. This was an emergency solution, insofar as the former strength of the SD had become exhausted in the long fight during the years 1936, 1937, and 1938, especially against Best, the deputy of Heydrich for the Main Security Police Office. Therefore, there was no person who on this new basis could establish anything like tolerable relations with the state police. As the SD was not taken really seriously by Himmler and by Heydrich, I remained full-time business manager of the Reich Group Commerce; in November 1939 I was even authorized to become the main business manager officially, i.e., to represent the complete organization of about 900,000 members officially with respect to all agencies of the Reich. I remained honorary leader in the SD and I only worked in the SD sporadically for a few hours now and then and I saw no possibility for the time being to create a different situation from the one I left in 1938.

Q. Making you chief of office III was, therefore, not proof of any special confidence in you on the part of Himmler and Heydrich, was it?

A. No, as I said already, it was only an emergency solution since there was no serious intention of expanding this office.

Q. How did the practical examples you have given affect your position and work in the SD Inland?

A. The work in the SD Inland formed the basis for all the difficulties and all the set-backs and defeats which came later. The SD Inland, the only branch as from September 1939 of the SD within the Reich, remained illegal. The Party had not approved this formation of the SD and it was not prepared to approve it. Himmler himself did not legitimize this SD either. He was not prepared to cover this SD, and he let it and its men down whenever they were attacked from any side. It was not possible for the contents of the business distribution plan of Central Department II-2 which I showed just now—it was not

possible to expand Office III, which covered all the spheres of life of the German people, sufficiently for it to be able to fulfill its wide and extensive tasks. This became evident very soon, especially first of all on my own person. Although I became the chief of office III, only in September 1939, we already had the first big crisis at the beginning of November. Heydrich sent me on an official trip with Himmler, and during its course disputes arose, the consequence of which was that in Warsaw he had me informed, through his chief adjutant Karl Wolff, that I must leave his services, that agreement between us about the work was not possible.

Q. What was the reason for this disagreement with Himmler?

A. He reproached me that the members of the SD in Poland had not been able to carry out the treatment of the Jews in the form he wanted and that, he said, was the product of my training. Heydrich was very pleased by this crisis with the Reich Leader (SS) because any possibility of an overshadowing of his position had been prevented. He refused to let me leave the organization and put matters right with the Reich Leader SS. During the year 1940 there were more disagreements, because the nature of the information service he instituted aroused protests from all sides. Ley * complained to Himmler about me and asked for my dismissal because of criticism in the SD reports of his development of the DAF [German Labor Front] especially of its economic enterprises. Himmler himself criticized a number of reports because he said they were defeatist and pessimistic. They came back torn up. In the negotiations with me, Heydrich now realized that I was chief business manager of the Reich Group Commerce and was as such exempted from the draft—that means I was obligated to serve in the Reich Group Commerce during the war and that he had thus almost completely lost his power over me. And so, in 1940, the crisis with Heydrich took on a very acute form. He demanded on various occasions that I join the army. This was prevented because, meanwhile, the chief of the Reich Group Commerce had been drafted, and apart from the business management, I also took over the position of chief of the Reich Group Commerce. Therefore, he went over to demanding that I should leave the Reich Group Commerce.

PRESIDING JUDGE MUSMANN: May I interrupt, please. Witness, would you please indicate specifically just what were these differences between you and Himmler—briefly, but specifically.

DEFENDANT OHLENDORF: The differences of opinion between Himmler and myself were differences of temperament and of

* Leader of the German Labor Front. Indicted by the IMT but committed suicide shortly after the serving of the indictment.

politics. I am now using his expressions: I was the unbearable, humorless Prussian, an unsoldierly type, a defeatist, and damned intellectual.

PRESIDING JUDGE MUSMANNO: Are we to understand that you mean by that, that you anticipated the defeat of Germany?

DEFENDANT OHLENDORF: The SD in its reports pointed out the many difficulties which might make the success of the war questionable, that is why he called me a defeatist.

PRESIDING JUDGE MUSMANNO: I see.

DEFENDANT OHLENDORF: What was most disagreeable to him was that in our administrative reports we wanted to bring about constitutional conditions under all circumstances. We made it quite clear to him that if the order of the state was destroyed, the demands of a major war could not possibly be met.

Now I would like to describe Himmler. I called Himmler a Bavarian because he called me a Prussian. He did not want orderly conditions. He was the representative of dualism. He tried to imitate Hitler on a small scale. Hitler himself followed the type of policy so fatal to us, of assigning tasks not to organizations but to individual persons, and wherever possible he assigned one and the same task to several individuals. This was imitated by Himmler. Although for him there was no reason whatsoever to fear that one of his functionaries would become too powerful, he believed he could prevent his individual functionaries from becoming more powerful than himself in this way. A practical example, which will also occupy the Tribunal in Case No. 8 * is the handling of ethnic [Volkstum] questions. These questions were handled by five different offices without the competency for the individual tasks being made clear. When I suggested to Himmler that these questions should be dealt with as an entity, this was a further reason for his utterances in Warsaw asking for my replacement. Thus was his basic structure. He was a practical man, an opportunist of the day, who was in no way prepared to deal with matters in an organized manner—rather, he liked to employ individual people from day to day, to raise them up and to drop them again. In my opinion this was bound to destroy the whole order of a nation even in peacetime, and of course, especially in as serious a war as Germany had to wage. What separated me most from him was the wilfulness of the individual decisions not in regard to the actual tasks he assigned, but in the legitimization of people who were in part not qualified, corrupt, or so fixed in their views that they could feel no impulse of leadership—it may even be that he appointed them

* United States vs. Ulrich Greifelt, et al. See Vols. IV and V.

perhaps for this reason so that on the other hand, he could intervene in the decisions of an agency and thus many very important matters were never brought to a satisfactory solution. The difference between us was that I regarded politics objectively, and I wanted to make men the subject of politics while he regarded politics merely from the point of view of his own person and his tactical position, and he subordinated affairs to this tactical position. If we judge the matter from the German point of view, Himmler became a parasite of our own people, not so much because of what he did, but because of what he did not do. He had a power which has led to the terrible judgment of him and the SS, and in reality he did not exercise this power in Germany but he and his power were an empty shell, and in this we have the important element of his crime against humanity too, that through the police, through a unit like the SS, and later through his direction of the Ministry of the Interior, he had the power which would have enabled him to see the damage and would have given him the possibility to remove this damage and to create orderly conditions.

DR. ASCHENAUER: Witness, you have pointed out the difference between Himmler and yourself. How is it that in spite of this you returned to Berlin in June 1942 and took over office III?

DEFENDANT OHLENDORF: In June 1942, Heydrich died as a result of an attempt on his life. Himmler himself took over the leadership of the Reich Security Main Office with the clear intention of weakening it, because Heydrich was the only SS leader who had grown above his, Himmler's, head. Purely externally, Heydrich as the Reich Protector already ranked above Himmler on the official list of Reich agencies. When Himmler was in charge of the Reich Security Main Office, he weakened it in two important points. He took the economic authority away from the Reich Security Main Office and transferred it to Pohl,* the head of the Economic Administrative Main Office (WVHA), and he also took away the personnel authority of the Reich Security Main Office and transferred it to the SS Main Personnel Office. Everyone who knows about agencies knows what this weakening means. Himmler was not present at that time in Berlin, that is, the Reich Security Main Office had no management and no leadership. Thus he was forced to let the different offices work independently. As office III had not been given a deputy while I was in Russia, I was the only one who, during his absence from Berlin, could direct office III. Furthermore, it was a tactical measure which, in my opinion, was intended to avoid documenting his weakening measures of the Reich Security Main Office by taking away the office chief

* Chief of the SS Economic and Administrative Main Office (WVHA). Defendant in case of Oswald Pohl, et al. See Vol. V.

from the office and then appointing a person who had no authority, either internally or externally.

Q. What was the development of your relations with Himmler after this?

A. When I returned from Russia in July, I was ordered to report to Himmler. In August he received me in his headquarters in a very friendly manner.

PRESIDING JUDGE MUSMANN: May we suspend just for a moment? There seems to be something wrong with the transmission here. We don't quite get all of it. I would like to speak to the interpreters here * * *.

Very well, thank you.

DR. ASCHENAUER: We were just dealing with the question of the development of your relations with Himmler.

DEFENDANT OHLENDORF: After my return from Russia, I reported at the headquarters to report to Himmler about the situation in office III. I was received in a very friendly manner. He promoted me to brigadier general of the SS [Brigadefuehrer], and he told me that he planned to make me a brigadier general of the police. This friendly manner, of course, had its ulterior motives, because he continued Heydrich's demands that I should leave the Reich Group Commerce and become an official in the Reich Security Main Office. I explained to him that I had to ask him not to make me an official of the Reich Security Main Office and not to make me a brigadier general of the police, and why the SD, office III, had to remain independent under all circumstances, that is, it had to remain a free organization, and its members had to be Party employees. I made it quite clear to him that the Party would never stand for a state organization taking over an information service in which the work of the Party would also be dealt with in any way. I also made it clear to him that the SD could only carry out the task which it had tackled if it remained quite free of any appearance of being a police organization, because this organization was collecting the most able experts of all departments. They, however, were not prepared even to give the impression that they were connected with the police in any way at all. Apart from that, through this connection with the Gestapo, the most important principle of the SD would be abandoned, namely, to be independent of any department, but to work without any individual responsibility and in no connection with other departments, completely independently. This alone would justify the SD in approaching other departments with its criticism, which, otherwise could no longer be considered objective criticism but would be regarded as the opinion of one department as against that of another. This, of course, led to a completely new disagree-

ment. Himmler reproached me with very harsh words and asked me to not try and teach him anything. He knew exactly what best served the interests of the SS, and what meaning the State Security Corps had for him. I was dismissed in disgrace, and this was the second time in my activity of nine years in the SD that I had the chance to speak to Himmler alone. When Kaltenbrunner¹ took over the office and became Himmler's successor in January 1943, Himmler spoke of the office III and its chief with ironical words, and said they were the "guardians of the Holy Grail of National Socialism and of the SS who stood whining over the broken ideas" and thought that now everything was lost. Thus, we were again publicly denounced as nuisances, pessimists, and defeatists. But it was only now that the actual crisis of the SD started, because after Stalingrad² conditions in Germany became more and more difficult. The more difficult these conditions in Germany became, the more critical, of course, became the reports of the SD. And now, Himmler was no longer prepared to cover this activity on the part of the SD but, on the contrary, he used the complaints of his colleagues in the Reich offices and pushed them on to the SD.

I'll give you a few examples. In the spring of 1943, Goebbels had tried through an act of force—or you can call it a coup de theater—to gain the internal power in Germany. It was the famous Sports Palace rally, the famous declaration of total war. Goebbels himself asked the next morning for a report from the SD on the effects of this rally; and he got this report. In this report it was said that among the population of all Germany, in all districts, this declaration in the Sports Palace was disapproved of and disagreed with and that it was called a Punch and Judy show. This led to Goebbels' achieving a ban on "reports from the Reich". These reports from the Reich were the summaries of reports of all spheres of the SD, which were sent by us to all Reich agencies, and in the administrative practice of the Reich were the only source of information of the departments about difficulties of the other departments. With this, the most important organ and most important functions of the SD were abolished and destroyed.

The reasons he gave were that these reports were so defeatist that not even Reich Minister Lammers³ and Goering, who,

¹ Ernst Kaltenbrunner, Lt. General of the SS, Head of the Reich Security Main Office, Chief of the Security Police and SD. Defendant before the IMT. See *The Trial of the Major War Criminals*, vols. I–XLII, Nuremberg, 1947.

² The retreat of the German armies from Stalingrad in March 1943, the turning point of the Russian campaign.

³ Hans Heinrich Lammers, Chief of the Reich Chancellery, defendant in case of Ernst von Weizsaecker, et al. See Vols. XII, XIII, XIV.

because of his pressure, were the only ones to receive these reports, and all other information received, were not able to overcome this defeatism. Gauleiter Koch, the Reich Minister in the eastern territories, had through his own information service in the Party Chancellery learned of the reports which I had issued against his policy of force in Russia. He complained to the Reich Leader SS, and the Reich Leader SS wrote a letter to Kaltenbrunner in which he instructed him to decimate office III and its subsidiary offices in the Reich to reprimand its chief and to threaten him that if these unnecessary reports did not stop, the SD would be dissolved completely and the chief arrested. Bormann * and Ley were the next people to take this direction. Ley, without informing us, forbade the holders of office and shop stewards of the German Labor Front any collaboration with the SD. Because of the unjustified work of the SD, Bormann threatened to speak to the Fuehrer, which was to have the effect that the Fuehrer would take the chief of office III where he belonged, and his people would be put to more productive work.

When, in spite of this, I continued to send out my reports, Bormann in 1944 also forbade all Party officials, Party affiliations, and Party employees, down to the charwomen to have any activity within the SD. This fight which Bormann put up continued until April 1945; and it was such a heavy fight that even Kaltenbrunner, who on the whole approved of my work, asked me urgently to stop the Reich reports, or at least to camouflage them as reports on opponents or sabotage. The reports of this time regarding the leadership situation within the Reich, which fell into the hands of the English, showed the Allies that this manner of reporting was not given up in spite of all and in spite of the threats it was still possible to submit the strongest reports about the leadership situation of the Reich, about the complete internal dissolution of leadership, and about the collapse of the air force to the Fuehrer through roundabout channels.

According to my knowledge—that is the tragedy of the SD—these were the only reports which only in the midst of the catastrophe were submitted to Hitler. I myself did not know Hitler personally nor did I ever have the possibility of submitting a report to him or even of speaking to him.

Q. How did it come about that you were appointed into the Reich Economics Ministry?

A. My professional development was conditioned by my work in the Reich Group Commerce. This work gained more importance and significance than was usual for a group in the professional

* Chief of the Party Chancellery, defendant *in absentia* before the International Military Tribunal. See Trial of the Major War Criminals, Vols. I-XLII.

organization because the neighboring groups of industry, the crafts, banking, insurance companies, and transport did not have any political people in them. They were not prepared to work politically on the policy of the economic ministries, especially the Armaments Ministry, which was restricting and in part destructive for them. As I entered this policy with political arguments, my own significance in economic policy was a much bigger one than can be understood from the point of view of commerce. This was increased by the fact that even in the Economics Ministry there were no political personalities who were prepared to discuss the differences with the Party, or the political person Speer¹, who was the Fuehrer's trusted representative in defense matters. Thus in the years 1939 and 1940, from the Reich Group Commerce, we were the main consultants in the field of economic policy against all collectivistic and socialistic tendencies which were connected with the names of Speer and Bormann.

Funk² was in agreement with my activity. He especially approved of my work against the so-called self-responsibility of economy, that is, against the condition that the state authority as a state vanished, and instead of the state, economic leaders entered who took over the authority of the state, but at the same time were competitors in competition with each other. This not only opened the gates wide for corruption but created for me a basic condition for the economic loss of the war, because the competitors were no longer prepared to reveal their actual output to the competitor. Large masses of the people felt themselves confronted no longer by an objective state but individual economic hyenas and monopolists. Therefore, the differences between economy and the state were bound to become larger and larger. Funk approved of these reports of mine and, therefore, asked for my entry into the Reich Ministry of Economics.

In the spring of 1943, I was to become Second State Secretary in the Ministry of Economics. Himmler categorically refused my transfer into the Reich Ministry of Economics and for the very reason that caused Funk to ask for my transfer into the Reich Ministry of Economics. Himmler also recognized the significance of the economic development as a monopolistic capitalism such as we had never known. But in a letter to me he refused my transfer to the Ministry of Economics, giving the reason that he did not want an SS leader to be exposed in this fight against

¹ Reich Minister for Armaments and Munition. Defendant before the International Military Tribunal. See Trial of the Major War Criminals, Vols. I-XLII.

² Reich Minister of Economics. Defendant before the International Military Tribunal. See Trial of the Major War Criminals, Vols. I-XLII.

capitalism because this fight could no longer be waged within this war. After the Ministry of Economics collapsed in the summer of 1943 Funk again tried and through a tactical maneuver succeeded in anticipating a decision by Himmler; and Himmler now agreed.

Q. How was your last discussion with Himmler?

A. My relationship with Himmler was bound to deteriorate even more, because my new work in the Reich Ministry of Economics was added to the old crisis, because what our predecessors had not been able to do we now took upon us. We tried to force Pohl and the Economic and Administrative Main Office to put the cards of the SS concern on the table. We told him that we would not stand for any further expansion of this SS structure either in Germany or in foreign countries. During the course of these differences Himmler, in the summer of 1944, sent for me and Heider, State Secretary in the Ministry of Economics to come to Berchtesgaden. He explained to us why this policy must not be pursued by us in opposition to his economic activity. We refused any agreement; but he had already created an accomplished fact in Hungary by a deal with the Weiss combine,¹ securing the Weiss enterprise for the SS. As for us, the right was on our side in this case; and as normally he had nothing on us, he used the next occasion to begin a new correspondence of a very serious and slanderous character. The reason was the economic reform plan which I had drafted in the autumn of 1944. It was intended in the economic field at least to establish an orderly and constitutional administration. Himmler agreed at first, until Bormann objected, because he was preventing any consolidation of the state and furthermore he did not want a curtailment of the power and authority of the Gaue [districts] which he regarded as an anti-Party measure.

Himmler now changed his opinion and agreed with Bormann. He disavowed my reform suggestions, which he said were academical reports representing a waste of intelligence. But at the end, our relations were of a different nature. In the last fortnight before the collapse, I turned over my quarters in Flensburg and Ploen to Himmler. Only now did really serious discussions begin, and now he was more approachable. One can say that these were good discussions between us—only the end was more or less like the beginning because at the end I tried to cause him not only to dissolve the Werwolf² activities which he did, but also to dissolve the SS and turn himself over to the Allies. In trying to

¹ Leading industrialist of Jewish origin.

² National Socialist underground organization formed shortly before the surrender of Germany for the purpose of combating the occupation by the Allies.

cause him to do so, I put it to him that he alone could in a responsible manner explain to the Allies the tasks which he had given to the SS, and he would have to take this responsibility. He refused and escaped without saying good-by.

EXAMINATION

PRESIDING JUDGE MUSMANNO: What was the date of this discussion with Himmler when the witness recommended the dissolution of the SS and the going over to the Allies?

DEFENDANT OHLENDORF: That was 9 May, your Honor, 1945.

PRESIDING JUDGE MUSMANNO: Well, it was all over then, wasn't it?

DEFENDANT OHLENDORF: No; it was not all over in a manner of speaking because the Flensburg government¹ was in power, and the Allies had agreed to this so-called Flensburg government. This government was actually officially in power until 23 May 1945, although only in an area the size of the territory of a Landrat (district council). Between 9 and 23 May, there were still government reshuffles. Only on that date did Himmler leave the government as Reich Minister and as the commander of the reserve army. He had been of the belief that via his officer, Schellenberg² the Allies wanted to negotiate with him and needed him as a factor for order in Europe. On these conversations of Schellenberg via Bernadotte, the Chief of the Red Cross in Sweden, with Churchill and the British Government, Himmler really relied until the day of his escape, in fact, even until the day before his death. Even after he escaped he sent me one or two orderlies every day to inquire whether Schellenberg had returned from Sweden, or whether Field Marshal Montgomery had answered the letter which he had written him on 9 May.

PRESIDING JUDGE MUSMANNO: But when you say that on 9 May you were discussing whether you should go over to the Allies, it's like the mouse discussing whether it should go over to the cat. You had already surrendered.

DEFENDANT OHLENDORF: Yes, but as I just stated, this small district of the Flensburg government, with the locality Muerwik and Gluecksburg, had not surrendered because at that place there were official negotiations between the control commission of the Allies with the government and the Chief of Government of the German Reich. I may draw your attention to the fact, your

¹ The government set up under Admiral of the Fleet Doenitz after the announcement of the death of Hitler.

² Brigadier General of the SS, Chief of the Foreign Intelligence Division of the Reich Security Main Office, Office Chief in the SD. Defendant in case of *United States vs. Ernst von Weizsaecker, et al.* See Vols. XII, XIII, XIV.

Honor, that at the surrender negotiations the Allies asked Jodl,¹ Keitel,² and Friedeburg³ to certify the official position of Doenitz as head of state, and he with his government actually remained in power until 23 May 1945.

PRESIDING JUDGE MUSMANN: But you didn't seriously believe that you could successfully hold out against the combined Allied Power after 8 May, did you?

DEFENDANT OHLENDORF: No. I think we must have misunderstood each other, your Honor, because I had only two intentions. One was to prevent SS units from being formed into underground movements. Therefore, I tried to cause Himmler to dissolve the SS officially, to order them to submit to their fate, and as far as possible to work with the Allies in a positive sense. I also tried to cause Himmler to go over to the Allies and put himself at the disposal of the Allies, so that he could tell them what the tasks of the SS were, why he had given them these tasks, and to answer for them.

Q. Were you in daily contact with Himmler following 8 May?

A. Yes.

Q. Until when?

A. At least until 19 May, I believe even until the 21st through the orderlies. He had camouflaged himself and was living in a disguise under which he then was delivered into a prisoner-of-war camp.

Q. How did you submit yourself to the Allies?

A. When Himmler told me that I was afraid for myself and afraid for my own life, I told him that I had already made up my mind to put myself at the disposal of the Allies and to take my own responsibility for what I had made of the SD. I could not leave it to anybody else to take responsibility for the activities of the SD; and although I was not arrested on the afternoon when the rest of the government was arrested, after asking for it three times, I achieved the status of being arrested.

Q. When was that? What date?

A. That was on the 23d of May.

Q. Then they favored you by arresting you?

A. Yes, on the 23d of May.

DR. ASCHENAUER: Witness, did you report voluntarily for the campaign in Russia?

DEFENDANT OHLENDORF: No, on the contrary. Twice I was

¹ Chief of Staff of the OKW; defendant before the IMT. See *Trial of the Major War Criminals*, Vols. I-XLII.

² Chief of the Supreme Command of the German Armed Forces, Defendant before the IMT. (Ibid.)

³ Admiral Friedeburg committed suicide.

directed to go to Russia and twice I refused. Then I got the third order which I could no longer evade.

Q. Why didn't Heydrich from the beginning simply give orders? It was certainly not customary to negotiate with any of his subordinates?

A. He was forced to insofar as I was on call for the Reich Group Commerce—I had a note in my military passport which obligated me in case of war to be at the disposal of the Reich Group Commerce, therefore, it was necessary that this war order be superseded by Heydrich's order. This happened for the third time by order, so that the Reich Group Trade revoked the deferment. Now I was conscripted for the Reich Leader SS; the army district command received notice that I had gone to a foreign country on a secret mission for the Reich Leader SS. After that I was made available for the Reich Security Main Office. Now I was given a note in my military passport for the Chief of the Security Police and SD.

Q. Please explain the legal situation of your membership in the SD, when you were conscripted in 1941?

A. In 1936, I joined the SD when I was given the job of building up a critical military information service. When this job was taken away from me I asked for my dismissal. This was refused to me in 1938. I was merely able to give it up as a full-time occupation which it had been. The situation with the Chief of Security Police and SD was as difficult as in the other SS organizations, because one did not enter into a contract. It was merely a unilateral loyalty agreement, and in addition to a simultaneous joining of the SS, a condition of military subordination existed. One was at the same time a military subordinate. My renewed application for dismissal in November 1939 was again refused. By now the position of the Chief of Security Police and SD had become even stronger. In the meantime through a decree the Security Police and SD were listed as being on a war emergency status, and in the renewed decree it was added that even an application to leave this organization would be forbidden. This application was even punishable. In this manner it was no longer possible after 1939 even to file an application to leave. This last remark applied to a general condition, since through the wish of the Reich Leader SS, I had the possibility in November 1939 to make a renewed application. Therefore, when I was conscripted for the Russian campaign in 1941, I was not a voluntary member of the SD, or of the SS. I was conscripted for the campaign.

Q. How did the formation of the Einsatzgruppen and the Einsatzkommandos come about? Were they part of the agencies of the offices of the Secret Police and the SD?

A. The Einsatzgruppen and the Einsatzkommandos were neither agencies nor parts of the organization of the Reich Security Main Office. They were mobile units set up for one single purpose which were set up ad hoc for certain assignments. The members of the Einsatzgruppen and the Einsatzkommandos were either conscripted or were taken from the members of the security police and SD. Or they were drafted to a large extent, for example, as drivers or interpreters, whereas a large membership of the Einsatzgruppen, by order of Himmler, was made available by companies of the Waffen SS or the regular police. These Einsatzgruppen and Einsatzkommandos were no agencies or authorities, but they were military units.

Q. Were the purposes and the orders of the Einsatzgruppen made known to the men and the leaders when they were drafted?

A. No. This was not done. The leaders and men were given an order to report to Dueben or Pretzsch in Saxony. They did not get any information where they were to be committed, or what tasks they were supposed to do. Even after the units had been activated, the commanders and men did not know about it.

Q. When was the area of operation made public?

A. It was made known shortly before the units left for Russia, about three days before.

Q. When was the order given for the liquidation of certain elements of the population in the U.S.S.R. and by whom was it handed over?

A. As far as I recollect, this order was given at the same time when the area of operations was made known. In Pretzsch, the chiefs of offices I and IV, the then Lieutenant Colonels [Obersturmbannfuehrer] Streckenbach and Mueller gave the order which had been issued by Himmler and Heydrich.

Q. What was the wording of this order?

A. This special order, for such it is, read as follows: That in addition to our general task the Security Police and SD, the Einsatzgruppen and the Einsatzkommandos had the mission to protect the rear of the troops by killing the Jews, gypsies, Communist functionaries, active Communists, and all persons who would endanger the security.

Q. What were your thoughts when you received this order of killings?

A. The immediate feeling with me and with the other men was one of general protest. Lieutenant Colonel Streckenbach listened to this protest, and, even gave us a few different points which we could not know, but at the same time he told us that even he himself had protested most strenuously against a similar order in the Polish campaign, but that Himmler had rebuked him just

as severely by stating that this was a Fuehrer order, which must be carried out, in order to achieve the war aim of destroying communism for all times, therefore, this order was to be accepted without hesitation.

Q. Did you consider this order as justified?

A. No; I did not. I did not consider it justified because quite independently from the necessity of taking such measures, these measures would have moral and ethical consequences which would deteriorate the mind.

Q. Did you know about plans or directives which had as their goal the extermination on racial and religious grounds?

A. I expressly assure you that I neither knew of such plans nor was I called on to cooperate in any such plans. Lieutenant General [Obergruppenfuehrer] Bach-Zelewski testified during the big trial [before the International Military Tribunal] that the Reich Leader SS in a secret conference of all lieutenant generals made known that the goal was to exterminate thirty million Slavs. I repeat that I was neither given such an order nor was there even the slightest hint given to me that such plans or goals existed for the Russian campaign. This is not only true for the Slavs but this is also true for the Jews. I know that in the years of 1938, 1939 and 1940, no extermination plans existed, but on the contrary, with the aid of Heydrich and by cooperation with Jewish organizations, emigration programs from Germany and Austria were arranged; financial funds even were raised in order to help aid the poorer Jews to make this emigration possible. In 1941, I personally helped in individual cases, where, for example, a representative of I. G. Farben called on me in order to overcome difficulties with the state police, when it was their intention also to let so-called bearers of secrets emigrate. Up to the very end I succeeded in giving such aid. Thus, at the beginning of the Russian campaign, I had no cause to assume that the execution order which we were given meant that any such extermination was planned or was to be carried out. During my time in Russia, I sent a great number of reports to the Chief of Security Police and SD in which I reported about the fine cooperation with the Russian population. They were never objected to. When Himmler was in Nikolaev in 1941, he neither made any reproaches about this, nor did he give me any other directives. I am rather convinced that where such an extermination policy was later carried out, it was not carried out by the order of the central agencies, but it was the work of individual people.

Q. Did you give any thought to the legality of such a Fuehrer order?

A. Of course I did. I knew the history of communism. From

the theory of Lenin and Stalin and from the strategy and tactics of the Bolshevik world revolution, I knew that bolshevism was to let no rules prevail other than those which would further and promote its aim. The practice of bolshevism in the Russian Civil War, in the war with Finland, in the war with Poland, in the occupation of the Baltic countries and Bessarabia, gave us the assurance and certainty that this was not only theory, but that this was carried out in practice, and in the same manner it therefore was to be expected that in this war no other laws would have any validity. This was true for the international conventions which Russia officially denounced to the German Government, as well as the international customs and usages of war, and it was true because according to this same communist ideology the customs and usages could only develop between partners who were on the same ideological basis. Just as the other class is the opponent internally who must be destroyed at all costs, according to the same ideology the other state which does not represent a Bolshevik system is the external opponent who is to be destroyed, just as the class is to be destroyed internally. The rules in this are adjusted according to the state of emergency of the moment. In this respect it was clear to me that in this war against bolshevism the German Reich found itself in a state of war emergency and of self-defense. What measures are to be taken in such a war in order to fight such an opponent on his own ground—to determine this could be only a matter to be decided by the supreme leadership which waged this war for the life or death of its people; and which, in my opinion, they certainly believed they waged also for Europe and even more for there was no doubt for us that the Four Year Plan, as well as the events of 1938 and 1939, were nothing else for Hitler but the securing of the point of departure for this war against bolshevism which was considered by him to be inevitable.

PRESIDING JUDGE MUSMANNO: Witness, when you refer to the Russian practice in the war against Poland, were you referring to the war of 1939 when Russia was your ally?

DEFENDANT OHLENDORF: Yes. This has nothing to do with it, or does not change the subject, the fact that Russia was our ally at the time.

Q. No. I am just asking if that is the war you are referring to?

A. Yes, this is the war.

Q. Yes. Well, did Germany at that time also have the same practices?

A. I do not know that this happened to the same extent. That violations took place cannot be doubted.

Q. You believe that it was not as widespread as it later developed in your war against Russia? Is that what I am led to believe?

A. Yes.

DR. ASCHENAUER: Is, in your opinion, the man who receives these orders obliged to examine them when they are given to him?

DEFENDANT OHLENDORF: This is not possible, legally or actually. According to the general legal interpretation in Germany, not even a judge had the possibility of examining the legality of a law or an order, as little as an administrative official could examine the administrative edict of a supreme authority. But even actually it would have been presumptuous because in the position in which every one of the defendants found themselves, we did not have the possibility of actually judging the situation. It also corresponds to the moral concept which I have learned as a European tradition, that no subordinate can take it upon himself to examine the authority of the supreme commander and chief of state. He only faces his God and history.

Q. Didn't Article 47 of the Military Penal Code give you an occasion to interpret this execution order differently?

A. It is impossible for me to imagine that an article which was created to prevent excesses by individual officers or men leaves open the possibility to consider the supreme order of the supreme commander a crime. Apart from this, again according to continental concept, the chief of state cannot commit a crime.

* * * * *

DR. ASCHENAUER: What is your conviction about the actual background of the Fuehrer order which was given to you?

DEFENDANT OHLENDORF: I have had no cause, and I still have no cause today to think that any other goal was aimed at than the goal of any war, namely, an immediate and permanent security of our own realm against that realm with which the belligerent conflict is taking place.

Q. The prosecution states that the contents of the order and its execution was part of a systematic program of genocide which had as its aim the destruction of foreign peoples and ethnic groups. Will you please comment on this?

A. I did not have any occasion to assume any such plan. I assure you that I neither participated in plans, nor did I see any preparation for such plans which would have let me assume that such a plan existed. What was told to us was our security and those persons who were assumed to be endangering the security were designated as such.

Q. What observations did you yourself make in Russia about

the objective prerequisite that the executions of populations, according to the Fuehrer order, were necessary?

A. The experiences in Russia showed me once and for all that here the propaganda of Goebbels had not stated the truth clearly enough. I was convinced that this state, which in order to gain its ends internally, had torn many millions from their families; in the process of separating the Kulaks [well-to-do farmers] they took the adult population away three times from rural districts. This state would have even less consideration for a foreign population.

It was obvious that the number of Jews in the general population in Russia, in relation to their number in the higher administration, was very, very small. The prosecution has submitted a report from my Einsatzgruppe to the army. In this report in enclosure No. 2 it explained the situation of Jewry in the Crimea. Unfortunately, this enclosure was not available. It would have shown that in the Crimea, for example, up to 90 percent of the administrative and leading authoritative positions were occupied by Jews. The information service in the same field, conversations with innumerable Ukrainians and Russians and Tartars, and the documents which the prosecution submitted show that this was not only the case in the Crimea. For us it was obvious that Jewry in Bolshevist Russia actually played a disproportionately important role.

Three times I was present during executions. Every time I found the same facts which I considered with great respect, that the Jews who were executed went to their death singing the "International" and hailing Stalin. That the Communist functionaries and the active leaders of the Communists in the occupied area of Russia posed an actual continuous danger for the German occupation the documents of the prosecution have shown.

It was absolutely certain that by these persons the call of Stalin for ruthless partisan warfare would be followed without any reservation. Orally and in written form, the Bolsheviks have attested enthusiastically to the fact that this partisan warfare was not only waged by the Communist Party and not only by the Communist functionaries; but as Stalin requested, it was waged by the population, by peasants, by workers, men, women, and children. This same literature is proud of the fact that it was waged with great treachery and cunning which the call of Stalin evoked in order to wage this war successfully. Thus our experiences in Russia were a definite confirmation of the Bolshevist theory and of the practice as we had learned about it before.

Q. What orders did you give to the Einsatzgruppen and Ein-

satzkommandos for the security of the rear area concerning the killing certain elements of the civilian population?

A. Before I testify to the various facts, I would like to say the following: The men of my group who are under indictment here were under my military command. If they had not executed the orders which they were given, they would have been ordered by me to execute them. If they had refused to execute the orders they would have had to be called to account for it by me. There could be no doubt about it. Whoever refused anything in the front lines would have met immediate death. If the refusal would have come about in any other way, a court martial of the Higher SS and Police Leader would have brought about the same consequences. The jurisdiction of courts martial was great, but the sentences of the SS were gruesome. The orders for the execution in the past given in Pretzsch went to all Einsatzgruppen commanders or Einsatzkommando leaders who went along during the beginning of the Russian campaign. They were never revoked. Thus they were valid for the entire Russian campaign as long as there were Einsatzgruppen. Thus it was, therefore, unnecessary at any time to give another order of initiative and I did not give any individual order to kill people. I emphasize this, even though I was told in England two and a half years ago that the Russians had found a written order. My mission was to see to it that this general order for executions would be carried out as humanly as conditions would permit. Therefore, I merely gave orders for the manner of carrying out these executions.

Q. What were these orders?

A. These orders had as their purpose to make it as easy as possible for the unfortunate victim and to prevent the brutality of the men from leading to inevitable excesses. Thus I first ordered that only so many victims should be brought to the place of execution as the execution commandos could handle. Any individual action by any individual man was forbidden. The Einsatzkommandos shot in a military manner only upon orders. It was strictly ordered to avoid any maltreatment, undressing was not permitted. The taking of any personal possessions was not permitted. Publicity was not permitted, and at the very moment when it was noted that a man had experienced joy in carrying out these executions, it was ordered that this man should never participate in any more executions. The men could not report voluntarily, they were ordered.

Q. What did you do to prevent a wide interpretation of these execution orders?

A. It was forbidden that the commandos undertake any executions outside of the territory occupied by the German army.

This became necessary in Chernovitsy. This was especially necessary after 10,000 Rumanians had been driven into the German area of occupation, and it became acute for Odessa, when the Rumanians tried to carry out executions beyond our orders. The commandos had the order during the execution of Communists to execute only those persons who by their proved deeds and conduct definitely represented a danger to security. Families were never seized, neither those of high functionaries nor of commissars nor of any other person. If, on the other hand, it was said that children were executed at Kerch, this was done without any connection with the Einsatzkommando there.

Q. Why did you not prevent the liquidations?

A. Even if I use the most severe standard in judging this, I had as little possibility as any of the co-defendants here to prevent this order. There was only one thing, a senseless martyrdom through suicide, senseless because this would not have changed anything in the execution of this order, for this order was not an order of the SS, it was an order of the Supreme Commander in Chief and the Chief of State; it was not only carried out by Himmler or Heydrich. The army had to carry it out too, the High Command of the Army as well as the commanders in the east and southeast who were the superior commanders for the Einsatzgruppen and Einsatzkommandos. If I could imagine a theoretical possibility, then there was only the refusal on the part of those persons who were in the uppermost hierarchy and could appeal to the Supreme Commander and Chief of State, because they had the only possibility of getting access to him. They were, after all, the highest bearers of responsibility in the theater of operations.

PRESIDING JUDGE MUSMANNO: May I ask a question, Dr. Aschenauer?

Do I understand you to say, Witness, that the Supreme Commander in the East, that is of the Wehrmacht, also had orders to carry out this program of execution?

DEFENDANT OHLENDORF: I know that the Supreme Command gave the commanders for the eastern campaign who had assembled on 30 March, not only information about the measures planned, but also directives to support the execution of these measures. The fact that SS and police units were used for these executions had only one reason; namely, that there was no guarantee for a systematic execution of these orders by the army troops but that one expected demoralization if army troops would be used. As the war progressed in the Southeast this principle was abandoned.

PRESIDING JUDGE MUSMANNO: Would you say that the army

commander not only countenanced this program of executions but lent their active support to it?

DEFENDANT OHLENDORF: Yes. That is what I want to say. If I may give you two examples for that, the executions in Simferopol by the Einsatzkommando 11b were carried out on the order of the army, and the army supplied the trucks and the gasoline and the drivers in order to bring the Jews to the places of execution. The arrests of hostages were expressly carried out by order of the supreme commander of my army. He did not agree with the executions of these hostages, because the number of executions did not seem high enough to him and afterwards he told Seibert, the defendant here, to tell me that he himself would henceforth carry out the appropriate number of executions.

Q. Did you not try in Nikolaev to dissuade the Reich Leader SS from this order?

A. The situation in Nikolaev was especially depressing in a moral sense, because in agreement with the army, we had excluded a large number of Jews, the farmers, from the executions. When the Reich Leader SS was in Nikolaev on 4 or 5 October, I was reproached for this measure and he ordered that henceforth, even against the will of the army, the executions should take place as planned.

When the Reich Leader SS arrived at my headquarters, I had assembled all available commanders of my Einsatzgruppe. The Reich Leader addressed these men and repeated the strict order to kill all those groups which I have designated. He added that he alone would carry the responsibility, as far as accounting to the Fuehrer was concerned. None of the men would bear any responsibility, but he demanded the execution of this order, even though he knew how harsh these measures were.

Nevertheless, after supper, I spoke to the Reich Leader and I pointed out the inhuman burden which was being imposed on the men in killing all these civilians. I didn't even get an answer.

Q. Could you not have refused to support the execution of this order?

A. For that I would have had to have the feeling of the illegality and the possibility of appealing to a higher authority, but I had neither of them.

Q. Could you not have, after a certain period of time, tried to evade this order by sickness?

A. As long as I thought in political terms, I no longer considered myself as an individual person who only could think and act responsibly for himself. After I had once become Chief of the Einsatzgruppe, I felt responsible for the 500 men of this group. By simulating illness, I could have evaded the mission,

but I would have betrayed my men if I had left this command. I could not leave this task and I would not have been convinced that my successor would care for his men in the same manner as I did. Despite everything, I considered this my duty and I shall consider it today as much more valuable than the cheap applause which I could have won if I had at that time betrayed my men by simulating illness.

Q. Did you issue orders of execution?

A. No.

Q. Wherein lies your participation in the carrying out of these executions?

A. It is in three points. As far as the transportation conditions permitted, I convinced myself before the large executions whether measures had been taken at the place of execution, which would make possible the conditions I set down for these executions.

The second, in order to take some burden from the Kommandos, I ordered that other distant Kommandos be detailed to support that Kommando which had to carry out an execution, and third, that, as far as possible, I tried either personally or through my men to carry out unexpected inspections during these executions. I wanted to make sure in that way that my orders about the manner of execution were being carried out.

DR. ASCHENAUER: In the indictment it says that the task of the Einsatzgruppen was, first, to follow the German army into the eastern territories, and to eliminate Soviet functionaries, gypsies, Jews, and other elements of the civilian population which were considered racially inferior, or politically unwanted. Would you say something about that, Witness?

DEFENDANT OHLENDORF: First, the Einsatzgruppen and Einsatzkommandos never had the task to eliminate groups of the population because they were racially inferior, and even so that was not the main task. It was an additional assignment which, in itself, was foreign to the actual task of the Einsatzgruppen and Einsatzkommandos, because never was such a task of the security police or of the SD for that matter—and never by any means, as it is mentioned in another place in the indictment—were they trained for such exterminations and executions. Rather, the general task of the Einsatzgruppen and the Einsatzkommandos was that the security of the army territory in the operational theaters should be guaranteed by them, and within the framework of this security task the execution order was, of course, one of the basic orders. But, in reality, the Einsatzgruppen's task was a positive one, if I leave out this basic order for exterminations and executions. It must be realized, of course, that a group of about 500 people who, on the average,

had charge of an area of 300 to 400 square kilometers, could not terrorize such an area, even if they had wanted to do so. Therefore, if we regard it intelligently these tasks could only be called positive ones, and as such they were developed by myself. The first experiences I collected was when the task was transferred to us by the army to harvest the overdue crop in the Transistria. The larger number of Kommandos for weeks dealt only with this one task of harvesting in Transistria; I had given orders for this measure which was the basis of my policy altogether. First, the institution of a self-administration, as it were, in the communities and the communal settlements, and also in the municipalities; secondly, a recognition of private property; thirdly, the payment of wages: the population received for each fifth sheaf of the entire harvest. I guaranteed this wage, even to the Rumanian authorities. Fourth, cultural places were restored—that is, the population was supported in restoring the cultural centers and they were inspired to take up a new cultural life. It is not for me now to describe or discuss the success which this had with the populations of such places. I can only state that because of these measures the population was on our side, and they themselves reported any disturbances which might happen in these territories. Therefore, by this positive winning over of the population, the security of the territory internally could be guaranteed, and actually, in our territory a partisan resistance movement did not come into existence, but it was formed by external elements and was artificially extended.

Concerning the security tasks, there were also tasks of reporting to the army about the atmosphere within the population, the reaction of the population to German measures, and what disturbances and damages happened in the area on the part of the Germans. In this manner plebiscites could be arranged which were useful to the population and which saved us police measures. The situation in the Crimea was much more difficult, although I was there a longer time than anywhere else at a stretch, and I had the possibility to prepare political measures. Even here the institution of friendly measures succeeded in establishing a sort of confidence relationship between the population and the SD agencies. When, in January 1942, the danger arose that we would lose the Crimea, the Tartars, also the Ukrainians, voluntarily put themselves at our disposal for military service. The army left it up to me to deal with the political situation in the Crimea. At that time I could not accept the Ukrainians into the army, but the Tartars put 10 percent of their male population at my disposal within three weeks, absolutely voluntarily. Here, self-government and self-administration was granted to all parts

of the population that is, those units, those communities with a Ukrainian majority had a Ukrainian mayor; the Tartars got a Tartar for their mayor; the Greeks got a Greek; and the Russians got a Russian. These measures were extended in winter as a support when the danger of famine arose in the south. Thus, the actual security task was a positive one and was to be achieved by positive measures.

Q. Did the combat against armed bands belong to your sphere?

A. No. That was not within my sphere. But, in the Crimea—especially after repeated landings of the Russians in Feodosiya, Kerch and Yevpatoriya from the north, east, and the west, with the ultimate aim of the Yaila Mountains—the whole Crimea was systematically filled with enemy agents and spies and those strongly executive tasks, as, for instance, band intelligence, became an essential task which was assigned to us by the army. To my great regret the forces of the army in the Crimea were so small that for months the Kommando 10b and parts of the Kommando 11b had to be assigned to fight armed bands. This assignment, as well as the combating of armed bands, was under the army command, that is, the command of the various army units which held the front sectors. We ourselves were only subordinates and were outside our actual field of activities.

Q. What tasks were given to you as chief of the Einsatzgruppe within this activity of the Einsatzkommandos?

A. It was in keeping with my own method that I kept the staff of the Einsatzgruppe very small. I had merely one, or possibly two, departmental experts, and one adjutant, the defendant Schubert, who was also the manager of the business office. That was my whole staff who had to deal with the matters. I had to be in the headquarters of the army, the local headquarters, that is, in order to establish and guarantee the permanent contact between the Einsatzgruppe and the army; I was actually the point of contact between the army and the Einsatzkommandos. My main task was to carry out the orders of the chief of the SD, the security police and the too frequent orders of the army, and to adjust them, and to take care that the Einsatzkommandos, on the basis of the general situation in an area, were committed in the right tactical manner. Thus, for instance, we had to hunt down saboteurs, enemy agents, or make out intelligence reports, or gather intelligence about partisans, or whatever the situation required.

Q. I now turn to the documents. * * *

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Q. My first question on this subject—Introducing the evidence against the members of the Einsatzgruppe D, the prosecution

under Exhibit 149 produced Document NO-2661, Volume III D, and they have remarked that the operation and situation report No. 10 concerned activities of the Einsatzgruppe D from 1 until 28 February 1942, in which it is shown that all Jewish areas in the eastern territories are to be cleared, by transporting the Jews to ghettos and those who resisted the German regulation would be shot. Jews would also be shot in order to prevent the spreading of epidemics. Would you comment on this, Witness?

A. In this document the prosecution starts from the wrong assumption insofar as it is not a report from the Einsatzgruppe D, because in this document, independently from individual reports of the group, summaries were made independently of the original reports. Only from the location signs can one conclude which territory is meant for the individual Einsatzgruppen. Of Einsatzgruppe D there is only one small remark three or four times in this lengthy document, the content of which has nothing to do with the charge of the prosecution. This paragraph is mentioned twice. The error seems to me based on the fact that the prosecution confuses the term "Eastern Territory"—"Ostland." Evidently it takes the term "Ostland" to mean the whole of Russia, while in reality "Eastern territory" in German usage is an administrative term by which the three Baltic countries are meant—Lithuania, Latvia and Esthonia, and the charge of the prosecution against Einsatzgruppe D, is the content of what is being reported from this eastern territory.

Q. I show you Exhibit 9, Document 2620-PS, in Volume 1, page 40. It is your own affidavit of 5 November 1945, and there it says—

"In the course of the year, while I was leader of the Einsatzgruppe D, they liquidated" (the Einsatzgruppe, that is), approximately "90,000 men, women, and children." What do you mean by "approximately"?

A. I have been interrogated about my activities in the Einsatzgruppen for two and a half years now, and during all that time I have always tried to avoid naming figures because the numbers of executions I do not actually know.

I don't know today under what conditions these sentences were signed by me. This is an affidavit which was chosen from a number of ten or twelve. Even then, that "approximately" meant that I did not actually know. I can assure the Tribunal that in any oral remarks I might have made during these interrogations, I avoided as long as I could naming any figures whatsoever. If, of course, the figure 90,000 was named by me, I always added that of this, fifteen to twenty percent are double countings. That is on the basis of my own experiences. I do

not know any longer how I could have remembered the number of just 90,000, because I did not keep a register of these figures. The "approximately" must have meant that I was not certain.

From the documents of the prosecution it becomes evident—and my own men reproached me for it—that I was wrong in naming the figure 90,000. It is evident that I mentioned this number 90,000 by adding a number of other figures. I do not mention this in order to excuse myself, as I am perfectly convinced that it does not matter for the actual facts whether it was 40,000 or 90,000. But I mention this for the reason that, in the situation in which we are today, politically speaking, figures are being dealt with in an irresponsible manner. The material and the value of man seems to become so unimportant that the play with millions does not seem to be of any particular importance either.

Herr Auerbach* mentions the figure of 11,000,000 in relation to Germany. Not the minutest part of these millions have ever as much as seen a concentration camp. The International Military Tribunal named the number 2,000,000 for elimination in the Eastern territories. The prosecution in this trial is slightly more modest and only mentions the number of 1,000,000. It is not for nothing that the prosecution deals with only a small portion of time concerning the activities in the Eastern territories because after this period, there were no activities on the part of the Einstazgruppen.

But even if I add the figures mentioned by the prosecution in these documents, figures occur up to 460,000. I must now state solemnly that in the Reich Security Main Office, Heydrich, Mueller, and Streckenbach, and all the others who knew about these matters, intentionally exaggerated and invented the numbers of Einsatzgruppen A, B, and C. In the case of B, I mean the period of Nebe especially. I am convinced that these figures, which, if I add the numbers in the documents, are not even half of what the prosecution charges me with, are exaggerated by about twice as much. I believe that it is quite evident that these figures should be compared with others and looked upon as the Soviet, the Bolshevik figures. Compare these figures, as I say, with the number of civilian population figures which for the same reasons,—if from other motives perhaps, but in an inhumane manner—were murdered because this is what happened while I was in command of the Einsatzgruppe.

Q. Witness, you speak of exaggeration and double counting. Do you refer, when you maintain that, to Document NO-3148,

* State Commissioner for racial, political, and religious persecutees in Bavaria; later Attorney General of the Bavarian State Office for Restitution.

Prosecution Exhibit 95, and Document NO-3147, Prosecution Exhibit 96?

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Q. Furthermore, to Document NO-3137, Prosecution Exhibit 76; also Document NO-3159, Prosecution Exhibit 85? In these documents there are numbers which I would like you to comment on.

DEFENDANT OHLENDORF: I should like to contest this figure, the figure mentioned in Volume II-C. There it says that from 16 September until 30 September, 22,467 Jews and Communists were executed and that the total figure is 35,782. In Document Book II-D, it says under "Einsatzgruppe D, Location Kikerino, this area freed of Jews by the Kommandos. From 19 August to 25 September 8,890 Jews and Communists were executed. Total number, 17,315." There's a question mark here. In the next sentence it says, "At the moment the Jewish question is being solved in Nikolaev and Kherson. In each case approximately 5,000 Jews were apprehended." This operational situation report is from 20 September. On the next page, Document NO-3147, Prosecution Exhibit 96, there is the operational situation report from 26 September 1941. There under "Einsatzgruppe A" the location of Kikerino is stated. I do not know whether that was an actual garrison of the Einsatzgruppe A, but at any rate I know that this location was never a location of the Einsatzgruppe D. In this operational situation report, almost literally—under Einsatzgruppe D with the location of Nikolaev—the same subjects are mentioned as in the operational situation report of 20 September.

In their indictment the prosecution said that they were submitting as documentary evidence the reports of activities of Einsatzgruppen A and D; but actually up to this moment, apart from the reports of the Einsatzgruppen to the army, they have submitted no original reports. These two subsequent operational situation reports, which could be controlled and checked up on very easily in Berlin, show very clearly how far the original reports are removed from the contents of these operational situation reports. It is my opinion that from the operational situation reports, not a single sentence can be identified with a sentence of an original report from the Einsatzgruppen and the Einsatzkommandos, but on the contrary, as becomes evident from these two reports, the operational situation reports are made up from the original reports, and they are full of mistakes and are not compiled with the viewpoint of passing on accurate figure reports.

If this had been the idea, one could have attached these reports

to one another in copy. But as a matter of fact, they have been edited. According to my memory, these reports concerning the 5,000 Jews in the Nikolaev zone are correct, but, of course, only once, not twice. If now on page 49, II C, under 2 October, (NO-3137, Pros. Ex. 76) it says that between 16 September and 30 September, 22,000 Jews and Communists had been executed, this is an amount which during the occupation of the Einstatzgruppen in this territory did not exist in that area. During this time the Einsatzgruppe was in charge of operations in the Nikolaev-Kherson territory and the territory east of the Dnepr River, so far as it was already within our own territory of command. In the operational situation report of 18 October, in document book 2-D, on page 60, (NO-3147, Pros. Ex. 96) it says, "During the time of report, the solution of the Jewish question was dealt with especially in the territory east of the Dnepr River; the territories newly occupied by the Kommandos here freed of Jews." Then it says, "including those territories east of the Dnepr River, 4,091 Jews and 46 Communists were executed." This figure, is first of all outside the report of the time of 26 September and, secondly, it states the actual figure which existed in this territory at the time. It becomes evident, therefore, that the report of 22 October cannot be correct, under any circumstances. It can here only be an addition, or the using of the reports from other Einsatzgruppen. There must be another exhibit, the number of which I don't remember, from which this becomes quite evident, namely, the operational situation report of the beginning of November. May I have a look at this? That must be the Operational Report No. 129 of 5 November 1941 (NO-3159, Pros. Ex. 85). Here approximately 4 weeks later this report of Einsatzgruppe D in that period reports that 11,000 Jews were executed. It must be noted that in situation report of 5 November although in October the total number had been mentioned as 40,000; the situation report of November states there are 31,000. Here is a contradiction which cannot be clarified from the documents which proves the questionability of the evidence of these documents, not only regarding these figures but these individual reports in these documents.

Q. I further offer Document NO-2837, Prosecution Exhibit 58. It is an operational situation report from 29 August 1941. Furthermore, Document NO-2948, Prosecution Exhibit 89; also Document NO-2840, Prosecution Exhibit 154, would you comment on the statements in these documents concerning the statements, whether they contradict each other?

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DR. ASCHENAUER: I now take Document NO-4538, Prosecution

Exhibit 153. The prosecution charges that the Einsatzgruppe D from their own initiative founded a ghetto and used the Jews for executive works.

DEFENDANT OHLENDORF: From the document itself the contrary becomes evident. I quote literally. "On the initiative of the Einsatzkommando the Rumanian town commander in the old city erected a Jewish ghetto." The subsequent report that from this ghetto Jews were assigned to working groups is a logical measure, which was taken by the town commander of the Rumanians who was in charge of the administration of the ghetto.

Q. In the same volume there is Document NOKW-641, Prosecution Exhibit 155, which I submit to you. The prosecution wants to prove from this document that the subunits of Einsatzgruppe D carried out the execution orders conscientiously.

A. This document is one of the very few which are true copies of the original report. However, it does not become evident from this what the prosecution wants to prove.

On page 43 it says literally "also otherwise, all executions which were ordered by me and carried out by me,"—that is the man who wrote the report,—“were carried out in the manner as ordered by Einsatzgruppe D,” which is exactly the contrary of what the prosecution claims. But this document is very interesting otherwise on the following page and that in a twofold way. First the army here gives an instruction to the Einsatzgruppe D which is signed by the Ic AO (counterintelligence officer). His name was Riesen who was a major on the general staff. This is countersigned by "Ru". That must have been a mistake. It probably should read "Ra". That is Ranck, the superior of the major. The document also says that the Einsatzkommando of the security police with the Twenty-Second Infantry Division is within the combat front of the division. That was a condition in which all Kommandos or Teilkommandos of the Einsatzgruppe found themselves. It says literally, "It is to be expected that all measures, especially public executions in the town of Genichesk, the setting up and determining, etc., of a Ukrainian protection unit, etc., will be taken after agreement with the intelligence officer has been reached." This document speaks for itself and I do not have to comment on it, but as the document is now being dealt with I should like to deal with another point of the document which is not being under debate yet. Although at that time I held the highest authority which an SS colonel [Standartenfuehrer] can hold, and as it is not customary in the army, in particular in the case of public executions, that an order to another unit should be signed by a man who is inferior or at least not as high as the receiver in his rank, the major here

writes to the Chief of the Einsatzgruppe who is an SS colonel [Standartenfuehrer], which incidently at that time was an even higher rank than that of an Oberfuehrer [senior colonel].

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DR. ASCHENAUER: I now take Document Book II-C and I show you Document NO-2934, Prosecution Exhibit 78. It is on the German page 55, page 4 of the document itself, page 6 of the original, there is the following sentence: "Paleski considerably devastated. Rumanians content themselves with looting everything. Pogroms could not be achieved so far." I should like you to comment on this quotation.

DEFENDANT OHLENDORF: The sentence, "Pogroms could not be achieved so far," means a tactical term for the sake of the Berlin office, because contrary to the orders of Berlin I had forbidden my Kommando to instigate pogroms. I refused to take such measures because I did not agree with the method and the effect.

Q. I have here Document Book II-D. I shall refer to Document NO-3359, Prosecution Exhibit 84. It is on German page 7. This is an Operational Situation Report of 8 April 1942. From this document I quote as follows: "Inhabitants of the village of Laki near Bakhchisarai were in constant contact with partisan groups; they gave them billets at night and supplied them with food. On 23 March a penal action against this village produced such huge quantities of food that the partisans would have been able to live on this until the next harvest. The 15 main participants, among them the mayor, were shot, all inhabitants were evacuated and the village was burned down." I should like you to comment on this document.

A. This document is an example for many. I should like to repeat and state again that combating the armed bands and the retaliation measures which were carried out for such villages which assisted the bands, all came under the order of the staff for antipartisan warfare; usually these actions were carried out by the local army units, that is by the field divisions of the territory concerned.

In this situation report, as in many other situation reports, a general activity and a general situation report is given. That means naturally in reporting, the situation in the territory is discussed, and not only our own activities but also all the other happenings and events of the locality itself, quite independently of who created these situations.

PRESIDING JUDGE MUSMANN: Witness, just as a matter of information, looking at this page about which you have been

testifying and directing attention, particularly to the phrase, "and the village was burned down," would you please explain just what military objective was being aimed at in destroying the village? Let's assume for the purposes of the question that there was a reason for liquidating those who were opposing your forces, that is to say the partisans. Just what was attained in the actual physical destruction of the buildings?

DEFENDANT OHLENDORF: These villages which I talk about were at the foot of the Yaila Mountains fill the southern part of the Crimea near the coast. In the Yaila Mountains there were about 10,000 partisans at my time. Naturally, these partisans were not sufficiently supplied with food because in the mountains and on the south coast there had already been famines, even during peace. Therefore, the villages, that is the north part, were natural reservoirs for food supplies for the southern part. That means these villages were the only places where partisans could go, especially in winter. The reason for burning and destroying these villages were twofold; one, at first the village that is talked about here was a hiding place for partisans, and thus a base was to be destroyed for partisan activities; and secondly, after the army had repeatedly threatened to burn down villages if the villages supported the partisans actively, in such a case when a village actually supported the partisans it was then to be a deterrent for the inhabitants of other villages.

PRESIDING JUDGE MUSMANNO: Very well.

DR. ASCHENAUER: I have Document Book II-A in front of me. It is Document NO-3235, Prosecution Exhibit 54. It is an operational Situation Report of 23 March 1942. It is reported about shooting of mentally insane people although it is not evident from the document how many mentally insane people were actually shot. Could you comment on this?

DEFENDANT OHLENDORF: The reporting of this situation report was made at a time when I myself was not present in the Crimea, but I can assure the Tribunal that my Kommandos did not carry out shootings of mentally insane. I had forbidden this explicitly, and I repeated this again and again because the army asked us on various occasions to carry out shootings of mentally insane people. It is for this reason that it is impossible that this report deals with actions carried out by one of my own Kommandos. Furthermore, I think this is a false report because the territory at the south of Karasubazar consisted mainly of woodlands and clay huts. There were no major villages and there was certainly no asylum for insane people.

Q. Witness, I must remonstrate you here and that is from Document Book III-D, I want to put to you Document NOKW-604,

Prosecution Exhibit 150. I shall show you this document and I should like you to comment on it.

A. This Document NOKW-604 is a report of the Sonderkommando 11a to the army. In the last paragraph it says, that "Romanenko, on the 9 September 1941, for hereditary biological reasons, was executed." I do not remember this case in detail, but the reason probably was that—or at least this becomes evident from the document—that the Sonderkommando 11a received a direct order from the Commander in Chief of the Army that Romanenko should be punished as deterrent and, if possible, should be executed in public by hanging. The Kommando investigated this case, as becomes evident from the document, and did not find the reasons confirmed for this request by the Commander in Chief. It does not become evident from the report why the Kommando, in spite of this, executed the order, especially as it gives the reason as: "hereditary biological." I do not know whether I ever saw this report, but if I had seen it I would not have agreed with it, but I assume that it went to the Commander in Chief immediately after the Commander in Chief had been put in charge of this Kommando.

Q. Witness, from the same document book I now turn to another document. Would you look on page 15? It is Document NOKW-631, Prosecution Exhibit 151. I ask you in connection with this document, why did you try to justify yourself against the army concerning the confiscations of watches and other valuables taken during the anti-Jewish actions?

A. I remember the incident very well which led to my writing this report to the army. Some officers had complained to the Chief of Staff that I refused to turn over money to the town of Simferopol without a receipt. Furthermore, complaints had been received that I had failed to turn over as many watches as I should have done after the confiscations had taken place. The army sent a remonstrance to me and asked me where the valuables were. As the army, by their own position, had the authority to ask me for such an explanation of the facts, this is the answer to the complaints of the army.

Q. I should like you to keep the same document book that is III-D, and to look at Document NO-4489, Prosecution Exhibit 152, which is on page 21 of the German. The Einsatzgruppen are charged that they had looted Jewish apartments and had taken away property which they put at the disposal of Ethnic Germans.

A. What is called looting here was the carrying out of the confiscation and utilization decrees which I simultaneously had received from the Reich Security Main Office and the army. The apartments as well as the furniture were put at the disposal

of people who had lost all their property and who could prove that or the material and the apartments were administered by the local commandants in their respective localities of command and were put at the disposal of those people who were looking for apartments. Furthermore, apart from these two lines, this report, which contains about twenty pages, is an excellent explanation of the terror under which the German areas lived for twenty years, and which only proves what I said yesterday, that as a rule three male grown-up members of each family in the course of this time were taken from the family and their fate could not be established.

Q. Those who looked for accommodations were, therefore, Tartars, Ukrainians, and Ethnic Germans, etc. Witness, during what period in the war were you chief of Einsatzgruppe D?

A. I was chief of the Einsatzgruppe D from June 1941 until June 1942, inclusive; however, from March 1942 to June 1942 there were considerable interruptions.

Q. What was the nature of these interruptions?

A. From the beginning of March until 26 April I was on leave in Berlin. At the end of April I had to go back to Berlin until the beginning of May. After the death of Heydrich on June 1942, I was called to Berlin, and I only returned in order to give over my office to my successor.

Q. Did you, as the Chief of the Einsatzgruppe, operate with the Einsatzgruppe and its units in Russia independently?

A. No. My official position was Representative Plenipotentiary of the Chief of the Security Police and the SD in the 11th Army. As such, for the tasks which I had to carry out within the army, Einsatzkommandos had been subordinated to me as units with whom these tasks were to be carried out.

Q. Will you explain to us the significance of this position in the army and the activity of the Einsatzgruppen and Einsatzkommandos?

A. I was given this assignment on the basis of an agreement between the High Command of the Army and the Supreme Command of the Armed Forces on the one hand and the Security Police and the SD on the other. This decree was known as the so-called Barbarossa Decree. On the basis of this decree the institution of these mobile units had a twofold significance within the framework of the army units. On the one hand, special units were subordinated to the army for tasks which they had so far carried out on their own authority and with their own units. On the other hand, Heydrich, Chief of the Police and the SD, was sole authority to give direct instructions to these Einsatzkommandos, and, also to receive the new reports direct with the reason and

purpose of preventing an expected collaboration of the adversaries in the Reich itself and in the occupied territories at the front. The essential thing was that these activities were to be carried out by me and the Einsatzkommandos in the assigned territories and that was within the territory of the army; this means that the task and activities of the Einsatzkommandos were under supreme authority of the Commander in Chief of the Army. He held the executive power within his territory, and his authoritative power had been laid down in the Reich defense law, as well as in a decree of the Supreme Command of the Armed Forces regarding the position of a Commander in Chief in the operational theater. According to this, the decrees issued by the Commander in Chief of the Army were of primary importance and had to be complied with first. Therefore, it was necessary for the units to carry out all activities and tasks in a form which was in agreement with the intentions of the army. That means the army had either to approve the action or agree with the plans and activities of the units within the framework of their own tasks. By this I mean that the activities of the Einsatzkommandos, these special task forces, were formed to comply with tasks given by the army itself. They had to attempt to fulfill the assignments which were meant for these special units. It was their duty to accept special assignments which, according to the authority of the Barbarossa Decree,* could be asked for by the army.

Q. This is the general program. Was this factual and legal relationship between the army hierarchy and the Einsatzgruppe and Einsatzkommandos also put down in individual decrees?

A. Yes, this relationship had been regulated by me in the agreement I mentioned. It was left to the discretion of the army to determine the operational theater of the individual Kommandos, the strength of the Kommandos, and the period of activity of the Kommandos. Furthermore, it also had been determined that for operative necessities the regulations and decrees of the army had priority. What had not been determined, however, was the current competition of orders which might occur within the decrees of the chief of SD and the security police and the chief of the army. It was often the case, that it was more or less left to the skill of the officers in charge of the respective agencies to find an objective solution in case of such competitive orders. For

* The order abolished court martial proceedings in the eastern territories and authorized any German officer to order executions without trial of civilians who allegedly committed crimes or were merely suspected of having committed crimes against the occupying power. The order further stated that members of the German Armed Forces who had committed crimes against the civilian population need not be prosecuted.

operative reasons, however, it was in the end always the highest authority which had the right to make the final decision.

Q. Could you tell us of the effect of the Barbarossa Decree on your own position and your activities and the activities and the position of the Einsatzkommando?

A. In explaining one document I have already explained how the army tried from the very first day not to take notice of me at all as the Chief of the Einsatzgruppen and to treat the Einsatzkommandos as their own army units. We were auxiliary units of the counterintelligence officer. This becomes apparent also from another document. It is Document NOKW-584. It is in Document Book III-D, in which the counterintelligence officer gives us a picture of how in his own tasks of espionage of armed band activities and the setting up of plans for the combat against such bands, apart from the field constabulary and his own units, also the SD delivered news reports which he himself used for his own purposes.

Q. What was your relationship with the Chief of Staff of the Army?

A. As I have already pointed out, neither the Commander in Chief nor the Chief of Staff really took notice of me at all when I first reported to them. When, therefore, on the strength of the position as described by me just now the army made use of the Kommandos without my knowledge, I had a serious dispute with the intelligence officer. The consequence of this was that I was called to the Chief of Staff, Colonel Woehler,* and he received me by saying that if the collaboration between the army and myself would not improve, he would ask for my dismissal in Berlin. I believe that this fact gives a good picture of my relationship with the Chief of Staff. For although the Chief of Staff was a colonel, and I, as a Standartenfuehrer also held the rank of a colonel, the actual position held in the army becomes abundantly clear. By the army I was considered a unit leader of just about 500 men. That equals a commander of a battalion and I was treated accordingly. I was not only ordered to see Colonel Woehler but even a major who was the intelligence officer ordered me to come and see him and he avoided expressly to address me with my rank—a custom usually adhered to in the army—in order to show that he, even as a major, was above a Standartenfuehrer.

PRESIDING JUDGE MUSMANN: I understand you to say he was a colonel.

DEFENDANT OHLENDORF: Who?

* Woehler became Brigadier General in 1941. Defendant in case of Wilhelm von Leeb, et al. See Vols. X, XI.

PRESIDING JUDGE MUSMANN: This officer with whom you were speaking.

A. The last one I mentioned was a major. The intelligence officer with whom I had to deal immediately, and from whom the Einsatzgruppe received most of the orders, was a major.

Q. Yes. Were you so under the control of the army that a recommendation from him for your dismissal would have had weight and effect in Berlin?

A. I didn't hear the question.

Q. I see. I am sorry. Were you so under the command of the army that a recommendation from this officer to Berlin could have worked the dismissal which he threatened?

A. Immediately, yes. There is no doubt, because it was in Himmler's interest as to this assignment to extend this first footing he had won for the territory of the army by means of a close collaboration with the army, and it is generally known that, as a rule, not one officer of Himmler was ever covered by him when in the case of complaints the complainant was a person who was of importance to Himmler himself, and this was certainly the case of Keitel, the Chief of the Supreme Command of the Armed Forces.

DR. ASCHENAUER: Would you tell the Tribunal the content value of your position? What were you in command of? What was your power of decision and your authority? What was the territory of your authority?

DEFENDANT OHLENDORF: I have already explained, that the units of the Einsatzgruppen were essentially auxiliary organs of the intelligence officer. The field of tasks which had been definitely established was to bring about secure collaboration with the army. That was the general framework of the order, and within the framework of this order there was the one frequently discussed here, namely, the liquidation of certain groups of people in order to achieve the aim of guaranteeing the security within this territory. My authority consisted in safeguarding the communication lines of the army as well as the police security and in deciding whether or not the Einsatzgruppen should carry out such executions. It was outside my authority to stop the Einsatzkommandos from carrying out such executions, because this was the basic order which came from the Commander in Chief of the Armed Forces and which was not within the power of authority of the unit chiefs. My authority only started in carrying out these orders, that is, when deciding in what manner these orders were to be carried out, which were determined as the main task of security. The orders which were issued by the High Command currently in this connection show that the

authority for measures to guarantee the security in these areas was never exploited by me. Furthermore, the fact that in winter 1941-1942 currently Kommandos were taken away from my own units by the army and became subordinated to the fighting troops proves perhaps best that I, with my own Kommandos, was only a little wheel at the lower end of the machinery, which the army units kept in the Russian territory.

Q. Could you give us a few examples of your own position which might be of interest here, for instance, in the assigning of Kommandos?

A. I think I have given an example for this just now. There is only to be added that, as I have already basically explained before, special tasks were transferred to me by the army in which it was merely my task to determine the way in which they should be carried out, for instance, in espionage of armed band activities or recruiting of Tartars, or, for instance, the harvesting or establishment of district administration, or whatever might have come up. My power of authority again merely extended to executive measures and only insofar as the army did not deal with them itself.

Q. The concluding question concerning the set of questions concerning Russia—What was your power of decision concerning execution orders?

A. I do not think I have to repeat this. As to the orders for execution, even if applying the harshest standard, I had no possibility whatever to circumvent them.

Q. I now come to the final questions—membership in the SS and SD.

Witness, we heard yesterday that in 1926 for a few months, lists were made of the members of the SS. What was the position after 1926 until 1936?

A. From the time 1926 to 1936 I had no immediate contact nor any immediate connection with the SS. I was not a member of the SS, either.

Q. By joining the SD, did you become a member of the General SS—the Allgemeine SS?

A. No. I did not become a member of the Allgemeine SS.

* * * * *

Q. Witness, whom did you fight against in particular through the SD?

A. In particular the Reich Leaders Ley, Goebbels, and Bormann.

Q. Why these three in particular?

A. Because these three endangered the moral value of the human being like nobody else. Ley, because he interfered with the independent development of social existence and tried to

eliminate the private sphere of the human being. Goebbels, because he denied the independent mental development, the development of consciousness, and in that way, the inner freedom of the human being, and in questioning all absolute values he became one of the earliest exponents of modern existentialism and embodied actual nihilism; Bormann, because he eliminated the natural tension between individual and community to the disadvantage of the individual by trying to subordinate these individuals to a certain master clique within the Party. These three together then attacked the value of the human being as created by modern times.

Q. How did SD Inland (domestic affairs) fight this power machinery?

A. In two ways. One was—the SD supported all positive powers which opposed these tendencies—and secondly, it disavowed in its reports the measures of these persons, so far as they expressed their inner views in their measures. That way, in a great number of cases, the realization of these tendencies in their development, as I have noted, was hindered or eliminated altogether.

Q. How could the SD Inland develop to become an organization of opposition as you described it to us?

A. From the very beginning, it retained its independence; it refused any executive power and was prepared to show its power only by making reports, whose form and contents were beyond reproach.

Q. What was the aim of the SD?

A. The aim was the following: To measure our entire reporting activity by applying the same criterion—how do the authorities react to the individual and how does the individual react to the authorities—we attempted to waken hopes in the individual by giving them a chance for development into what we saw in them, namely, human beings who in their aim to gain consciousness and inner freedom found a way of living and results in all spheres of life and who were suitable to support these human developments.

Q. You used the words “inner freedom.” What do you understand by the word “freedom”?

A. By “freedom” I mean the voluntary ties of the individual, the motives of his will and actions, the obvious will of God, in nature and history.

Q. You know that in public a different picture of the SD always existed and still exists, in particular, the SD was considered a great power which was omnipotent in a way. Will you please state your opinion on this?

A. In 1936 when I took over the economic section of the SD

this activity had to be camouflaged. My department was not called Economic Department but ST-4; meaning Staff Department No. 4. In 1937 I was not in a position to make any report at all without getting permission from Mr. Kranefuss* first who was the economic expert in the personal staff of the Reich Leader SS. In 1938 we made the first great report, the contents of which dealt with sabotage of the Railway Administration and further extension of the German communication network. This report was read by Heydrich and put in the files, that is, it disappeared in the safe because this mighty SD was not in a position even to inform a third person that they were dealing with such questions. In 1939, after the war had started, we had the courage to reveal obvious damages in the beginning of the war by making reports on them and here chance assisted us because Goering saw these reports and took them and used them in the sessions of the Reich Defense Council meeting as questions to the departmental representatives. He now desired to be informed in this way. Without knowledge of the connection, for the first and only time in the history of the SD, he permitted these reports to be distributed. In 1940 he confirmed them again, when a number of district leaders [Gauleiter] objected strongly to these reports. But this legalization did not last either and in spite of the importance of these reports the SD was only an illegitimate child which one did not like to see and wanted to hide as quickly as possible. As the development in 1942 and 1943 shows we were allowed to make official reports to the outside world no longer; Goebbels prohibited it. The power we had until the end was the result of the personal influence of my individual experts using their knowledge of their subjects to inform those who were interested in this knowledge. The SD never constituted an active power. My personal relations I need not repeat in this connection. I explained it in detail yesterday.

Q. I have finished my direct examination.

* * * * *

CROSS-EXAMINATION

MR. HEATH: Mr. Ohlendorf, to speed this examination I'd like to attempt to agree with you upon one or two points. First, we shall not quarrel about numbers. You have indicated that Einsatzgruppe D under your command slaughtered something less than 90,000 human beings. I understood you to suggest to the Court that this figure is exaggerated although it appears in an affidavit which you have given. I ask you now to give the Court the best estimate you possibly can of the minimum number of human

* Business manager of the "Circle of Friends" or "Himmler Circle". See Friedrich Flick, et al., Case No. 5, vol. VI and Ernst von Weizsaecker, et al., Case No. 11, vols. XII, XIII and XIV.

beings who were killed under your command by Einsatzgruppe D.

DEFENDANT OHLENDORF: In my direct examination I have already said that I cannot give any definite figure, and that even the testimony in my affidavit shows that in reality I could not name any figure. Therefore, I have named a figure which has been reported "approximately". The knowledge which I have gained by this day through the documents and which I have gained through conversations with my men, make me reserve the right to name any figure and strengthen this reservation. Therefore, I am not in a position to give you a minimum figure, either. In my direct examination I have said that the numbers which appear in the documents are at least exaggerated by one-half, but I must repeat that I never knew any definite figure and, therefore, cannot give you any such figure.

Q. You cannot give us a minimum figure?

A. If the prosecution wishes I am, of course, prepared to give my reasons why I cannot give any figure.

Q. Well, let me ask you—perhaps I can help you * * *. In any event, I can indicate to the Court one reason why you might have doubts about the numbers. In 1943 the Reich Leader SS, Himmler addressed the SS major generals at Poznan. You are aware of that speech, are you not?

A. Yes. I have heard it myself.

Q. Perhaps you recall his complaint; I will read it to you—

"I come now to a fourth virtue, which is very rare in Germany—truthfulness. One of the greatest evils which has spread during the war is the lack of truthfulness in messages, reports, and statements, which subordinate departments in civil life, in the State, the Party and the services sent in to the departments over them."

Of course, that was in 1943. Did you exaggerate the reports which you sent to the Reich Security Main Office?

A. I certainly did not on my own initiative, but I had to rely on those things which were reported to me, and I know that double countings could not be avoided, and I also know that wrong numbers were reported to me. I have tried to avoid passing on such double countings or wrong statements, because the individual Kommandos did not know the figures of the neighbor units; nevertheless the reporting of wrong figures was not prevented—and especially the reporting of strange figures as for instance, the report from Chernovitsy. Here those figures are named for which the Rumanians in Chernovitsy were responsible.

Q. Will you tell the Court what bookkeeping and record-making system was maintained in Einsatzgruppe D to keep track of the people slaughtered?

A. In Einsatzgruppe D the various reports were received which were sent from the Kommandos to the Einsatzgruppe, and these reports were gone over and the figures contained in them were sent to the Reich Security Main Office.

Q. Well, it is quite obvious that that is what happened. But tell us now who reported for Einsatzkommando 12, say, during the first six months of its operations, the killings by Einsatzkommando 12, to you?

A. Einsatzkommando 12 itself.

Q. And who was the man who reported to you?

A. They were usually signed by the Einsatzkommando chief himself, in this case by the then SS Major [Sturmbannfuehrer] Nosske.

Q. Very well, you relied on Nosske for truthful reporting of the numbers killed by his unit?

A. I had no possibility to examine these executions because Nosske, was sometimes 200 or 250 kilometers away from me.

Q. Witness, I don't mean to cut you off, but I think if I ask you now to attempt to make your answers as responsive as possible, I shall attempt to make my questions as explicit as possible—and I believe we both shall benefit. So, I ask you again—not why you did not check up on Nosske, but simply the question—Did you rely on Nosske for truthful reports of the slaughters committed by Einsatzkommando 12?

A. I didn't understand the last part of the question.

Q. Did you rely on Nosske for truthful reports of the numbers of persons slaughtered by Einsatzkommando 12 while it was under his command?

A. I was of the opinion that these reports were truthful. In the case of Nosske, however, in one case it was brought to my attention that the report was not truthful. But that was at a relatively early stage of Nikolaev.

We found out that in this case Nosske reported figures which were not killed by his Kommando but by a strange unit.

Q. Then in one instance at least, you did find your subordinate exaggerating the number killed by his unit?

A. Yes.

Q. Do you recall any other exaggerations by any other men in the unit under you?

A. Yes, for example, in the case of 10a.

Q. Yes. Do you recall an exaggeration in the case of 10a?

A. Yes. In the case of 10a.

Q. Any other Einsatzkommando do you recall exaggerating figures?

A. Not from my part, no.

Q. So within the limits of memory and the situation you find yourself in today, it should be possible for you to give us a minimum figure based on the reports of the men who were under you, should it not?

A. I can only repeat what I already have been saying for two and one-half years that to the best of my knowledge, about ninety thousand people were reported by my Einsatzkommandos. How many of those were actually killed I do not know and I cannot really say.

Q. Very well, we will leave this after one more question. This figure ninety thousand is the best estimate you can give at this moment. I take it we must continue to read that with the qualification that you gave in direct testimony, that you think there is a great deal of exaggeration in it?

PRESIDING JUDGE MUSMANN: Mr. Heath, I do not understand the witness to say that he regarded the figure ninety thousand to be an exaggeration. He states, and he stated not only here but before the International Military Tribunal, that his estimate of the number killed by the Einsatzgruppe D during the time he was in charge was ninety thousand, and he comes to that conclusion from the reports and that is what I understand he says today.

MR. HEATH: I agree with your Honor. I had understood him to say that in the transcript his testimony was—go ahead.

DEFENDANT OHLENDORF: I am not quite in agreement with this answer, your Honor, insofar as I said that the number ninety thousand was reported as having been killed. But I cannot really say whether that number had been actually killed and certainly not that they were killed by the Einsatzgruppen, because, apart from exaggerations, I also knew definitely that the Einsatzkommando reported the killings which were carried out by other units. Therefore, I could only repeat that ninety thousand were reported.

PRESIDING JUDGE MUSMANN: Witness, you may perhaps not agree to what I have stated, but you will have to agree to what you stated yourself on 3 January 1946; you were asked: "Do you know how many persons were liquidated by the Einsatzgruppe D under your direction?" And you answered: "In the year between June 1941 and June 1942 the Einsatzkommandos reported ninety thousand people liquidated."

DEFENDANT OHLENDORF: Yes.

PRESIDING JUDGE MUSMANN: Question: "That included men, women, and children?" Answer: "Yes." Question: "On what do you base these figures?" Answer: "On reports sent by the Einsatzkommandos to the Einsatzgruppen." Question: "Were those reports submitted to you?" Answer: "Yes."

MR. HEATH: Your Honor, please, if I may interrupt? I think I can clear up the difficulty. I have the advantage of having the transcript of his testimony before me.

PRESIDING JUDGE MUSMANN: Yes.

MR. HEATH: I don't know that your Honor has had the opportunity to see it.

PRESIDING JUDGE MUSMANN: No. I have not.

MR. HEATH: He did make this statement with respect to the affidavit which you just read.

PRESIDING JUDGE MUSMANN: It is not the affidavit. This is testimony put to him in Court.

MR. HEATH: We can follow this up in the witness' testimony in direct examination. Witness, this is from your testimony of last week. You said: "If, of course, the figure of ninety thousand was named by me, I always added that in this fifteen to twenty percent are double countings, that is, on the basis of my own experience. I do not know any longer how I could have remembered the number of just ninety thousand, because I did not keep a register of these figures. The 'approximately' must have meant that I was not certain. It is evident that I mentioned this number of ninety thousand by adding a number of other figures. I do not mention this in order to excuse myself, as I am perfectly convinced that it does not matter from the actual fact whether it was forty thousand or ninety thousand. I mention this for the reason that in the situation in which we are today, politically speaking, figures are being dealt with in an irresponsible manner." That is the qualification that I had referred to.

PRESIDING JUDGE MUSMANN: But that still does not in any way take away from what he said on 3 January 1946.

MR. HEATH: I agree, sir, with you.

PRESIDING JUDGE MUSMANN: That is the testimony of that day, and it still stands now as he gives this explanation and the Tribunal sees no difference between what he said then and what he said today, namely, that this estimate of ninety thousand is based upon the report which he personally saw.

MR. HEATH: Alright, sir.

DEFENDANT OHLENDORF: With what was just read by the presiding judge of my affidavit of 3 January 1946 I agree completely.

PRESIDING JUDGE MUSMANN: Yes.

DEFENDANT OHLENDORF: Anything else which I have said on direct examination is merely a commentary to the testimony of 3 January 1946.

PRESIDING JUDGE MUSMANN: Very well.

MR. HEATH: Very well, sir. Mr. Ohlendorf, I had begun to ask

you about the Karaims [Karaites]¹ and the Krimchaks,² I think you called them. I understood that you were confronted in the south of Russia with the question further to slaughter Krimchaks. Krimchaks I understood were human beings who had come by way of Italy to Russia, and they had Jewish blood. The directive which you got from Berlin was to kill the Krimchaks, is that correct?

DEFENDANT OHLENDORF: Yes.

Q. Now, I cannot pronounce it correctly, the Karaims were another sect whom you encountered in the south of Russia, and this sect had no Jewish blood, but it did share the religious confessions of the Jews. Is that right?

A. Yes.

Q. You submitted to Berlin the question whether the Karaims should be killed, and I understood you to say that the order you got from Berlin was you shall not kill them for they have nothing in common with the Jews except the confession?

A. Yes.

Q. Now during your direct examination you told this Court that you had no idea, and that you have no cause today to think that there was any plan to exterminate the Jewish race in existence, nor that you had any information of putting it into effect. Is that right?

A. Yes.

Q. Will you explain to the Court, please, what difference there was between the Karaims and the Krimchaks, except Jewish blood?

A. I understand your question completely in reference to the eastern Jews, in the case of the Jews who were found in the eastern campaign. These Jews were to be killed—according to the order—for the reason that they were considered carriers of bolshevism, and, therefore, considered as endangering the security of the German Reich. This concerned the Jews who were found in Russia, and it was not known to me that the Jews in all of Europe were being killed, but on the contrary I knew that down to my dismissal these Jews were not killed, but it was attempted at all costs to get them to emigrate. The fact that the Karaims were not killed showed that the charge of the prosecution that persons were persecuted for their religion is not correct, for the Karaims had that Jewish religion, but they could not be killed because they did not belong to the Jewish race.

Q. I think, Witness, you answered exactly what I had antici-

¹ Sect which refused the Talmud and adopted the Old Testament as sole source of faith.

² Turkish Jews of mixed Semitic and Tartaric blood.

pated in the last sentence, "They did not belong to the Jewish Race," is that right?

A. Yes, That is right.

Q. They were found in Russia?

A. Yes.

Q. But they participated in the Jewish confession in Russia?

A. The Karaims had the Jewish faith, yes.

Q. But your race authorities in Berlin could find no trace of Jewish blood in them?

A. Yes.

Q. So they came absolutely under the Fuehrer Decree or the Streckenbach Order to kill all Jews?

A. Yes.

Q. Because of blood?

A. Because they were of Jewish origin. For you must understand the Nazi ideology, as you call it. It was the opinion of the Fuehrer that in Russia and in bolshevism, the representatives of this blood showed themselves especially suitable for this idea, therefore, the carriers of this blood became especially suitable representatives of the bolshevism. That is not on account of their faith, or their religion, but because of their human make-up and character.

Q. And because of their blood, right?

A. I cannot express it any more definitely than I stated, from their nature and their characteristics. Their blood, of course, has something to do with it, according to National Socialist ideology.

Q. Let's see, if I can understand it; we've got a lot of time, I hope. What was the distinction except blood?

A. Between whom?

Q. Between the Karaims and the Krimchaks?

A. The difference of the blood, yes.

Q. Only the difference in blood, is that so?

A. Yes.

Q. So the criterion and the test which you applied in your slaughter was blood?

A. The criteria which I used were the orders which I got, and it has not been doubted during the entire trial, that in this Fuehrer Order the Jews were designated as the ones who belonged to that circle in Russia and who were to be killed.

Q. Very well, Witness, let's not quibble. Let's come back again. What you followed was the Fuehrer Order. Now, I leave you out of it for a moment, your own idea of what should be killed and what should not be killed.

PRESIDING JUDGE MUSMANN: I disagree with you, Mr. Heath, that the witness has quibbled. I think he has stated very clearly

that his orders were to kill all Jews, that was the criterion which he followed. If he was a Jew he was killed, if he was not a Jew then they might figure some other reason to kill him but he wouldn't be killed because he was a Jew.

MR. HEATH: Yes, your Honor, I am attempting to get him to say the word blood and not the word Jews. That is the reason I was saying he is quibbling, but I am perfectly happy to leave it where it is.

PRESIDING JUDGE MUSMANN: I think he has been rather forthright.

MR. HEATH: Very well. Let's see, Mr. Ohlendorf, let's go for a moment to this order which you got at Pretzsch in the spring of 1941. Did you have any knowledge whatever of the purposes of the Einsatzgruppen before you went to Pretzsch?

A. We merely knew that the Einsatzgruppen were to be set up.

Q. But you did not know what they were to do?

A. No. Apart from the fact that one has a definite idea about missions in which people of the Security Police and the SD were assigned. That is, of course, true.

Q. Did you, at that time, have any idea that the mission of the security police would be to slaughter Jews and gypsies?

A. I could no longer say today that I had such an idea, but I don't believe so. In my opinion the order about the killing of the Jews was made known to me for the first time in Pretzsch, that is, for the Russian campaign.

Q. If you had known that that was going to be the purpose of the Einsatzgruppen to kill all Jews and gypsies and certain other categories, you would remember it today—would you not, Mr. Ohlendorf?

A. I can no longer say.

Q. You were ordered three times to join the Einsatzgruppen, were you not?

A. Yes.

Q. And twice you refused?

A. Yes.

Q. The order in the first instance came from Heydrich?

A. Yes.

Q. The second order for you to become a member of the Einsatzgruppe came from Heydrich?

A. Yes.

Q. You refused both the first and the second order?

A. Yes.

Q. Why?

A. For two reasons. For one thing, because I had not been a soldier and did not have any interest in the military; secondly,

because I was not a policeman, and had no interest for police work, and police work was against my nature; and third, because I had a genuine job to do in Berlin which I knew would not be replaced once I left it, and I wanted to do a job to which I had the best ability.

Q. How did you refuse the first time? Will you tell us the circumstances? Heydrich was your military superior, was he not?

A. Yes.

Q. You were fully convinced that every order, every military order must be obeyed without a question?

A. That is expressing it very generally.

Q. It is quite general, but to be specific, you killed all these people you have told us because you were ordered to do it, not because you wished to do it?

A. I said often enough that I personally did not kill any people. I would like you to remember that or to question me about this matter.

Q. I'll come to that in due time. I shall ask you now again how you refused the first Heydrich order to join the Einsatzgruppe?

A. Because I wanted to explain why it was not expedient for me to leave Berlin, and I said in my direct examination I was indispensable to the Reich Trade Group, that is, I had a note in my military passport which obligated me to work for the Reich Trade Group, and, therefore, Heydrich first had to consult me and remove this note. Therefore I had the chance to discuss these matters with him.

Q. And in your direct testimony you said: "Twice, I was directed to go to Russia, and twice I refused."

A. Yes.

Q. Did you go to Heydrich and say: "I refuse to go to Russia"?

A. Not in that form, of course, but we spoke about these matters, and I used the tact which is necessary when discussing such matters with a superior that is usually customary.

Q. On the second occasion what happened?

A. The same thing.

Q. Heydrich had selected you to go with the Einsatzgruppen, and twice you were able to persuade him to relieve you of that assignment?

A. When the last order came I could not evade it. How strenuously he insisted on this could be seen from the fact that Mueller and Streckenbach, Chief of the Gestapo and Chief of personnel, were of the opinion that it would not be expedient to give me an Einsatzgruppe, and they also protested to Heydrich about giving me the command of an Einsatzgruppe, but since

he wanted it, the third order came down, and there was no chance to evade it this time.

Q. I didn't follow you there. Who was it that insisted, Streckenbach?

A. Heydrich insisted on it against the vote of Streckenbach and Mueller.

Q. Heydrich, of course, knew at that time what the Einsatzgruppen were to do in Russia?

A. I don't know.

Q. I beg your pardon?

A. I don't know whether he did.

Q. Is it your idea that he organized these units without having any idea of what they were to do?

A. He had an idea, all right, for he wanted to take every security job away from the army, whereas, up to that time he had detailed personnel to the army, and the army worked without letting him in on this work; therefore, he expanded his domination to include the operational areas.

Q. This was a very secret preparation, was it not, of the Einsatzgruppen?

A. Yes, of course, these were negotiations between Heydrich and the Supreme Command of the Armed Forces and the High Command of the Army, and representatives of Heydrich and of these two agencies.

Q. Well, then, it is a fair assumption that when Heydrich selected you to go to Russia in command, he knew what work you were going to perform in Russia, did he not?

A. Whether he already had the Fuehrer Order I don't know. I only knew the fact that the Einsatzgruppen were being set up.

Q. Now at Pretzsch, Streckenbach told you, for the first time, you say, what the Einsatzgruppen were to do?

A. Yes.

Q. Now he had a special order?

A. Yes.

Q. In your direct examination you stated that the order read "as follows". Did you see the order yourself?

A. No, I did not say, it read "as follows". I merely gave the contents, for I always said there was no written order.

Q. I misunderstood you; the transcript said, "Read as follows." So your understanding of the purposes of the Einsatzgruppen came from Streckenbach orally at Pretzsch?

A. Yes. That is correct.

Q. And you protested?

A. Not only myself, but as I said in direct examination, there was a general protest.

Q. What form did your protest to Streckenbach take?

A. I pointed out that these were missions which could not possibly be accomplished. It is impossible to ask people to carry out such executions.

Q. Why?

A. Well, I believe there is no doubt that there is nothing worse for people spiritually than to have to shoot defenseless populations.

Q. If I may be a little facetious in a grim matter, there is nothing worse than to be shot either, when you are defenseless?

A. Since this is meant ironically by you, I can imagine worse things, for example, to starve.

Q. It is not meant entirely ironically. I have read the whole of your testimony, and I am impressed by the fact that not once did you express any sympathy or regret.

PRESIDING JUDGE MUSMANN: Mr. Heath, I don't think that that observation is in place.

MR. HEATH: I withdraw it, your Honor.

PRESIDING JUDGE MUSMANN: You are not to comment on the witness. Ask him questions, and he is to answer them. What you think about him is of no consequence.

MR. HEATH: I know that, your Honor, and I ask the Court's forgiveness for having put the question.

* * * * *

MR. HEATH: Now I want to say this—you have told the Court repeatedly that to your knowledge there was absolutely no purpose to exterminate races. You are charged here, of course, with war crimes which is one kind of killing, and crimes against humanity which is another kind of killing. You have told the Court that you have no reason today to believe that these killings were part of an extermination program. I want to ask you further, you are aware of this speech which Hitler made in 1933 at the Party rally in Nuernberg, and I would like to ask you, when I have read you this quotation, to comment on it. "But long ago man has proceeded in the same way with his fellowmen. A higher race, at first higher in the sense of possessing a greater gift for organization, subjects to itself a lower race, and thus constitutes a relationship which now embraces races of unequal value. There thus results the subjection of a number of people under the will often of only a few persons, a subjection based simply on the right of the stronger, a right which, as we see it in nature, can be regarded as the sole conceivable right because founded on reason." Do you recall that or any of the similar outgivings of Adolf Hitler during the period from 1933 on?

DEFENDANT OHLENDORF: I have read this remark repeatedly

here because it seems to please the prosecution especially. Despite repeated readings I have still not understood it to this date. Perhaps the last two sentences are reasonable, but the first two-thirds I cannot make any sense out of.

Q. You were in the same state of uncertainty with respect to a great deal of Hitler's statements, were you not?

A. It is very difficult to judge statesmen on their ideas about politics from various scattered quotations. If one were to do this it would be hard to find any statesman of whom one could say that he had ever any definite idea, for statesmen are in the difficult position of being in politics which is something changing and developing, and statesmen always adapt themselves to this changing characteristic of politics. This has not been only a quality of Hitler's but of all statesmen, until this very day.

Q. Let us leave the statesmen and the politicians then and go to the lawyer of the Third Reich, Carl Schmitt, whom you quote in your direct examination as the author of what you call the theory of "friend and foe". You pointed out to the Court that this theoretician of the Nazi movement, the top legal theoretician, had, in your opinion, an impossible doctrine. Schmitt was the top juridical commentator on the Nazi State, was he not?

A. In 1933 and 1934, yes, but then it was at an end after that.

Q. Now, in Schmitt's conception, man had the very power, which Hitler described here, to coerce his weaker brother, did he not, the moral right to do it?

A. That is why the SD for instance saw to it that Schmitt disappeared as the top jurist of the Third Reich because he credited such mistaken theories to National Socialism.

Q. Will you tell us the name of another man whom the SD destroyed because he opposed your view of National Socialism?

A. That is very difficult. You ask very much. National Socialism, unfortunately, had not time to work out its theory thoroughly and thus I looked in vain for even one book of principle on which National Socialism really was based.

Q. Let us go to Gottfried Feder.* When was his influence ended in Germany?

A. Already before Hitler assumed power, because when he became under secretary in the Ministry of Agriculture in 1933, this was the last honor which one gave him. Actually he didn't have anything to say in the Agricultural Ministry after 1933, nor did he have any political significance at all.

Q. Very well. He was free of political pressure, and it was he who said that the master race dogma was the emotional founda-

* Early member of the National Socialist Party, author of the official party program.

tion of the Nazi movement. Do you care to comment on that, do you care to comment on the Herrenvolk, the importance of it to the Nazi movement?

A. If you were to know Gottfried Feder you would assume that he arrived at the idea of the master race from his own vanity. Outside of him and Ley and two other people, there was certainly no logic in the leadership for raising this nonsense of the master race. The office for racial politics dealing with such racial problems never represented this theory.

Q. Let us move then to some other representatives and at later dates. In August 1942, we find Rosenberg,¹ spokesman, saying "The Slavs are to work for us. Insofar as we do not need them they may die. Therefore compulsory vaccination and Germanic health services are superfluous. The fertility of the Slavs is undesirable." Now, Rosenberg, would you classify him as the spokesman for the National Socialist State?

A. Certainly, but I don't believe that he expressed this in this form for I knew him personally. He was anything but a man who would even say such a thing; certainly not act accordingly. I never could consider him an enemy of the Slavs.

Q. Very well. He himself, I believe, came from Russia, did he not?

A. Yes, he was a Balt.

Q. Well, let's see about Hans Frank.² How do you place him in the Nazi hierarchy in 1941 at the time you were in Russia?

A. Frank is a pathological case and no one who knew the conditions in the Reich considered him anything else, not even Hitler.

Q. Well, for what it is worth * * *. I beg your pardon, proceed.

A. The same thing would go for Frank as what I said before. You might quote from him about the "Rechtsstaat" [legal state] as it could not have been formulated any better by the best Democrat, and you could list him as the greatest enemy of the SS and of the police, but he was taken seriously neither as the one nor as the other, and the fact that he came to the General Government was the result of the fact that Hitler did not want to make him Minister of Justice, even though the Minister of Justice was deceased and no one had been found to replace him. The General Government was not considered to be a permanent organization and therefore the Governor General, the title of the Governor

¹ Defendant before International Military Tribunal. See Trial of the Major War Criminals, Vols. I-XLII.

² Governor General of Poland, defendant before the International Military Tribunal. See Trial of the Major War Criminals, Vols. I-XLII.

General was considered to be honorary, and even a Frank was not considered to be able to mess it up because he had no spiritual strength.

Q. That is one of your protests against the course of National Socialism, is it not, that psychopaths and irresponsibles were given power in this personal staff?

A. I don't think that it is a single case, but this has happened time and again in politics.

Q. I understood you to say to the Court that most of your difficulties in the Party came from your opposition to those men who advocated total destruction of the objective or institutional state, is that right?

A. Yes, that is correct.

Q. You had been convinced by a year's study of Mussolini's personal autocracy that Italian fascism was a bad thing?

A. Yes.

Q. And it was bad because Mussolini had completely destroyed institutional restraints on men who wielded power?

A. I would rather express it positively, because this was an unrestricted dictatorship in the form of a totalitarian state.

Q. Very well. I think we say the same thing in different words, do we not?

A. Yes, from the positive side.

Q. In 1933, when Hitler, after he was made chancellor, had legal power to legislate by himself without the restraint of any constitution, was he not in precisely the same situation and did he not have the same power to act that Mussolini had acquired, from the legal standpoint?

A. Yes, I understand you completely. The difference is that the one was National Socialist and the other was Fascist. Hitler for himself did not make up a constitution for an absolute state, but because he had a different opinion of the state he had himself given power for a definite period of time. And this was nothing else but a constitutional means, which during the parliamentary period of the Weimar Constitution was also used then, especially in the years 1931 and 1932, when paragraph 48 of the Weimar Constitution was the basic support of the government. This law giving a government the power must not let one conclude that Hitler wanted to establish a dictatorship, but he took a constitutional means, and I know that during the entire time of the Hitler government, even during the war, it was the idea to build a senate, a kind of parliamentary system; and I know that several times Hitler complained to acquaintances that he still had not found any man who could rebuild the state for him and who could give

the state the appropriate legal form. I don't believe that Hitler wanted a dictatorship.

* * * * *

Q. Well, you went to Poland with Himmler in 1940?

A. 1939.

Q. 1939. All right. And Heydrich sent you along with Himmler, you say? Disputes arose between you and Himmler in 1939?

A. They really were monologues because Himmler—

Q. That's all right, whether it was monologue or not. He reproached you that members of the SD in Poland had not been able to treat the Jews in a manner in which he had wanted, and that, you say "was a product of my education". What was it he wanted done to the Jews in Poland which he said you had failed to do?

A. That is connected with the actions about which I have answered to the prosecutor on his previous questions. It was in the same city where differences between Streckenbach and Himmler occurred. It concerned the same actions.

Q. You mean the actions under a Fuehrer Order, an order similar to the order which controlled you in Russia?

A. Yes. During the direct examination I already answered the questions by the presiding judge, and today I answered your questions, that the contents were not the same, but a directive which was only given once concerning certain definite single actions.

Q. Tell us how orders that you operated under in 1941 in Russia differed from the order which controlled killing of Jews in Poland in 1939?

A. In Poland individual actions had been ordered, while in Russia, during the entire time of the commitment, the killing of all Jews had been ordered. Special actions in Poland had been ordered, whose contents I do not know in detail.

* * * * *

Q. You have told the Court that the army was perfectly aware of this decree, or this order to kill, and that it had the obligation also to execute the order within its ability? Is that right?

A. Yes, but I do not know that in this order insane persons were mentioned; but I would have considered the insane persons just like anybody else because they would have come under the order if they, owing to their condition, would have endangered security—but not only because they were insane—for that reason I rejected this request.

Q. You don't mean to say that the persons you killed had to endanger security in order to be killed, do you?

A. In the sense of the Fuehrer Order, yes.

Q. Well, let's not say about the sense of the Fuehrer Order.

Let's talk about reality. Did the people you killed in fact endanger security in any conceivable way?

A. Even if you don't want to discuss the Fuehrer Order it cannot be explained in any other way. There were two different categories; one, where those people who, through the Fuehrer Order, were considered to endanger the security were concerned and, therefore, had to be killed. The others, namely, the active Communists or other people were people whose endangering of security was established by us and they were only killed if they actually seemed to endanger the security.

Q. Very well. I repeat my question. Apart from the Fuehrer Order, and not because the Fuehrer Order assumed that every man of Jewish blood endangered the security of the Wehrmacht, but from your own experience in Russia, from your own objective witnessing of the situation in Russia, did every Jew in Russia that you killed in fact endanger security, in your judgment?

A. I cannot talk about this without mentioning the Fuehrer Order because this Fuehrer Order did not only try to fight temporary danger, but also danger which might arise in the future.

Q. Well, let us get back to it immediately, and let us see if we can't talk about it without the Fuehrer Order. I ask you the simple question * * *. From your own objective view of the situation in Russia, did the Jews whom you killed, and the gypsies, endanger the security of the German army in any way?

A. I did not examine that in detail. I only know that many of the Jews who were killed actually endangered the security by their conduct, because they were members of the partisan groups for example, or supported the partisans in some way, or sheltered agents, etc.

Q. Let's put the partisans or those who were aiding the partisans completely aside.

A. I will assist you, Mr. Prosecutor. Of course, at a certain time there were persons of whom one could not have said at that moment that they were an immediate danger, but that does not change the fact that for us it meant a danger insofar as they were determined to be a danger, and none of us examined whether these persons at the moment, or in the future, would actually constitute danger, because this was outside our knowledge, and not part of our task.

Q. Very well. You did not do it then because it was outside of your task. I want you to do it today for this Tribunal. Will you tell us then whether in your objective judgment, apart from the Fuehrer's Decree, all of the Jews that you killed constituted any conceivable threat to the German Wehrmacht [armed forces].

A. For me, during my time in Russia there is no condition

which is not connected with the Fuehrer Order. Therefore, I cannot give you this answer which you would like to have.

Q. You refuse to make the distinction, which any person can easily make—you need not answer that. Let me make it clear then, in the Crimea—no, I believe near Nikolaev, Himmler came to see you in the spring of 1942, did he not, or fall of 1941?

A. Beginning of October 1941.

Q. You had then been working in that area a considerable number of Jewish farmers, is that right, and you had determined not to put them to death?

A. Yes.

Q. You made a determination then that those men did not then constitute any security threat whatever to the German armed forces?

A. No; I did not make such a determination but, in the interest of the general situation, and of the army, I considered it more correct not to kill these Jews because the contrary would be achieved by this, namely, in the economic system of this country everything would be upset, which would have its effect on the operation of the Wehrmacht as well.

Q. Then, I ask you the question again. Because these people were farmers, you concluded that it was wiser to get the grain they produced, than to put them to death?

A. Also because of the danger that they might shelter partisans, yes; I was conscious of this danger.

Q. What danger, that they might shelter partisans in their houses?

A. That these Jews might have contact with the partisans.

Q. So the only threat you saw to security was the possibility that the Jews would conceal partisans in their houses?

A. No; I only named this as an example. There might have been agents against us who could endanger us in every way. I only mentioned this as an example.

Q. The same situation would exist in the case of the Krimchaks, wouldn't it, or what do you call them, Karaims.

A. Karaims.

PRESIDING JUDGE MUSMANN: Mr. Heath, I must confess a confusion here. I understand the witness to say, or perhaps you said it, that the reason the Jewish farmers were not executed is that they were used to bring in the harvest. Then a discussion ensued as to the possible threat that these Jews could bring to the security because they could house partisans. There must be a contradiction there; in one instance, they were a threat and, therefore, were subject to executions. Were they saved, or were they not saved? If they were saved, why, and if they were killed, why?

MR. HEATH: As I understood the witness, your Honor, he said he was balancing the desirability of getting in the harvest as against a potential threat.

PRESIDING JUDGE MUSMANN: I see.

MR. HEATH: He exercised discretion.

PRESIDING JUDGE MUSMANN: And came to the conclusion that there was more to be gained by not liquidating.

MR. HEATH: Precisely, so I understand it.

PRESIDING JUDGE MUSMANN: Is that correct?

DEFENDANT OHLENDORF: I think it is even simpler. They were not farmers, they were craftsmen, who when there would be no longer work for them to do would endanger considerably the interests of the Wehrmacht. I never considered this problem in discussion but now Himmler came to me and ordered that these Jews were to be treated according to the Fuehrer Order, without any further discussion, and without any further consideration of circumstances.

MR. HEATH: What about the gypsies. I believe you have no idea whatever as to how many gypsies your Kommando killed, have you?

A. No. I don't know.

Q. On what basis did you kill gypsies, just because they were gypsies? Why were they a threat to the security of the Wehrmacht?

A. It is the same as for the Jews.

Q. Blood?

A. I think I can add up from my own knowledge of European history that the Jews actually during wars regularly carried on espionage service on both sides.

PRESIDING JUDGE MUSMANN: You were asked about gypsies.

MR. HEATH: I was asking you about gypsies, as the Court points out, and not Jews. * * *. I would like to ask you now on what basis you determined that every gypsy found in Russia should be executed, because of the danger to the German Wehrmacht?

A. There was no difference between gypsies and Jews. At the time the same order existed for the Jews. I added the explanation that it is known from European history that the Jews actually during all wars carried out espionage service on both sides.

PRESIDING JUDGE MUSMANN: Well, now, what we are trying to do is to find out what you are going to say about the gypsies, but you still insist on going back to the Jews, and Mr. Heath is questioning about gypsies. Is it also in European history that gypsies always participated in political strategy and campaigns?

DEFENDANT OHLENDORF: Espionage organizations during campaigns.

PRESIDING JUDGE MUSMANN: The gypsies did?

A. The gypsies in particular. I want to draw your recollection to extensive descriptions of the Thirty Year War by Ricarda Huch and Schiller—

Q. That is going back pretty far in order to justify the killing of gypsies in 1941, isn't it?

A. I added that as an explanation, as such motive might have played a part in this, to get at this decision.

Q. Could you give us an illustration of any activity of a band of gypsies on behalf of Russia against Germany during this late war?

A. Only the same claim that can be maintained as with regard to Jews, that they actually played a part in the partisan war.

Q. You, yourself cannot give us any illustration of any gypsies being engaged in espionage or in any way sabotaging the German war effort?

A. That is what I tried to say just now. I don't know whether it came out correctly in the translation. For example, in the Yaila Mountains, such activity of gypsies has also been found.

Q. Do you know that of your own personal knowledge?

A. From my personal knowledge, of course, that is to say always from the reports which came up from the Yaila Mountains.

Q. In an instance in which gypsies were included among those who were liquidated, could you find an objective reason for their liquidation?

A. From Russia I only knew of the gypsy problem from Simferopol. I do not know any other actions against gypsies, except from the one in Simferopol.

PRESIDING JUDGE MUSMANN: Very well.

MR. HEATH: May I proceed, your Honor?

PRESIDING JUDGE MUSMANN: Yes, please.

MR. HEATH: Mr. Ohlendorf, you say the gypsies are notorious bearers of intelligence? Isn't it a fact that the nationals of any invaded state are notorious bearers of intelligence. Didn't the Americans bear intelligence, and the Germans bear intelligence, and the Russians bear intelligence for their countries when they were at war?

A. But the difference is here that these populations, for example, the German population, or the American population have permanent homes, whereas gypsies being unsettled as people without permanent homes are more prepared to change their residence for a more favorable economic situation, which another place might promise them. I believe that a German, for example, is very unsuited for espionage.

* * * * *

Q. Mr. Ohlendorf, on the question of the order which you say you felt you had to honor and fulfill, the Fuehrer Order. It is a fact, is it not, that you could have failed in your duty as a soldier and escaped this without any penalty, in short, you could have played sick.

A. I have already had this question addressed to me in the direct examination because I expected it.

Q. Let's see if you expect the next one—I suppose you do. At one juncture you were told by the Chief of Staff of the army above you, down there, in the south of Russia, that unless your collaboration with the army improved, he, Colonel Woehler—I forget his name—he would recommend your immediate dismissal in Berlin, so there was a way, was there not, where you could have avoided service merely by refusing to be agreeable with other military gentlemen. Is that right?

A. This discussion with Woehler did not concern our debate but factual reproaches which were unfounded. And I did not do anything else than rectify untrue reproaches.

Q. I am sorry, I didn't understand that. Is it true that you were threatened with a recommendation for dismissal unless your collaboration with the army improved?

A. No. It was the first word of the Chief of Staff, "If your cooperation with us does not improve, we will request that you be dismissed," and then a number of factual reproaches which were untrue, and I was merely given the chance by the Chief of Staff to reject these untrue charges. Nothing else was being discussed. I do not think that you expect that, in order to be relieved, I should have let myself and my men be wrongly accused.

Q. No, no, I had no idea that you would do any such thing. I simply wanted to find out whether it was possible for you to win a dismissal from this job or task that you had by disagreeing with the military and you have said that it was.

PRESIDING JUDGE MUSMANN: Witness, I understand that there was a conference at Pretzsch when you first learned of this mission. How many of the defendants were present at that conference?

DEFENDENT OHLENDORF: I cannot say that for certain.

Q. At the conference in—I am sure I will mispronounce this word—Nikolaev—how many of the defendants were present if you recall?

A. Merely Seibert was present then.

Q. Who?

A. Only the defendant Seibert was present.

* * * * *

MR. WALTON: General, did you ever have the feeling that the

Fuehrer Order, about which so much has been said here, was an illegal order?

DEFENDENT OHLENDORF: No.

Q. Have you ever heard, during your career, of the recognized laws and customs of war?

A. Of course.

Q. Have you ever heard of the Geneva Convention?

A. Of course.

Q. And have you ever heard of the Hague Convention?

A. Naturally.

Q. From your study of law, and your high rank in an organization subject to military law, did you not know that the killing of civilians in occupied areas, without any trial, is considered by both international law and the laws and customs of war to be plain murder, and nothing else?

A. Yes.

Q. Who was it, in one of your Kommandos, who had the power and the authority to decide whether a person was a Jew, or gypsy, or a Communist, and to order his execution?

A. That was up to the Kommandos.

Q. By that am I to presume that it was the Kommando leader, the commanding officer of that unit?

A. He was responsible for what happened in his field.

Q. Was there any one else in a Kommando, the second in command, or the leading noncommissioned officer—could he decide whether a man was a Jew or a gypsy and order his execution?

A. Before answering this question concretely I wish to point out that in considering the question of discretion as to how to carry out the order—the entire situation should be considered. For example, concerning the Jews, it was usual that the Kommandos called the Jewish elders to determine who was Jewish and who was not. The possibility to go beyond this decision was not given to the Kommandos. Therefore, they had to accept the statements of the Jews themselves as a basis of their orders. The Kommando chief could not go beyond this and carry out the executions independently but he had to rely on his officers who were, for instance, chiefs of Teilkommandos for these assignments. As the Tribunal knows, this question had already been decided before the war by order of the Fuehrer, through Keitel, insofar as individual officers had the opportunity to arrive at a decision whether or not a person was suspicious, and whether he might endanger the security. In my direct examination I have already explained that this statement went too far, in my opinion, and therefore, I gave the order that the suspicion must be confirmed. But to ask for more, for example, concerning the Jews,

than, to believe the statements of the Jewish elders could not have been expected of the Kommandos because there was no possibility of doing more. Doing more would have meant questioning the task.

Q. Then the registration list of the Jewish population handed to the Kommando leader by the Jewish Council of Elders was sufficient to denominate those named as Jews?

A. In order to complete it, the Jewish elders themselves took the Jews to the registration place or the collection place.

Q. Now, was the denouncement of a gypsy by a civilian sufficient identification that could cause his execution by Einsatzgruppe D?

A. No. I remember cases in Simferopol where to identify gypsies the certification of two witnesses, at least, was required by the Kommando there.

Q. These witnesses came, of course, from the civilian population of the area in which this man was arrested?

A. Yes.

Q. And these witnesses claimed to have known it?

A. Yes. That was the difficulty, because some of the gypsies—if not all of them—were Moslems, and for that reason we attached a great amount of importance to not getting into difficulties with the Tartars and, therefore, people were employed in this task who knew the places and the people.

Q. Then there was more investigation in the case of gypsies than there was in the case of a Jew, is that right?

A. There were fewer gypsies than there were Jews and, as I said yesterday already, I only remember one great action in Simferopol.

Q. You stated in your testimony last Wednesday, did you not, that you personally never issued execution orders. Am I correct?

A. Yes.

Q. Who issued orders for these executions?

A. The procedure cannot be explained in one sentence because the order for execution as such had been given from the start in Pretzsch, and also later by the Reich Leader SS. But the Kommandos took it for granted that when they came to a larger city the solution of the Jewish question would be the first problem to be solved, and therefore, the executions developed, not from an order, but as a consequence of a number of occurrences—such as the consultation of a Council of Elders, registration, etc., until the final operation resulted. The same happened in the case of the executions themselves, where a number of organizational occurrences took place one after the other; a definite order was only given, really, at the moment when an officer stood before a

military unit and gave the order to shoot. Everything else develops, one occurrence following another.

Q. In your direct testimony, and yesterday in some of your cross-examination, reference was made quite frequently to "the army". To what army, or army group, were you referring?

A. In my case, to group 11, 11th Army.

Q. Now, who commanded the 11th Army when you were in command of Einsatzgruppe D?

A. First, General Ritter von Schobert. He was killed. After that, there was a temporary assignment; and then later, Field Marshal von Manstein.

Q. Did you ever have any contact—that is, official contact—with Army Group South during your career as commander of Einsatzgruppe D?

A. With the army Group South itself? No. Only with the army. The reason was that the 11th Army was independent, relatively. It had been intended as a nucleus for a new army group which was to operate in the Caucasus Mountains. The army units, at that time, were still in the Baltics in readiness.

Q. How often were you in contact with General von Schobert, and later Field Marshal von Manstein?

A. I reported to General von Schobert, as shown in the documents, on 12 June. Then I saw him again in the army casino once or twice. And von Manstein, I mostly saw in the Crimea on duty, as well as privately; for example, he put me in charge of recruiting Tartars. I also had personal discussions with him about the question of military commitments of my unit. Contact with the army became closer in time because the difficulties of the first months proved some officers so wrong that they had to apologize to me and now the other officers tried to eliminate these former differences. It took longest with Manstein. Not before the spring 1942 was I invited by him personally, for the first time, to his castle on the south coast, which he had set up for recuperation. There I was, together with my successor von Alvensleben, and three or four officers of the army, invited to his place one evening and I stayed there the night. The next morning I had breakfast with him, and then I travelled on. The second time I was privately invited was for the celebration when Sevastopol had fallen. Apart from that, there was constant contact with the army, owing to the fact that there was a liaison officer with the army who shared his billet with the counterintelligence officer; and beyond that, Herr Seibert, at least once a week, visited the Chief of Staff, the intelligence officers, or the chief of partisan warfare with whom arrangements were made. Naturally, I had more to do with the Chief of Staff than with the commander in chief. And for that

reason I visited him officially, repeatedly. Finally, after the winter of 1941, a very lively personal relation with the staff officer of the army took place in my casino. For example, during the Christmas celebration the staff of the army was completely represented, and also during my farewell party.

Q. General, I think the translation came through incorrectly. The way I heard it when you were mentioning the commanders of the 11th Army, the name von Alvensleben came through as your successor.

A. I want to complete this. Einsatzgruppe D was given to Colonel [Oberfuehrer] Bierkamp, but he was with Einsatzgruppe D only for a short time in the Crimea. The Crimea was given over to the civil administration and Alvensleben became SS and Police Leader for the Crimea, and in this he became my successor for that area and not in my position as chief of the Einsatzgruppe.

Q. Then, from what you have just said in answer to the question, your personal and official contacts with the army under Field Marshal von Manstein were more frequent and more friendly than with his predecessor, General von Schobert?

A. Yes. I believe he was only with the army for four weeks before he died in battle.

Q. Can you remember now when Field Marshal von Manstein succeeded General von Schobert, that is, the approximate date?

A. I cannot remember the exact date, but I think that von Manstein became successor of von Schobert in September 1941 at the latest.

Q. Did General von Schobert or Field Marshal Manstein ever issue orders to your Gruppe concerning executions?

A. That question is too definite, Mr. Prosecutor. Such orders existed in various forms. For example, he told the defendant Seibert, who is present here, that retaliation measures which he had ordered were not sufficient, and for that reason he would have to take a hand himself, or, as I described concerning Simferopol, where the army requested that the liquidation of Jews be carried out immediately. Apart from that, there was the idea of killing certain persons like, for example, the insane people but I cannot always say, of course, that this was of the army itself. But the Einsatzkommandos were assigned to units or divisions, so that contact with the Kommandos, and, therefore, the issuing of individual orders were settled in the individual areas to smaller units rather than in the central offices.

Q. Then Field Marshal von Manstein did personally issue instructions or orders concerning the executions in Simferopol about which we have spoken?

A. No, I cannot say that, but an instruction came—so far as I

remember after discussing it with Braune—from the Quartermaster General, then Colonel Hanck, but in the organization of the army, it is natural that the Quartermaster General on his own authority cannot do such things without the approval of his commander in chief. I, therefore, cannot say that von Manstein knew about it, or that he ordered it. I am merely considering it to be so owing to the military situations.

Q. It is highly probable that Field Marshal von Manstein did know and did instruct his staff officer to issue orders, is that correct?

A. In any case, I cannot imagine that a staff officer can make such demands on his own authority.

Q. General, who were the army officers with whom you usually had conferences about the activity of the Einsatzgruppen D?

A. That was the intelligence officer.

Q. Can you give me his name?

A. First, Major Ranck, later his successor, Major Eisler, or Lieutenant Colonel Eisler; the counterintelligence officer, Major Riesen, and the chief of partisan warfare was Major Stephanus. The other staff officers I think are not of such great interest in this connection, that is, the operations officers, Colonel Busse, and another one, von Werner. They are the most important names I know of.

Q. You say all of these were on the staff of General von Schobert, or Field Marshal Manstein.

A. Yes.

Q. Did these same officers whom you have named hand down to you orders for the execution of Jews?

A. No. I cannot say that.

Q. For the execution of gypsies?

A. No. I cannot say that, either.

Q. For the execution of the insane?

A. As I said before, I do not definitely know whether this order was given by the central office, or from the medical offices, or from the regional offices.

Q. Who issued the orders for the killing of active Communists and Soviet officials?

A. For these groups the order was contained in the general Fuehrer Order.

Q. I believe you testified a few moments ago that the liaison officer of Einsatzgruppe D with the 11th Army was the present defendant Seibert?

A. No, the liaison officer was another man. Seibert belonged to my staff, and was in my billets, while the liaison officer was another

officer, who was in the staff of the army, and also shared his billets with the army.

Q. Now, General, you have admitted here that during the time you commanded Einsatzgruppe D, an unidentified number of persons were executed by the units under your command, and I believe you testified further that the responsibility for the actual executions generally was with the Kommando leader, am I correct?

A. Responsibility is a word which can be interpreted in different ways—those who gave the order were responsible. They were responsible for the carrying out.

Q. Just as a matter of information, will you state in detail what normal channel the order went through from the authority issuing it to the man who actually pulled the trigger?

A. I believe my entire examinations show that this order was given once, namely, in Pretzsch; there the initiative was given, and, therefore, no new initial order was given in my time. I never received an initial order unless one would consider the order to segregate prisoners of war such an additional order. The original order, as I have said, was sent to the chiefs of the Einsatzgruppen, and to the Kommando leaders who were assembled.

Q. This in effect is true. Because of the difficulty of communications in the area in which you found yourself, your Kommando leaders were largely, because of poor communications, independent units, were they not?

A. The Kommando leaders were independent, there is no doubt about that. They had to be able to act independently for reasons as you gave just now.

Q. And they made a great many decisions without having to consult either you or higher authorities, did they not?

A. These decisions, Mr. Prosecutor, have to be stated more definitely. In this general form I cannot answer, yes or no.

Q. I apologize. They created tactical situations without consulting higher headquarters, did they not?

A. Of course.

Q. Now to select these commanders, great care had to be exercised as to their ability. Their initiative and their general ability to do the job?

A. Of course.

Q. And they were entrusted with the command of a subunit of yours?

A. It is rather difficult to answer this.

Q. I will repeat, General. I shall rephrase the question. Because of their careful selection, you relied on their judgment in given situations, did you not?

A. The Kommando leaders had certain tasks. These tasks they

had to carry out. I did not choose the Kommando leaders, or else they would have been quite different ones, but they were appointed by the Reich Security Main Office and they had to carry out the tasks which they had been assigned to do; I had to rely on it, that according to their best ability they would fulfill these tasks. But since I did not rely on it completely, I tried, by inspections, to find out whether the Kommandos were in order, and whether the tasks were carried out. Unfortunately, it was not possible to inspect them all; some I could not visit even once within six months, because it was very difficult to get there. Unfortunately, I had no influence on the choice of Kommando leaders.

Q. In your direct examination you have explained your position and relationship with the chief of the 11th Army. My question in connection with this topic may be, therefore, in a sense a little repetitious, but nevertheless, I would like you to answer this for the information of the Tribunal. Which were the special tasks which were assigned to you by the army on the basis of the so-called Barbarossa Decree?

A. The basic task surely was to supply information and to look after the police tasks and the security of the army. Beyond that, the army gave definite detailed tasks, and these changed according to the situation. For example, in July and August, the harvest had to be brought in, and the rear had to be guarded; in November and December and January, to make inquiries about the partisans, and to fight them; immediate military commitments, and then again the information service. These changed according to the situation.

MR. WALTON: At this time, may it please the Tribunal, I should like to submit to the witness for his examination the Document NOKW-256, Prosecution Exhibit 174. There are copies in the German language ready for distribution just as there are in the English now.

* * * * *

MR. WALTON: Have you ever received this or a similar document containing this decree?

DEFENDANT OHLENDORF: I should think that this is one of the drafts for the so-called Barbarossa Decree. I do not think that this draft actually constitutes the Barbarossa Decree, but considerable parts are contained in it. I believe that there are not a great number of differences in the contents.

Q. Was there anything said in the Barbarossa Decree outlining the collaboration of the Sonderkommandos, and the army in the rear areas?

A. I just forgot one thing. This text shows in this draft the Einsatzgruppen in the operational areas and also Einsatzgruppen

in the rear areas. There were no such double assignments. Only one Einsatzgruppe was assigned to the army, to each group, and the army group decided how they were to be used.

Q. Whether they were to be used in the rear areas, or in the forward areas, the army decided that?

A. Yes.

Q. Now, isn't it true, that this Barbarossa Decree, that Himmler's orders based on it made it plain that the Sonderkommandos should carry out their missions under their own responsibility?

A. That is not clear here, either, because the expression "own responsibility" I presume, means that the chief of the Security Police and the SD could give instructions to these Kommandos, which then were carried out on their responsibility; but it never meant that this happened beyond the authority of the army, or rather of the army group; and this limitation is shown in this draft. Because every time it says that the instructions are to be passed to the army and the army can make restrictions. The army can exclude areas; it can make restrictions if the operational situation requires it. Later in the Barbarossa Decree, it says that operational necessity can cause the army to give instructions or to change them. This sense is revealed clearly in this draft, "own responsibility" never means beyond the actual authority of the Commander in Chief of the army, as contained in his task. This is shown in the assignment of the Einsatzgruppen and in the instructions of the Supreme Command of the Armed Forces for the competence of the Commander in Chief.

Q. Then, General, in short, within the broad framework of the order, the Fuehrer Order, subject to the tactical situation at any time, which was the responsibility of the army, it was entirely up to the decision of the Einsatzgruppe as to how to carry out these missions, was it not?

A. Yes.

Q. Now then, did the responsibility mentioned in this draft of the Barbarossa Decree include executions?

A. The Einsatzkommandos had the order, and the tasks to carry out certain executions, of course.

Q. By the Barbarossa Decree?

A. No. I did not say that. At least, I did not intend to say that. I do not know that in the Barbarossa Decree this order for extermination is contained. To repeat it: I do not know that in the Barbarossa—Fuehrer Order—anything was contained about the killing of certain groups of the population.

Q. General, I won't quarrel with you, but the testimony is very clear on your orders for execution. I leave that point at this time. Now, General, did it ever happen that the order of the commander

of the 11th Army, or his staff, was given directly to the Kommandos—these units which were subordinate to you?

A. Which orders?

Q. Any orders?

A. Yes, of course.

Q. How did you obtain knowledge of such orders, since they did not pass through your headquarters?

A. For example, in a written order I was mentioned on distribution lists, therefore a written order to a Kommando was passed on to me. This of course, was only the case if they were orders by the army. Orders by a corps, or by the division I did not see, of course.

Q. But you were informed of it through other distribution lists, after the order was actually given?

A. Yes, so far as it was given by the army.

Q. Were you ever informed if an army group, or an army corps gave an order to a subunit of yours?

A. Whether I was informed?

Q. For instance, if the chief of Einsatzkommando 11b was detached from your headquarters, and attached to the army corps? Do you follow me?

A. Yes.

Q. And the tactical situation was such that the Einsatzkommando 11b should be committed for a certain specific task, the army group commander issued an order directly to the commander of the Einsatzkommando 11b?

A. Yes.

Q. Now, were you later, through official correspondence or through reports of your Kommando, informed that that actual order was given?

A. Of course, in writing or orally if the Kommando leader considered it necessary that I should know about this event.

Q. Then your information did not come from a copy of that order sent to you through official channels, but through the report of your Kommando leader?

A. In that case, if the army had not given a written order, only that way, of course. If they had given a written order, on the whole, they would have given me a copy.

Q. Then you obtained your knowledge of this type of orders from a report submitted to you by your Kommando leader?

A. Yes.

Q. General, was it the task of the liaison officer of the different units of the Einsatzgruppen to transmit such orders?

A. I believe I must ask a preliminary question. By liaison officer you mean the officer who was in the staff of the army?

Q. Yes.

A. In the document book such an occurrence is mentioned, the case of Romanenko. There, the document shows that the liaison officer got an order from the commander in chief and gave it to the Kommando itself immediately. This shows that the Kommando was in the place where the commander in chief was, while I was with the staff of the Einsatzgruppe about two hundred kilometers to the west. Therefore, if the commander in chief wanted to hand something to a Kommando, he could easily give such instructions to the liaison officer.

MR. WALTON: Now I shall have to avail myself of the privilege of forgetting one or two questions. Your Honor, I should like to draw the witness' attention back to some moments ago when I was asking him about who had the authority to make selections for executions. It is entirely out of the context now, but my attention has been called to it. I ask permission to go back and ask him.

PRESIDING JUDGE MUSMANN: I recall that you did go over that subject, but there is no reason why you can't go back to it.

MR. WALTON: There is one class which I forgot to ask who made the selection. General, who made the selection of Communist and Soviet officials for execution?

DEFENDANT OHLENDORF: The procedure was that certain persons were arrested and these persons were taken to be examined, as is usual, by the police. The interrogating officer, mostly together with the Kommando leader, determined the result of the examination, and with that they determined whether the man endangered the security, or whether he did not, and they passed a judgment on this person.

Q. It usually turned out, did it not, that a member of the Communist Party and a Soviet official of the Communist Party or of the civil administration were considered a definite threat to the security of the German Armed Forces?

A. Yes.

PRESIDING JUDGE MUSMANN: Witness, in carrying out the procedure which you have just indicated, I assume that in many, if not all of the towns, that you would find yourself liquidating the governing authorities, the mayors, the councils, etc., because naturally they would be members of the Communist Party, is that true?

DEFENDANT OHLENDORF: So far as I know the conditions in the cities or districts where the Einsatzkommandos entered, there was no administration any more, but the leading personalities had escaped or were hidden.

MR. WALTON: General, how were the condemned people assembled for an execution?

DEFENDANT OHLENDORF: In detail I cannot describe that.

Q. I believe you stated in the matter of the Jews that the registration through the Council of Elders stated who was a Jew. Now, if it was determined that so many would be executed, were the Council of Elders instructed to assemble so many people?

A. To assemble the people, yes.

Q. Now, was there any pretext given, either by the Kommando leader or by the Jewish Council of Elders, to get these people to assemble?

A. Yes. For example, on the resettlement question.

Q. They were told that they had to move or they would be moved to a place for resettlement, is that correct?

A. Yes.

Q. Now then, what disposition was made of these people after they had assembled in the market square or at the place designated?

A. It was tried, for example, to compare whether registration lists were the same as the persons present. The persons were then assembled and then were taken to be executed.

Q. Were they sometimes marched to the place of execution?

A. No. They were taken there by trucks. I just described how in Simferopol the army gave trucks for this purpose.

PRESIDING JUDGE MUSMANNO: Did the council of Jewish elders know what was the real purpose of the demanding of this list of the Jews?

DEFENDANT OHLENDORF: Certainly not in my Einsatzgruppe.

Q. Well, after the first contingent had been marched away or transported away, was it not then very obvious what the purpose of the obtaining of this list was?

A. In a city the Jews were then assembled all at once, at one time, for example in barracks or in a large school or in a factory site.

Q. Do I understand then that no executions took place until the council of Jewish elders had completed their work of making up the lists?

A. Yes.

MR. WALTON: Now, did you have any army directives or any orders stating the minimum distances from army headquarters where these people could be executed?

DEFENDANT OHLENDORF: In the case of Simferopol the army decreed that shootings should take place at a certain distance from the city. The same occurred at Nikolaev.

Q. By certain distance do you mean a certain distance from the headquarters, or from the army installation, or from the city itself?

A. In Simferopol, from the city; in Nikolaev, from the headquarters.

Q. Now, what was the general method used in execution?

A. Only one method was used by me. That was the military manner.

Q. Am I to infer from that: execution by shooting?

A. Yes.

Q. In what position were these victims shot?

A. Standing up or kneeling.

Q. What disposition was made of the corpses of the executed victims?

A. They were buried in that same place. The Kommando who carried out the executions had to prepare the burying so that no signs of the executions could be seen afterwards.

Q. What was done with the personal property of the persons executed, General?

A. The personal property was confiscated. The valuables, according to orders, were given to the Reich Ministry of Finance or rather to the Reich Bank. The personal property was at the disposal of the local Kommando and the city, except for exceptions in Simferopol where a group of the National Socialist Peoples' Welfare Organization was assigned to the army who took care of the textile items.

Q. Were all the victims, including the men, the women, and the children, executed in the same way?

A. Until the spring of 1942, when by Himmler's order it was determined that women and children be killed by gassing in gas vans. Your Honor, I ask to make a remark about a question in yesterday's examination. I think a mistake arose to the effect that your Honor asked me whether from the reports from the Kommandos the fact that children were shot could be seen. If I have answered to the effect that this opinion was confirmed, that would be wrong. My confirmation in the IMT that men, women, and children are contained in the figures is merely a conclusion from the fact that Jewish men, women, and children were to be shot. In the reports which came from the Kommandos no such difference was made. Actually I do not remember any report where children—or figures of children—are mentioned. I repeat, the statement which I confirm: It was a conclusion I came to, based on the order.

PRESIDING JUDGE MUSMANN: I understand then that a report indicating that 5,000 Jews had been killed would not specify so many children, so many women, but just 5,000 persons?

DEFENDANT OHLENDORF: Yes, yes.

MR. WALTON: Let me refresh your memory, General, please. I believe you stated in answer to the last question that executions

were entirely in the form of shootings until the spring of 1942 when you received an order to have women and children executed by gas van. I am sorry I missed your statement as to where this order originated, or from whence this order came.

DEFENDANT OHLENDORF: The order of the gas vans came from Himmler immediately and was given to special units who had these gas vans.

Q. These units who had charge of the operation and the maintenance of the gas vans stayed with the vans all the time?

A. Yes. I only saw it myself for a short time because it occurred shortly before I resigned, but the drivers remained there while the officer who had come along originally left later on; but the reason for this was mainly that the vans were refused by the Kommando leaders, and I was not prepared to force the Kommando leaders to use these vans. The vans were practically not used.

Q. General, have you yourself ever seen a gas van?

A. Yes.

Q. Will you give a short description of the physical appearance of a gas van to the Tribunal?

A. It is an ordinary truck just like a box car. It looks like that, like a closed truck.

Q. No windows in the gas van?

A. I beg your pardon?

Q. There were no windows?

A. That is possible.

Q. The back of the gas van, did it have a thick door which led into the interior of the gas van?

A. Of course.

Q. And this door was narrow where only one person could enter at a time?

A. No. I believe it was an ordinary door as any other truck has.

Q. Now were the people selected for execution induced to enter these vans?

A. One could not see from the van what purpose it had, and the people were told that they were being moved, and, therefore, they entered without hesitation.

Q. The same information was given them that they would be moved for purposes of resettlement?

A. Yes.

Q. General, could you estimate how many persons could be accommodated at one time in these vans?

A. There were large vans and small vans. The small one might have taken 15 persons and the large one 30.

Q. Did you even learn how long it would take to execute persons by the use of these lethal gas vans after they were subjected to gas?

A. As far as I remember about 10 minutes.

Q. Did all of your Kommandos use these vans?

A. No, because there were more Kommandos than vans. Apart from that one van was no good. They had come from Berlin. One van was sent to Taganrog immediately without my seeing it and never came back, and the other two vans remained in Simferopol.

Q. Did Sonderkommando 10a ever use one of these vans?

A. I already said that one van was sent to Kommando 10a immediately.

Q. I apologize, I missed it. Did 10b ever use one of these vans?

A. No. I am not sure whether they did use it. I cannot swear to it, but I don't think so.

Q. I accept your answers as the best of your recollection and belief. Did Sonderkommando 11a use one?

A. No. As I said, the two vans were in Simferopol.

Q. 11b, did it ever use one?

A. 11b would have used it I think.

Q. And Einsatzkommando 12, do you recollect that it ever had one?

A. No. They certainly did not have one.

Q. How many people do you estimate—I am sure that you do not remember the exact number, but how many people do you estimate were executed by these vans by Einsatzgruppe D?

A. Please save my mentioning these figures because I don't know anything about 10a and concerning 11b the van may have been used two or three times, I am not sure. I myself hardly saw the van, but only the first time, together with the physician, I had a look that the people went to sleep without any difficulties, and then I must have left. I don't know whether it was used again.

Q. Then some people were executed by means of the gas vans by your subunits?

A. Yes.

* * * * *

MR. HEATH: Mr. Ohlendorf, you have just said that you felt that you must respect this order unto your own death.

A. Yes.

Q. You have asked the Court to accept that coercion. Will you now tell the Court what your present judgment is of the order? Do you think it was a moral order or do you think it was a wrong order which you received from the head of the German State?

DR. ASCHENAUER: I object to this question, your Honor. Only facts can be asked about and not opinions.

MR. HEATH: May I answer, if your Honor please. A man who claims mitigation because of superior orders is putting himself in the position of saying, morally, I had no choice. If, in fact, he

morally approved of a superior order and, therefore, would have acted without the coercion of it, if, in fact, he did not object to the coercion but merely lent himself to the course of action which he would have to follow without coercion, then a plea of mitigation fails entirely, and so here, if the defendant did these killings because of the coercive effect of an order, with which he disagreed, that is one thing, but if Ohlendorf was himself in full agreement or in partial agreement with the purpose which Hitler had, then the mitigating effect of the coercion order is fully or almost fully lost.

PRESIDING JUDGE MUSMANNO: Dr. Aschenauer, do you follow that argument?

MR. HEATH: The plea is bad, if it is done willingly.

DR. ASCHENAUER: I wish to point out that these are merely argumentations which have nothing to do with the testimony by the witness.

PRESIDING JUDGE MUSMANNO: The Tribunal has indicated that this is not the time for argument, but it would appear that the purpose behind the question is not in the nature of argumentation, but for the purpose of determining whether there can be any mitigation in the offense as charged by the prosecution in the indictment and for that purpose the question will be permitted. The objection is overruled.

DEFENDANT OHLENDORF: Mr. Prosecutor, I have already replied to that question during my direct examination by stating that I considered the order wrong, but I was under military coercion and carried it out under military coercion knowing that it was given in a state of emergency and the measures were ordered as emergency measures in self-defense. The order, as such, even now, I consider to have been wrong, but there is no question for me whether it was moral or immoral, because a leader who has to deal with such serious questions decides from his own responsibility and this is his responsibility and I cannot examine and not judge. I am not entitled to do so.

MR. HEATH: If your Honor please, that is exactly the state of the record and I respectfully submit that we yet have no answer. For this reason the witness has said he thought it was an unjustified order, because it was difficult or impossible of execution, when he was told—

DEFENDANT OHLENDORF: I didn't say that.

MR. HEATH: When he was told about it at Pretzsch, he thought it was impossible of execution. I think the very issue which he seeks to avoid is the crux of this question, namely, not whether it was a difficult order, or a wise order, from the standpoint of his, but whether it was right or wrong. The issue is a moral one. The

coercion of superior orders goes to the moral coercion and not to the wisdom of the order.

PRESIDING JUDGE MUSMANN: But, Mr. Heath, hasn't he answered your question?

MR. HEATH: He has said—he said it was a wrong order.

PRESIDING JUDGE MUSMANN: Now, what more do you want? Put another specific question and we will see if he hasn't answered. It appeared to the Tribunal that he has answered, but put the question to him.

MR. HEATH: You have said it was a wrong order. I want you only to tell me whether it was morally wrong or morally right.

DEFENDANT OHLENDORF: May I correct beforehand that in my reply I never said whether it was a difficult or not a difficult order. That is an assumption which I don't want to have in the record.

PRESIDING JUDGE MUSMANN: Then it must have been an error in transmission, because the Tribunal is under the impression that yesterday you stated in your original protest against the order that it was impossible of fulfillment or very difficult of fulfillment. Are we in error in that impression?

DEFENDANT OHLENDORF: I said "inhuman", your Honor.

PRESIDING JUDGE MUSMANN: I see, very well. The record indicates just what was said. Now, do you want to put another question?

MR. HEATH: I put the same question—Was the order a moral one; was it morally right, or was it morally wrong?

DEFENDANT OHLENDORF: I have just said that I do not think that I am in a position to decide on the moral issue, but I considered it to be wrong because such factors are able to bring such results which may have and, in my opinion, are bound to have immoral effects. But I do not think I am in a position to judge the responsibility of a statesman who, as is shown in history, rightly saw his people before the question of existence or nonexistence, or to judge whether a measure in such a fight against fate, for which this leader is responsible, is moral or immoral.

PRESIDING JUDGE MUSMANN: Do we extract from all that you have said, this thought that you are not prepared to pass upon whether the order was morally right or morally wrong, but you do say that the order could only lead to very bad circumstances which would be injurious to Germany itself.

DEFENDANT OHLENDORF: Not only to Germany itself, your Honor. I consider this to be much more serious even. I see the order which Hitler gave, not as a first cause for this order, but I already consider it as a result of logical developments which may have started—or at least became very obvious—when in 1935, in our opinion, Germany was encircled. Such measures must further

such developments, for example, to the effect that instead of an understanding, hatred, revenge, and an exaggerated effort to gain security will become very strong and, therefore, the general insecurity of the world will be increased. For example, causing effects, as can be described with the name "Morgenthau Plan" or requests, such as that Germany is being weakened in its greatness and strength so that this people will no longer endanger the security of anyone. That is what I meant by "effect" which might result from such factors, because they are intended for this, while I believe that throughout historical development at some time a chain of hatred or mistrust has to be broken in order to start anew somewhere, and that, for example, I hoped would be achieved through National Socialism which owing to its national basis, must be respected by each individual people, but here the chain is continued, a sequence is continued, which instead of reconciliation breeds more hatred, and increases the craving for security. That is my opinion on this.

MR. HEATH: May I put the question once more, if your Honor please?

PRESIDING JUDGE MUSMANN: Yes, you may put the question and then the witness may answer it directly, or, if he feels he has already answered it, he may so indicate, or he may refuse to answer it. We will see what happens.

MR. HEATH: I do not ask you for a judgment of Hitler's morals; I ask you for an expression of your own moral conception. The question is not whether Hitler was moral; but what, in your moral judgment, was the character of this order—was it a moral order, or an immoral order?

DEFENDANT OHLENDORF: The question concludes itself, because you are not asking abstractly for a moral estimate of nothing—but a moral estimate and judgment about a deed of Hitler. And for that reason the judgment which I may make is a judgment on the deed of Hitler.

Q. Then I may ask one more question, and this is the last one, your Honor. You surrendered your moral conscience to Adolf Hitler, did you not?

A. No. But I surrendered my moral conscience to the fact that I was a soldier, and, therefore, a wheel in a low position, relatively, of a great machinery; and what I did there is the same as is done in any other army, and I am convinced that in spite of facts and comparisons which I do not want to mention again, the persons receiving the orders—and all armies are in the same position—until today, until this very day.

Q. It was not the coercion of the Hitler Order which overcame

your moral scruple. It was the fact that you had surrendered to Hitler the power to decide moral questions for you—is that right?

A. That is an argumentation on your part which I never said. No, it is not correct. But as a soldier I got an order, and I obeyed this order as a soldier.

Q. Well, as a soldier you still had a moral conscience—I suppose you did—which required, if you had a moral conscience, you had to judge the orders that came to you. You got an order from Adolf Hitler, and you tell us you accepted his moral judgment absolutely, whether right or wrong—is that right?

A. That I accepted a moral judgment I certainly did not say. I think my answer will not be changed by the fact that you want me to make a certain reply.

Q. Let us put it in the negative, then. You refused to make any moral judgment then, and you refuse now to make any moral judgment?

A. The reason is—

Q. I am not asking you the reason. I am asking whether you refuse to express a moral judgment as to that time, or as of today.

A. Yes.

EXAMINATION

PRESIDING JUDGE MUSMANN: Yesterday Mr. Heath put a question to you which perhaps we did not allow to be answered—but in view of what has now been stated perhaps we might go back just a moment. He asked you whether, when you received this order, any question arose in your mind as to its authenticity, namely, was the order of such a nature that it caused you to hesitate as to whether there could have been an error in it and would cause you to go higher than the officer who had given you this mission, in order to determine, positively, whether it was authentic or not. You remember that discussion?

A. Yes.

Q. Now, when you received this order—it did not come from Hitler, that is, it was Hitler's, but he did not give it to you, it came from Streckenbach.

A. It was handed on, yes.

Q. Yes, very well. And his rank was not so high that an incredible statement by him could be questioned?

A. Yes.

Q. When this order was first presented to you, did it shock you to such extent that you wanted to inquire whether it truly was an order given by Hitler or not; or were you so satisfied that Hitler

knew what to do, and the circumstances were such that even that order could be a logical one, that you accepted it without misgivings, without questioning, without doubts, and without investigations?

A. It was a shock and was dispersed, as I explained yesterday, through reaction towards Streckenbach, and Streckenbach argued on all those questions which your Honor just mentioned. So that during this discussion all the questions have been worked on already, and finally. No other solution was left to us than to accept Streckenbach's experience who knew through his discussion with Hitler that it was quite obvious that there was a Fuehrer Order here which under no circumstances could be cancelled.

Q. You indicated a lack of desire to answer Mr. Heath's question on the moral issue. You indicated that it wasn't for you to decide the moral question at all. But with every order, with every demand, or request, there instinctively goes a moral appraisalment—you may agree with it or not—so when this order was given to you to go out to kill, you had to appraise it, instinctively. The soldier who goes into battle knows that he must kill. But he understands that it is a question of a battle with an equally armed enemy. But you were going out to shoot down defenseless people. Now, didn't the question of the morality of that enter your mind? Let us suppose that the order had been—and I don't mean any offense in this question—suppose the order had been that you should kill your sister. Would you not have instinctively morally appraised that order as to whether it was right or wrong—morally, not politically, or militarily, but as a matter of humanity, conscience, and justice between man and man?

A. I am not in a position, your Honor, to isolate this occurrence from the others. I believe during my direct examination plenty of questions of this kind have been dealt with. Probably with the occurrences of 1943, 1944, and 1945 where with my own hands I took children and women out of the burning asphalt myself, with my own hands, and with my own hands I took big blocks of stone from the stomachs of pregnant women; and with my own eyes I saw 60,000 people die within 24 hours—that I am not prepared, or in a position to give today a moral judgment about that order, because in the course of this connection these factors seem to me to be above a moral standard. These years are for me a unit separate from the rest. Full of ruthlessness to destroy and to be inhuman—until today, your Honor, and I am not in a position to take one occurrence or rather a small event of what I experienced and to isolate it, and to value it morally in this connection. I ask you to understand that from a human point of view.

Q. Your answer gave a certain date. You mention the years

1943, 1944, 1945. Naturally, these were years following 1941, when you were confronted with that issue.

* * * * *

MR. HEATH: The Court made inquiry on which it got no response from the witness, which was, I think, the ultimate question which your Honor was putting to him, namely, if you get an order from Hitler to kill your sister, would you have acted on the order, or would you have had any conflicting moral judgment about the nature of the order? There was no response, and I don't know whether the Court thinks we have gone far enough with the questioning, or, whether we may ask for a response to that question?

PRESIDING JUDGE MUSMANN: The Court would not insist on the question being answered because of its very nature, but it seems to me that it is a relevant question, but the witness may or may not answer, as he sees fit.

MR. HEATH: May we then put the question to him, if your Honor please? Witness, if you received an order from Adolf Hitler to kill your own flesh and blood, would you have executed that order, or not?

DEFENDANT OHLENDORF: I consider this question frivolous. The question is being put to me here by the prosecution, it deals with people—with life and death of people, and of millions of people who are near starvation even today, therefore, I can only state that the question is frivolous.

Q. Then I understand you to say that if one person be involved in a killing order, a moral question arises, but if thousands of human beings are involved in it, you can see no moral questions; it is a matter of numbers?

A. Mr. Prosecutor, I think you are the only one to understand my answer in this way, that it is not a matter of one single person, but from the point of departure events have happened in history which among other things have led to deeds committed in Russia, and such an historical process you want me to analyze in a moral way. I do, however, refuse moral evaluation with good reasons as outlined so far as my own conscience is concerned. I am not refusing to answer this last question because it is just one person, in order to bring morality on the basis of numbers, but because the prosecutor now addresses me personally—

Q. I shall not address you personally. Suppose you found your sister in Soviet Russia, and your sister were included in that category of gypsies, and she was brought before you for slaughter because of her presence in the gypsy band; what would have been your action? She is there in the process of history, which you have described?

DR. ASCHENAUER: I object to this question and I ask that this

question not be admitted. I think the subject has been dealt with sufficiently so that no other questions are necessary. This is no question for cross-examination.

MR. HEATH: Your Honor, I believe we have met tests which we applied by putting one of his own flesh and blood in exactly the alleged historical stream in which he can form no judgment. I asked him now whether if he found his own flesh and blood within the Hitler Order in Russia, what would have been his judgment, would it have been moral to kill his own flesh and blood, or immoral.

DR. ASCHENAUER: I ask for a ruling of the Tribunal upon my objection.

PRESIDING JUDGE MUSMANN: The question indubitably is an extraordinary one, and ordinarily would not be tolerated in any trial, outside of a trial like this, which is certainly an extraordinary and a phenomenal one. We are dealing here with a charge, which to the knowledge of this Tribunal has never been presented in the history of the human race of a man who is here charged with the responsibility for the snuffing out of lives by the hundreds of thousands—not hundreds of thousands, but ninety thousand. If he were not charged with anything so monstrous as that, it would not seem to me necessary for him to answer the question on a moral issue, but if he is presented with an order by Hitler to dispose of his own flesh and blood, whether he would regard that as a moral issue, or not, I believe that is a question that is entirely relevant and is not frivolous, and the witness will be called upon to answer it.

DEFENDANT OHLENDORF: May I please answer this question in the way it was put by the prosecutor, and the way it was originally put. I had not finished my statement why I considered this question frivolous, when the prosecutor interrupted me.

MR. HEATH: The Court has ruled that the question is not frivolous, and it calls for an answer. I urge the Court or respectfully request the Court to ask the witness to answer the question.

PRESIDING JUDGE MUSMANN: The ruling disposes of this, and the witness will answer the question, so that you do not need to urge or demand.

MR. HEATH: I should have added your Honor, “or refuse to answer it, one way or the other.”

PRESIDING JUDGE MUSMANN: I am disposed to believe that he will answer it. Let's see whether he will answer it, or not.

DEFENDANT OHLENDORF: I consider this question frivolous, because it brings a completely private matter into a military one; that is, it deals with two events which have nothing to do with each other.

PRESIDING JUDGE MUSMANNO: Witness—

MR. HEATH: Your Honor—

PRESIDING JUDGE MUSMANNO: Let's just keep in mind this situation. You are a defendant in a trial, and very serious charges have been brought against you. Your whole life and career are before this Court for scrutiny and examination. A question arises regarding an order which you received, and that order calls for the execution of defenseless people. You will admit that in normal times such a proposition would be incredible, and intolerable, but you claim that the circumstances were not normal, and, therefore, what might be accepted only with terrified judgment was accepted at that time as a normal discharge of duties. It is the contention of the prosecution, that regardless of the circumstances, the killing of defenseless people involved a moral issue, and that under all the circumstances you were to refrain from doing what was done. Now by way of illustration he advances, suppose that you had in the discharge of this duty been confronted with the necessity of deciding whether to kill, among hundreds of unknown people, one whom you knew very well. It seems to me that that is a relevant comparison. Now, let's direct our attention to that very question, if you will, please.

DEFENDANT OHLENDORF: If this demand would have been made to me under the same prerequisites that is within the framework of an order, which is absolutely necessary militarily, then I would have executed that order.

MR. HEATH: That is all, sir.

PRESIDING JUDGE MUSMANNO: Witness, I would like to ask one question. Were the men in your command entitled to any increase in pay because of the nature of the operation, or were they paid the regular salary which went to all soldiers?

DEFENDANT OHLENDORF: At no time was there any advantage connected with that operation. Not at any time.

PRESIDING JUDGE MUSMANNO: Now you were travelling in a territory which must have been very strange to you, and you had indicated that you had interpreters, but you must have been confronted with many language difficulties, because of dialects, and so on. Do you suppose that because of these language barriers that any errors might have occurred, so that even individuals under the broadest interpretation of that order were killed who should not have been killed?

A. I don't think so. The interpreter whom I had, for instance, my own interpreter was from Russia himself, and he knew the language and the conditions.

Q. Very well. You stated yesterday the only reason why you did not wish your command was that of a fear your successor might

not be so considerate of your men as you were. In what way did you regard that considerate; in what respect?

A. Because I had experience from other Einsatzgruppen.

Q. Well, you were considerate of them, but the Tribunal does not understand in what respect. Was it with regard to accommodations, with regard to food, with regard to the manner in which they had discharged this unpleasant duty?

A. It was part of the complaints which I personally presented to Himmler in Nikolaev; that, for example, the Higher SS and Police Leader Jeckeln had organized special detachments which had to carry out nothing but executions, and it is understandable that this would ruin these people spiritually, or make them completely brutal. This is an example of what I meant.

Q. Very well. How much time did you spend, generally, in each community. I presume you were travelling all the time?

A. I personally, or with my staff?

Q. With your staff. With your unit, the Einsatzgruppe?

A. I changed my headquarters when the headquarters of the army moved. I always joined the headquarters command of the army.

Q. Now you said that you tried to avoid excesses. Just what do you mean by that?

A. That, for example, an individual would carry out an execution on his own.

Q. You mentioned this morning apropos something else, that there was a Christmas celebration in your organization. Did you have a Christmas celebration regularly every year?

A. Yes.

Q. Yesterday, you stated that you had attended three executions, and in each one of these executions the subjects were singing the International and that they were shouting their allegiance to Stalin, and you took from that their solidarity to the Bolshevist cause, and, as I understood your answer, you drew from that a justification for the order, namely, that these individuals had in effect declared their hostility to Germany, and, that, therefore, as a matter of security and self-defense, or as a war measure in itself, it was justifiable to dispose of them in the way they were disposed of?

A. No, your Honor, I did not mean it that way.

Q. I see.

A. I was asked whether I saw any signs that the Fuehrer Order really was based on objective facts, and I meant these facts as one example to show that in these cases the victims actually expressed this attitude. This was not a basis for my action, only an example of what I saw myself.

Q. Did you take from their singing and from their shouts at that moment, that this reflected an attitude on the part of all that race, which called for aggressive measures on the part of the Reich?

A. No. I was merely impressed by the fact that my three incidental visits always were attended by the same demonstrations on the part of the victims. It was not a cause for me to act in any way. It was merely an illustration of the actual situation.

Q. Now just one more question on this incident. When you observed this demonstration, did you feel any sense of relief that here indeed were enemies of your country, and, therefore, the order which you were executing did have some justification in fact?

A. I have already expressed it a little more carefully yesterday, your Honor, because in any situation it is difficult to comment on this. I said that I watched this demonstration with respect, for I respected even this attitude, and I never hated an opponent, or an enemy, and I still do not do so today.

PRESIDING JUDGE MUSMANN: Any further questions, Dr. Aschenauer?

REDIRECT EXAMINATION

DR. ASCHENAUER: Your Honor, I only have two more questions. They concern the document which was submitted by the prosecution. I believe it is Document NOKW-256, Prosecution Exhibit 174. There are two sentences "we received your directives from the Chief of the Security Police and the SD, and we are informed that we are under your command as far as restricting our mission on the part of the army is concerned." I want to ask one question. Did you ever have any responsibility of your own about these missions, including the executions, which went higher in responsibility than that of the Supreme Army Commander, as the executor of supreme command and which would have excluded the responsibility of the army commander in chief over life and death?

A. No. This activity was carried out under the responsibility of the Supreme Commander. He alone had the executive power of command, and therefore he disposed over life and death. This responsibility was never limited.

Q. Then do I understand you correctly if you say that your responsibility refers to the manner and type of the execution of the order?

A. Yes, that is right.

DR. ASCHENAUER: I have no further questions.

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*EXTRACTS FROM THE TESTIMONY OF
DEFENDANT HAENSCH**

DIRECT EXAMINATION

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DR. RIEDIGER (counsel for defendant Haensch) : Did you, in the course of the war, try to get a position of a leader of an Einsatzkommando?

DEFENDANT HAENSCH: I never tried to get the position of a leader of an Einsatzkommando.

Q. When did you come to know that you were intended to be leader of the Sonderkommando 4b, and how did you hear it?

A. As far as I remember it was the end of January or the middle of January 1942, that I heard of it. I remember that exactly because in November or December my mother was dangerously ill. At that time, and in the first days of January, I went to see her and I stayed with her for about a fortnight in Hirschfelde. When I came back from my visit to her, the chief of office I—it was Streckenbach at that time—told me over the telephone that I had been appointed leader of a Sonderkommando in the East.

Q. Was that in accordance with your own wish?

A. No. It was not, and, above all, it was not in accordance with my wish at that particular moment. At that time I had again been making special efforts to leave my work.

PRESIDING JUDGE MUSMANN: Did you ever get a job which pleased you. Every job you mentioned so far made you very unhappy. Now, you joined the NSDAP, quite willingly, enthusiastically—you wanted to serve this ideology—yet every job you got made you unhappy. Now, can you tell us one job you got because of your association with the NSDAP which left you tranquil, and at peace with your mind, and with the world?

DEFENDANT HAENSCH: Mr. President, I never obtained any position in connection with my membership in the NSDAP.

Q. Well, did you ever have any job in your life—let us make it broad—did you ever have any job which you liked? Now, tell us that!

A. Yes.

Q. Now, what job was that? That will be very interesting.

A. Well, first, I was greatly stimulated and satisfied with the administrative work I did in Doebeln; and I was particularly satisfied and, in spite of the serious situation, I was happy in the position which later on I obtained in the administration with the Reich

* Complete testimony is recorded in mimeographed transcript, 2, 3, 4 Dec. 1947, pp. 3225-3323, 3365-3423.

delegation in Denmark. And that, too, was a purely administrative—

Q. Give us the year. Now, in Doebeln, when were you there?

A. I was in Doebeln in 1935.

Q. For how long?

A. I was there from February to July.

Q. From February to July 1935, in Doebeln.

A. Yes. In 1935, your Honor.

Q. All right. And then when were you in Denmark?

A. That was in 1943.

Q. How long?

A. Until the end of the war.

Q. 1943 to 1945?

A. Yes.

Q. Well, then, those were two periods in your life—five months in 1935, and two years, from 1943 to 1945, that you were happy with your work?

A. Yes.

PRESIDING JUDGE MUSMANN: All right. Proceed, Dr. Riediger.

DR. RIEDIGER: When you were informed about your appointment, what steps did you take, and what did you know at the time about the functions of the Einsatzkommandos?

DEFENDANT HAENSCH: Until that time I knew nothing beyond the fact that formations of the Security Police and of the SD were with the troops in the East and—as I saw it—they were used as military units. As for details about their functions and their task, I knew nothing of those.

Q. Did you know the reports of the Reich Security Main Office or the Einsatzkommandos during the time that you were working for the RSHA?

A. No, I didn't. Those reports on the vents and those reports from the East I didn't know; as I gather from the documents here the various sections of Office I didn't receive those reports.

Q. Did anybody in Berlin inform you about the purpose of the Einsatzgruppen and, if so, who?

A. After I had been informed over the telephone by Streckenbach that I was to be sent to a Kommando in the East, I immediately asked him for an interview. Once again I must mention briefly that at that time the order to go to the East was in no way opportune, for in the meantime I had tried to be requested by another unit to go to the front, as I had come to realize that that was an opportunity for getting out of the Reich Security Main Office. The only possibility, in fact, was if another agency asked for me which was strong enough to support such a request. At that time, in December 1941, among other things, I called on

my co-defendant Six, and asked him to let me know as soon as he heard of anything to the effect that some other agency needed an administrative official. In the same way friends of mine were making attempts, through other means, to help me find a way of getting out of the RSHA.

To clarify this point as to why I was not feeling happy, and as to why I think I could not have felt happy in my work, perhaps I may make the following statement: I believe every law graduate who works as a district attorney had more freedom of action and more scope for initiative than I had; for the work of an expert on disciplinary matters of the RSHA was that of an investigator without any authority to make decisions.

Q. You have testified that you had discussed the matter with Streckenbach, and I am now asking you what he told you about the work that you would have to do with the Sonderkommando 4b. Now what was it that Streckenbach told you?

A. During our short discussion when I called on him, Streckenbach told me that the task of a Kommando involved authority at the front and it was to protect fighting troops in the front area. It was then mentioned and it was repeated later by Heydrich that the Kommando was part of the army, and that I myself would always have to have my headquarters at the place where the army had its headquarters. The work of a Kommando as such, so he told me, was based on decrees and orders received from the army to the Einsatzgruppe and that those orders had to be obeyed, and that I was to see to it that that was done. As such orders were new to me, I asked Streckenbach in the course of our talk for further information. Above all, I asked him whether he wanted me to take this position as a permanent position. I had a vague reason for that question, because I suspected that perhaps they wanted to send me to the East for good to get rid of me. Streckenbach told me about the dangerous elements which threatened the German troops in the East from the partisans. He said it was the task of the Kommando to deal with such saboteurs, and obstructionists, and partisans jointly with the army. Streckenbach pointed out to me that the executive work of the Kommando was in the hands of experts, that is to say, experts trained of the men of the Secret State Police [Gestapo] and of the Criminal Police. At the express instructions of Heydrich he drew attention to the fact that I was to stay in the East for a short time, at the utmost three months; that, therefore, I was to leave things as they had been, and that I was to handle them as they had been handled up to then. Streckenbach also drew my attention to the fact that, in particular, in cases of executive decisions I was to rely on the investigations of the experts who had the necessary

experience in the East. In connection with my work as to disciplinary matters, Streckenbach also pointed out to me that in the East, in the fight against illegal elements and the fight against saboteurs and obstructionists, formal court proceedings such as we were accustomed to carrying out in the homeland, in the police courts, or other courts, didn't exist, but that through a decree by the highest military authority, that is, by the OKW [Supreme Command of the Armed Forces], matters in the East were settled in a different way; that the chief of the executive department of the Kommandos and the army commander proceeded in accordance with these decrees and the decrees by the highest military authorities. So far as I recall that is what Streckenbach told me when I had my first talk with him, and during that talk I asked him for information, and he particularly impressed on me that close contact had to be maintained with the army authorities in question.

Q. Did you not discuss with Streckenbach the question of going somewhere else at the front, and why?

A. That was at a later time. I talked to Streckenbach again, and the second time I went to see him it was very different. After our first talk, I heard the next day that the Chief of Einsatzgruppe C was Thomas. There had been a considerable amount of tension between Thomas and myself before. He used to be senior section chief [Oberabschnittsfuehrer]—I think it was in Wiesbaden, anyhow, it was somewhere in the West—and he often interfered in disciplinary matters, which had arisen in my office—anyway there had been a certain unpleasantness. I approached Streckenbach openly when I heard that Thomas was the chief, saying that I didn't like it and if it would not be possible to use me in some other Einsatzgruppe. Streckenbach said no, that it could not be done, and it was then that he told me that Sonderkommando 4b had been destined for me by Heydrich. There had been special reasons. On the one hand the assignment in the East was only to last for a short time, and it was to serve the purposes of acquainting myself with conditions in the East; Streckenbach said that as I had so far only dealt with disciplinary matters, and as I was to stay there only a short time things should be left as they were. In the case of Sonderkommando 4b it was easy to regulate because in this Kommando a higher official had already been chief of the executive department.

Q. When was it that you left for the East to join the Sonderkommando 4b?

A. So far as I remember I left for the East during the last days of February 1942. It was either on the last day of February, or the day before the last day.

Q. Prior to your departure, did you talk only with Streckenbach, or also with Heydrich, or any of the other gentlemen, and if so, what were you told about your job?

A. Well, it was Streckenbach alone who at the end of January told me I was to go to the East, and he added that my written marching orders would be sent to me later. For the moment I was to continue in my old job. My predecessor was on leave, and during this time at Heydrich's request, he was to return to the Kommando. I only got an opportunity to talk to Heydrich when I reported my departure to him, and that was when I received my marching orders and, so far as I remember, it was only a week or ten days before I left that I received my marching orders.

Q. Now, I was interested in hearing what Heydrich told you about your work in Sonderkommando 4b?

A. In essence, Heydrich told me the same that Streckenbach had already told me. He emphasized the fact that I was to deal with the job of front security; that it was the army which was in command, and that orders and decrees from the army to the Einsatzgruppe had to be obeyed; that those orders and decrees had to be carried out exactly, and at that point, Heydrich made particular reference to the activities of bands of organized resistance, and he mentioned the dangers which threatened the German troops. In his usual brief manner he told me very explicitly that the life of every German soldier needed special protection, and that I was always to remain conscious of the fact that in such a situation the lives of fathers of German families and the lives of the German men were at stake. He also told me—I cannot at the moment fully recall how—but he drew my attention to the wartime laws, he told me about the laws which I would get from the army, and that the orders would have to be obeyed. He told me he did not want to receive any complaint. "If you do not obey orders," he said, "I need not tell you that as you are an expert on disciplinary matters, you, just like every soldier at the front, are subject to the laws of war, and that any delay or any dereliction of duty is subject to heavy penalty." That is substantially what Heydrich told me.

Q. And did you go anywhere to report your departure?

A. Yes. I just remember it. Heydrich said that in the executive institution of the Kommandos I was not to make any change; I was to rely, in that connection, on the opinions of experienced officials. "Anyway," he said, "Go and see Mueller about that." I had never had anything to do with Mueller before and ordinarily there would have been no reasons to report my departure to him. I did go to see Mueller who received me just by the door which led from the anteroom to his office. He just spoke a few brief words to

me. He was rather rude. I thought that he didn't like the idea that an expert in disciplinary matters was sent up there for he made a remark to the effect that it was his officials, men who had been trained by him, who worked out there, and they were all men who had the necessary expert knowledge.

* * * * *

EXAMINATION

PRESIDING JUDGE MUSMANN: Now, Witness, as I recollect what you stated, you were instructed by Stahlecker and later by Heydrich that you were to go into Russia and that you were to fight saboteurs, partisans, and obstructionists, and that you were also to offer protection to the German army. Did that constitute—briefly put, of course—your mission in Russia?

DEFENDANT HAENSCH: Your Honor, the mission which was given to me by Streckenbach and by Heydrich was an assignment at the front for the security of the front. That is to say, to guard the rear of the German troops immediately in the front area from elements which endangered the security of the individual German soldier and the front area.

Q. What was said to you about Jews, gypsies, and Communist functionaries?

A. Your Honor, Jews and gypsies Streckenbach and Heydrich never mentioned to me. These words never came up on this occasion. The details of the assignment were not given.

Q. What was said to you by Streckenbach and Heydrich regarding Jews, Communist functionaries, and gypsies?

A. If I may repeat this, your Honor, Jews and gypsies were never mentioned. The word was never mentioned even.

Q. In this whole conversation with these two men the word "Jews" was never mentioned?

A. No. It was not mentioned.

Q. Did they not say that Jews were active Communists and in offering security to the army it was necessary to be on guard against the Jews?

A. No, your Honor, this was never mentioned. If I may repeat, the individual persons or elements who might endanger the security of the troops were never mentioned at all by Streckenbach in any way, nor did Heydrich do so, but I was told that corresponding orders existed with the army, and that the mission of the Kommando was already fixed. That was during the second discussion with Streckenbach.

Q. Did you know that Jews were active Communists; did you know that from other sources?

A. No, your Honor. If I am to answer this question now, at the time it was never mentioned, there was no discussion—

Q. I asked you if you knew from other sources that the Jews in eastern Russia, or in western Russia, and eastern Europe, were very active Communists, did you know that from other sources?

A. No. I cannot say that in this form. At the time, as I said, it was never mentioned, and I would like to say this, every Russian citizen who was a Bolshevik was inclined and suitable to be specially radical in the action against—

Q. Was anything said to you about the Fuehrer Order which called for a liquidation—

A. No.

Q. Well, I didn't finish the sentence, but you apparently know what I am referring to. What was the Fuehrer Order? You answered before I finished the question, so, therefore, you are familiar with it. Now, what was the Fuehrer Order? Tell me.

A. Well, your Honor, I want to say the following.

Q. Tell me what the Fuehrer Order was.

A. Well, the Fuehrer Order, as I heard of it here and got to know it here, says that Jews—I don't remember the exact wording now but it was mentioned here—that Jews, and gypsies, and dangerous elements were to be killed.

Q. And when did you first learn of the Fuehrer Order?

A. I heard about the Fuehrer Order—about the existence of the Fuehrer Order—for the first time here from Mr. Wartenberg.* The question was never put to me whether I knew the Fuehrer Order, but Mr. Wartenberg told me the fact that the Fuehrer Order existed.

Q. And when was that?

A. That was during an interrogation. It must have been the last interrogation, I believe on 23 July.

Q. 1947?

A. 1947, yes.

Q. So that although the order was issued in June 1941 or perhaps even in May, but at any rate in that period, 6 years went by before you learned of it, is that right?

A. Yes, your Honor. That is right.

Q. In your conversation with Thomas, was nothing said about the order to liquidate Jews?

A. No. Nothing was mentioned.

Q. How long were you in Russia?

A. I was in Russia actually 7 to 8 weeks altogether. From the middle of March until about the middle of July I was in Russia, but there were interruptions.

* Member of prosecution staff who conducted interrogations in this case.

Q. And, during all this time, did you have conversations with your sub-Kommando leaders?

A. Your Honor, I can only say that not even once was I told anything about the existence of such a Fuehrer Order.

Q. Did you have conversations with your sub-Kommando leaders? That was the question.

A. Yes.

Q. And did you discuss with them what had to be done?

A. Well, your Honor, the tasks were currently discussed. Perhaps I may—

Q. Now, please answer the question. Did you discuss with your sub-Kommando leaders what you had to do?

A. Well, I for my part—

Q. Yes or no?

A. Of course, we talked—

Q. Very well.

A. About—

Q. That is all. Now you have answered the question. When you arrived in Russia were you told about the orders which were pending, and which had been executed by your predecessor in the course of his duties?

A. No. Nothing was mentioned. As orders I merely got to know those which the army had issued concerning the civilian population.

Q. You told us that in Berlin you were instructed that you would go to Russia and there would find detailed orders. Did you say that?

A. Yes. I said that decrees and orders by the army existed, yes.

Q. Well, now, your Kommando had been in existence prior to your arrival there?

A. Yes.

Q. And who was the previous Kommando leader?

A. My predecessor was Major [Sturmbannfuehrer] Braune.

Q. Braune? Did you talk with him when you arrived?

A. Yes. I talked to him.

Q. And did he tell you about the orders which he had received and which he was putting into effect?

A. No. He merely pointed out to me, in the general conversation, the general orders and decrees from the army high command—

Q. Well then, he did talk to you about the orders which he was called upon to execute?

A. Your Honor, I misunderstood you then. We did not talk about the detailed orders, about each individual decree by the army high command, but we merely discussed the general affairs. He told me in broad outline that certain decrees and orders from the army

existed for the civilian population which had been publicly announced, and these orders were in the hands of the chief of the executive department.

Q. Well, he told you about the orders which he was called upon to put into effect, didn't he?

A. I would like to say, your Honor, what was the mission of the Kommando from the time when I took over the Kommando.

Q. Now, you please answer the question? It is not a difficult question, and I don't see why you won't answer it. I merely ask you, did you talk with your predecessor Braune, and did you discuss with him the orders which he, Braune, had been executing prior to your arrival?

A. No.

Q. Did he tell you about the orders which he was going to turn over to you to put into effect?

A. Braune did not have to turn over orders or decrees to me, and he did not do it in fact. He merely told me and showed me how the front area was and the present situation in the front area, and apart from that he introduced me immediately to the army high command and to the liaison officer who was appointed for this. The situation I saw was this, that—

Q. Just a moment now, did he not say to you, "Now, Haensch, I am turning over the Kommando to you, I have been here so long and this is what we have done. I have here certain orders and I turn them over to you to put into effect." Did he say anything like that?

A. No, your Honor, not in that form.

Q. Now, tell me—but very briefly, briefly please, just what he told you to do? Keep in mind, here is a man who is in charge of an organization and he turns it over to his successor who has just arrived. Now, what did he tell you, briefly?

A. Braune told me that the front area had to be guarded and the Kommando had to look after this task, in particular to guard it against partisans and newly infiltrating elements who constantly increased in the front area and were becoming very active there and—

Q. All right. Now, that's one item, to cover the front line area and to guard against elements infiltrating through; one, all right. Two, what's the next thing he told you to do?

A. This was the mission of the Kommando. He emphasized particularly that it was the work in the Kommando, was running smoothly and according to schedule; in this I could rely on the executive officials and beyond that, I should and could turn to the liaison officers of the army who had been in good relationship with him and his predecessor, and to whom—

Q. He did not mention Jews at all?

A. No.

Q. Did the word "Jew" ever fall from his lips in his conversations with you?

A. Your Honor, I don't know now but I can't imagine—the idea of measures against Jews—

Q. Now, just a moment please, Witness. Witness, now you must answer questions, not make a speech each time something is directed to you. Did the word "Jew" ever fall from the lips of Werner Braune when he discussed with you what were your duties as his successor?

A. I don't know, your Honor. I cannot remember, that—

Q. Did it or did it not?

A. No. I can't remember.

Q. No. All right. Did the word "Jew" issue from the lips of Streckenbach when he instructed you as to what you were to do in Russia?

A. No.

Q. Did Heydrich ever mention the word "Jew" to you in his conversation with you?

A. No. With no word.

Q. From February to July, when you were in Russia, did anyone ever mention the word "Jew" to you?

A. Yes.

Q. Who?

A. Well, I am just thinking that it was mentioned during discussions which I had, for example—

Q. Not for example. I want to know who mentioned the word "Jew" to you.

A. I could name Thomas himself. When Thomas came on an inspection visit.

Q. All right.

A. When Thomas came on an inspection.

Q. Yes, and what did Thomas say about Jews?

A. When Thomas came on an inspection visit he asked whether in the territory any Jewish artisans existed as there was a great lack of craftsmen in the Ukraine altogether, and in the Ukrainian territory the Jews mostly did the skilled labor.

Q. And what did Thomas ask about the Jews? Did he ask you to get some Jewish workers for him?

A. This was not necessary, your Honor, because he did not know that in our territory, that in the territory under the Kommando such Jewish craftsmen did not exist.

Q. Well, he mentioned Jewish skilled labor. Did he ask you to get some for him, or did he tell you that there was a great lack

of them? In what connection did he talk about this Jewish skilled labor?

A. That is what I wanted to mention before. In this connection he said craftsmen were urgently required for work essential for the war and in Dnepropetrovsk large workshops were being set up for which craftsmen were particularly required who were to be used there to do work essential for the war, in particular tailors—

Q. But now please restrict it to the Jews. Please don't ramble all over the place. What did he say that he wanted about the Jews?

A. He mentioned this in connection with these workshops and said if Jewish craftsmen existed in this territory they were to be assigned to these jobs.

Q. Yes. Then he asked you to gather whatever Jewish craftsmen you could and send them to these plants; is that what he told you?

A. Yes, your Honor, but this not only concerned Jewish craftsmen but it was like this—

Q. Now, just a moment. Did he tell you, "I want you to get some Jewish craftsmen or as many craftsmen as you can, but where they are Jews you are not to liquidate them, in spite of the fact that there is a Fuehrer order out to the effect that the Jews are to be liquidated." Did he tell you that?

A. Your Honor, liquidation of Jews was never mentioned at all, and I cannot say anything else. I already said this to Mr. Wartenberg, that for the first time I heard about this fact was here and may I add one thing now? The following happened during my time in the territory of Sonderkommando 4b. I know that quite a number of Jews, and as far as I remember there must have been more than a hundred, were used as horsecart drivers for the army. From the rear they brought up new vehicles to the front; that must have been in April or May—

Q. All right. That's enough. You told us that you know that a hundred Jews were used as drivers for the army. It isn't necessary to go into so much detail.

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EXTRACTS FROM THE TESTIMONY OF DEFENDANT BRAUNE*

DIRECT EXAMINATION

* * * * *

DR. MAYER (Counsel for defendant Braune): When were the Jews, gypsies, and Krimchaks executed in Simferopol, with which you are charged?

DEFENDANT BRAUNE: In the first half of December 1941.

* Complete testimony is recorded in mimeographed transcript, 25, 26 November and 1, 2 December 1947, pp. 8004-3054; 8060-8228.

Q. How did these executions come about?

A. On one of the first days of December in the evening, the liaison officer of the 11th Army came to see Mr. Ohlendorf and told him that the army demanded the carrying out of the executions before Christmas.

Q. Were you present yourself when the liaison officer of the 11th Army told this to Mr. Ohlendorf?

A. Yes. I was personally a witness and a few more officers were present too.

Q. How did you conduct yourself in the face of this army order?

A. I immediately told Mr. Ohlendorf that for my weak forces it would be impossible to carry out these executions before Christmas.

Q. Witness, at this point, please tell the Tribunal about the strength of your unit.

A. When I left Odessa my Kommando had a strength of about 100 men, but all told, including drivers, interpreters, auxiliary forces, etc. In Simferopol, outside of an administrative officer and two aides on my staff I had no other people, except an officer who took care of the SD reports temporarily for 2 months and at times I had a noncommissioned officer who helped me in the handling of partisan questions which had become so extensive that I could not handle them myself. Everything else was assigned to the Teilkommandos, that is, the Teilkommando Simferopol, including the guard personnel and drivers who were necessary. Certainly it was not more than 25 to 30 men strong and the other Teilkommandos also were about the same strength. Yevpatoriya was a little stronger than Karasubazar and Alushta. I know that in the Teilkommando in Simferopol there were about three or four trained police and interrogation officials. With these forces it was practically impossible for me to carry out the required executions in Simferopol.

Q. What did Mr. Ohlendorf do when you told him that your forces were too weak to carry out the execution which was demanded by the army?

A. Mr. Ohlendorf recognized my objections as justified and with his agreement I went to see the G-2 of the army, Colonel Hanck, and described the situation to him.

Q. What was the result?

A. The result was that he managed to put at our disposal a large number of trucks with drivers, to furnish the gasoline, and a certain number, I don't remember how many, of field police, all of whom were placed at the disposal to help in this execution.

Q. Another question, Witness. Isn't it a mistake on your part when you say that Colonel Hanck was the G-2 of the army?

A. I beg your pardon. I made a mistake. Colonel Hanck was the Chief Quartermaster of the army.

Q. Therefore, he was the IIa?

A. No. In the German army his name was OQu [Oberquartiermeister], Chief Quartermaster. Whether he was the IIa, I do not know.

Q. Did you tell your superior, Mr. Ohlendorf, about the result of your conference with the G-2?

A. Yes. I reported about the conference.

Q. As for the forces furnished by the army as a result of this conference, did they also take part in the executions?

A. I cannot say specifically.

Q. Who then carried out the executions?

A. My Teilkommando chief, Sturmbannfuehrer [Major] Schulz, was responsible for carrying out the details. He had at his disposal the people furnished by the army, the newly arrived police company who was to relieve the company so far in operation and who had not yet been distributed among the Teilkommandos. Furthermore, I think I recall that Kommando 11a or 10b, or even both, furnished forces by order of Ohlendorf. Finally there were the forces of the Teilkommando and my guard personnel.

Q. Who carried out the execution itself?

A. The execution Kommandos were, as far as I recall, furnished mostly by the police company, but here I cannot give any specific details as to who was used for the transport, who was used to block off the area, and who was used to do the shooting. I believe that people rotated.

Q. Witness, did you supervise the execution?

A. Yes, I did. It took place under my responsibility. Once I was at the place of execution with Mr. Ohlendorf and there we convinced ourselves that the execution took place according to the directives laid down by Ohlendorf at the beginning of the assignment. I personally was there several times more, and I supervised. As I heard, the adjutant of Ohlendorf was there once, and saw that everything was carried out according to the instructions. Furthermore, my Teilkommando chief, Sturmbannfuehrer [Major] Schulz, was always present, the company commander of the police company, and, I think, another captain.

PRESIDING JUDGE MUSMANN: Who was the adjutant, please?

DEFENDANT BRAUNE: That is the co-defendant Schubert, your Honor.

DR. MAYER: Witness, did your supervision extend to blocking off the area and the transporting of the victims?

DEFENDANT BRAUNE: I think I have already said that I super-

vised the entire process, that is the blocking off and the transport too.

Q. In these executions were Krimchaks shot also?

A. Yes. On this occasion the Krimchaks living in Simferopol were also shot.

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CROSS-EXAMINATION

MR. WALTON: Dr. Braune, it is true, is it not, that you joined the SD voluntarily?

DEFENDANT BRAUNE: Yes. I joined the SD voluntarily.

Q. And that was in 1934, was it not?

A. It was exactly on 18 November 1934.

Q. Is it not further true that as a result of this voluntary entry into the SD you became a member of the SS?

A. I already said this in my direct examination. By joining the SD I became a member of the SS special formation called SD.

Q. Now as an old National Socialist and an SA-man you, of course, knew that when you entered the SD you, as a matter of course, became at the same time a member of the SS, did you not?

A. Yes, I can only repeat what I said before: I became part of the special formation of the SS which was called SD.

Q. You knew that would happen before you even went into the SD, didn't you?

A. Of course I knew that.

Q. Now, the defendant Biberstein testified here that the SS was known in 1936 as the most ideal and most unselfish representative of National Socialism and was highly regarded by the population. May we assume that you also were of this opinion?

A. Yes. I had the same opinion, Mr. Prosecutor.

Q. Have you, between 1934 and 1945, changed your opinion about the SS?

A. I can only talk about the field where I was active myself, and from my own knowledge. I have no reason to change this opinion basically at all. I believe that in the last years before the end of the war many people would have liked to join the SS and become SS leaders who don't want to have anything to do with it now.

* * * * *

MR. WALTON: Doctor, let us pass to some of your specific activities. In your statement, Document NO-4234, Prosecution Exhibit 163, in paragraph 3 thereof, you relate one instance of the execution of a number of Jews. Who rounded up these Jews?

DEFENDANT BRAUNE: Under direct examination I said that prior to my term of office, identification and registration were carried out, that is to say, before I assumed office, and it was the

commander of 10a that dealt with it; when orders had been received from the army for the commander to concentrate the Jews, they were rounded up.

Q. Did I understand you to say that the commander of 10a—what is this designation? Will you go a little further into details?

A. Under direct examination I said that at Simferopol a Teilkommando, which was part of Kommando 10a, a few days after arrival was subordinated to me. The way I remember it is that originally it was Kommando 10a.

Q. Thank you. The translation came over in better shape that time. Well, approximately how many Jews were there in this number which were executed?

A. I have already said here that I cannot give you a definite figure. As far as I remember, I gave you the exact number of Jews present in peacetime in Simferopol. I also told you that at least half of them had escaped, but I cannot give you the exact figures.

Q. Can you give me an approximate figure?

A. No. I cannot do that either, unless I can just work it out this way. There were approximately 10,000 before, half of whom had escaped and from that I can deduce that in all circumstances there must have been fewer than 4,000 to 5,000, but I cannot give you an exact figure.

Q. Then there were more than 1,000 executed during this one instance, is that what I am to gather?

A. I think I am certain that there were more than 1,000.

Q. Were women and children included in this number in this incident?

A. Yes, but I have to add that on account of the rumors and on account of people escaping I think there were only a very few children. Anyway, I myself never saw children being shot, but there were women among them for certain.

Q. Do you remember approximately how large the execution squad was that performed this execution?

A. They were detachments, I believe, of 10 men. In each case there was a military commander. The exact number of these squads I cannot give you.

Q. Were they composed of regular police or state police, army, and Gestapo?

A. I have already told you that the majority of them were companies from the regular police, but I cannot give you any details as to their composition, all the more so because I believe that I remember that they were being relieved at the time.

Q. Am I to assume that these executions were ordered by the army?

A. Mr. Prosecutor, it happened the way I described it to you.

The liaison officer came and told Mr. Ohlendorf the army demanded the execution to be carried out before Christmas. Naturally, above all, there was the Fuehrer Order, unchanged and valid as before.

Q. Well, why didn't you include this fact, since it was so important, in your affidavit, or, I am sorry, in your statement?

A. Mr. Prosecutor, I believe I can remember perfectly well that I told Mr. Wartenberg at the time that the things which he had put into the affidavit only constituted a small fraction, but I believe, I am certain I told him that it was the army which gave that order. In fact, I believe that I can remember just now that that is contained in my statement. Perhaps I can just have a look. Yes, I have found it. May I quote—

“The 11th Army had ordered that the execution at Simferopol was to be finished before Christmas.”

That is in my own statement which I deposed at the time. It is on page 2, Mr. Prosecutor, and it is the last paragraph.

Q. By that you meant that the army ordered all executions of Jews in Simferopol to be finished by Christmas, is that correct? Was it this one that you specifically state, or all others?

A. Mr. Prosecutor, the Fuehrer Order was there and now the army said “We want it finished before Christmas.” I wasn't able at the time to find out all the reasons. Maybe the reasons were strategic reasons, military reasons, which caused the army to issue that order. Maybe they were territorial questions. Maybe they were questions of food. The army at that time was afraid that hundreds of thousands of people might have to starve to death during that winter, because of the food situation, but all those are suppositions on my part and I cannot tell you what was the ultimate reason for that order given by the army.

Q. Are you trying to tell us now that the execution of all undesirables was ordered because there might not be enough food for them?

A. No, Mr. Prosecutor, all I wanted to say was that might have been the reason for the army to issue that order at that particular time. The over-all principles of the matter were not affected by that.

Q. Were there any executions carried out in Simferopol after Christmas 1941?

A. Certainly, executions were carried out after Christmas, 1941, Mr. Prosecutor.

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3. GENERAL DEFENSES AND SPECIAL ISSUES

a. Superior Orders

*EXTRACT FROM THE CLOSING STATEMENT FOR DEFENDANT NAUMANN*¹

* * * * *

I have set forth that Naumann did not participate in the carrying through of the Fuehrer Order and that he himself did not give orders for executions.

Even if such a participation could, however, be considered as proved, a punishment because of this would be impossible since Naumann's behavior would be due to an order issued by Hitler. That this order did exist, and that it existed during the whole period in which Naumann was chief of the Einsatzgruppe B, cannot be doubted according to the results of the evidence presented. As regards this, I particularly refer to the testimony of Ohlendorf (*Tr. pp. 523-524*), (*Tr. pp. 1812-15*), Nosske (*pp. 350-05*), who gave a detailed description of the way in which the Fuehrer Order was given to the commanders of the Einsatzgruppen and Einsatzkommandos in Pretzsch.

For the examination of the question as to whether, and to what degree, the plea of acting on higher orders precludes punishment, it is first of all of decisive importance according to which law this objection is to be judged.

During the proceedings against Flick² and others, Military Tribunal IV declared that it was not a tribunal of the U.S.A. and, therefore, did not have to apply American principles, but that it was an international tribunal and that, therefore, the facts were to be judged according to international law. (*Page 3 of the judgment of 22 December 1947.*) I must suppose that this principle applies generally to the military tribunals here and that, therefore, in this trial the plea of acting on superior orders is to be judged according to the international law in force at the time of the action.

As I shall set forth, the plea of acting on superior orders was thus far admissible in international law. This result cannot be altered either by the London Charter or the Control Council Law No. 10. The Charter and Control Council Law No. 10, therefore, can only be applied inasmuch as they coincide with the hitherto recognized rules of international law. No new international law could, however, be created by the Charter and the Control Council

¹ Complete closing statement is recorded in mimeographed transcript, February 1948, pp. 5812-5862.

² *United States vs. Friedrich Flick, et. al.* See Vol. VI

It has generally been recognized that it is unjust to punish a person who acted in compliance with an order. For, if he had refused to comply with the order, the subordinate would probably have been shot. In such cases, therefore, justice requires the punishment of the person who is responsible for the order and not that of the one who executed the order. If the commission nevertheless declined to use the principle, which could have arisen from this, it was feared that then every subordinate who committed a punishable action would plead to have acted on superior orders, and, since according to the general rules of the code of criminal procedure the state has to bear the *onus probandi*, it would then be impossible to punish subordinates for the perpetration of punishable actions. It was only for that reason that the plea of superior orders was not generally considered as admissible, but it was left to the court to decide whether the plea of superior orders is to be considered as admissible. From these results, the plea of superior orders is to be declared as admissible if the existence of such an order is incontestably to be considered as proved.

In the case on trial before this Tribunal the plea of superior orders would be admissible according to this report of the commission, since it is without doubt established that the defendants acted in compliance with an order issued by Hitler.

As for (b).—The British military code, issued as early as 1715, already provided that every soldier had to obey every order given by his superiors regardless of whether the order was in accordance with the law or in violation of the law. In this respect, I refer to the statements of Professor Lauterpacht in the essay in the "British Year Book for International Law" issued in 1944.¹ In the following period, this conception became a principle in the armies of all nations. Moreover, since 1914 the field regulations of the armies of most nations have accepted this principle that the plea of acting on higher orders was admissible to be true, for the reason that the admission of the plea of acting on higher orders had already become common law.²

In the same way, the British Manual of Military Penal Law and also the Rules of Land Warfare have explicitly declared the plea of acting on higher orders as admissible. Up till April 1944,

¹ Lauterpacht, *The Law of Nations in the Punishment of War Crimes—in the British Year Book of International Law*, 1944, p. 71: "The Military Code of 1715 provided that any officer or soldier who should refuse to obey the military orders of his superior officer shall be liable to capital punishment. *The code contains no qualifications as to the lawfulness of the command.*"

² George Manner, Instructor in Political Science, University of Illinois, in the "American Journal of International Law," No. 3, July 1943, p. 417: "Since 1914, at least, the maxim has been incorporated in the war manuals of the powers as a rule of the customary laws of war."

the provision was contained in paragraph 443, chapter XIV of the British manual that soldiers cannot be considered war criminals if, by acts they were ordered to carry out by their governments or their superiors, they had violated recognized laws of war. This provision explicitly precluded a punishment by the enemy. To this effect I refer to the statements in Law Reports of Trials of War Criminals, Volume I, page 18, 1947, where, with reference to the fundamental statements made by Oppenheim in his book International Law (Vol. II, p. 454, 5th Edition), it is furthermore established that in such a case the enemy can only call to account the officials or commanders for the issue of such orders.¹

In regard to the contents, the Article 347 of the American Rules of Land Warfare correspond to the provision of paragraph 443² of the British manual. According to this provision, members of the American Armed Forces must not be punished if they had committed a punishable act on orders or even with the approval of their government or commanders. The commanders themselves rather could only be called to account.

In both provisions, the fact is significant that no distinction was made between a lawful and an unlawful order and that the subordinate person did not even have the right, and much less so the obligation, to examine the lawfulness and legality of an order.

The provision contained in paragraph 483 of the British manual (British Manual of Military Law) was rescinded on 15 April 1944. Since that time the plea of acting on higher orders is no longer admissible.

A similar amendment of the American field regulations was published on 15 November 1944 through Amendment No. 1 of the Rules of Land Warfare.

In this respect one cannot help thinking that the amendment was evidently made in view of the impending end of the war and the contemplated trials of war criminals.

. DR. GAWLIK: Your Honors, after I wrote these lines and after I handed in my final plea I received the book by Sheldon Glueck,

¹ Law Reports of Trials of War Criminals, Vol. I, 1947, p. 18: "Until April, 1944, Chapter XIV of the British Manual of Military Law contained the much discussed statement (par. 443) that 'members of the armed forces who commit such violations of the recognized rules of warfare as are ordered by their government, or by their commander, are not war criminals and cannot therefore be punished by the enemy. He may punish the officials or commanders responsible for such orders if they fall into his hands, but otherwise he may only resort to other means of obtaining redress * * * 'This statement was based on the 5th edition of Oppenheim's International Law, Vol. II, page 454.'"

² "Individuals of the armed forces will not be punished for these offenses in case they are committed under the order or sanction of their government or commanders. The commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall."

"War Criminals, their Prosecution and Punishment", 1944, and I found this opinion confirmed in the book. My colleague, Aschenauer, has already commented in detail on this book. Therefore, I shall not go into any detail but I call the attention of the Tribunal to several sentences from this book which I shall ask the interpreter to read.

INTERPRETER: From page 141 of Sheldon Glueck's book. "The provisions in the American rules quoted above seemingly protect them against punishment not only in the case of orders of their Government (and perhaps acts of state) but also as in doing the prohibited act, they obeyed the order of a military superior, even though they know their acts to be contrary to the laws and customs of legitimate warfare."

DR. GAWLIK: Even Glueck who, as the book shows, is not at all pro-German and who attempts to establish a procedure for the trial of war criminals, cannot get over the exclusion of the plea of superior orders. If Naumann in 1943 or 1944 had been tried before an American military tribunal for the charges raised against him now he could not, on the basis of this Article 347, in the Rules of Land Warfare, have been punished according to this rule. I emphasize expressly that this regulation also applies to enemy nationals. Through the change in this regulation, this plea of acting on superior orders could only be amended to refer to those actions committed after 15 November 1944 but not to those committed before that.

The retroactive application of this regulation would have the same significance as one of the laws promulgated by the Nazis on the occasion of the burning of the Reichstag, namely the retroactive admissibility of the death penalty for arson. At that time the world raised a hullabaloo, they spoke of a violation of the law, they spoke of the beginning of the dissolution of the legal state, and one could say that those people were right. I have too great a confidence in this Tribunal and, therefore, I do not believe that they will build up their judgment on such an insecure position.

I shall continue in the final plea—

Moreover, Winthrop, the well known professor of the American Military Penal Code and author of the book Military Law and Precedents, admits the plea of acting on higher orders and expresses the opinion that an order precludes punishment.* As a reason for this opinion held by him, he asserts that obedience was the fundament of every army and that the subordinated person was, therefore, not under the obligation to decide by himself about the question whether an order given him was lawful or

* Winthrop, p. 296: "That the act charged as an offense was done in obedience to the order—verbal or written—of a military superior, is, in general, a good defense at military law."

unlawful. Such a conduct by the subordinated persons would, according to Winthrop's point of view, mean insubordination and would lead to undermining military discipline.¹ In this connection, Winthrop also refers to a decision by the Supreme Court which likewise comes to the same result. It is said in this decision that it would mean the end of all discipline if, for instance, sailors aboard a warship on the high seas would, on the basis of their personal sense of justice, have the possibility to shake off the power of command of their commander by reasoning that they considered the execution of the order an unlawful act.²

Therefore, it can be established as a principle of international law that the obligation for obedience on the part of the soldier, and such was Naumann during his time of duty in Russia, is not preceded by the obligation to examine whether the order is in violation of any law, especially the laws of war.

The Tribunal in examining this legal question will not disregard the existing conditions in Germany.

I can understand that repeatedly it may have appeared inconceivable to the Tribunal if defendants in this trial, interrogated as witnesses in their own defense, have again and again referred to the fact that it was their duty to carry out the order and that they had no authority to decide about the legality of the order.

Germany is a state in which for centuries obedience has been preached as the supreme duty of the citizen. The army and the civil servants were the pillars of the German state. It was the supreme duty of both to obey, and unconditionally comply with, the orders given by superior authorities. This is a fact which is based on the historical conditions of Germany, especially on the historical development of the past 150 years, a development which is completely different from that of the United States.

The principle that obedience was the supreme duty of every citizen was emphatically advocated especially in the National Socialist Fuehrer state. The individual citizen was not entitled to voice his own opinion. Neither was he permitted to express any criticism on measures taken by the state administration.

Conditions in Germany, therefore, were completely different from those in a free democracy. To be true, it is correct that the

¹ Winthrop, p. 296: "But for the inferior to assume to determine the question of the lawfulness of an order given him by a superior, would in itself, as a general rule, amount to insubordination, and such an assumption carried into practice would subvert military discipline."

² Supreme Court in leading case in the navy, *Dinsman v. Wilkes*, 7 Howard, 403, quoted by Winthrop, p. 296: "There would be an end of all discipline if the seaman and marines on board a ship of war on a distant service were permitted to act upon their own opinion of their rights, and to throw off the authority of the commander whenever they supposed it to be unlawfully exercised."

provisions of the British Manual and the similar provision in the Rules of Land Warfare of the United States, with respect to the plea of acting on higher orders, have undergone a change insofar as the plea of acting on higher orders was no longer admitted to the extent that this was the case in the past. However, during the period in which Naumann was chief of the Einsatzgruppe B, namely from the end of November 1941 till March 1943, the old provisions of the aforementioned field regulations were still fully valid.

The opinion held by me, concerning the admissibility of the plea of acting on higher orders, is not refuted either by Article 47 of the German Military Penal Code which in this connection has been repeatedly mentioned in this courtroom.

The provision of Article 47 * of the Military Penal Code cannot be applied if only for the reason that it is not applicable to orders given by the chief executive of the state. This interpretation results in particular from the meaning of this provision.

The provision of Article 47 of the Military Penal Code always presupposes that the possibility to refuse obedience must be based on the possibility to complain to the superior officer of the person who had given the order so that he might find justice there. Only in this case can he make use of the provision of Article 47 of the Military Penal Code. If the soldier does not have this possibility, then his refusal to obey an order entails a severe punishment without examining the lawfulness of the order, and the unlawful act, as ordered, cannot be prevented.

The provision of Article 47 of the Military Penal Code, therefore, applies, for instance, to the common soldier who refuses to carry out an unlawful order given to him by his lieutenant, because he then has the possibility to complain to the superior officer of the lieutenant. Moreover, an unlawful order given by a general can be rejected since in this case the possibility is given that he who received the order can turn to the general's superior. This possibility, however, does not exist if any orders, which henceforth are found to be unlawful, have been decreed by the chief executive of the state. And this possibility by no means exists if the orders are issued by a dictator who combines in his hand all instruments of power of the state, as this was the case with Hitler, a dictator who, by use of all means at his disposal, would have actually executed the orders he decreed.

What action should the defendants take against the orders given to them by Hitler? How could they have prevented the execution of these orders? Whom could they approach in order to find

* Text of Article 47 is quoted on page 53.

justice in respect to the unlawful orders given by Hitler? Under the present circumstances, it is simple to assert that the defendants ought not to have carried out the order. No answer, however, can be given to the question what action they ought to have taken, in the situation in which they were at that time, to prevent the execution of the order. Even according to the prevailing German law itself, unlawful orders are effective.¹

According to the French penal code too, the soldier is obligated to obey an order of the legitimate authorities, regardless of whether the order is lawful or not. The soldier solely has a right to complain after the execution of the order. In this connection, I refer to the statement by Cobbett.² Moreover Garner, who in his statements refers, among others, to the view of Professor Nast of Nancy University and to the example mentioned by the latter, has come to the same conclusion.³ Professor Nast has added further explanations to this question. In this he comes to the conclusion that the *sedes materiae* of French law is article 64 of the Penal Code, according to which an act committed under duress does not constitute a crime. Among these acts Professor Nast also includes cases in which a soldier has to carry out orders. In this connection, Nast also mentions the Belgian and Dutch Criminal Codes, which contain the same provisions. In this connection, he refers particularly to Article 43 of the Dutch Criminal Code, according to which a defendant is expressly exonerated by orders from superior authorities.⁴

As for Authors' Hypotheses—The hypotheses adopted in legal literature are not sources of international law. This is generally recognized in international law. I particularly call attention to the

¹ So binding, Manual of the Penal Code (1885), p. 804, furthermore Girginoff, p. 18, Battenberg, p. 3, 73, Frank, p. 143 and Eberh. Schmidt, p. 58. Very clearly in this meaning RMG. 1, 63: evidently also Rittau, decree 2, (p. 98 *ibid.*)

² Cobbett, vol. II, p. 176/77: "By the French penal code the civilian is immune if the order is lawful and commanded by the legitimate authority. But it has been held that the soldier is bound to obey the order of the legitimate authority, whether lawful or not. He may also protest afterwards."

³ Garner, vol. II, p. 486: "Article 64 of the French criminal code lays down the rule that an act committed by a person who has been constrained by force is neither a crime or a misdemeanor (Délit). Professor Nast of the University of Nancy has expressed the opinion that the immunity would cover the case of a soldier who is compelled to commit an act in violation of the laws of war and that therefore German soldiers who were compelled by their commanders to participate in the spoliation of French industrial establishments and the removal of their machinery to Germany, although the acts were contrary to the Hague Convention, were not liable to arrest and trial by the French courts."

⁴ Prof. Nast, *Revue Générale de Droit International Public*, 26 (1919), p. 123: "The crucial *sedes materiae* in French law appears to be Article 64 of the Criminal Code according to which an act committed under duress (which apparently includes the case of a soldier bound to obey orders) is neither a crime nor a misdemeanor. Art. 327 excludes liability in case of acts 'ordonnés par la loi et commandés par l'autorité'. So does Article 190, Articles 70 and 71 of the Belgian Penal Code reproduce substantially Articles 64 and 327 of the French Penal Code. Article 43 of the Dutch Criminal Code recognizes generally the defense of superior orders, while Art. 40 lays down the general exception of duress."

explanations of Wharton, who refers to statements by Chief Justice Cockburn. There it is said that authors in the field of international law, no matter how valuable their efforts may always be with respect to the interpretation and definition of fundamental legal provisions, cannot make any laws, because laws, in order to be binding, require the agreement of the nations, which can take place by treaty or through suitable statements by the respective governments, or even through established tradition.¹ A conviction, therefore, cannot be based on the fact that individual scholars of international law adopt the viewpoint that the appeal to a superior order is inadmissible.

Moreover, the question of the admissibility of the appeal to the superior order is very much contested in legal literature. It is in no case rejected by the majority of authors.

The appeal to a superior order is first declared admissible, as already mentioned by Winthrop, who recognizes as a defense the fact that the incriminating act was committed in pursuance to an order by a superior.² Likewise Garner, the well-known Professor of International Law at the University of Illinois, declares that it would be unjust to deny the right of a person under military orders to appeal to a superior order. Garner particularly emphasizes that it is not the task of a military subordinate to examine the lawfulness and legality of a military command.³

He is of the opinion that justice requires that that person be punished, first of all, who bears the responsibility for the order and not that person who acts under duress.⁴ Professor George Manner of the University of Illinois is also of the same opinion.⁵ Likewise Oppenheim, the well-known British Professor of International Law, has adopted the view of his work "International Law" that the appeal to the superior order is admissible. In this

¹ Wharton, *Elements of International Law*, p. 23: "Writers on international law", says Lord Chief Justice Cockburn, "however valuable their labors may be in elucidating and ascertaining the principles and rules of law, cannot make the law. To be binding, the law must have received the assent of the nations who are to be bound by it. This assent may be expressed as by treaty or the acknowledged concurrence of government, or may be implied from established usage."

² Winthrop, *Military Law and Precedents*, p. 296: "That the act charged as an offense was done in obedience to the order—verbal or written—of a military superior is, in general, a good defense at military law."

³ Garner, Vol. II, p. 484: "He cannot discuss or question the commands that are given him; he is not the judge of their legality or illegality; and if he were, his ignorance of the laws of war would in many cases make him an incompetent judge."

⁴ Garner, Vol. I, p. 484: "In such cases therefore justice, it is said, requires the punishment of the officer who is responsible for the order rather than the simple soldier who acts by constraint and who has a power of judgment or discretion."

⁵ Manner, *The Legal Nature and Punishment of War Crimes*, p. 433: "Secondly, it appears to be equally admitted that the defenses act of State and superior orders and the maxim nullum crimen, nulla poena sine lege condition any prosecution for war crimes. The very fact that the writer suggests a reappraisal of these orthodox principles is only further proof of their general acceptance in positive law. 102".—102 Glueck, 10 *ibid.*, p. 145.

work he declares that violations of the laws of war are only crimes *if they have been committed without the order of the belligerent government*. He is of the opinion that members of the armed forces who commit violations of law at the command of their government are not war criminals and, therefore, cannot be punished by the enemy. In such cases, he grants the enemy only the right to resort to reprisals.¹

Lauterpacht, who brought out Oppenheim's work in 1940, after the latter's death, was the first to abandon this opinion. This view of Professor Lauterpacht, however, has found no concurrence elsewhere in legal literature. It has been particularly attacked by Professor Kelson in his work "Peace through Law", page 98, and described as more than questionable.

From these statements, it appears that accepted international law is solely and alone decisive in deciding the question whether the appeal to a superior order is admissible in this trial and that according to international law the appeal to the superior order is a reason for justification and exoneration from guilt.

b. Justification of the Hitler Order

PARTIAL TRANSLATION OF OHLENDORF DOCUMENT 38 OHLENDORF DEFENSE EXHIBIT I

EXTRACTS FROM EXPERT LEGAL OPINION PRESENTED ON BEHALF OF
THE DEFENSE BY DR. REINHARD MAURACH

*EXPERT LEGAL OPINION
PRESENTED ON BEHALF OF THE DEFENSE
BY
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PROFESSOR OF CRIMINAL LAW AND
EAST EUROPEAN LAW*

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¹ Oppenheim, *International Law*, par. 253: "Violation of rules regarding warfare", writes this eminent jurist, "are crimes only when committed *without an order* of the belligerent Government, they are not war criminals and cannot be punished by the enemy; the latter may, however, resort to reprisals".

² Originally called as witness by the defense; by agreement of prosecution and defense this legal opinion was submitted in lieu of oral testimony.

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INTRODUCTION

Subject and Outline of this Expert Opinion

The present expert opinion has to deal with only a part of the questions which will be discussed during the trial. It does not propose to investigate whether the acts of the defendants represent the characteristic elements of a given crime, i.e., whether they can

be classified as the types of offenses as outlined in the basically applicable Control Council Law No. 10. In that respect the individual counts of the indictment are assumed as proved, without any prejudice to the result of the evidence to be taken. Nor is the expert opinion aimed at investigating the *unlawfulness* of the conduct the defendants are charged with (use of possible objective arguments in defense). What remains to examine is the question of *guilt*.

This question, on the other hand, had to be propounded as a question of principle, because the defendants claim for themselves an exception and are pleading to have acted under necessity, which cannot but influence the degree of responsibility.

This justifies the structure of this expert opinion, the details of which can be seen from the table of contents.

I. SELF-DEFENSE

1. *According to German law*

a. In general. Self-defense (Art. 53 of the Criminal Code) is admitted as a legal defense plea; if it is given, unlawfulness of the act is excluded, the deed not only is excused by the law, but even approved of. The prerequisite for self-defense is an unlawful attack, that is, such an attack as the attacked need not tolerate. The attack need not have started; self-defense is also admissible against an *immediately imminent* attack.

Self-defense is applicable on behalf of all values; a limitation to body or life in particular is not provided. Entitled to self-defense, therefore, is *also the state as such, the existence of the people, the menaced vital interest of the nation* (Decision Reich Court in Criminal Matters, vol. 63, p. 220). The circle of values entitled to self-defense, therefore, is drawn much wider than according to Anglo-Saxon law.

b. Aid in self-defense, in particular aid in self-defense of the state. The person attacked is not the only one who can practice self-defense, but also any third party. This is particularly the case in so-called self-defense of the state. For self-defense on behalf of the state is always assistance in case of distress, and can, consequently, always be given by a third party only. The relation between offended and defended values is of no account, either in the case of self-defense or in the case of assistance to the state in distress. The intensity of the attack alone is decisive for the defensive action.

c. Putative self-defense and putative assistance in distress. This legal concept is not developed by law, but generally recognized in science and jurisdiction. It is given if the perpetrator was errone-

ously of the opinion that the prerequisite of an "unlawful attack" existed.

If the error was *unavoidable*, then putative self-defense counts as a defense *plea*; if, on the contrary, it was *avoidable*, then its legal value is disputed; according to one opinion, it excludes the responsibility of the perpetrator *on account of intent*, while according to a less widely held opinion only *extenuating circumstances can be pleaded while responsibility on account of intent is still operative*. According to both opinions, however, it is impossible to hold the perpetrator who believed in the justification of his deed as the result of factual error fully responsible within the meaning of the penal code.

2. According to Soviet Law

a. In general. The definition of self-defense according to Soviet Law, Article 13, paragraph 1 of the Penal Code of the RSFSR, and of the other Soviet Republics, dated 1926, corresponds in general to the German point of view. Here too, the state and especially the Soviet [Raeteorganisation] as such are entitled to self-defense; in contrast to German law the Russian law states even "verbis expressis" that self-defense (*neobhodymaya oborona*) may also be exercised in favor of that state (*sovietskaya vlast*). (Compare for more explicit information *Maurach*, *The System of the Russian Penal Code*, 1928, page 101.) A balance between the colliding values is no more required than by German law. In literature it is not clarified whether assistance in distress constitutes an exculpating defense or only an excuse.

b. Putative self-defense and putative assistance in distress are, just as in German law, not taken care of by law, but recognized by jurisdiction and literature. (Reference: *Maurach*, see above reference, page 102) and is indeed placed on the same level as the error in fact (*fakticheskaya oshibka*), intent is excluded, and at worst, guilt is treated as committed under extenuating circumstances. It is unimportant whether the error could have been avoided or not.

II. NECESSITY

1. According to German law

Necessity is, according to valid law, regulated in an insufficient, fragmentary, and casuistic manner. This situation was cleared up by the fundamental decision rendered by the German Supreme Court, Volume 61, page 242 and following pages. According to this the following applies:

a. In general. A difference is made between justifiable and merely exculpating necessity. Common to both is the existence of an urgent condition of danger to a recognized interest which can only

be removed by the infringement upon another unconcerned legal interest. If the threatened interest is preponderant, then necessity constitutes *reason for justification*; if no comparison between interests is possible and if life and limb of the party acting under necessity or that of a relative are threatened (Article 54 of the German Penal Code) then the necessity remains still an exculpating reason.

b. *State necessity* is recognized on principle in the same measure as assistance to the state in case of distress. According to a decision rendered by the German Supreme Court dated 3 April 1922, II 791-22, in particular also "the subversive actions of rebellious parts of the population in an area and the resulting increased insecurity of this area" have been recognized as an acute state of danger to the state. The German Supreme Court in Volume 60, page 318, has furthermore recognized the so-called continuous necessity and voiced the opinion that the continued endangering of the common weal by a certain person could under certain conditions justify the killing of that person as an act of necessity. The question whether a *state necessity* warrants the killing of a person has in contrast been left open by the German Supreme Court; this question has been discussed very often, especially during the period after the First World War, but has never been clearly decided.

c. *Putative necessity* has not been expressly regulated by law, but is recognized in theory and jurisdiction as a concept of common law. It is treated on principle just as putative self-defense (see above).

2. *According to Soviet Law*

Soviet Criminal Law, more modern than German law, has in Article 13, paragraph 2 of the Penal Code, a general definition of necessity. Thereby it has accomplished that for which German reform legislation has long been striving.

However, this definition is rather a summary one. Any actions taken through necessity are admissible without restrictions, if they are necessary to save higher values, in as far as the danger could not be averted in any other way (Maurach, also mentioned p. 103). It has not been clarified whether this constitutes justification or exculpation. The law does not deal expressly with the putative state of necessity; however, it will be treated as an error in the same way as a putative action of self-defense (see above).

III. CONCLUSIONS DRAWN FROM A COMPARISON OF THE TWO SYSTEMS OF LAW

If the principles common to both legal systems are examined, it will be found that a far-reaching concord of concepts exists.

a. Self-defense. Self-defense is admissible on behalf of all legal values, in particular the continued existence of the state, and the vital interests of the nation as represented by the state. If the state or the nation are directly threatened in their existence, any person—not only the man who has been appointed by the state for this purpose—can exercise aid in distress. Self-defense, respectively aid in distress, is determined by the violence of the attack, and does not exclude killing. An error concerning the prerequisites for self-defense, respectively aid in distress, must be treated as an error in fact [Tatsachenirrtum], and constitutes according to the motive, the avoidability, and also according to the extent of the error, an excuse, or at least an extenuating circumstance.

b. Necessity. According to both legal systems necessity is always permissible as a so-called last resort only. Necessity is applicable on behalf of all legal values in particular on behalf of the state and its institutions, as well as the welfare of the nation. Necessity exists when the imperiled legal values are considerably weightier than the interests violated by the perpetrator. A putative state of necessity should be treated in principle as a grave error, i.e., in the same way as putative self-defense.

C. INCLUSION OF THE CONCRETE CASE UNDER THE ESTABLISHED LEGAL PREREQUISITES

Having established a continental “Cross-Section” [Querschnitt] of the legal position as claimed by the defendant *Ohlendorf*, it can now be stated to what extent the *actual* circumstances, which determined the defendant’s actions correspond to the *criminology* relevant prerequisites as indicated above. Before that, however, reference as to the method must be made.

The defendants, and in particular *Ohlendorf*, do not claim that objectively conditions of assistance to the state in distress or state self-defense necessitating an emergency prevailed. But they do claim that because of the special situation in which they had been put and in which they were called upon to act, *subjectively* the condition existed for resorting to the previously mentioned legal concepts. The question whether objectively aid in self-defense and necessity prevailed whether (according to German terminology) a reason for justification [Rechtfertigungsgrund] was given is *not even to be examined*. Nevertheless, the following examination cannot omit a discussion of the objective prerequisites concerning self-defense and state of necessity.

Such an examination is necessary, in order to discover where the defendant Ohlendorf erred concerning the justification of his actions; for, the more the objective situation coincided with the picture the defendant had in his mind, the more relevant becomes

his defense that, because of an error, he considered his actions permissible and necessary. Having mentioned this, the discussion will have to be classified in accordance with the following viewpoints: (1) *Objective* prerequisites, i. e., prerequisites which did not only exist in the mind of the defendant, but which were actual facts *the nature of the war against* the Soviet Union. (2) prerequisites, i. e., prerequisites that did not prevail, whose subjective assumption, however, brought about the error in fact of the defendants regarding the prerequisites of self-defense by the state and state necessity, e. g., the *East European Jewish problem as part of the problem of bolshevism*: origin and effect of the defendant's delusions that a solution of the problem "bolshevism versus Europe" could only be brought about by solving the Jewish problem, and thus in their own sphere, only by executing the Fuehrer Order.

1. *The objective prerequisites: The war against the Soviet Union as exceptional war.* There is no need to point out that the state of war *as such* does not vindicate extraordinary actions, prohibited by international treaties and common law practices, either on the premise of self-defense or a state of necessity. If this were the case, international law would be rendered illusory, since at least one of the warring states could invoke self-défense as an excuse, while necessity could be claimed by all parties concerned. *Therefore, a state of war as such does not in itself justify self-defense or necessity.* This presupposes, however, war in the strict sense of international law, i. e., armed conflict between two states. *If however the armed conflict stands from the outset under an aspect by far surpassing the extent of war and its limits, in other words, if the war aims and methods of one of the opponents can with certainty be expected to be "total" to such a degree that in the face of them the traditional conceptions and limitations of international law would fail, during hostilities, the opponent of such a state cannot be denied the right to claim self-defense or necessity.*

It must be examined, therefore, whether the Soviet Union possessed the qualifications of a belligerent opponent within the limits of international law. It cannot be denied that the Soviet Union possesses the status of a state, and thus is a potential belligerent. It can be questioned, however, whether the Soviet Union, according to her own governmental teleology and ideas, should be considered, in the face of her war aims and methods, a belligerent, thus forcing a presumptive opponent *ipso facto* into a position of self-defense a status in war, deserving recognition by international law. In 1941 the German war leaders took this viewpoint. The justification of this position will be examined as follows, in the following three sections:

- a. The U.S.S.R. until 1941.
- b. The U.S.S.R. during the war.
- c. The U.S.S.R. after the war.

* * * * * * *

(bb) *Conduct of the so-called partisan warfare*

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This is the place to say with special emphasis that the killing of entire national groups is not justified by "collective suspicion", of any group, no matter how grave this might be. This opinion is merely concerned (just as in the analysis of the partisan movement above) with advancing proof that the Soviet conduct of war created an atmosphere suggestive of the absolute predominance of "raisons d' état", a psychological delusion to the effect that the well-being or ruination of individual national groups or nations should not play a restraining role in this war, and that under certain circumstances even considerations of ethics and morals were to give way to military success. Any hesitations and scruples which the defendants had upon receiving and carrying out the extermination orders necessarily had to lose some of their weight in the face of reports of the unimaginable way in which the Soviet High Command treated its own peoples which were constantly leaking through the front lines.

2. *The subjective prerequisites: bolshevism and Judaism*

The arguments to 1 intended to show the presence of an actually existent, objective and exceptional situation in Germany's war against the Soviet Union. The enemy was not a state securely linked to the community of nations consisting of one nation or a self-sufficient union of nations, but rather an ideology that considered the state it had created only as one of the vehicles of its power, that basically denied the forms of existence of other nations and states, and which had unmistakably shown in all of its assertions of power up to the outbreak of the war that it would not consider the coming conflict merely as a "war", i. e., as an armed conflict that would be waged according to certain minimum international rules, but that over and beyond this it was determined to fight it out without regard to basic agreements and with every means at its disposal. All persons in authority in both the German and the Soviet Russian camps were well aware, even before it began, that the war in the East could not be considered a "normal war".

It has already been emphasized that the issuing and executing of orders for mass executions cannot find any justification in international law, even within the scope of a total war of this kind, and in particular cannot allow of any appeal to the objective premises of self-defense and necessity. The question, however,

whether the objective premises for an emergency removing general rules of conduct were present is not alone decisive in judging the above matter. That would be the point in question if, for example, we had to examine whether the German Reich, as subject of international law, was guilty of a so-called offense against international law. *In this case, however, the issue is not the responsibility of a state according to international law, but rather of the criminal responsibility of individuals acting for the state.*

Here not only the objective circumstances are decisive (the presence of an "attack" implying self-defense, or the presence of an imminent danger which cannot be removed by other means, indicating a necessity), but the important point is how the persons involved (the defendants) looked upon and had to look upon this emergency or danger subjectively. A *justification* according to criminal law, indeed, should be limited to an examination of the objective criteria (and, as has been said, such objective criteria would be found not to have existed) but since we wish to examine here whether the facts exclude criminal guilt, we cannot bypass the subjective positions because, strictly speaking, they are always the basis for the (always subjective) compulsion or emergency which leads to the commission of the conduct alleged to be criminal, "in truth the defense is not necessity but rather the *assumption* of necessity" (Radbruch in his festive publication for Frank, 1930 Vol. I, p. 166). The thing that must be examined now is the compulsion as it developed, and had to develop in the imagination of the defendants. We have already presented this premise under 1. We had seen that the war which had broken out against the Soviet Union, as a vehicle of bolshevism, was bound to lead, from the beginning and on both sides, to means of combat and measures of protection which had never been used to the same extent in other wars.

General extermination measures cannot be justified by any war situation, no matter how exceptional; therefore we must examine to what extent they could have seemed necessary subjectively. And this leads us to the question of the relationship of bolshevism and Judaism (a) in reference to National Socialist ideology and (b) in reference to the conceptions of the defendants themselves.

a. The merger of the "Jewish problem with the Bolshevik problem" according to the official Nazi theory

The ideological merger of the two centers of power, "Jewry" on the one hand and "bolshevism" on the other, which were both equally displeasing to National Socialism, goes back to the beginning of National Socialism. In the Party program, to be sure, this connection had not yet found any direct expression. However,

it was already advocated in Hitler's "Mein Kampf", in its most general and apodictic form, and was later set forth in more detail in Rosenberg's "Mythos". Since these writings, both of which are fundamental and obligatory for National Socialism, this "combination theory" belongs to the permanent body of Nazi doctrine. To a larger extent its journalistic and pseudo-scientific foundation begins in 1934. After September 1936, that is after the Reich Party rally, where bolshevism was ideologically made the object of the severest attacks and "Juda-marxism" was again set up as an official dogma, an especially feverish journalistic and pseudo-scientific activity of "enlightenment" began. To this belongs the foundation of the "Anti-comintern", under State and Party sponsorship ("General League of German Anti-Communist Associations") and the formation of a special department for Jewry and bolshevism in the Ministry of Propaganda, the direction of which was under a certain *Dr. Taubert*, who was as unscrupulous as he was incorrectly informed about the facts. The publishing houses (such as "Eckart-Kampf-Verlag", "Nibelungen-Verlag") which were charged with the publication of journalistic and pseudo-scientific writings on "Juda-marxism", bolshevism and the role of Jewry in Russia, were not only State foundations, but were also directly under the management of the above-named *Taubert*. The tactical unity of the theoretical line was thereby substantially preserved. Scientific literature which was to be taken seriously was able to prevail against the camouflaged official Party publications only in exceptional cases and at the cost of severest discrimination. "Specialists" on the Jewish problem with official Party backing, such as *Fehst*, *Poehl-Agthe*, *Boekhoff* and *Ehrt*, whose names had a bad sound in the camp of science, dominated the field without exception. Their theories were the sole foundation for the treatment of the "unified Jewish-Bolshevist problem" in educational letters, in camps, in the press and in the official or semi-official utterances of major or minor Party leaders.

That the primitiveness of this theory can only be explained by the complete ignorance of the actual facts is quite obvious in this connection. This official view in detail concerning the alleged physical necessity of communion of fate between bolshevism and Judaism can be brought to the following common denominator: Marx had been a Jew. Therefore the Marxist theory contained nothing but Jewish logic. This theory was an attempt to conceal an aspired Jewish world domination. It was the task of the consciously super-national or international concept of bolshevism to prevent discovery that Jewry as such was the moving power of bolshevism. Bolshevism was the practical realization of this concealed Jewish "dream for world domination". This is proved by the dispropor-

tionately high number of Jewish leaders in the Bolshevik administration.

This statement is not concerned with attacking the argumentation of this pseudo-scientific literature which is both poor and limited to formalities, which neither knew nor wanted to recognize the conditions of the eastern-European Jewry and which has not become familiar or was unconcerned with the changing fate of the Jewish people in the Soviet Union. An opinion about this official doctrine in the framework of the statement is not necessary because the statement *does not stress the doctrine itself but its psychological results, just as in legal aspects the objective facts of legitimate self-defense or necessity are not to be considered but the strictly subjective facts of the putative self-defense or the putative necessity*. Therefore it is only essential for us to state that the following concepts, inspired by the Party, found a wide propagation in pseudo-scientific literature and began to influence the imaginations even of those strata who used to be reserved towards ordinary propaganda: Bolshevism was a Jewish invention; bolshevism was to serve the realization of Jewish plans for world domination; Jewry in its great majority was an active exponent of militant bolshevism; the defense against Bolshevik expansion depended on rendering Soviet Jewry harmless.

Several examples may indicate how far the identification of bolshevism and Jewry has progressed in literature. It is unnecessary to quote the relative passages from the books "Kampf" or "Mythos" as well as from Hitler's speeches since these statements are generally known. Better clues are given by the inferences of literature which ostensibly pretends to be of scientific nature. Thus *Boekhoff* writes ("International Law against Bolshevism", Nibelungenverlag 1937) the following:

"The removal of the Jewish dictatorship in the Soviet Union can only be accomplished through a revolution, that is through an anti-Bolshevist coup d'état. The Jewish dictatorship, from the legal as well as the political point of view, is linked to the existence of the Soviet Union." (P. 193.)

Moreover, at a different passage it is expressed in a still more unmistakable manner—

"Here we see the face of the Jewish world front in a thousand masks. The problem of bolshevism as a political and legal factor would be solved at the moment all nations declared the Jews enemies of people and state and shook off their domination. Then, the identity of Jewish world domination and Bolshevik world revolution would become evident. The nations refused to be annihilated." (P. 143.)

In his book (Bolshevism and Jewry, Eckart-Kampf Verlag Berlin, 1934), *Fehst* states in a similar way—

“The pale constructions and propagandistic allegations of Marxism which through an alleged class-struggle pretended to achieve a ‘dictatorship of the proletariat’ and eventually a classless society were replaced by the bare political truth that, after a war of nationally conscious peoples, the dictatorship of a new race had been established in Russia”. (P. 6.)

and furthermore on page 157—

“Thus, the Russian people today are facing the historical task of freeing their country from the alien domination which Jewish Marxism exercises over the Russian people. The national struggle for the liberation of the Russian people is at the same time a struggle against the deadly enemy of all nations—the Communist International in the shape of which nation-destroying Marxism and International Jewry have concluded a league against peace and liberty of the world.”

Continuation of similar quotations would be unnecessarily repetitious. Decisive are solely the psychological results of such a double-barreled publicity as well as scientifically camouflaged propaganda (or a propaganda which considered itself scientific). And in this respect it cannot be doubted that National Socialism had succeeded to the fullest extent in convincing public opinion and furthermore the overwhelming majority of the German people of the identity of bolshevism and Jewry. Even those among the leadership corps of the NSDAP who considered themselves enlightened and can be considered to a certain extent to be capable of discriminating judgment are not exempted.

For the aim of governmental propaganda in a totalitarian state has not only then reached its goal if all published statements are actually believed to be true but already when it has created an atmosphere in which criticism or rejection would be unthinkable. And this very fact is significant for the problem “Juda-Marxism”. It does not matter whether the individual, who later in the framework of “Special Duty” in the Soviet Union had to make fateful decisions or received fateful orders, was himself 100 percent convinced of the correctness of the official thesis or whether he gave any consideration to it at all.

On the contrary, it was decisive that the thesis “Jewry is identical with bolshevism—every Jew is a Bolshevik”—was backed up by the state authority in such a way that a mere independent critical examination of its correctness appeared practically unthinkable. One must evaluate the psychological effect of the liquidation order by those who received it in the light of these concepts.

b. *Link between Jewry and bolshevism according to the personal experiences and conceptions of the defendants*

Here, an introductory remark is first necessary. As a result of the historical sociological study of Russia during the past decades it has been established beyond doubt that the percentage of the Jewish population in political, cultural, and economic key positions within the Soviet Union is in fact an extremely high one. These findings were not only the result of inquiries by Germans and Russian emigrants but also, at least until about 1934, by Soviet Russian inquiries. Since in the Soviet Union the Jewish population is considered to be a national minority and is treated in accordance with national minority laws, the investigations referred to this recognized national minority. It is to be stressed that the Soviet statistics which on principle are based on the subjective criterion (self-adherence of the concerned to a specific nationality) must have led to a somewhat different result than the investigations conducted on the basis of the (objective) race theory which were exclusively based on the fact of *extraction*. But even according to the Soviet statistical system which is reducing the Jewish percentage, it is established that the percentage of the Jewish population in the aforementioned key positions exceeded their numerical strength (about 4-5 percent of the total population) by a considerable margin on the average. Individually the Jewish participation fluctuated and fluctuates in various offices, economic enterprises, and organizations, according to rank and positions. However, on the basis of Soviet statistics it is possible to establish in general that the share of the Jews was the greater, the more influential the office was, politically or economically, and the more influence was attributed to the bearer of the office (*de facto* if not *de jure*).

The infiltration of Jews into official positions amounted to about 20 percent on the average at the time the statistics were made; the percentage was considerably higher in Party positions, the average of which fluctuated considerably. Thus, the Ministry of Foreign Trade with its representations abroad can be called a Jewish domain to an especially high degree. This can be applied in a similar way to the Ministry of the Interior, the Ministry for National Security, and to the majority of the Economic Ministries; the Jewish percentage within the armed forces is especially large in the so-called political administration. Here the Jewish infiltration into the higher key positions comes up to 65 percent.

We have seen (see *a* above) that the National Socialist ideology was rashly prepared to regard this circumstance as a conclusive, if not decisive, proof for the fact that bolshevism was a Jewish invention and was only serving the interests of Jewry.

In this connection, as seen from an objective point of view, they failed to consider two facts. First, the fact that the Jewish population, as a predominantly intellectual class, was from the beginning better fitted to fill these positions. Above all, however, and that too should have been proved by the serious scientific research conducted by the *Germans*, this allegation has confused both cause and effect. It has been established that, aside from the denationalized professional revolutionary, the Jewish population, that is the ghetto, was on principle opposed to the Soviet system during the first years of the Bolshevik regime; the predominant domain of Jewry, aside from Zionist groups (also opposed to the Soviets) was the Jewish "Bund" which had a menshevist platform. If in the course of time Jewry has given more and more functionaries to bolshevism and has increasingly infiltrated into the Bolshevik state machine, it is a result of the fact that the Jewish population, who on principle were opposed to the planned economy, threw themselves into the arms of bolshevism. Under the prevailing circumstances they had come to the conclusion in an opportunistic attitude that, in view of the fact that bolshevism had assumed great power, which one has to take into consideration, it would be the best thing not only to swim with the current but also to attempt to gain dominating and influential positions within this organization. This opportunism, and not an ideological and fateful link between Judaism and bolshevism, explains the great Jewish influence within state and party. These facts, however, are the result of scientific research and, above all, of serious study better fitted to the attainment of scientific results than were calculations with the help of primitive populations statistics, a method no means desirable to the National Socialist ideology. National Socialism, as we have experienced, has greatly simplified the entire intricate problem. What at the most could be regarded as an accidental communion of interests, namely the link between Jewry and bolshevism, had become a logically conditioned necessity, a slogan that bolshevism was a mere "Jewish invention" and that the struggle against bolshevism was necessary and in the first place a struggle against Jewry.

As seen from the tactical and realistic point of view this last conclusion was not even incorrect. For after Jewry had found admission into the Soviet state to the above described extent and following the outbreak of the war in 1941 *it only had to expect a worsening of its situation by the German invasion as a result of the prevailing German policy towards the Jews*, it was obvious that it would support the fight of bolshevism against the German Wehrmacht with the greatest intensity. The experiences and findings, made by the advancing German Wehrmacht in Russia

in regard to the Jewish problem, were at first glance of such a nature as to confirm the correctness of the National Socialist ideology in the eyes of the soldiers fighting in Russia. He who came to Russia in 1941, whether officer or enlisted man, had to get an idea of the problem from personal experience. He had the opportunity to find out that the percentage of Jews in the administration was very high and that especially those offices, which were particularly unpopular among the masses of the people as the economic authorities and the political police, were permeated with Jews to an especially large extent; moreover, the German soldier, in his conversations with the native population, noticed an unmistakable antisemitism (which on the other hand varied considerably according to the region); eventually one could notice very soon that the Jews played a special role in the resistance movements and particularly in the underground organizations of the partisan movement.

Under these circumstances it is a necessary consequence that, among those circles of the German Wehrmacht in the East who so far had not been inclined to an anti-Semitic conception a priori a clearly defined resentment against Jewry could very soon be noticed. One regarded the Jew as the spiritual leader of resistance and sabotage and this fact on its part again created the psychological conditions mentioned, the psychological atmosphere for the fact that the liquidation order was accepted as a "raison de guerre" about which the individual might think as he wanted, which, however, in the framework of the general developments, were to be taken notice of and were to be carried out without discussion.

3. *Conclusions in regard to criminal law*

In the aforementioned statements a summary has been made of—under 1, the objective (actually given), under 2, the subjective (psychologically effective) prerequisites of putative assistance in distress respectively putative necessity. It is now to be examined whether these prerequisites can justify the assumption of *putative assistance in distress or of putative necessity* in the sense of the continental conception.

a. *Putative assistance in case of distress*

In 1941, the German Reich was facing acts of war of an opponent who, filled with the concept of class struggle, denied the obligations of positive international law and, even under his own doctrine of international law, in as far as he referred to the rules of international law, only utilized these rules in the interest of his theory of class struggle.

The coming conflict [die kommende Auseinandersetzung] took place, from the outset, outside the boundaries drawn by inter-

national law. There threatened from the Soviet Union a total attack waged in a manner contrary to international law, not only against the German Reich, but in its implications [Fortwirken] against the entire European system of states and societies, an attack which exceeded the frame of normal war danger and justified extensive security measures on the part of the menaced state. Therefore, this was a case of an unlawful attack, in the meaning of international law and continental criminal law which can here be coordinated.

We must reject any *objective justification* of the liquidation order and its execution. For, as seen from the objective point of view, the attack came neither from that side against which the liquidation measures were directed nor did these measures remain within the frame of the preamble of the Hague Convention concerning War on Land which are regarded as compulsory, minimum rules of common law, even in the absence of the validity of this convention.

On the other hand it will have to be examined to what extent the defendants can plead putative assistance in distress (on behalf of the Reich and the German nation). The defendants, according to the National Socialist theory as well as due to their own conception and experience, were obsessed with a psychological delusion based on a fallacious idea concerning the identity of the aims of bolshevism and the political role of Jewry in eastern Europe. This conception was apt not only to exclude the possibility of a discussion regarding the moral defensibility of the liquidation order but to bring the defendants to the conviction that the attack against the future existence of the German Reich and people was to be expected mainly from the Jewish population in the occupied Russian territories. If this association of ideas can be considered in favor of the defendants the Tribunal will also have to consider the effect of a factual error on the degree of guilt.

b. Putative necessity

The position is here essentially the same. In place of the threatening attack there appears here the imminent state of emergency of a legal value the existence of which is endangered (existence of state and nation) which the acting party is called upon to protect. *Even here the objective prerequisites for a justification of the act are missing.* For the liquidations carried out by the defendant were (apart from their objectionable nature according to moral law) not the proper actions required for the removal of the danger. *But even here* one cannot get by the question of putative necessity. The prerequisites here are the same as in the case of (a). The further prerequisite of putative necessity, namely, the conviction of the perpetrator that he is sacrificing an object of

lesser value in order to preserve one of higher value is, in view of the struggle for existence in 1941, not to be rejected. *Here, too, therefore, the effect of an error in fact derived from the uniqueness of the concrete situation will have to be taken into consideration.*

c. Justification Because Allied Bombings Killed Non-Combatants

EXTRACTS FROM THE TESTIMONY OF DEFENDANT OHLENDORF*

DIRECT EXAMINATION

* * * * *

DR. ASCHENAUER (Counsel for defendant Ohlendorf): How do you explain the disgust with which the whole world regarded these exterminations in the East?

DEFENDANT OHLENDORF: This seems to have several reasons. For one thing, the deeds in the East were published as being isolated excesses done by the SS. One took them out of their context and made the SS alone responsible. In reality these executions in the East were a consequence of total war which was inevitable if an ideology of one power was to prevail which had as its goal the destruction of every resistance against their conquering the world with their idea. This war was never finished. The preparations for a possible conflict seem to express that whatever happened in the East was only a prelude.

Another point. It has been customary so far to judge executions during a war by various standards. The element regarded as heroic, which made killing seem honorable was the fight of man against man. This has long been overcome. The individual war opponents try to exterminate as many enemies as possible by preserving their own strength. The fact that individual men killed civilians face to face is looked upon as terrible and is pictured as specially gruesome because the order was clearly given to kill these people; but I cannot morally evaluate a deed any better, a deed which makes it possible, by pushing of a button, to kill a much larger number of civilians, men, women, and children, even to hurt them for generations, than those deeds of individual people who for the same purpose, namely, to achieve the goal of the war, must shoot individual persons. I believe that the time will come which will remove these moral differences in executions for the purposes of war. I cannot see that political factors and political

* Complete testimony is recorded in mimeographed transcript, 8, 9, 14, 15 October 1947, pp. 475-756.

and economic conventions, which in their consequences cause the execution of acts of violence against and misery for millions of people, have done anything better morally only because the conscious consequences were not expressly made known to the population. I believe, therefore, that when history has come to an end, that this conflict will not have started in 1941, but with the victory of bolshevism in Russia, that then only can the judgment of history be made which will inform about various phases of this conflict.

CROSS-EXAMINATION

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MR. HEATH: Mr. Ohlendorf, what happened to the Jewish children, the gypsy children?

DEFENDANT OHLENDORF: According to orders they were to be killed just like their parents.

Q. Did you kill them just like their parents?

A. I did not get any other reports.

Q. I don't understand your answer. Did your reports show the killing of children or did they show that children had been spared?

A. They also revealed the executions of children.

Q. Will you explain to the Tribunal what conceivable threat to the security of the Wehrmacht a child constituted in your judgment?

A. I believe I cannot add anything to your previous question. I did not have to determine the danger but the order contained that all Jews including the children were considered to constitute a danger for the security of this area.

Q. Will you agree that there was absolutely no rational basis for killing children except genocide and the killing of races?

A. I believe that it is very simple to explain if one starts from the fact that this order did not only try to achieve security, but also permanent security because the children would grow up and surely, being the children of parents who had been killed, they would constitute a danger no smaller than that of the parents.

Q. That is the master race exactly, is it not, the decimation of whole races in order to remove a real or fancied threat to the German people?

A. Mr. Prosecutor, I did not see the execution of children myself although I attended three mass executions.

Q. Are you saying they didn't kill children now?

A. I did not say that. May I finish? I attended three mass executions and did not see any children and no command ever searched for children, but I have seen very many children killed in this war through air attacks, for the security of other nations,

and orders were carried out to bomb, no matter whether many children were killed or not.

Q. Now, I think we are getting somewhere, Mr. Ohlendorf. You saw German children killed by Allied bombers and that is what you are referring to?

A. Yes, I have seen it.

Q. Do you attempt to draw a moral comparison between the bomber who drops bombs hoping that it will not kill children and yourself who shot children deliberately? Is that a fair moral comparison?

A. I cannot imagine that those planes which systematically covered a city that was a fortified city, square meter for square meter, with incendiaries and explosive bombs and again with phosphorus bombs, and this done from block to block, and then as I have seen it in Dresden likewise the squares where the civilian population had fled to—that these men could possibly hope not to kill any civilian population, and no children. And when you then read the announcements of the Allied leaders on this—and we are quite willing to submit them as document—you will read that these killings were accepted quite knowingly because one believed that only through this terror, as it was described, the people could be demoralized and under such blows the military power of the Germans would then also break down.

Q. Very well, let's concede—I think there is truth in what you say, though I never saw it. Does it occur to you that when the German Wehrmacht drove into Poland without provocation, and when you drove into Norway, and when you drove into the Low Countries, and when you crushed France, and when you destroyed Belgrade, Yugoslavia, Greece, when you put Rumania, Bulgaria under your heel, and then attempted to destroy the Russian State, does it occur to you that people resisting your tyranny stand on a higher moral level when they resort to the same horrible cruelties which you initiated in order to destroy your tyranny? Answer that, please.

A. You will understand that I look at the events of the war which you referred to in a different way than you do.

Q. And that is also my opinion; on that we have a difference.

A. That is quite so on my side, and I believe that just the events of the last weeks in particular show that even if the price of peace calls for force because there is a danger which, if it is not broken by force, will cause a battle of bloodshed, that we then as the ones who were closer to bolshevism than you in the States, much sooner came to realize than you; and with this view I agree principally with your statesmen in America at the moment, and I believe that among these statesmen hardly anyone

does not hold the view that Roosevelt made a mistake when in 1942 he presumed that we were not in an emergency state concerning Russia, not in a German only, but also in a European state of emergency.

PRESIDING JUDGE MUSMANNO: Just a moment, please. This is a very interesting debate and if the Tribunal didn't have a very serious and solemn responsibility in passing upon the issue of guilt or innocence in the charges very solemnly drawn in the indictment, the Tribunal would be glad to listen to this debate which could go on for a very long time, but since the issue is a very narrow one, Mr. Heath, let us try to adhere to the problem which is before the Tribunal, namely, is this defendant guilty of having perpetrated illegal killings.

MR. HEATH: Thank you for the admonition.

PRESIDING JUDGE MUSMANNO: I don't mean by that that occasionally it is not illuminating to get into these side issues but I am afraid this last exchange went beyond all bounds of normal discussion on a question of murder.

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d. Justified Action Against Partisans and Reprisal Measures

*EXTRACT FROM THE CLOSING STATEMENT FOR DEFENDANT SANDBERGER BY DR. VON STEIN.**

Your Honor, members of the Court:

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Essentially two questions are relevant for the decision of this case:

1. How are Sandberger's measures against Communist activists, and
2. How are Sandberger's measures against the Esthonian Jews to be judged?

Sandberger's measures against Communist activists

1. The reasons for the Fuehrer Order

The measures which Sandberger took against Communist activists were based on the Fuehrer Order. In as far as the order deals with Communist activists it is essentially based on the following considerations:

For Hitler, the close connection between the Russian Bolshevist system of government and the political movement of communism was a fact. For him the Bolshevist state apparatus was the most

* Complete closing statement is recorded in mimeographed transcript, 9 February 1948, pp. 6077-6105.

important representative of the Communist movement and carrier of an active imperialism, which was a mixture of panslavism and the aim of Communistic world revolution.

Wherever communism came to power, the existing political and social leadership were rooted out. All experiences since 1917 showed this clearly, at least in the Baltic countries, which in 1940 were incorporated into the Bolshevist Federation of States. The witness Mae has also confirmed this specifically for Esthonia. A clear example, true for all Baltic States, is given in the liquidation list of the NKVD, published by the Canadian University Professor Kirkconnell and which I inserted in the Document Book Sandberger II.

Bolshevism also developed new types of warfare, the partisan war, the nature of which is depicted by the Bolshevists themselves in the brochure of the Press Department of the Soviet Embassy in London "We are Guerrillas" contained in Ohlendorf Document Book II; from this very description the illegality and criminality of this form of struggle in view of international law becomes evident. (Compare also the opinion of University Professor Maurach submitted for Ohlendorf.) This form of struggle consisted in preparation and execution of an illegal levee en masse on territory effectively occupied by enemy troops.

PRESIDING JUDGE MUSMANNO: Dr. von Stein, you don't contend that partisan warfare was originated by the Bolshevists, do you? You know that in the Napoleonic invasion of Russia partisan warfare was quite common. You know that historically, don't you?

DR. VON STEIN: Yes, your Honor, I only want to contend that this partisan war developed in a particularly crass manner in the eastern campaign.

PRESIDING JUDGE MUSMANNO: But you say here, "Bolshevism also developed new types of warfare, the partisan war." Well, it certainly was not new.

DR. VON STEIN: No, your Honor, I am not trying to say it was new. I am merely trying to say that the manner of fighting which had been developed by the Bolshevists was new, that is to say, fighting became more cruel all the time. It cannot be compared with the beginnings of the partisan war which you have just described.

PRESIDING JUDGE MUSMANNO: Very well. Proceed.

DR. VON STEIN: It was a war to the knife, which was conducted by the partisans in the bitterest and cruelest manner. It threatened the reinforcements, replacements, and supply communications in the rear of the troops. Particularly dangerous was this warfare in so vast an area as Russia. In regard to the Esthonian area there was a very special danger in the fact that most

important communication lines of the German Army Group North ran through Esthonia, namely from the naval port of Tallin over Narva and Pskov to the front end, from the Reich border over Tartu in the direction of Leningrad. To nip such movements in the bud, or to keep them to as small a size as possible, severe measures were necessary for the sake of preservation of the whole fighting front. Added to this, there was the particular type of enemy. The eastern man is capable of a fanatical toughness, almost unlimited endurance, and simply limitless faith. For him the fight against the "fascist German troops" was a crusade. The idea of the Bolshevist state of the future was an idol for him, which he worshipped as he did the Icons in former times.

Hitler as Supreme War Lord had to decide what measures necessitated by the war he regarded as essential.

Hitler expected a total war in the East, which did indeed develop. That such a war would to a greater part upset the existing principles of international law was clear to him, faced with an enemy like bolshevism. For he knew its attitude toward international law, which meant nothing else but to keep its hands essentially free in case of a collision with a "capitalist state". (Compare also the opinion of University professor Maurach, Document Books Ohlendorf II and Sandberger II-A.)

The well-known British authority on international law, Lauterpacht, by the way, expressed a similar opinion for the case of total war (British Yearbook of International Law 1944, p. 72):

"But original proceeding before the municipal courts of the victors may seem to many a questionable method of removing outstanding doubts and laying down authoritatively the existing law on subjects of controversy."

Total war has altered the complexion of many rules. At a time when the "scorched earth" policy with regard to the belligerents' own territory has become part of a widespread practice, general destruction of property ordered as an incident of broad military strategy will not properly form the subject matter of a criminal indictment.

Furthermore, in 1941 Hitler may have been convinced that in such a war strong shock effects may be obtained by certain draconic measures, which as a final result may cause the weakening or disintegration of the enemy's will to resistance. Measures of such effect were regarded as admissible in the war against Japan.

Henry L. Stimson, Secretary of War from 1940-1945, reports in his article: The decision to Use the Atomic Bomb (excerpts):

"To extract a genuine surrender from the emperor of Japan and his military advisers, a tremendous shock must be adminis-

tered which should carry convincing proof of our power to destroy the Empire. Such an effective shock would save more lives, both American and Japanese, than it would cost."

Transferring these conditions to the war in the East, Hitler was of the conviction that by such measures he would nip the partisan war in the bud or suppress it effectively. The welfare of the whole front was menaced by the unrestricted partisan war. Hitler may have expected a shock effect from the measure he ordered, which in the end would save the lives of an infinitely greater number of German soldiers. I have proved that just in the Esthonian territory the Soviet leadership attached great importance to partisan movements in the widest sense of the word. It even left the most important officials back in Esthonia in order to organize as extensive and effective an underground movement against the Germans as possible.

2. *Was the Fuehrer Order to that extent admissible according to international law?*

The Fuehrer Order had as its first objective the safeguarding of the territory occupied effectively by the German Wehrmacht. Inasmuch as Communist functionaries actually disturbed or threatened the security, as active directors of sabotage or espionage organizations, or by sabotage, incitements, and other hostile acts, murder, espionage, possession and use of weapons, they could be shot according to the law of war (war rebels). Here the same principles would apply as have been developed for the illegal levee en masse in the occupied rear of the troops.

So says, i. e., Oppenheim Volume II, paragraph 116, pages 278, 279:

"What kinds of violent means may be applied for these purposes is in the discretion of the military authorities. But there is no doubt that, if necessary, capital punishment and imprisonment are lawful means for those purposes."

Inasmuch as Communist functionaries actually committed acts of insurrection and resistance or other serious crimes and inasmuch as such acts were proved against them, they could be shot in accordance with international law.

Obviously the same principles are applied in the struggle on the Greek northern border.

These principles correspond also to the American practices of war.

The Basic Field Manual [FM 27-10], Rules of Land Warfare states in Article 12—

"Uprising in occupied territory.—If the people of a country, or any portion thereof, already occupied by an army, rise

against it, they are violators of the laws of war, and are not entitled to their protection.”

It states further in Article 349—

“*War rebels.*—War rebels are persons within territory under hostile military occupation who rise in arms against the occupying forces or against the authorities established by the same. If captured they may be punished by death, whether they rise singly or in small or large bands, whether or not they have been called upon to do so by their own expelled government, and, in event of conspiracy to rebel, whether or not such conspiracy shall have matured by overt act of hostility.”

And in Article 350—

“*War treason.*—Examples of acts which, when committed by inhabitants of territory under hostile military occupation, are punishable by the occupying belligerent as treasonable under laws of war, are as follows: Espionage; supplying information to the enemy; damage to railways, war material, telegraphs or other means of communications; aiding prisoners of war to escape; conspiracy against the occupying forces or members thereof; * * * and circulating propaganda in the interests of the enemy.”

3. *What has Sandberger done?*

The defendant Sandberger was active only to this extent. Insofar as Communist functionaries were shot in his area and under his command or on his responsibility, this did not take place in the form of mass executions, but only when serious guilt had been established in regular proceedings and after the person arrested had been able to defend himself in these proceedings. Special courts had been excluded for the Russian campaign and in view of his subordinate position he was not able to establish such. Nor was it necessary. According to Article 356 of the Rules of Land Warfare, too, regular legal proceedings suffice to establish offense and subsequent guilt of “war rebels”. The detailed arrangements for these proceedings must naturally be made in accordance with circumstances and possibilities at the time.

The defendant proved authentically that regular and lawful proceedings were carried through. Over and beyond that, however, it has been proved by numerous depositions that Sandberger always behaved correctly, decently, and fairly.

From the series of affidavits which I have submitted for judging the behavior as a whole of Dr. Sandberger in Esthonia, I quote as especially typical one part from the deposition of the Swedish Major Mothander who was in Esthonia for a long time as a representative of the Swedish government. The latter says, among other things about Sandberger, “He was generally regarded as a decent

fellow. A natural tendency to human kindness and justice was often evident in his nature. Therefore he was always open to what is called '*Argumentum ad hominem*'. He showed himself to be a gentleman through and through both as an official and as a man."

4. *Sandberger acted in full consciousness of legality.*

Sandberger was fully convinced, too, that he was acting legally in this. For every state it is an elementary precept of self-preservation to suppress resistance in the actually occupied area in all circumstances. The supreme commander decides what measures are to be taken in the individual case. He alone can decide what military necessities command him to do. This is the conception too of the expert on international law, Hyde. (International law Chiefly as Interpreted and Applied by the United States, 1945, Volume III, section 655, "War Department Rules of Land Warfare 1940".)

"If the term military necessity implies great latitude and is invoked by way of excuse in justification of severe measures, it is because the law of nations itself permits in case of great emergency and allows a belligerent commander to be the judge of the existence and sufficiency of the need."

The measures against Communist activists were severe. But in view of the general war situation and the special position in Esthonia, they were, the defendant was convinced, justified. The resistance which naturally became manifest on receiving the Hitler Order was connected in the first place with the extensive measures aimed simply at the Jews, that is, regardless of whether they had become active as partisans, war rebels, or war traitors, or belonged merely to the civilian population; it was connected also, however, with all collective measures against other people who had no individual guilt as far as acts endangering security were concerned. Now when he came to Esthonia and had convinced himself on the spot of the horrors which the Communist activists had perpetrated there, he was also convinced that such measures were in the end unavoidable against war rebels and war traitors of the kind. This was an elementary precept of self-preservation, the self-preservation which in particular is fully recognized in Anglo-Saxon international law. For the conviction of having acted in defense against a state of emergency which actually existed—a conviction to be claimed for Dr. Sandberger as for all defendants—reference is made to the detailed statements of Professor Dr. Maurach in his counsel's opinion in Ohlendorf Document Book II and in Sandberger Document Book II-A. The prosecution has not proved that Sandberger, in the measures against Communist activists, behaved contrary to the principles of international law. Instead, it has the *onus probandi*

the more so because I have proved that Sandberger was judged to be correct, fair, and upright in general and even in Esthonia.

* * * * *

*EXTRACT FROM THE CLOSING STATEMENT FOR
DEFENDANT OTT **

* * * * *

In the case of Ott, it has been proved beyond a doubt that all executions were dictated by military necessity alone.

A tremendous number of documents, including some of the prosecution, show how great the partisan danger was, by describing the strength, armament, organization, and fighting methods of the partisan bands. (*NO-3276, Pros. Ex. 66; NO-3159, Pros. Ex. 85; NO-2834, Pros. Ex. 87; NO-3339, Pros. Ex. 93, etc.; Ohlendorf 38, Ohlendorf Ex. 1; Ohlendorf 42, Ohlendorf Ex. 4; Ohlendorf 43, Ohlendorf Ex. 5.*)

Here the German troops were opposed by a force as powerful as nature, so weird that it can only be comprehended if you consider how immense the space, how impenetrable the forests and swamps, and how difficult to comprehend the ideas and mental processes of the Asiatic peoples and the peculiarities of the Bolshevik ideology and methods were for the European; and, add to this, the picture of a relentless ideological battle which used every means of warfare, from the methods and tricks of primitive tribes to the most modern weapons of technological war. These are the conditions under which one must consider the Russian campaign, and especially the partisan war, if one is to establish the boundaries of "military necessity".

That which was opposed to the combat divisions and the security forces at the battle front in Russia was more than "enemy" and "enemy territory". All conceptions of the Occident concerning man and state, space and time, technology and war, and might and right were exploded in this unfathomable land of released demons. In such a situation the Fuehrer Order also had a different aspect than it now has in retrospective contemplation from the viewpoint of a world that is at least formally at peace. In this case, every retrospective verdict can use knowledge which is denied to the man acting in the present. And so the defendant Ott also did not have an extermination program in mind when he came to Russia, but rather he saw first of all the destruction of two German engineer companies in a treacherous partisan attack using unlawful measures of war.

* Complete closing statement is recorded in mimeographed transcript, 9 February 1948, pp. 6105-6119.

When he was told of his duties, on the spot his predecessor told him, in Bryansk, of the Fuehrer Order which had been issued "for security", as he was told. Ott did not understand that defenseless women and children and the aged were to be shot "for security", but his chief also acknowledged to him that the Supreme War Commander had ordered this.

With the sound instinct of a plain man, Ott led his Kommando like a military police unit to secure the rear and the lines of communication of the most advanced troops. Because Ott saw the duties of his Kommando exclusively from the viewpoint of military necessity, he was brought back to Russia by General Schmidt, the commander in chief of the 2d Panzer Army, after he had already been transferred back to his job at home. (*Tr. p. 3714.*) Sonderkommando 7b only killed proved partisans under his leadership. And approximately 20 Jews were also members of partisan groups. Their execution was permitted by the rules of warfare and did not have to be based on the Fuehrer Order. The limits of the security of his own combat troops necessitated by the war were not overstepped.

Naturally, he could not deny the fact towards the leaders of this subkommando that the Fuehrer Order remained formally in effect (*Tr. pp. 3752-53*), but in practice the Fuehrer Order no longer had any meaning in his territory while Ott was in command of the Kommando. (*Tr. p. 3782.*) The territory of the army could be considered as free of Jews since long before (*Steimle 21, Steimle Ex. 20; Steimle 34, Steimle Ex. 33; Steimle 39, Steimle Ex. 38*), and the security tasks had to be carried out where the danger threatened, that is, in the territory of the partisans and against them. The security police functions of Ott and his Kommando were exhausted in the defense against the partisans and their sabotage activities.

* * * * *

TRANSLATION OF OHLENDORF DOCUMENT 39 OHLENDORF DEFENSE EXHIBIT 2

EXTRACT FROM J. STALIN, "ON THE GREAT NATIONAL WAR OF THE
SOVIET UNION", RADIO SPEECH ON 3 JULY 1941

* * * * *

In the areas occupied by the enemy, cavalry and infantry partisan detachments must be formed and diversion groups created for fighting the units of the enemy army, for kindling partisan warfare everywhere and every place, for blowing up bridges and highways, for destroying telephone and telegraph

connections, for burning down forests, supply camps, and trains. Unbearable conditions must be created for the enemy and all of his accomplices in the occupied areas; they must be pursued and destroyed at every step, and all their measures must be frustrated.

One cannot regard the war against Fascist Germany as an ordinary war. It is not only a war between two armies. It is at the same time the great war of the entire Soviet people against the Fascist German troops.

* * * * *

(Source: Library of the Institute for World Economics, Kiel, I 25827.)

VIII. ORDER OF THE TRIBUNAL SEVERING THE CASE AGAINST THE DEFENDANT RASCH

MILITARY TRIBUNAL II

THE UNITED STATES OF AMERICA

—against—

OHLENDORF, et al.

CASE NO. 9

ORDER

Subject: OTTO RASCH *

On 5 September 1947, Dr. Hans Surholt, counsel for the defendant Otto Rasch, filed a motion requesting—

1. The severance of the trial of Rasch from that of the other defendants;
2. A stay of the proceedings against Rasch;
3. The release of Rasch.

On 11 December 1947, a board composed of three physicians conducted a mental and physical examination of the defendant and reported—

“It is the opinion of the board that if he appears in court he is not capable of full use of his mental and physical abilities in the understanding and answering of questions.”

On 12 January 1948, the defendant, Otto Rasch, through his counsel, indicated his willingness to appear in Court and testify in his own behalf. He made several attempts to testify, but attending physicians stated to the Court that the defendant was incapable of continuing his efforts and recommended he be excused. Captain George T. Carpenter and Dr. Herbert Graumann then took the witness stand and testified that in their professional opinion the defendant was physically unable to continue and that any further attempts in this direction could have serious consequences.

From the various medical reports and the physical appearance of the defendant himself as demonstrated in Court, it is apparent that the defendant is not able to stand trial at present. Paragraphs 1 and 2 in the counsel's motion of 5 September 1947 are approved. Paragraph 3 is refused.

In consideration of the above it is ORDERED that the charges against the defendant, Otto Rasch, be, and the same are, hereby

* Otto Rasch died on 1 November 1948.

severed, for the purpose of trial, from the charges against the other defendants now on trial before this Tribunal;

IT IS FURTHER ORDERED that the charges contained in the indictment against the defendant Otto Rasch shall be retained upon the docket of the Military Tribunals, as a separate cause, for the trial hereafter, if the physical and mental condition of the said defendant shall permit.

[Signed] M. A. MUSMANNO
Michael A. Musmanno
Presiding Judge, Military Tribunal II

Dated: 5 February 1948

IX. CLOSING STATEMENT OF THE PROSECUTION, 13 FEBRUARY 1948, BY BRIGADIER GENERAL TELFORD TAYLOR*

On 29 September, 137 days ago, the prosecution outlined the evidence in support of the indictment which has been brought against these defendants. On 30 September, 136 days ago, the prosecution rested its case. In view of the nature of the crimes charged here, and the conclusive documentary proof in support thereof, the desperate nonsense which has been chattered during the twenty-one intervening weeks may jar the ear but it can hardly surprise the mind.

In summing up this case after four and a half months—nearly a week for each defendant—the prosecution sees not the slightest necessity for or benefit from a tedious rehearsal of the details of the record. We are filing briefs summarizing the evidence against each individual defendant. In this oral statement, we will confine ourselves to the very few general matters raised by the defense which warrant a few words.

At the risk of wearying the Tribunal, I will first summarize very briefly what the prosecution's evidence showed with respect to the organized program of murder of which these men are the chief surviving executors. It is only too well known that anti-Semitism was a cardinal point of Nazi ideology. Throughout the early years of the Third Reich, the Jews of Germany were subjected to ever more severe restrictions, persecutions, and barbarities, and by 1939 life in Germany was all but intolerable for them. The war presented Himmler and Heydrich with what, to them, was a golden opportunity to carry these doctrines to their logical and terrible conclusion—the extermination of all Jews in Germany and in the countries overrun by the Wehrmacht. But practical problems soon cropped up. No one, at least for centuries, had ever tried to eradicate an entire national and racial group, and it rapidly became apparent that such a project was an ambitious undertaking which required time and money and manpower and planning. With the invasion of the Soviet Union, the project was put on a really systematic footing.

The trigger men in this gigantic program of slaughter were, for the most part, the approximately 3,000 members of the four so-called "Einsatzgruppen" of the SS, whose leading members are

* *Tr.* pp. 6577-6595.

indicted here. The members of these units were carefully instructed as to their mission by Heydrich himself. Their general task was to insure the "political security" of the conquered territories in Russia, and as part of this function they were directed to exterminate all Jews, gypsies, government officials, Communist party leaders, and other so-called "undesirable elements" in their assigned territories. With the support of the army leaders, this program was faithfully carried out, and resulted in the murder of at least a million Jews and other human beings during the first two years of the Russian campaign. The defendants have not seriously endeavored to controvert these facts, which conclusively prove the crimes of genocide and the other war crimes and crimes against humanity charged in the indictment. Nor, with a few exceptions as to precise dates—for the most part insignificant—have the defendants attempted to contradict the clear proof that they commanded or were otherwise connected with the Einsatzgruppen as charged in the indictment. All of the foregoing is clearly established by the documents introduced by the prosecution, consisting chiefly of the defendants' own reports of their activities.

What, then, have the defendants endeavored to contrive in order to escape the damning effect of the conclusive proof afforded by their own records? Only a few of them have been so utterly foolish as to deny that they knew that the Einsatzgruppen had been directed to kill Jews and government officials as described above, or that such executions indeed took place, and in the face of the proof, such a defense is preposterous. These defendants who were in charge of these units at the outset of the Russian campaign received instructions which were terribly clear. Those who came in later learned about it from their superiors and predecessors. Mass executions of Jews by the Einsatzgruppen took place in all sectors of the Russian front. We may well believe that the members of the Einsatzgruppen were brutalized by what they did and what they saw being done around them, but they did not become so blasé as to carry out these mass executions without even talking about it among themselves. The subject matter of this proceeding is horrible, but it is hardly boring. And furthermore, quite apart from the inherent incredibility of this defense, it is easy to see why very few of the defendants have ventured to put it forth. Most of the defendants have relied upon the so-called defense of "superior orders", and if no order was given to kill Jews and others, or if such an order was not perfectly well known to all the members of the Einsatzgruppen, then of course the defense that these executions were committed under the compulsion of such an order cannot be made. In any event, the very idea that

the defendants did not know of both the order and of the executions is so ridiculous that we have already dignified it overmuch.

But there are, however, four points made by the defendants at various times during the trial which deserve some comment. Some of the defendants have sought refuge in the contention that they as individuals did not take an active or direct part in the actual executions, but were primarily concerned with administrative matters or other phases of the operations of the Einsatzgruppen. Other defendants claim that the units under their command did not carry out the order for the killing of Jews and gypsies and government officials, and other undesirables. With respect to reports showing that their units did in fact execute large numbers of people, the excuse is given that the victims were either proven criminals or were all executed by way of reprisal in the course of the anti-partisan warfare being waged behind the front in Russia. And the third point—made by numerous defendants—is that they acted under the compulsion of “superior orders”. We will, shortly, make a few observations on what effect, if any, a few of the defendants—most notably the defendant Ohlendorf—have advanced as a defense the very motives which led them to commit these murders; they have bluntly taken the position that under the circumstances which confronted them, the killing of all Jews—even Jewish children—was a necessary and proper part of warfare. This sinister doctrine we will deal with in conclusion.

Now while these few matters deserve answers, the answers are readily available, conclusive, and susceptible of very brief statement. We do not propose now to examine the evidence, or the application of these arguments, with respect to each of the individual defendants; that has been done in the written briefs which we have filed or are filing with the Tribunal; we have no desire to protract the trial on this, its last day, by laboring the obvious or burdening the transcript with a detailed refutation of flimsy and desperate contentions.

I will deal first with the question of participation.

What we may call the defense of “lack of direct participation” has been made by two distinct groups of defendants. Some of them—for example, Jost, Naumann, and Blobel—were the commanders or deputy commanders of the Einsatzgruppen or their subordinate units the Einsatzkommandos and Sonderkommandos, with slightly greater plausibility. Thus the argument has also been put forth by the lower ranking defendants—such as Ruehl, Schubert, and Graf—who were officers and staff members, but not in command of these units.

Now with respect to this contention that the defendants did

not participate directly, the elementary principle must be borne in mind that neither under Control Council Law No. 10 nor under any known system of criminal law is guilt for murder confined to the man who pulls the trigger or buries the corpse. In line with recognized principles common to all civilized legal systems, paragraph 2 of Article II of Control Council Law No. 10 specifies a number of types of connection with crime which are sufficient to establish guilt. Thus, not only are principals guilty but also accessories, those who take a consenting part in the commission of crime or are connected with plans or enterprises involved in its commission, those who order or abet crime, and those who belong to an organization or group engaged in the commission of crime. These provisions embody no harsh or novel principles of criminal responsibility, and a moment's reflection on their meaning will indicate how inadequate is the defense which we are now considering.

With respect to the defendants such as Jost and Naumann, the very matters which they affirm establish that their responsibility is, in fact, deeper than that of some of the other defendants. It is, of course, highly probable that these defendants did not, at least very often, participate personally in executions. And it would indeed be strange had they done so. Not even a regimental or battalion commander in battle spends much of his time personally shooting a gun—it is his task to organize and direct the shooting by the men who serve under him. And when these defendants tell us that they were chiefly engaged in “administrative work” this means only that they were engaged in the general management and direction of the work of the Einsatz units which they commanded. The “administrative work” which these top leaders and their immediate staffs performed at times—as in the case of Jost—included such interesting tasks as the ordering of additional gas vans to be utilized for mass exterminations. But such items like that one are colorful rather than necessary to establish guilt. We are not aware that General Yamashita,¹ with his own hand, took the life of anyone in the Philippines, and surely General Anton Dostler² did not serve as a member of the firing squad which shot down the fifteen American commandos who had been taken prisoner in Italy.

No doubt, too, these defendants did not devote every minute

¹ Opinion of the Supreme Court of the United States rejecting the petition and application in re Yamashita, delivered on 4 February 1946 (327 U. S. 16).

² Case of United States of America vs. General Anton Dostler, Commander of the LXXV German Army Corps, tried before U. S. Military Commission, Rome (Italy), 8-12 October 1945. For a short summary of this case, see Law Reports of Trials of War Criminals, selected and prepared by the United Nations War Crimes Commission, English edition, Vol. I, London 1947, pp. 22-34.

of their waking hours to the extermination of Jews. The Einsatzgruppen had a general mission of which these executions were a very important part, but they did have some other things to do. We are quite prepared to believe that the defendants spent some of their time writing general reports to the Reich Security Main Office and to the military intelligence officers, and that they at times scrutinized captured documents, in pursuit of what the defendant Six was pleased to call "cultural objectives". Often, as the defendant Klingelhofer conceded, the purpose of the documentary research was to identify intended victims of Einsatz executions. But, in any event, these circumstances are no more important than the conceded fact that the defendants had to take time out to eat and sleep in order to carry on. So far from being a defense or even a circumstance in mitigation, the fact that defendants like Naumann did not personally shoot a great many people, but rather devoted themselves to directing the over-all operations of the Einsatzgruppen, only serves to establish their deeper responsibility for the crimes of the men under their command.

Now, the situation is a little different with respect to defendants such as Radetzky and Ruehl, and Schubert and Graf. It is a little different, but not much. Even though these men were not in command, they cannot escape the fact that they were members of Einsatz units whose express mission, well known to all the members, was to carry out a large scale program of murder. Any member who assisted in enabling these units to function, knowing what was afoot, is guilty of the crimes committed by the unit. The cook in the galley of a pirate ship does not escape the yardarm merely because he himself does not brandish a cutlass. The man who stands at the door of a bank and scans the environs may appear to be the most peaceable of citizens, but if his purpose is to warn his robber confederates inside the bank of the approach of the police, his guilt is clear enough. And if we assume, for the purposes of argument, that the defendants such as Schubert and Graf have succeeded in establishing that their role was an auxiliary one, they are still in no better position than the cook or the robbers' watchman.

I come now to the second argument which has been advanced by another group of defendants—including Schulz, Blobel, Sandberger, Steimle, Haensch, and Nosske—have claimed that they did not carry out the order. And they say that executions reported by units under their command are justified on the basis that the victims were in all cases partisans, or that they were executed in reprisal for attacks by partisans, or were proven criminals.

Now, with respect to most of these defendants I have just named, their contention is palpably false even at first glance. Blobel, for example, was in command of Sonderkommando 4a of Einsatzgruppe C when his unit entered the Russian city of Kiev. This ancient city had not seen such carnage since its destruction by the Mongols centuries before. As the records show, Blobel's unit killed 35,000 people in Kiev in two days, and 60,000 over the course of six months. Schulz' Einsatzkommando 5 killed 12,000 people during the six weeks of his command. Sandberger's Einsatzkommando 1a of Einsatzgruppe A killed 14,500 people, including according to one report, 1,158 "Jews and Communists" at one fell swoop. And even as to the other defendants whose recorded murders do not run to five figures, nevertheless the number of executions reported is still more than ample—particularly in view of the established pattern and purpose of Einsatzgruppen activities—to compel the inference that these executions were certainly not all undertaken solely against partisans or by way of reprisal.

But, once again, even if we assume the truth of this contention, the situation of the defendants is not much the better for our charity. In thus exculpating themselves under count one of the indictment, they have simultaneously inculpated themselves under count two, which charges atrocities and offenses against the laws of war, including the murder and ill-treatment of the civilian population of occupied countries. As a most eminent authority on international law has pointed out, "a war crime does not cease to be such for the reason that it is committed under the guise of reprisals."

The laws of war place strict curbs on the use of a measure so extreme as reprisals, which can be taken only when an unlawful act of warfare has first been committed by the other side. Counter-action can only be taken as a last resort, and the sole purpose of reprisals is to discourage the continuance of unlawful acts of warfare by the enemy. Reprisals may never exceed the degree of violence of the acts which they seek to stop, or the degree reasonably necessary to accomplish this purpose.

It is quite clear from the record, of course, that the executions by the Einsatz units never conformed with the requirements laid down by the laws of war. So far from being measures of retaliation for unlawful acts of warfare by the Russians, they were carefully planned in advance long before Germany launched the attack which began the war. Furthermore, nothing is more clearly established by the laws of war than that no surrendered combatant—whether he is a partisan, spy, or guerrilla—and no civilian may be executed without the benefit of a court martial or military

court trial to determine his guilt. This was well known to each defendant and is written in the pay book of every German soldier. The defendants have not even pretended that this requirement was fulfilled. If we had applied to these defendants the kind of law which they administered prior to the executions they carried out, this trial would have ended the day before it began.

In arguing that the victims of the Einsatz executions were "partisans" the defendants become enmeshed in a hopeless maze of contradictions and confusions. If their own records show that the victims were Jews, they reply that all Jews were partisans. If the records show the executions of partisans, then they are asked how they knew that the victims were partisans, they reply that they must have been partisans because they had been ascertained to be Jews. This, of course, is flatly contradictory to the argument advanced by Jodl, the defendant before the IMT, who assured us that "there were next to no Jews among the partisans. In the main, these partisans were fanatic, steel-hard Russian fighters, mostly white Russians."*

Some of the defendants claim that they spent most of their time on "cultural research", but the judicial process, however summary, was not part of the activity of the Einsatzgruppen. As the defendant Klingelhoefler finally admitted on cross-examination, "whether or not the Jews had violated any order, whether they left or stayed in the ghetto, and whether or not they contacted the partisans, they were all killed." (*Tr. p. 3939.*) And the defendant Blume admitted that interrogations were not held in order to determine guilt or innocence, but to obtain information, and that the interrogation was always followed by the death of the subject. (*Tr. p. 3756.*) Having noted these admissions which, revealing as they are, serve merely to confirm what is abundantly clear from the documentary proof, we may turn to the third general proposition which a number of the defendants have urged on the Tribunal. That is the defense of superior orders.

A third group of defendants admit that Einsatz units under their command did carry out mass executions of Jews, gypsies, and political officials, but seek to escape the burden of guilt by pleading that they carried out these executions under the compulsion of superior orders. To this group belong Ohlendorf, Naumann, Blume, Braune, and Ott. It should be noted at the very outset that the putting forward of this plea of superior orders cuts the ground from under the defenses which we have just been

* Trial of the Major War Criminals, Vol. XV, p. 408, Nuremberg, 1948. See also the admission to the same effect by the witness Bach-Zelewski, under cross-examination by Jodl's counsel. *Ibid.*, Vol. IV, p. 487.

considering. If, as Ohlendorf and these other defendants tell us, Hitler did order the Einsatz units to execute all Jews and political officials, and if, in obedience to Hitler's order, such executions were carried, then there is less than nothing left of defenses such as lack of knowledge, or that the victims of the executions were all partisans. And in fact, the documents make it clear beyond the slightest doubt where the truth lies—the order for the mass executions of Jews and political officials was given, and it was carried out, and there remains for consideration only the question whether the fact that these defendants acted pursuant to an order shall be held to better their position before this Tribunal in any way.

Now the general principles of international penal law with respect to the effect of superior orders on criminal responsibility are by now well established. Normally, a subordinate is entitled to assume that orders issued to him by his superiors are lawful and do not require him to commit crimes in execution thereof; and we cannot hold the subordinates responsible to make careful inquiry or elaborate research into the background of the order to make sure that it is in fact lawful. But this general presumption for the benefit of subordinates has no application where, on its face, the order is palpably criminal. These principles have been concisely set forth in the decision of the German Supreme Court at Leipzig in the so-called *Llandovery Castle Case* (1921): I will quote from that opinion—

“* * * It is certainly to be urged in favor of the military subordinates, that they are under no obligation to question the order of their superior officer, and they can count upon its legality. But no such confidence can be held to exist, if such an order is universally known to everybody, including also the accused, to be without any doubt whatever against the law. This happens only in rare and exceptional cases. But this case was precisely one of them. For in the present instance, it was perfectly clear to the accused that killing defenseless people in the lifeboats could be nothing else but a breach of law. As naval officers by profession, they were well aware, as the naval expert has strikingly stated, that one is not legally authorized to kill defenseless people. They well know that this was the case here.”

The language of this decision is precisely applicable to the present case; here also we are dealing with even more obviously criminal orders to kill “defenseless people” on the sole ground that they were Jews, gypsies, or government or party officials. And, in any event, the scope and effect to be allowed the plea of “superior

orders" are expressly set forth in Control Council Law No. 10, which is governing on this Tribunal and which states *—

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

So we are left, with this question of mitigation. In dealing with this matter, the prosecution believes that there are at least three matters which deserve primary consideration. The first is, what was the attitude of the defendants towards the criminal order and the criminal acts which it required? Obviously, if the defendants were in sympathy with or merely indifferent to the criminal character of the order, its existence can be allowed no mitigating effect. If, and only if, the Tribunal is satisfied as to any defendant that he was opposed to and revolted by the character of the criminal order, then two other matters warrant consideration. First, how well equipped, by rank and education, was the accused to resist the compulsory impact of the order? And secondly, how deep was the criminal nature of the order? For by this we can, to some extent, measure the gravity of the obligation to resist it.

The prosecution submits that on none of these footings have the defendants made any showing whatever which would establish a claim to mitigation. These defendants are not German peasants or artisans drafted into the Wehrmacht. They are not uneducated juveniles. They are lawyers, teachers, artists, and a former clergyman. They are, in short, men of education, who were in full possession of their faculties and who fully understood the grave and sinister significance of the program they embarked upon. They were part of the hard core of the SS. They did not give mere lip service to Himmler's atrocious racial doctrines; they were chosen for this terrible assignment because they were thought to be men of sufficient ruthlessness to carry them out. They are handpicked fanatics; every one of them was an officer of the SS, and among those indicted here are six SS generals, five colonels, six lieutenant colonels, four majors, and only three junior officers. They are not unhappy victims, unwillingly pushed into crime by the tyranny of the Third Reich; these men, above all others, themselves, spread the Nazi doctrine with fire and sword.

The answer to our problem is even clearer if we consider the nature of the crime which is charged here. We are not concerned with the conduct of soldiers in the heat and excitement of battle. These crimes were not committed as a result of snap judgments in

* Control Council Law No. 10, Article II, paragraph 4(b). This provision is substantially identical with Article 8 of the Charter of the IMT.

serious emergencies. These crimes were committed in execution of deliberate plans laid months earlier. And the crime itself is of staggering enormity—the annihilation of entire racial and national groups—such as Jews and gypsies—and all leading government and party officials. Questions of guilt or innocence of the victims played absolutely no part; this was massacre for its own sake and the intended victims numbered in the millions. This case, therefore, falls well within the conclusion reached by the IMT in passing judgment on Keitel and Jodl. Keitel and Jodl too, had advanced the same argument; in disposing of it, the IMT said, in the case of Keitel ¹—

“There is nothing in mitigation. Superior orders, even to a soldier, cannot be considered in mitigation where crimes as shocking and extensive have been committed consciously, ruthlessly, and without military excuse or justification.”
and, in the case of Jodl, the IMT said ²—

“His defense, in brief, is the doctrine of ‘superior orders’, prohibited by Article 8 of the Charter as a defense. There is nothing in mitigation. Participation in such crimes as these has never been required of any soldier and he cannot now shield himself behind a mythical requirement of soldierly obedience at all costs as his excuse for commission of these crimes.”

Before leaving this question of superior orders, we may note, for the sake of formal completeness, that this defense has no application under count three of the indictment, which charges all the defendants with membership in organizations (the SS, the SD, and the Gestapo) declared criminal by the IMT. Under well-established principles, the defendants must be convicted under count three on the basis of a showing that they were in fact members of any of these organizations after September 1939, and that they knew that the organizations were being utilized for the commission of acts declared criminal by the London Agreement and Charter. The defendants were all officers in the SS—most of them high ranking—and all of them joined the SS years before the time, during the latter part of the war, when compulsory recruiting for the Waffen SS [Armed SS] began. The close association of all of the defendants with one of the most horrible crimes of the SS upon which great stress was laid by the IMT in rendering the declaration of criminality, needs no further emphasis here.

The Laws of War in Modern Times

There remains to be considered the point of view expressed by

¹ Trial of the Major War Criminals, Vol. I, p. 291, Nuremberg, 1947.

² *Ibid.*, p. 325.

a few of the defendants, and most notably by the defendant Ohlendorf, that the massacres of the Einsatzgruppen were, under the circumstances, defensible and necessary. I have used the expression "point of view" advisedly, for this argument is not, properly speaking, a defense against the charges stated in the indictment; rather it is an attack upon the binding character of the laws of war and international law. Its logical conclusion is that the laws of war are not laws at all, and are not judicially enforceable. The argument runs about as follows:

a. It was not unlawful for the Third Reich to attack Russia in order to destroy the Russian Army and wipe out the Soviet Government;

b. The Germans expected that, in repelling the attack, the Russians would not comply with the laws of war;

c. Therefore, it was lawful for the Germans to plan to violate the laws of war in the course of their attack to whatever extent might be necessary in order to achieve victory;

d. Among the Russians, those groups who could be expected to oppose the Germans especially included the Jews, the gypsies, and political and party officials;

e. Therefore, it was lawful for the Germans to plan to exterminate all members of those groups in order to safeguard their own military and political security;

f. Furthermore, in modern total warfare the laws of war are not and cannot be observed;

g. The heavy bombing raids carried out by the Allies during the war—notably the raids on Dresden and the dropping of the atomic bomb at Hiroshima—are indistinguishable in principle from the massacres carried out by the Einsatzgruppen, and

h. Finally, therefore, the defendants cannot be held criminally liable for these massacres, and in any event are no more guilty than the Allied leaders who ordered the bombing raids just mentioned.

This, I believe, is an accurate statement of the arguments which the defendant Ohlendorf put forth during his testimony. And, after all the incredible gabbling we have heard about cultural pursuits and scientific research, it is a relief to be given a direct and stark rejoinder of this kind. This is exactly what a fanatical pseudo-intellectual SS-man might well believe. Thus, when Ohlendorf was asked on the witness stand to explain why the civilized world regarded the Einsatzgruppen massacres with abhorrence, he replied,

"The fact that individual men killed civilians face to face is looked upon as terrible and is pictured as specially gruesome because the order was clearly given to kill these people; but

I cannot morally evaluate a deed any better, a deed which makes it possible, by pushing a button, to kill a much larger number of civilians, men, women, and children, even to hurt them for generations than those deeds of individual people who for the same purpose, namely, to achieve the goal of the war, must shoot individual persons. I believe that the time will come which will remove these moral differences in executions for the purposes of war." (*Tr.* p. 520.)

Ohlendorf's thesis is, of course, equally relevant to the other cases which are being or have been tried at Nuernberg and, indeed to all war crimes trials everywhere. And Ohlendorf is not the sole exponent of the thesis that Allied bombing constitutes a complete and satisfactory defense to all the crimes charged in these indictments. Thus, counsel for the defendant Burkart in the Flick case, by way of defending his client against the charge of participation in the slave labor program, asked in his closing argument¹—

"Should they"—that is, the defendants in the Flick case—
"have considered it a crime to force foreign workers to work while the enemy considered it his right to kill German workers, and their wives, and children, through air attacks?"

And counsel for the defendant List in Case No. 7, dealing with the charge that his client had executed thousands of hostages in violation of the laws of war, observed²—

"Reasons of fairness and justice demand that Field Marshal List be treated in this respect exactly as were those Allied commanders who gave the orders to attack Dresden and Hiroshima."

And General Rendulic, testifying in his own behalf in that same case,³ drew exactly the same parallel between the killing of hostages, and "air attacks" and the atomic bomb on the other.

The common denominator of all these expressions is the same. It is the doctrine that total war means total lawlessness. The doctrine is logically indefensible and is based upon wanton indifference to facts and the order in which certain events took place.

As to the atom bomb, it is unfortunately all too true that war always tends to produce bigger guns and faster airplanes and more lethal explosives. Ultimately, the responsibility for these developments lies not with those who finish a war but with those

¹ Final plea for defendant Burkart, in case of United States *vs.* Friedrich Flick, et al. See Vol. VI.

² Final plea for defendant List, in case of United States *vs.* Wilhelm List, et al. See Vol. XI.

³ Mimeographed transcript, p. 5291-92 in Case No. 7.

who start it. But the question is, in any event, quite irrelevant in terms of the traditional laws of war, the *laws of war* have never attempted to prohibit such developments. Neither in the Hague Conventions nor in the general principles and usages of warfare have any limits ever been laid down in terms of size, speed, or destructive capacity.

The atomic bomb, therefore, is neither more nor less legal than ordinary bombs; under the laws of war, the question is not as to the character or explosive capacity of the bomb, but how it is used. It is sad but true that the destruction of an enemy's power of resistance by air attacks against urban industrial centers has become an accepted part of modern warfare. We are constrained again to note that the responsibility for this development does not lie with any of the powers under whose authority this proceeding is conducted. The first cities to undergo the terror of modern air raids suffered under German bombs, Warsaw, Rotterdam, and London were badly mauled while there was still hardly a scratch on any city in Germany. Nor can there be any suggestion that the major criminal ventures of the Third Reich—the slave labor program, the extermination of the Jews, or any other crime of similar magnitude—were planned or committed in retaliation for Allied bombing. All of these programs were well under way and on the high road to consummation long before Allied bombing had had any appreciable effect on life in Germany.

But there are still more fundamental considerations. We may overlook for purposes of argument the question of who started all this bombing, because it is clear that in this field there is by now no question of unilateral repudiation of the laws of war. But, just as the laws of war develop by common observance, so they are not changed merely because one country breaches them, no matter how savagely and consistently. No parallel exists in modern warfare to the Einsatzgruppen and their activities. The defendant Ohlendorf justifies them on the ground that it could be expected that the Jews and party and government officials would oppose the German attack with special vigor. Even the dullest mind can imagine what would have happened in Germany had similar principles been applied during the Allied advance and occupation.

In fact, the attempt to justify the Einsatz massacres on the basis that Jews were especially hostile to the Wehrmacht involves a perversion of fact and a reversal of logic so extraordinary that it would be amusing were it not so seriously advanced. After the Nazis had reviled and degraded and threatened the Jews for twenty years, it certainly might have been expected that the Russian Jews would have feared the coming of the Germans.

And so now this very circumstance is put forth as justification for slaughtering them to the last man, woman, and child. We could ask for no more exact a parallel to the burglar who shoots the house-owner in self-defense.

On this whole question we wish to make one final observation. The Einsatz massacres of Jews have been defended here as if it were sincerely believed that the killing of Jews was a military necessity in order to achieve military victory over the Russian Army. But in point of fact this argument is not sincerely made. Whatever anyone may think about atom bombs or ordinary bombs, they have not been dropping here in Germany since the capitulation. But will any defendant dare to suggest to us that the execution of the Jews in Russia would have stopped if Russian military resistance had collapsed? On the contrary, the evidence is compelling that a German victory would have enormously widened the scope of operations of the Einsatzgruppen and the holocaust would have been even more staggering. Ohlendorf's own testimony makes this clear beyond a doubt. When questioned as to the necessity for the killing of Jewish children by the Einsatzgruppen he replied—

“I believe that it is very simple to explain if one starts from the fact that this order did not only try to achieve security but also permanent security because the children would grow up and surely, being the children of parents who had been killed, they would constitute a danger no smaller than that of the parents.” (*Tr. p. 662.*)

In short, the crimes of the Einsatzgruppen were not, fundamentally, military crimes at all. They were not committed in order to make military victory possible. On the contrary, military victory was sought in order to put the victors in a position where these crimes could be committed. These crimes were a war objective, not a military means.

Conclusion

Now, may it please the Tribunal, I have made these observations not only because they deal with questions which are fundamental to the integrity of this proceeding, but also because they are fundamental to the very existence of the laws of war and international penal law. Not only is this Tribunal dedicated to the enforcement of international law; it owes its very existence to international law and agreements. Though constituted by the United States, its jurisdiction is established and defined by international agreements and declarations. One of the things for which we fought was to put an end to international anarchy, and

the need for establishing international law on a practical and enforceable footing has never been clearer than it is today.

But the defendants are not charged here with the crime of disagreeing with us on questions of international law, and what they did was not only a crime against humanity under international penal law; it was a heinous crime under all civilized legal systems. It is for this Tribunal, not for the prosecution, to determine what punishment the deep guilt of these defendants merits. But it is within the legitimate prerogatives of the prosecution to state the nature of the crime. The crime involved in this case is murder—deliberate, premeditated murder; murder on a gigantic scale; murder committed for the worst of all possible motives. Some of these defendants still believe that what they did was not murder because the victims were Jews. No system of domestic or international penal law could possibly survive under which the determination of guilt for murder is governed by the political or religious creed or racial origin of the victim. It is vitally important to the peace of the world that no such doctrine gain currency among nations. We earnestly suggest to the court that true judicial wisdom in this case counsels firmness rather than leniency to those adjudged guilty of this terrible crime against humanity.

X. FINAL STATEMENTS OF THE DEFENDANTS*

OHLENDORF

May it please the Tribunal, all literature published in the last two years dealing with the problems of National Socialism seriously and, particularly, religious literature, agrees that National Socialism is not the cause, but the effect of a spiritual crisis. That crisis which unfolded itself in the last centuries, and particularly, in the last decades, is twofold: it is a religious and a spiritual one, and it is a political and social one. Catholic and Protestant literature both agree that at least since the application of Gallican freedoms, Christian religion as the final aim of humanity was increasingly eliminated from the spheres of the state which form the core of historical development. The end of the Christian idea as a binding goal for humanity in its social systems and of the individual turning to the beyond, to life in God, had a double effect.

1. Man lacked absolute and uniform values in his life. In his mind and impulses he no longer found a uniform and firm guiding point which could have supplied him with the motives for his actions. Religious values and laws took an ever smaller space in his emotions, thinking, and acting. The Christian values, if they remained at all important, actually could not prevent man from being split into a "Sunday" and "week-day" individual. Week-day supplied him with different motives than an even temporary meditation on God's will. Life this side of the grave had not only acquired a significance of its own, but indeed ruled him independently with its concepts of autonomy, wealth, social position, and so forth.

2. Society, organized into separate states, found in this development no uniform values which might have been the constant objective of society or the state. As individuals and majority groups were in a position to make their separate aims the objects of society and politics, the inviolate metaphysical relatedness of politics was lost, and in consequence such social and political order as existed at a given time had to be disputed by the differing concepts of other individuals and other groups. The endeavors to preserve the status quo within the state and the nations was replaced by the will to eliminate the status quo by means of war or revolution.

My generation, when it became aware of social conditions

* Final statements are recorded in mimeographed transcript, 13 February 1948, pp. 6605-6645.

around it, found this spiritual, religious, political, and social decay having a deep effect. There were no values for them which were not immediately attacked and opposed by different groups. Thirty or more parties fought for power in the state. They represented a number of opposing interests. This generation was not offered any idea for learning to live as human beings which was not contested. Their social future was without hope. It is understandable that under those conditions this generation did not regard wealth as their aim, for material wealth had become a questionable asset after inflation, financial crisis, and years of economic stress, during which century-old properties dissolved into nothing. They were longing for spiritual support, for a goal behind the social order into which they were born, a goal which promised them true human dignity, firm human objectives, and a spiritual and religious center for their development into human beings. This generation had become too realistic in their suffering to believe that by fixing their eyes at the beyond they would find the moral and social basis for their existence as human beings at this period in history. Confronted with daily life and social existence they found both these elements to be too clear cut not to be the touchstone of human existence. Indeed the split into a "Sunday" and "week-day" man appeared as one of the deeper causes for spiritual and material suffering. Thus, it becomes understandable that this generation searched for new religious values.

Also, the dependence of every individual on the constitution and condition of the society, the nation, and the state in which he lived was far too obvious for this generation not to look for ways and means to replace the changing rule of group interests by an order which was based on the conception of totality in relation to every single individual irrespective of his social status. In National Socialism we saw this idea and we expected it to furnish the basis of a new order. It was not in the spirit of frivolity that we spoke of The Thousand Years Reich because we knew that great developments of humanity take centuries, nay, thousands of years, until they mature and give rise to yet newer developments. Therefore, our minds were not impatient, but we looked at the history of mankind, including their religious history, and that of the ups and downs of states and nations in order to find the guiding ideas in the growth and decline of the peoples in order to find the indications which would make it possible for us to fulfill justly the requirements of our time for the experiences and sufferings of history. From our search in history, we acquired the certainty that the great religious aims, the great moral and ethical issues always flank the actual historical events.

Both prosecution and defense have at the beginning of this

trial repeatedly pointed to the great religious and moral law contained in the Ten Commandments of Moses. Nobody will deny their binding character and no one can escape the sacred earnest of the Commandments. But it would amount to misjudging reality if one would, in the Books of Moses, ignore the descriptions of real history which in all its frightfulness is said to have been ordered by the same God who transmitted the Ten Commandments through Moses. It is not an empty religious phrase to say that to God a thousand years are but a moment. Anyone familiar with history will note that it is the outward customs and means that change in the course of the centuries, but that in 1948 no ideas are conceived or discussed which were not the living contents of Indian religious and philosophical systems, the Persian and Egyptian mysteries, Greek philosophy, the political systems and battles of the Greek city-states, of neo-platonic philosophy, of the large emotions of early Christians, the Roman concepts of law and the state, of the great impulses of the Catholic Church and of Protestantism.

It would also mean misjudging reality if one spoke of the dark Middle Ages in the belief that in its wars the so-called modern age had become more humane than the Middle Ages, or than the even more distant times, the time of so-called barbarism.

Every age has its moral aims, its ethical urge, and the stamina to create martyrs for its ideals. But, independent of these aims and forces, every age has been a piece of human history in which individuals and nations engaged in contest for their existence, for great or small aims, for individual or collective objectives, the outward shape of which in its degree of frightfulness essentially depended on inner and outer suffering, and the degree of sincerity in these contests. As subject and object of history man stands in the middle of the development formed by sincere or insincere impulses. Man will take one or the other side or will be driven on by one or the other side. If we meditate on the character of man we come to the conclusion that he who is animated by religious ethics and moral impulses and who tries to understand them in himself in order then to apply them to living history, perhaps comes closest to the concept of man. But as this aim and its practical fulfillment will never coincide, there always will be a tragic tension in the individual life between the religious and moral impulses and their application to real life, not only because individual man is limited in his power, but also because he lives in a world of powerful groups and social conditions which can wholly ignore his intentions and dispose over him. That tension extends and becomes cruder in the history of the nations, both in the living body of the nations themselves, as well as in the relations between

the nations. And yet all religions, especially the Christian religion, teach that God becomes manifest in history. Experiences in the last years have often shaken that conception, and yet no one with a spark of religion in himself can escape that knowledge.

The tension between the conception of history as a road to God and in God and historic reality as the outward manifestation of human ability and inability, human wisdom and human error, has grown into a general crisis in the human existence as such, since the elements of creations have shown themselves to man, and since human beings were not bound together by common ideals, bolshevism appeared as the idol, equipped not only with power and force, but even with martyrs.

At the end of the Second World War and with the defeat of National Socialism, the spiritual, religious, political, and social crisis still persists. A link between East and West has been eliminated and this perhaps has made the crisis yet more apparent. In analyzing our present time we will always find that ultimate values as criteria for the feeling, thinking, and acting of human beings and nations are still lacking. The metaphysical standards are missing. We must never forget that the basic laws of Christianity in its relatedness to God and individualism with man as its center and its outward expression in the constitutions of states are diametrically and irreconcilably opposed to one another. To Christianity this will always be true of any social order or political constitution which has made man the sole measure for its motives, the objects of its policies. If the ideas and concepts of democracy, the ideas of human dignity and liberty are to be made the sole yardstick for the measuring of the recent period in history, it must not be forgotten that the idea of democracy is no substitute for the metaphysical obligation of the Christian or any other religious idea. The democratic idea is a formal one. It lacks all certitude which would comprehend the totality of human life; it assigns duties and privileges to people and social organizations; it grants individual liberties, but it does not give the reason why. Nor is this intended because this would contradict the objectives of democracy. To equip that idea with judicial authority by bestowing on its representatives a legitimacy from a binding religious and moral principle amounts to an entirely unjustified assumption that an idea or a law, which does not exist, is generally binding. As all metaphysical motivation is lacking, this usurpation will always be regarded as an effort by one group to maintain the status quo which will not serve to lessen the tension between the nations. Nothing can grow from this which would substitute force by an idea which is binding for all and from which there could

come comprehensive motives for a human conception of law and for the shaping of a common history of the nations.

The most recent period in history is not different from any other period simply because a fight has taken place for moral and ethical principles and, through certain historic conditions, for the survival of nations, even if appearances seem different at a superficial glance. I regard myself as one of those who have become aware of the contrast of those two forces in history. I have myself sensed that tension and endeavored to find a solution. I have said time and again that I was tortured by the fear of the punishment which those in Germany who were responsible for the historic development seemed to invite by their words and deeds. Their frank ignoring of human lives, and of the basic ideas of their own religious and moral conceptions of the people made this fear grow in me, but today my fear of future punishment invited by present day events is greater still.

I have been now in the Palace of Justice in Nuernberg for 2½ years. What I have seen here of life as a spiritual force, in these 2½ years in Nuernberg, has increased my fear. Human beings who under normal conditions were decent citizens of their country were deprived of their basic conception of law, custom, and morals by the power of the victors. The fact that they were deprived of their conceptions which in the place of the lost religious values had given to the majority of human beings moral and ethical support, and the fact that the life which they led justified by those conceptions was now called criminal, made them give up their human dignity, which they should never have done. While they waited for the verdict which was really announced beforehand, when the victorious powers had condemned their basic conception of life, the march of history did not stop, which in its consequences for the peoples concerned put the powers on the judges' bench in the wrong before their own verdicts.

I am animated by the desire that the Tribunal may look beyond the over-simplified and over-generalized formulas of the post-war period and contemplate the events of this period from the point of view of the two basic forces which have always decided the flow of events. Not one nation alone is guilty, but ideas and the weight of concrete conditions among the nations fighting for their survival and future find human representatives who are capable of unloosening the pent-up tension. The concrete situation facing the nations after this war shows that the tension which still persists and grows daily goes deep back into the past and far beyond the German people and its intentions.

Thus I ask that in their deliberations for the verdict the Court will take into consideration that these defendants here were

thrown into a historic development which they did not cause and which went on independent of their will. None of them has himself selected his place in that development as a result of which he now sits in this dock. They were the target of impulses which made them act as they did independently of their own aim in life. They entered on their task convinced that they were backed by a genuine and justified moral force. They felt that their work was necessary even if it opposed their own inner tendencies and interest, because the existence of their people was in deadly peril. They were the same good average citizens as you find them by the millions in all countries. They never thought of criminal activities or criminal aims. They felt that they had been put into an inevitable, awful, and gigantic war which was to decide not only on the survival of their nation, their families and themselves, but they saw in themselves the protective shield guarding also other nations against one common enemy. They were in no position to judge the necessity and methods of this war. They were not responsible and could not be responsible for it. Any other attitude would have been in contradiction to the state administration which had been in force for centuries, and in contradiction to the existing responsibility of the highest leaders of the nations. They had to accept the methods and the orders in this war as did all soldiers in all countries. And those who looked at history and who from the developments which history taught them concluded that the future would be the result of inexorable moral laws were as much as ever faced by the tension between the two basic forces in history; in their longing for the realization of ethic and moral ideas, and the power of actual history with its overwhelming strength. They also felt the natural human urge for peace and a normal life with their fellow beings. But the passion of their moral existence included the metaphysical stipulation that the existence of their people must be preserved.

I never lost faith in God being manifest in history; even though we may not understand His ways, no situation will deprive me of my faith that life and death in this world has a reason and must be regarded affirmatively. Never in one moment of my life have I failed to offset the overwhelming forces of practical history with religious, moral, and ethical impulses, whenever life demanded something of me. I always regarded history as the realization of ideas in which human beings were both the subjects and the objects and which yet seemed to point to something beyond them. I am of the opinion that this Tribunal will use the historic facts which have become known in the last two years on the background of the past period, facts which not only threaten the existence of the German people, but are a menace to the whole

world, in order truly to understand the realities of history in their broad ideological and material implications. The fact that the victorious powers declared the German people guilty and the statement that its legal, moral, and ethical basis of the past had been illegal, immoral, and unethical have confused and uprooted the German people as well as the individuals who were heard here in Nuernberg as the representatives of that people. Thus, this legal, moral, and ethical suffering of the German people became greater than the material one which threatens its physical existence. May the verdict of this Court take into account the reality of historic conditions and developments and give the Germans, individually and collectively, the opportunity of true self-realization, lest they be kept in the grip of despair because their existence is held to take place outside historic reality and their future fate is based, not on the firmness of law, but on power and force.

If the Tribunal please, I do not wish to end my final statement without expressing my gratitude for the very generous way in which you have dealt with the problems which we have regarded as important to these proceedings.

JOST

Your Honor, having grown up in the years of need of the German people, I decided in 1928 to enter the NSDAP [National Socialist German Workers Party] because I believed that I found in this party the movement which alone would be able to prevent the decline of Germany, and would be in the position to offer resistance to the ever increasing pressure of bolshevism within Germany, and also abroad. I believed that I would best be able to fulfill my duty toward my people and my Fatherland by taking this path. This point of view also caused me to enter the SD in 1934, an organization which I considered a justified and necessary institution, an instrument capable of doing, particularly in an authoritarian state, constructive work and of offering necessary criticism.

In the late summer of 1941 I left the SD for tangible and personal considerations which I have spoken about at length.

Against my will and without my agreement I was elected Chief of Einsatzgruppe A, and Chief of the Security Police and SD Ostland in late March of 1942. With this assignment, and in connection with known orders then at hand, and other orders which were given to me later by my superior, I was charged with a singular responsibility, a responsibility which fortunately only few men have had to bear in the long course of history. The execution of the orders given me meant the death of 10,000 people. The knowledge and acquaintance with the fate of these victims, and,

in addition, about the inevitable fateful result of this order for the German people brought me to a state of conflict regarding my duties which cannot be described today with mere words. I decided in the course of this conflict to undertake everything in my power to render a further execution of these orders impossible, and to commit myself to the revocation of the orders. I myself gave no order, and I did not pass on the order which I received from Heydrich, and I did not carry out the instruction from the Reich Commissioner to rid the Ostland of Jews. I took this position because I had to take it. I did not act in this way in order to derive thanks from some person; neither did any opportunist considerations influence me. And, moreover, I certainly did not act in this way in order to have an alibi for a prosecutor one day, because in the summer of 1942 such thoughts would have been absurd. It was possible for me to prevent a further execution of this order for five months so that all Jews who lived in this area at the beginning of my activity there were still living at the end of my activity there. The prosecution has managed to prove three-hundred deaths in an area larger than Germany, and in a span of five months, and these deaths exclusively concern partisans, or such people who had forfeited their lives because of offenses against the laws of war. If, on a roll call I expressed that Jews, too, stood under the protection of the laws with their life and property, that was the expression of my conviction, namely, that even the Jewish people have their right as a part of God's creation in exactly the way that the German people, too, have their right to live.

The prosecution submitted among its rebuttal documents the examination of a certain Roman Loos, and this statement is supposed to be a standard for the activity of a commander when confronted with orders like the Fuehrer Order. I can only say that in my position I fulfilled all these conditions. I expressed to all my superiors my opinion and my point of view. I did not leave my subordinates in any doubt about my ideas. If the prosecution introduced documents of this nature, then they would have to be permitted to work favorably for the defendants who acted in accordance with the conditions therein contained. I personally was completely aware of the results which could follow from my actions. It was in the hands of my superiors to act in accordance with them, and finally they did so. Mr. Wartenberg stated in the course of a heated interrogation in May 1947, "We know that you acted very decently in Riga. We know, too, that you have done everything humanly possible in opposition." This statement admits the compelling conclusion that they were in possession of material which was mitigating for me. But they did not submit it.

During the five months I acted as my conscience prescribed, and

I believe that as a German and as a man, I acted justly. I can justify my actions before myself and before any Tribunal in the world with a pure conscience.

NAUMANN

All conditions within the German people, patriotism, and conscientiousness were the reasons which, in 1929, caused me to join the NSDAP. Inspired by the very same patriotism, and the same conscientiousness, I chose the opportunity, from 1928 on, to take part in the brief courses which were held in those days by the then Reichswehr, the predecessor of the later German Army, and, apart from exercising my profession, to train myself as a soldier in order to be able to defend my country, should the necessity arise. Thus I received my basic training and visited the noncommissioned officers' courses.

When in 1939 war broke out I frequently asked my chief, Heydrich, to let me join the army until I achieved my aim, and was able to join the army in April 1940. However, this condition did not last for long. As early as December of the same year, I was to return to my former office. Owing to my personal acquaintance with General Juettner of the Waffen SS, who held then the corresponding rank of Chief of General Staff in the Waffen SS, I managed to remain with the army. But through a decree of Himmler I was recalled to my office in March 1941. At the end of November 1941 I took over Einsatzgruppe B by personal order of Heydrich, and thus became acquainted with the Fuehrer Order, which is being dealt with in this trial. Apart from instinctive objection against this order, there was the fact that this order had been given by the Supreme Commander, and the Chief of State during the war. Apart from the wish not to have to comply with this order, there were the considerations that the oath rendered to the Chief of State left no possibility to evade it, and the realization that it was a legal order, as it was given by the Chief of State. In this inner conflict of emotions, in this enormous collision between duty and conscience, I conducted myself as has been described by my counsel in his plea.

I want to use this opportunity to thank my defense counsel and his assistants for the labors they underwent in my behalf. Psychologically, I rejected this order. On the witness stand I have attempted to give as true a picture as possible of this inner conflict. The testimony of my comrades Steimle and Ott equally show how strong and how serious our objections were against this order. Steimle's and Ott's testimony supported my inner attitude, but we clearly recognized that we had neither the possibility nor

the power to take any steps against the order. The Fuehrer Order was also the subject of discussions with my military superiors in Russia, the Commander in Chief of Army Group Center, Field Marshal von Kluge, and the Commander of the Army Group Rear Territory, General von Schenckendorff. Also Field Marshal von Kluge, who exercised the entire executive power in central Russia, and who was the only man in this area who had immediate access to the Fuehrer, stated that there was no possibility to evade the Fuehrer Order. On many occasions I discussed this with General von Schenckendorff and the result was the same. I would like to say here that friendly relationship developed between von Schenckendorff and myself in spite of the high position and high rank, and his age; von Schenckendorff was then 68 years old.

To illustrate this I would like to say that in the course of time he became my fatherly friend.

I did not regard the war in the East as a German war of aggression. According to information that I had access to I believed that Germany had anticipated the immediate impending attack on the part of the Soviet Union. I was furthermore convinced that bolshevism was a great danger for Germany and Europe, and that all forces must be mobilized to avert this danger. How right this attitude was has been proved by the subsequent period. The causes which led to the cooling off of the inter-Allied relationship between the U.S.A. and the U.S.S.R. prove, I believe, the accuracy of my original point of view.

There I was, a soldier and officer in the East. It was in accordance with my inclination as a soldier, that I should regard my assignment as a purely military one and that I complied with it accordingly. The situation in the army sector, and the very imminent partisan danger provided the opportunity for this. Therefore, I mobilized the forces of Einsatzgruppe B to a large degree for partisan reconnaissance and combat, which my superiors, later on, took as a reason to reprimand me.

It was also in accordance with my military inclinations that I should combine a battalion of Russians who voluntarily fought on the German side, and had put themselves at our disposal with the police company of the Einsatzgruppe B, a unit of members of the Waffen SS who were part of Einsatzgruppe B, and a number of voluntary Ukrainians into one combat unit, and reported voluntarily for combat against partisans as commander of this newly formed unit. This was approved by my superiors. In the course of this combat, I was decorated with the Iron Cross First Class for bravery before the enemy. I merely mention this fact because the prosecution in their trial brief have mentioned this decoration as a reproach. I would like to tell the prosecution here that I am still

proud of this decoration which I have earned for bravery before the enemy.

After about three months an end was put to my secret wish to remain a unit commander during the whole period of war, because, first, the battalion of Russians and, later, the mixed battalion were withdrawn from the territory of the army unit, and thus I had to dedicate myself entirely to the leadership of Einsatzgruppe B. I was a German soldier and officer in the truest sense of the word. Whenever I had to order, or to act anywhere, and anyhow on my own initiative, I have always acted in a humane manner. If I was confronted with an order by the Supreme Commander, or the Chief of State, I saw, just because I was an obedient soldier, no possibility to disobey this order, even though my inner attitude resisted it. When I was in Russia, it so happened that I took over Einsatzgruppe B only five months after the beginning of the war, and, therefore, I did not have to comply with the Fuehrer Order, because the Fuehrer Order had been given to the Chiefs of the Einsatzgruppen and of the Einsatzkommandos at the very beginning. To reject the order I had neither the power nor the possibility. The fact that obedience is the supreme duty of a soldier is shown in the well known speech of the British Field Marshal Montgomery of 1946, in which he says—

“No matter how intelligent the soldier is, the army would leave the nation in a lurch if it were not used to obey orders immediately. It is the duty of a soldier to obey all orders without questioning which the army, i. e., the nation, gives him.”

The war has shown that not only the Germans but also the Allied soldier receives and executes severe and severest orders. How could it be possible otherwise that my home town of Dresden, which housed no factories nor any installations of war importance within her boundaries, should be destroyed within 36 hours, and, thus more than 200,000 defenseless human beings, mostly old people, women and children were killed, buried, or cruelly wounded? How would it otherwise have been possible that the old city of my last garrison, old Nuernberg, had been turned into a rubble heap? How would it have been possible that the first atom bombs were thrown on Japan, and thousands and thousands of defenseless people were killed and that through the very consequences of the atom bomb even the unborn generation will have to suffer?

On both sides soldiers executed their orders, orders of their highest superiors, even if it was not in accordance with their conscience, when they had received the orders, with the reason that they were necessary in order to reach the war aim.

My position as chief of Einsatzgruppe B, my conduct in Russia,

and my inner attitude have given me the confidence so that I was able to answer the question of the president of this Tribunal which he put to me on 15 September 1947, with a clear conscience and deep conviction by "Not Guilty."

SCHULZ

May it please the Tribunal: On the charges made against me in this trial I have commented on the witness stand. That which could be summarized was put forth by my defense attorney Dr. Durchholz in his final plea. I have nothing to add to these statements because they corresponded with the truth. Thus, and in no other way, the events unfolded before me.

Therefore, my honor tells me that I must defend myself once more against the charges put forth by the prosecution to the effect that my statements are impeachable. On the day of capitulation I made myself unconditionally available for my own person and for the thing which I have to represent not in order to lie but to serve the truth. Considering the unlimited means of investigation, which are more than ever available to the investigating authorities it must also have been an easy matter for the prosecution staff to test the truthfulness of my statements. If all these many men were interrogated, whose names Mr. Wartenberg read to me from a long list, then the result of the questioning cannot have been different from that which I stated myself, excluding the events, naturally, which took place within me [sic].

I must also expressly reject the monstrous charge of the prosecution according to which 12,000 people have been shot under my responsible leadership of Einsatzkommando 5. Each member of Einsatzkommando 5 who was there during my time can truthfully say nothing other than that such a charge is devoid of any basis.

Wherever I have been, in almost twenty-five years of police service, human beings have always been holy for me. Just as I am concerned to maintain the purity of my own honor, I consider also the honor of my fellowmen, no matter who they are. And it was also not different in Russia. At no time did I hold irresponsible or unfeeling views on the subject of the fate of human beings.

My honor forces me also to emphasize once again—under my oath as a witness—that never in my life at any place or at any time have I maltreated or tortured a human being. Neither have I ever participated in an order to this end, nor have I tolerated such an act silently. Had I discovered such an inhumane act within my area, I should have committed myself against it with all means at my disposal. That this is the case is proved also by the affidavits which have been submitted, which for the most part were made available most voluntarily by former political opponents.

If the prosecution believes in spite of all this, that it must draw a conclusion which is not in harmony with my conception, I wish to try to attain understanding here, too. But that cannot alter the fact that I can answer to my conscience for that which I have done and not done. This accounting to my conscience is the satisfaction which I am able to give to myself.

In my sacred duty to serve my Fatherland I never forgot my duty towards humanity, because I carried within me personally the conviction that the respect of my Fatherland is dependent upon that respect which it deserved from its environment. I acted in my position on this premise.

In the certainty that I acted in accordance with this premise, I confidently await the decision of the Tribunal.

SIX

Your Honor, I was always a scientist but never a policeman. My political work, whether at the desk of the university, or at the desk of an office, was devoted to understanding and not to hatred. The four weeks of my assignment in the East did not constitute an exception to this. And I do not have to reproach myself in anything as a man and as a soldier, than as today. Thus my first word in this trial can remain my last word: Not Guilty.

BLOBEL

May it please the Tribunal. Contrary to the assertion of the prosecution that I did not serve at the front and that my activity did not take place in the confusion of the front line, I would like to say once more in conclusion, my assignment was exclusively in the combat area and not in the rear area. In addition, this assignment was the result of an order by the Reich Security Main Office which legally is to be considered equivalent to a war draft. Like every soldier I was subject to the harsh war laws. I too became enmeshed, by the assignment in the East, in conflict between law and morality, obedience and refusal to obey orders, harsh necessity of war, and personal feelings, a conflict which can hardly be retold today, and which can hardly be explained to the outsider.

I did not leave Pretzsch with the thought that I would have to order mass executions of Jews, Communists, and other enemies, since I personally lacked every prerequisite to bear the responsibility for such a decision.

At that time I could not interpret the speech by Major General [Gruppenfuehrer] Streckenbach as a final order. I expected certain executive orders. These were issued to me when I was subordinated to Sixth Army Headquarters.

Executions were not ordered by me personally. The executions which were carried out, at which I was present, were decided upon and ordered by the Commanding General of the Sixth Army, Field Marshal von Reichenau, according to documentary statements.

The number of 10,000 to 15,000 persons which I mentioned included, to my knowledge, all events with which any man belonging to Sonderkommando 4a had to deal. The documents concerning the often mentioned operation in Kiev show that by far the largest part of this number are due to this operation to which only a small group of men belonging to Sonderkommando 4a had been detailed. Whether any of these men took part in this execution is something about which I do not know anything personally, since I did not actively participate in this operation.

During the assignment in the East I was frequently in bad health due to infectious diseases. Only relatively late did this condition lead to my being relieved, after the superior authorities finally had received knowledge of the medical opinion about my reduced military fitness.

I am still afflicted with the after-effects of this illness, and the operations connected with it, as can be seen from the hospital papers which have been submitted.

I did my duty as a soldier towards my Fatherland according to the orders given to me by von Reichenau. I did not commit war crimes and crimes against humanity, as the prosecution asserts. I can face my wife and my children with a clear conscience, and I can look into their eyes. I am not guilty before God and my conscience.

BLUME

May it please the Tribunal, my defense counsel in his final plea and myself when in the witness stand commented already on the actual questions of this trial and its legal problems. Therefore I only want to add a few words with regard to my personality.

My education and training at home when I was in school and at the university acquainted me with the values of Western culture. At the same time Germany was a sacred concept for me. After the conclusion of my studies and at the beginning of my professional career in 1933 it was the aim of my life to become an official in the internal state administration. But fate sent me to the branch of the political police. In all those years from 1933 until 1945 I saw nothing else in all the developments in Germany than the great effort to eliminate the moral threat of bolshevism against our Western cultural values. According to my conviction of that time,

this purpose was served by Adolf Hitler's policies, even when he, in the middle of 1941, led Germany into war against the Soviet Union.

My attitude towards the world and life is based on the belief in the inner values of man, and on the belief in ideals. I always tried to realize these ideals in my personal conduct of life as well as in my profession. This required in particular a correct and clean attitude as an official and the endeavor to serve justice and law in my professional activity. In those cases where my character could not agree with certain orders received in my activity, I tried, up to the last limit, to dominate with my own humane attitude. I therefore believe that during my entire professional activity, I helped incomparably more people without their knowing it, than I interfered in human destinies and made them suffer in the execution of the authority of the state.

All in all I feel myself free from any legal guilt. I therefore expect your judgment, your Honors, with perfect calm and confidence.

SANDBERGER

I do not want to make any statement.

SEIBERT

May it please the Tribunal, I do not wish to add to the statements of my defense counsel about the actions indicted here in this trial in Russia, because I am of the opinion that that which had to be said about it has already been said. I had requested my defense counsel not to make any lengthy statements about my character and my life otherwise. Above all the reason was that the Tribunal already knew my life—if only in brief outline—because of my testimony on the witness stand, and that my activity in the SD, especially outside of Russia, always took place in the economic department. The documents of the prosecution prove this.

In my work which I did after I was transferred from the army to the SD I feel myself so free of every guilt, according to the best of my knowledge, that I dare claim that it is no coincidence that the prosecution did not succeed during the time of my detention, which is more than thirty-three months, to mention even one human being who has been harmed through my activity.

I add that in May 1945 I surrendered voluntarily to the British and that not only here but already in 1945 and 1946 I was interrogated about my activity longer than seven months in the headquarters of the British Secret Service in Nenndorf. After the completion of these interrogations in February 1946 I was

charged with nothing but I was committed then to an internment camp for automatic arrest.

I feel free of every guilt.

STEIMLE

May it please the Tribunal, before I say my final words may I tell the story of an event which I experienced at the end of September or beginning of October 1941 in Velizh, the headquarters of my Kommando, and which I related to Mr. Wartenberg during the interrogation?

In the area of Velizh a number of German soldiers had been murdered in a partisan attack. The competent military field commander handed over to me a number of farmers from collective farms from a village which was located near the site of the attack. He asked me to have these Russians shot as hostages by my Kommando. For this purpose I ordered an interrogation of the prisoners concerned. The investigation showed that these men could not have been connected with the partisan attack. I therefore ordered their immediate release.

Your Honors, I remembered this event especially distinctly when I received the indictment for participation in systematic genocide. As far as my situation is concerned, it seems to me to be especially symptomatic in this trial too, insofar as the interrogator at the time greeted my truthful story with sarcastic laughter and did not believe me. Whatever the prosecution may bring up, the inner certainty of having the truth on my side induces me once more to present the following concerning the charges made against me:

1. At no time during my command, either in Kommando 7a or in Kommando 4a, did I give orders to carry out the Fuehrer Order, just as little as this Fuehrer Order was carried out in my two Kommandos, to the best of my knowledge.

2. Numerous crimes against the security of the German troops which were punishable according to announcements, especially the appearance of partisans, gave my Kommandos cause, by order of the competent army, to take action against the bearers of this resistance movement and also to carry out death sentences in the process.

3. These convictions resulted on the basis of detailed interrogations which proved the individual guilt of the individual defendants.

4. At no time did my Kommandos carry out any collective measures during my command.

5. The Communist functionaries who are reported as having

been shot were convicted as active leaders of the resistance movement.

Your Honors, I look forward to your judgment with a calm conscience. The documents submitted by the prosecution cannot brand me a criminal nor a war criminal. No witness who experienced my activity has supported this claim of the prosecution, even though the prosecution interrogated officers and men of my command in detail.

Inspired by youthful idealism and a fervent love for my country I came into contact with the National Socialist movement once upon a time. I wanted to serve Germany, to help the German people. The end of the war finds my generation facing an immense abyss. Where we dreamed of future well-being and peace, we found ruins and distress in their stead. No history-conscious man will claim that such an event is thinkable without human weakness and guilt. Likewise, every historically-minded man knows that it is impossible, after such an event, to distribute the guilt individually or even to charge all to one people alone. As a former SS officer and National Socialist I am prepared to take my guilt upon myself. It does not lie in a punishable act which I might have perhaps committed in Russia. If I am to express this sense of guilt only in an approximate manner I will say this; hundreds of thousands have, together with me, placed their faith and idealism into the hands of a few people with too great a confidence and have thereby laid the foundation of one of the causes of our unfortunate time. Thus alone did I and many others become enmeshed in the guilt of our time. Surely their guilt is not a criminal one, but a political one. As an upright man I will answer for it.

BIBERSTEIN

Your Honors, I have nothing to add to the deliberation of my defense counsel. As to all charges of the prosecution I do not feel guilty before God and my conscience.

BRAUNE

Mr. President, your Honors. I have nothing to add to the final plea of my defense counsel.

HAENSCH

Your Honors, when this trial started I pleaded not guilty. With this idea I begin my final words. At no time did I have any connections with war crimes or crimes against humanity, and equally am I unable to see anything criminal in my membership in the SD and, therefore, also in the SS.

I owe it to a chain of circumstances, for which I am not responsible, that I am here today. Documents have been found, which appear to speak against me. However, a benevolent fate made it possible to prove to your Honors that I actually had nothing to do with the events reported in the documents. I underline here to its full extent what my defense counsel has said about this.

I went to Russia with a clean conscience and with a clean conscience I returned from there. I myself never did commit anything criminal, nor did I see others do so, nor did I ever hear of it. Also, nobody ever suspected me of committing a criminal act. What actually happened during this war in this respect—especially the treatment of the Jews on account of their race—I have learned—and of this I assure you again—only after the collapse of Germany, and the full details I heard only in this trial. I did not know the so-called Fuehrer Order. One could, therefore, not ask me now to feel guilty about this which is something which does not correspond to the fact. I, therefore, do not want to deal with it at this point, but only want to say one thing—had such an order been given I myself would have left nothing undone in order to fight against it, just in the same way as otherwise I always interfered against injustice and corruption without consideration of my person.

Again and again, I asked my defense counsel, and all those whom I met during this trial, to check on my assertions and ask whomever they wanted to, about my person and activities because I did and have nothing to hide and, therefore, have nothing to fear. It was clear to me that only truth could wash the suspicion off me, which the false statements in the documents had cast on me. Therefore, I avoided everything which could have shaken the proof put forward in my defense in the remotest way, and I know that all those who have helped me in providing for my evidence or who testified for me, did the same. For this reason I even restricted to a minimum my personal correspondence with my family. This was in no way easy for me, worried as I was about my wife and my aged mother, both of them being almost without means of subsistence at the present time.

Concerning my membership in the NSDAP I may be permitted again to point out that I only joined this organization in the belief to serve my people best in this way. This was my conviction when I swore fidelity to the Head of the State. This oath was no obligation to blind obedience as far as I was concerned, but left sufficient amplitude to my own responsibility. I related which events induced me to join the National Socialist Movement. It was the situation created in Germany by bolshevism at that time. Everything I saw with my own eyes showed the development

which could only end in chaotic destruction. To stem this danger I considered my duty, not only as a German, but also as a member of the entire civilized world. I do not think that I made a mistake in the recognition of this danger. It is still my conviction to this very day.

My defense counsel told everything about the circumstances which made me join the SD and the SS. I have nothing to add to this point.

Your Honors, all guilt that can be placed on man is the guilt of intention. My intention, however, was and is clean. Nobody can disturb the peace of my conscience. However, there is another thing, which ought to be defended. This is honor. It is exposed to outside attacks. Please do understand that I suffered a great deal and still suffer under the accusations of the prosecution, because they charged me with a guilt, of which I feel myself free. As a man who at one time was privileged to serve justice I trust that you, your Honors, will dispense justice to me, and will find me not guilty as my defense counsel has applied.

NOSKE

Your Honors, I have declared since the very beginning that I was determined not to obey the Fuehrer Order. And indeed I did not carry it out.

My activity in Russia consisted in police and security tasks, just as during war time it is imperative in enemy country. On the other hand, the knowledge of this order prompted me to try with all means to sever my connection with the Gestapo [Secret State Police]. I have made many attempts in this direction, however, I failed. Only as late as 1944 I succeeded in leaving the Gestapo. I refused to obey an order, which I could not evade, but should have carried out. The consequences of my leaving the Gestapo was that I was sent to the front as a soldier, and this could be considered as extreme leniency towards me. Just as well I could have been court-martialed and executed for disobedience. I did not have an easy time as a soldier but was assigned to those places where fighting was hottest, which is proved by my combat wound. I ask you, your Honors, to consider all these circumstances, and I put my life in your hands.

OTT

Mr. President, your Honors. Since 1945 singular and most secret conferences and decrees have come to our knowledge which we never had access to before. I must confess that under the influence of these documents numerous conclusions seem at hand

which, however, were never drawn by me as I have never had knowledge of the internal connections. Thus, the Fuehrer Order looks quite different if we look at it today as it did then in Russia where I did not have any idea of the happenings in the concentration camps and similar matters. In Russia I, as a soldier, was confronted with the task of doing my utmost towards securing the army territory for the fighting units. I carried out this task as well and as conscientiously as I was able to do. I saw no unjust war, I had no ideas of liquidations, but the decisive matter for me was my duty as a German and a soldier within the struggle for life of my own people. I only came in contact with the Jewish population of the sector of our assignment so far as individual Jews were members of the partisan groups which we fought against. I never searched for Jews in order to have them shot. In accordance with this, I used Sonderkommando 7b only as a unit for fighting partisans and for the prevention of acts of sabotage but never for liquidation operations. Even partisan counter-intelligence tasks I have tried to comply with using as lenient means as possible. Therefore, from my own initiative and under great difficulties I set up an internment camp in the vicinity of Orel to which I had people brought whose offenses would have sufficed to have them shot according to the general laws of warfare then in force. But I thought I would be able to secure their lives and merely punished them with 6, 9, or 12 months' confinement. By doing this I saved the lives of about 200 people.

I have never hunted for external honors. All my actions have been guided by reason and humane compassion. My assignment in Russia did not result in promotion; I received no decorations, no priority in subsequent employment. I did not apply for my assignment in Russia as part of the security police machinery, and I was finally re-appointed to the same post I had held before.

My conduct in other occupied territories before and after my Russian assignment, especially my activity in Lorraine was not regarded as one enforcing and supporting a terror rule by the population. It is most clearly shown in the letter of the French mayor, who, on his own initiative, says that I would be welcomed by the population of this particular French area at any time. My conduct in Russia was not different. Whenever and wherever I saw injustice done or unnecessary severity exercised, I openly applied to the responsible agencies as Gauleitung (district administration), Regierungspraesidium (government office), and Labor office, or State Police in order not only to bring about exceptional treatment by deviating the normal channels but also to cause the suspension of any and all unjust measures; concerning this, evi-

dence has been brought. Apart from this, any agency of my former domiciles can be asked concerning my behavior and conduct, be it my hometown Lindau, be it Norway, Saarbruecken, or Lorraine. Therefore I faced interrogators and judges with the same unburdened openness.

The charges against me are only of a general nature and as such contained in the common indictment. Yesterday the chief prosecutor, Mr. Ferencz, has stated that he will not submit a closing brief against me. I have only one special request to make to the honorable judges that they may arrive at their decisions only according to the defendant's own personal conduct and their motives, and not according to points of collective guilt. It is just because I was an old member of the Party that I know that we never as much thought of elimination as a solution of the racial question. This kind of solution was invented in the heads of a few leaders under the impression of war. And it was only carried out by few of them, based on orders which have nothing to do with the Fuehrer Order which is the subject of this trial. Even at the time when I was inspired by the idea of a new European Order under German leadership I never for a moment thought of violent methods, which would be considered a terror regime against other nations.

The war has caused many hardships. It also treated me with severity by taking my wife from me. She was shot down, in the street of a locality which was not defended when the enemy marched in, by an anti-tank gun through a well aimed shot, as she was just coming out of a shelter. In spite of this sorrow no bitter feeling has remained with me but only the wish that peoples may, in future, be saved from the horrors of war.

The following discussion took place regarding the statement of the defendant:

PRESIDING JUDGE MUSMANN: The defendant Ott has made a statement with regard to trial brief. Does the prosecution intend to file a trial brief in his case?

MR. HOCHWALD: If the Tribunal please, the Tribunal is aware of the fact that Einsatzgruppe B was handled entirely by Mr. Ferencz, however, I think that this is a mistake on the part of the defendant. As far as I know, trial briefs in all cases of all individual defendants are being filed and will be filed by the prosecution.

PRESIDING JUDGE MUSMANN: We wouldn't want any defendant or defense counsel to be of the impression that a trial brief is not being filed if one is to be filed. We will repeat what we said before. The trial briefs will be accepted up to and including next Friday, 20 February, but will not be accepted after that, and we recommend that both defense counsel and prosecution counsel get together, where briefs have not yet been filed, to see to it that with all expeditiousness possible they now be submitted to the Tribunal.

MR. HOCHWALD: Very well, your Honor.

STRAUCH

The following discussion took place regarding the final statement of defendant Strauch:

PRESIDING JUDGE MUSMANNO: In their order, the next defendant would be Eduard Strauch. He is not here, we presume, for physical reasons. We would like to inform his counsel, Dr. Gick, that Eduard Strauch has the right to make his final statement in court and we do not know whether you purposely, Dr. Gick, did not have him brought in or whether it was just assumed that he would not be brought in, and perhaps he is actually in good physical condition to make his statement or it may be that Strauch doesn't care to make a final statement. We would appreciate it, Dr. Gick, if you would inform him that he is entitled to make this final statement unless he has already indicated to you that he waives that right. If he wishes to make the statement in open Court and you inform the Tribunal, the Tribunal will sit to hear his statement. It may be that he will be satisfied to make merely a written statement in the nature of a final statement and that will be accepted by the Tribunal. We will leave it entirely in your hands, Dr. Gick.

DR. GICK: Your Honor, I saw the defendant Strauch yesterday in the hospital and I found him in a state of health which was worse than ever before. He gave completely confused answers and spoke nonsense. I was not in a position to make it clear to him that he, if necessary, could say a few final words; I was not in a position to make it clear to him what that meant. I believe that Strauch in his present state is not responsible for his actions. If the Tribunal will permit me to do so, I shall submit another medical certificate concerning the present condition of the defendant Strauch at a date to be fixed by the Tribunal.

MR. GLANCY: If it please the Tribunal, it is the prosecution's opinion that the defense counsel for the defendant Strauch is precluded from testifying as an expert in mental diseases. The Tribunal is well aware of his present condition and has been so advised by experts.

PRESIDING JUDGE MUSMANNO: Defense counsel has on previous occasions made comments similar to those which he has just now made and the facts established the contrary. The defendant was brought into court and did testify in a normal manner after two or three attempts and after examination had been made by competent physicians. So that the present statement of the defense counsel may not be accepted as evidence of the defendant's condition.

DR. GICK: May I say a few brief words, your Honor? It is not my intention to give an expert opinion here. I am not in a position to do so, but it was merely my intention to tell the Tribunal how I found the defendant, and what impression I gained.

PRESIDING JUDGE MUSMANNO: Yes. Well, the Tribunal will ask you, Dr. Gick, to inform the defendant Strauch that he is entitled to make a final statement just like every other defendant is making. He may make it in writing.

KLINGELHOEFER

Mr. President, Your Honors. The basis of my conception of life was influenced from my very early youth through the fact that I was born outside Germany. Besides my love for the German people and the inner obligation to dedicate my energy and my efforts to the good of the people, there always was the respect and the understanding for other peoples and nations.

The realization of the ever increasing Bolshevist danger in the East made me join the NSDAP at a time when the political, social, and economic conditions in Germany threatened to develop towards a chaos, which was bound to open the doors of Germany to bolshevism. I also realized the fact that for bolshevism Germany represented the key for the political conquest of Europe. From this point of view I considered the war in the East and therefore hoped for Germany's victory, being convinced that this victory in the East would also mean the final exclusion of the Bolshevist danger in the East.

At the beginning of the war with Soviet Russia, I was assigned to the Einsatz as an interpreter, because of my knowledge of languages. This assignment was based on a military order, which could not be objected to. My task in this assignment was restricted to intelligence duties and those duties resulting from my knowledge of the language and the country. In consideration of my subordinate position within the SD in Germany I never could be given the independent job of being the leader of a Kommando. My activity was therefore limited to the execution of orders and directives given to me, without ever being able to issue orders on my own initiative.

With regard to my attitude towards the Fuehrer Order I already declared that I personally objected to this radical order and tried to evade it. I also succeeded in doing so. I again declare expressly that at no time whatsoever was I in a position to have to carry out or pass on the Fuehrer Order in its radical and absolute form. I therefore never sent any persons to their death on the basis of this Fuehrer Order.

With the exception of the one case in Tatarsk, which, because of particular circumstances and under particular pressure I had to carry out on direct orders, and where my knowledge of the language played a decisive part, I never had anything to do with the executive tasks. This was entirely beyond the scope of my duties.

During my interrogation at Nuernberg I indicated from the start all the cases, where I had seen shootings or participated in them. At no time did I ever have the intention to deviate from the truth or to withhold something; in the witness stand as well as in all the interrogations and affidavits I always tried to speak the truth. I did not do anything which for any reasons—be it for fear of punishment or because of the knowledge of having done wrong—I had to withhold. Everything I did and however I may have reacted to the tasks assigned to me and orders I received was directed by the awareness of my duty as a soldier as well as by the intention to do only those things which according to my own and

full conviction had to be done to maintain and guarantee order and security in the rear of the fighting army.

Therefore, it was with my full conviction when in answer to the question of the Tribunal at the beginning of the trial, I pleaded "not guilty," and with a clear conscience I can repeat this declaration at the end of the trial.

FENDLER

Your Honors. On his final plea, my defense counsel Dr. Fritz stated our opinion on all points which might be of importance for the Tribunal in judging my case; he has arrived at the conclusion that the case in chief has undoubtedly turned out favorably for me. Therefore, I shall not go into details here again.

On the other hand, I would like to use this last opportunity to tell your Honors about my personal opinion concerning the indictment filed against me.

The opinion of the prosecution, that I was the deputy commando chief of Einsatzkommando 4b is just as incorrect as all conclusions drawn from that assertion. It is also unjustified for other reasons to make me responsible for the happenings in Einsatzkommando 4b which were discussed in the course of this trial. The truth is, and I solemnly confirm this, that my entire activity in the SD, both before, during, and after my assignment in the East, consisted exclusively of intelligence work. At all times, including during my assignment in the East, I only did what any state demands of its officials and officers entrusted with such jobs. I never had cause to fear that I was doing anything not permissible or even morally doubtful. Therefore I cannot hold a different opinion of my work during those years.

After severest self-examination, I have to refuse to assume responsibility for actions which I neither ordered nor carried out, in which I did not participate in any way whatsoever, and which I was even unable to prevent.

I can only repeat what I said at the beginning of this trial—I am *not* guilty!

VON RADEZKY

Mr. President, your Honors. When I was given the indictment on 13 July 1947, to answer for myself before this Tribunal, I accepted it, being confident that the truth would be established in the course of the trial and that I would have an opportunity to justify myself for a period of my life which without my assistance took a course during which I was not able to decide freely for even one hour. I have now answered for myself before this Tribunal. I did not commit any crime. I need not ask for pardon for my

actions. I only ask for unprejudiced understanding and I am confident that the Tribunal will arrive at a just verdict.

RUEHL

Your Honors. My career, my position, and tasks, my activity, and my attitude from 1933 to 1945 have been discussed at such length during the case in chief that it does not seem necessary to me to go into details about this again at this point. I would only like to say the following:

I was twenty years of age when I joined the NSDAP and the SA and two years later I joined the SS with youthful faith in the truth and purity of the ideals and aims which were made known at the time. In this good faith I finally complied with the draft to the then completely unknown State Police in 1933 and worked there until 1940 on counter-espionage, having nothing to do with everyday political differences.

When, after concluding my studies, doubts and disappointment began to undermine this faith, apart from the outer duress, I felt myself obligated to stay at that post to which I had been ordered in the decisive battles of my people of my native country.

That I did my duty on this post as I thought I could answer for before my conscience is proved most clearly by my behavior in Augsburg. In opposition to binding orders from the highest authorities, I stood up for those people whom the prosecution believes it was my aim to persecute.

Therefore, it does not concern me either if the prosecution wants to ascribe motives to me in my action concerning the retransfer of those Jews in Mogilev-Podolski, which did not even occur to me, in view of my basic attitude, which has now been proven. The important part which I played there as an intermediary of an order, was only based on the idea to avoid terrible misery and to enable those people to return to their native land.

The charge of the prosecution that I had assumed authority to give orders in this case, to which I was not entitled, I do not consider incriminating. On the contrary I hold the opinion that I would justly be in the defendant's dock now, if I had refused to assist at the time and had let those people perish in misery by referring to my incompetency.

I am firmly convinced that the Tribunal will confirm my opinion that my conscience has not deceived me.

SCHUBERT

Your Honors, being one of those tens of thousands of officers holding the same rank as I and holding the same position as adjutant, fate has placed me among those 220 German men who have

to answer for themselves to the highest American Military Tribunals as the ones who held the most responsibility. As long as I live I shall never understand that decision. Yet, I shall never complain about my fate. I need have no fear for myself as to the verdict of this Tribunal.

Even if fate placed me in a prominent position in this manner, I feel eager to state my opinion at this point concerning the charge of the prosecution that every defendant was filled with boundless contempt for human life, because of the National Socialist ideology in which he believed.

I joined the SD when I was a young man twenty years of age, a member of a generation born during the First World War and the majority of them probably witnessed the second one in the front lines. Everywhere we were in the center of events without having ourselves held any responsibility worth mentioning.

And now once again, I am brought into the center of an event in the judgment of persons who were responsible for past happenings. I became a National Socialist and even more so an SD member, not because of contempt for human life, but because I always strongly approved of life in a community of human beings. The severe stroke of fate in my young life did not change this either, when, before my eastern assignment I lost my wife and child as a result of Allied operations during the war. The love for my people always made my duty towards my Fatherland a perfectly natural sentiment. While searching for a real life in a genuine community of people, we found our way to National Socialism. From 1934 to 1945, in the SD, I considered it my noblest duty to serve my people.

When we set out on the Russian Campaign we stood on the crossroads of events of decisive importance to the world, not only as far as time is concerned, but also because of the place, in a territory between two worlds. We did not set out to kill, but we set out to defend Western civilization.

Being an adjutant of an Einsatzgruppe, I was outside the sphere of the events contained in the indictment, but I was all the closer to the men in those units, who, the prosecution asserts, were filled with boundless contempt for human life.

I was with these men for months in the area of the assignment. I know the mentality of these men, their surroundings, their troubles, and worries. I saw them when carrying out the hard task they had been given and I saw their struggle between duty and conscience when they were concerned with having to carry out the Fuehrer Order discussed here. I know that there was no one in those units that could have carried out the tasks assigned to him only because he did not respect the sacredness of human

life. I know that these men decided to do their duty to a great extent because they realized that the defense against bolshevism was the question—"to be or not to be" for their people, their wives, and their children. I do not believe that anyone has the right to charge these men with contempt for human life without having been in the same position himself at some time, since these men, as soldiers could only choose between obedience and the dishonorable death of a mutineer.

There is neither time nor space here to discuss all the tasks which were given to us in the Einsatz, but I wish that the ones who accuse us today would have once had the opportunity to witness the joy of liberation of the ethnic groups oppressed until that time by bolshevism and to see the Einsatzgruppen looking after the cultural interests of such ethnic groups and other peaceful tasks.

The prosecution has presented against me as sole incriminating material my own statements in the preliminary proceedings in the form of affidavits. I did not at any time keep anything secret about my activity from the first day of my captivity, since I was and still am of the opinion that I can be justly judged only if I give a clear picture of myself to the persons who are to pass judgment on me. I did not give any cause to the prosecution to make any further charges against me beyond my truthful and exhaustive statements.

I especially request the Tribunal not to judge the happenings of that time from the perspective of the present time, with the knowledge of connections gained in the meantime, but to imagine themselves in the area and in the situation into which we were placed at that time. Then it will become clear to the Tribunal that we did our duty not in contempt of human life, but in constant struggle between duty and personal feelings. Then I have the hope that the Tribunal will arrive at a just verdict.

GRAF

Mr. President, Your Honors, it was not my wish that led me to join the SD in 1940. It was fate that I was ordered to the East. In exactly the same way it was fate that I am the only one of approximately 5,000 noncommissioned officers and men in the Einsatzgruppen who came to this defendant's dock.

Surely, however, it was a benevolent destiny which did not involve me in the things which have been the object of the indictment here. I have confidence that a similarly benevolent destiny will restore my honor and my freedom to me, thanks to the objective and righteous judges.

XI. OPINION AND JUDGMENT

The indictment filed in this case on 29 July 1947 charged the 24 defendants enumerated therein with crimes against humanity, war crimes, and membership in criminal organizations. The 24 defendants were made up of 6 SS generals, 5 SS colonels, 6 SS lieutenant colonels, 4 SS majors, and 3 SS junior officers. Since the filing of the indictment the number of the defendants has been reduced to 22. Defendant SS Major Emil Haussmann committed suicide on 31 July 1947, and defendant SS Brigadier General Otto Rasch was severed from the case on 5 February 1948 because of his inability to testify. Although it is assumed that Rasch's disease (paralysis agitans or Parkinsonism) will become progressively worse, his severance from these proceedings is not to be regarded as any adjudication on the question of guilt or innocence.

The acts charged in counts one and two of the indictment are identical in character, but the indictment draws the distinction between acts constituting offenses against civilian populations, including German nationals and nationals of other countries, and the same acts committed as violations of the laws and customs of war involving murder and ill-treatment of prisoners of war and civilian populations of countries under the occupation of Germany. Count three charges the defendants with membership in the SS, SD, and Gestapo, organizations declared criminal by the International Military Tribunal and paragraph I(d) of article II of Control Council Law No. 10.

Although the indictment accuses the defendants of the commission of atrocities, persecutions, exterminations, imprisonment, and other inhumane acts, the principle charge in this case is murder. However, as unequivocal as this charge is, questions have arisen which must be definitely resolved so that this decision may add its voice in the present solemn re-affirmation and sound development of international precepts binding upon nations and individuals alike, to the end that never again will humanity witness the sad and miserable spectacle it has beheld and suffered during these last years.

At the outset it must be acknowledged that the facts with which the Tribunal must deal in this opinion are so beyond the experience of normal man and the range of man-made phenomena that only the most complete judicial inquiry, and the most exhaustive trial, could verify and confirm them. Although the principle accusation is murder and, unhappily, man has been killing man ever since

the days of Cain, the charge of purposeful homicide in this case reaches such fantastic proportions and surpasses such credible limits that believability must be bolstered with assurance a hundred times repeated.

The books have shown through the ages why man has slaughtered his brother. He has always had an excuse, criminal and ungodly though it may have been. He has killed to take his brother's property, his wife, his throne, his position; he has slain out of jealousy, revenge, passion, lust, and cannibalism. He has murdered as a monarch, a slave owner, a madman, a robber. But it was left to the twentieth century to produce so extraordinary a killing that even a new word had to be created to define it.

One of counsel has characterized this trial as the biggest murder trial in history. Certainly never before have twenty-three men been brought into court to answer to the charge of destroying over one million of their fellow human beings. There have been other trials imputing to administrators and officials responsibility for mass murder, but in this case the defendants are not simply accused of planning or directing wholesale killings through channels. They are not charged with sitting in an office hundreds and thousands of miles away from the slaughter. It is asserted with particularity that these men were in the field actively superintending, controlling, directing, and taking an active part in the bloody harvest.

If what the prosecution maintains is true, we have here participation in a crime of such unprecedented brutality and of such inconceivable savagery that the mind rebels against its own thought image and the imagination staggers in the contemplation of a human degradation beyond the power of language to adequately portray. The crime did not exclude the immolation of women and children, heretofore regarded the special object of solicitude even on the part of an implacable and primitive foe.

The International Military Tribunal in its decision of 1 October 1946 declared that the Einsatzgruppen and the Security Police, to which the defendants belonged, were responsible for the murder of two million defenseless human beings, and the evidence presented in this case has in no way shaken this finding. No human mind can grasp the enormity of two million deaths because life, the supreme essence of consciousness and being, does not lend itself to material or even spiritual appraisal. It is so beyond finite comprehension that only its destruction offers an infinitesimal suggestion of its worth. The loss of any one person can only begin to be measured in the realization of his survivors that he is gone forever. The extermination, therefore, of two million human beings cannot be felt. Two million is but a figure.

The number of deaths resulting from the activities with which these defendants have been connected and which the prosecution has set at one million is but an abstract number. One cannot grasp the full cumulative terror of murder one million times repeated.

It is only when this grotesque total is broken down into units capable of mental assimilation that one can understand the monstrousness of the things we are in this trial contemplating. One must visualize not one million people but only ten persons—men, women, and children, perhaps all of one family—falling before the executioner's guns. If one million is divided by ten, this scene must happen one hundred thousand times, and as one visualizes the repetitious horror, one begins to understand the meaning of the prosecution's words, "It is with sorrow and with hope that we here disclose the deliberate slaughter of more than a million innocent and defenseless men, women, and children."

All mankind can share that sorrow in the painful realization that such things could happen in an age supposedly civilized and mankind may also well cherish the hope that civilization will actually redeem itself, so that, by reflection, cleansing, and a real sanctification of the holiness of life, that nothing even faintly resembling such a thing may happen again.

Judicial opinions are often primarily prepared for the information and guidance of the legal profession, but the Nuernberg judgments are of interest to a much larger segment of the earth's population. It would not be too much to say that the entire world itself is concerned with the adjudications being handed down in Nuernberg. Thus it is not enough in these pronouncements to cite specific laws, sections, and paragraphs. The decisions must be understood in the light of the circumstances which brought them about. What is the exact nature of the facts on which the judgments are based? A tribunal may not avert its head from the ghastly deeds whose legal import it is called upon to adjudicate. What type of reasoning or lack of reasoning was it that brought about the events which are to be here related? What type of morality or lack of it was it that for years bathed the world in blood and tears? Why is it that Germany, whose rulers thought to make it the wealthiest and the most powerful nation of all time, an empire which would overshadow the Rome of Caesar—why is it that this Germany is now a shattered shell? Why is it that Europe, the cradle of modern civilization, is devastated and the whole world is out of joint?

These Nuernberg trials answer the question, and the Einsatzgruppen trial in particular makes no little contribution to that enlightenment.

EINSATZGRUPPEN

When the German armies, without any declaration of war, crossed the Polish frontier and smashed into Russia, there moved with and behind them a unique organization known as the Einsatzgruppen. As an instrument of terror in the museum of horror, it would be difficult to find an entry to surpass the Einsatzgruppen in its blood-freezing potentialities. No writer of murder fiction, no dramatist steeped in macabre lore, can ever expect to conjure up from his imagination a plot which will shock sensibilities as much as will the stark drama of these sinister bands.

They came into being through an agreement between the RSHA (Reich Security Main Office), the OKW (Armed Forces High Command), and the OKH (Army High Command). The agreement specified that a representative of the chief of the security police and security service would be assigned to the respective army groups or armies, and that this official would have at his disposal mobile units in the form of an Einsatzgruppe, sub-divided into Einsatzkommandos and Sonderkommandos. The Kommandos in turn were divided into smaller groups known as Teilkommandos. Only for the purpose of comparison as to size and organization, an Einsatzgruppe could roughly be compared to an infantry battalion, an Einsatz or Sonderkommando to an infantry company, and a Teilkommando to a platoon.

These Einsatzgruppen, of which there were four (lettered A to D), were formed, equipped, and fully ready to march before the attack on Russia began. Einsatzgruppe A was led by Stahl-ecker and later the defendant Jost, operated from central Latvia, Lithuania, and Esthonia towards the East. Einsatzgruppe B, whose chief was Nebe, succeeded by the defendant Naumann, operated in the direction of Moscow in the area adjoining Einsatzgruppe A to the South. Einsatzgruppe C, led by Rasch and later Thomas, operated in the Ukraine, except for the part occupied by Einsatzgruppe D, which last organization, first under the defendant Ohlendorf and then Bierkamp, controlled the Ukraine south of a certain line, which area also included the Crimean peninsula. Later Einsatzgruppe D took over the Caucasus area.

These Einsatzgruppen, each comprising roughly from 800 to 1,200 men, were formed under the leadership of Reinhard Heydrich, Chief of the Security Police and SD. The officers were generally drawn from the Gestapo, SD, SS, and the criminal police. The men were recruited from the Waffen SS, the Gestapo, the Order Police, and locally recruited police. In the field, the Einsatzgruppen were authorized to ask for personnel assistance

from the Wehrmacht which, upon request, invariably supplied the needed men.

At top secret meetings held in Pretzsch and Dueben, Saxony, in May 1941, the Einsatzgruppen and Einsatzkommando leaders were instructed by Heydrich, Chief of Security Police and SD, and Streckenbach, Chief of Personnel of RSHA, as to their mission, and they were introduced to the notorious Fuehrer Order around which this extraordinary case has risen. Under the guise of insuring the political security of the conquered territories, both in the occupational and rear areas of the Wehrmacht, the Einsatzgruppen were to liquidate ruthlessly all opposition to National Socialism—not only the opposition of the present, but that of the past and future as well. Whole categories of people were to be killed without truce, without investigation, without pity, tears, or remorse. Women were to be slain with the men, and the children also were to be executed because, otherwise, they would grow up to oppose National Socialism and might even nurture a desire to avenge themselves on the slayers of their parents. Later, in Berlin, Heydrich re-emphasized this point to some of the Einsatz leaders.

One of the principal categories was "Jews". No precise definition was furnished the Einsatz leaders as to those who fell within this fatal designation. Thus, when one of the Einsatzgruppen reached the Crimea, its leaders did not know what standards to apply in determining whether the Krimchaks they found there should be killed or not. Very little was known of these people, except that they had migrated into the Crimea from a southern Mediterranean country, and it was noted they spoke the Turkish language. It was rumored, however, that somewhere along the arterial line which ran back into the dim past some Jewish blood had entered the strain of these strange Krimchaks. If this were so, should they be regarded as Jews and should they be shot? An inquiry went off to Berlin. In due time the reply came back that the Krimchaks were Jews and should be shot. They were shot.

The Einsatzgruppen were, in addition, instructed to shoot gypsies. No explanation was offered as to why these unoffending people, who through the centuries have contributed their share of music and song, were to be hunted down like wild game. Colorful in garb and habit, they have amused, diverted, and baffled society with their wanderings, and occasionally annoyed with their indolence, but no one has condemned them as a mortal menace to organized society. That is, no one but National Socialism which, through Hitler, Himmler, and Heydrich ordered their liquidation. Accordingly, these simple, innocuous people were taken in trucks,

perhaps in their own wagons, to the antitank ditches and there slaughtered with the Jews and the Krimchaks.

The insane also were to be killed. Not because they were a threat to the Reich, nor because someone may have believed they were formidable rivals of the Nazi chieftains. No more excuse was offered for sentencing the insane than was advanced for condemning the gypsies and the Krimchaks. However, there was a historical basis for the decrees against the insane. That is, a history going back two years. On 1 September 1939, Hitler had issued his euthanasia decree which ordered the killing of all insane and incurably ill people. It was demonstrated in other trials that this decree was made a convenient excuse for killing off those who were racially undesirable to the Nazis, and who were unable to work. These victims were grouped together under the title of "useless eaters". Since all invaded territories were expected to become Reich territory, the same policies which controlled in Germany itself were apparently introduced and put into effect in the occupied lands. But a very extensive interpretation was given to even this heartless decree. Insane asylums were often emptied and the inmates liquidated because the invaders desired to use the asylum buildings.

"Asiatic inferiors" was another category destined for liquidation. This kind of designation allowed a wide discretion in homicide. Einsatzgruppen and Einsatzkommando leaders were authorized to take executive measures on their own responsibility. There was no one to dispute with them as to the people they branded "Asiatic inferiors". And even less was there a curb on homicidal operations when they were authorized to shoot "Asocial people, politically tainted persons, and racially and mentally inferior elements."

And then, all Communist functionaries were to be shot. Again it was never made quite clear how broad was this classification. Thus, in recapitulation, the Fuehrer Order, and throughout this opinion it will be so referred to, called for the summary killing of Jews, gypsies, insane people, Asiatic inferiors, Communist functionaries, and asocials.

AUTHENTICITY OF REPORTS

The story of the Einsatzgruppen and the Einsatzkommandos is not something pieced together years after their crimson deeds were accomplished. The story was written as the events it narrates occurred, and it was authored by the doers of the deeds. It was written in the terse, exact language which military discipline requires, and which precision of reporting dictates.

The maintenance of an army in invaded territory and the planning of future operations demands cold factuality in reports, which requirement was rudimentary knowledge to all members of the German Armed Forces. Thus, every sub-kommando leader was instructed to inform his Kommando leader of developments and activities in his field of operations, every Kommando leader in turn accounted to the Einsatzgruppe leader, and the Einsatzgruppe leader by wireless and by mail reported to the RSHA in Berlin. These accounts were veiled in secrecy but they were not so covert that they did not come to the attention of the top-ranking military and political officials of the regime. In fact, at the capital, they were compiled, classified, mimeographed, and distributed to a selected list. These are the reports which have been submitted in evidence.

The case of the prosecution is founded entirely on these official accounts prepared by the Einsatzgruppen and Einsatzkommando leaders. The Tribunal will quote rather copiously from these reports because only by the very language of the actual performers can a shocked world believe that these things could come to pass in the twentieth century. A few brief excerpts at the outset will reveal graphically the business of the Einsatzgruppen. A report on Einsatzgruppe B, dated 19 December 1941, speaks of an action in Mogilev and points out—

“During the controls of the roads radiating from Mogilev, carried out with the aid of the constabulary, 135 persons, mostly Jews, were apprehended * * *. 127 persons were shot.”
(NO-2824.)

The report also declares—

“In agreement with the commander, the transient camp in Mogilev was searched for Jews and officials. 126 persons were found and shot.”

The same report advises that in Parichi near Bobruisk,

“A special action was executed, during which 1,013 Jews and Jewesses were shot.”

In Rudnja—

“835 Jews of both sexes were shot.” (NO-2824.)

Sonderkommando 4a, operating in the town of Chernigov, reported that on 23 October 1941, 116 Jews were shot; on the following day, 144 were shot. (NO-2832.)

A Teilkommando of Sonderkommando 4a, operating in Poltava, reported as of 23 November 1941—

“Altogether 1,538 Jews were shot.” (NO-3405.)

Einsatzgruppe D operating near Simferopol communicated—

“During the period covered by the report 2,010 people were shot.” (NO-3235.)

An Einsatz unit, operating in the Ukraine, communicated that in Rakov—

“1,500 Jews were shot.” (3876-PS.)

A report on activities in Minsk in March 1942 reads—

“In the course of the greater action against Jews, 3,412 Jews were shot.” (NO-2662.)

Einsatzkommando 6, operating in Dnepropetrovsk, reported that on 13 October 1941—

“Of the remaining 30,000 approximately 10,000 were shot.” (NO-2832.)

A report dated 16 January 1942, accounting for the activities of Einsatzkommando 2, stated that in Riga on 30 November 1941—

“10,600 Jews were shot.” (NO-3405.)

In time the authors of the reports apparently tired of the word “shot” so, within the narrow compass of expression allowed in a military report, some variety was added. A report originating in Latvia read—

“The Higher SS and Police leader in Riga, SS Obergruppenfuehrer Jeckeln, has meanwhile embarked on a shooting action [Erschiessungsaktion] and on Sunday, the 30 November 1941, about 4,000 Jews from the Riga ghetto and an evacuation transport from the Reich were disposed of.” (NO-3257.)

And so that no one could be in doubt as to what was meant by “Disposed of”, the word “killed” was added in parentheses.

A report originating from the Crimea stated laconically—

“In the Crimea 1,000 Jews and gypsies were executed.” (NO-2662.)

A report of Einsatzgruppe B, in July 1941, relates that the Jews in Lithuania were placed in concentration camps for special treatment, and then the report explains—

“This work was now begun and thus about 500 Jews, saboteurs among them, are liquidated daily.” (NO-2937.)

A Kommando, operating in Lachoisik, reported—

“A large-scale anti-Jewish action was carried out in the village of Lachoisik. In the course of this action 920 Jews were executed with the support of a Kommando of the SS Division ‘Reich’. The village may now be described as ‘free of Jews’.” (NO-3143.)

Einsatzgruppe B, operating out of headquarters Smolensk, reported on one of its operations in October—

“In Mogilev the Jews tried also to sabotage their removal into the ghetto by migrating in masses. The Einsatzkommando No. 8, with the help of the ordinary police, blocked the roads

leading out of the town and liquidated 113 Jews." (NO-3160.) This same organization also reported—

"Two large-scale actions were carried out by the platoon in Krupka and Sholopaniche, 912 Jews being liquidated in the former and 822 in the latter place." (NO-3160.)

The advance Kommando of Sonderkommando 4a, chronicling its activities of 4 October 1941 reported—

"Altogether, 537 Jews (men, women, and adolescents) were apprehended and liquidated." (NO-3404.)

Eventually even the expressions "liquidate" and "execute" became monotonous, so the report-writers broke another bond of literary restraint and began describing the murder of Jews with varying verbiage. One particularly favored phrase announced that so many Jews were "rendered harmless". Still another declared that so many Jews had been "got rid of." One more pronounced that a given number of Jews had been "done away with". However, it really mattered little what phraseology was employed. Once the word "Jew" appeared in a report, it was known that this invariably meant that he had been killed. Thus, when one particularly original report-writer wrote, "At present, the Jewish problem is being solved at Nikolaev and Kherson. About 5,000 Jews were processed at either place." It required no lucubration on the part of the RSHA officials in Berlin to comprehend that 5,000 Jews had been killed at Nikolaev and 5,000 had been killed at Kherson. (NO-3148.)

Death was simple routine with these earthy organizations. In the Reich Security Main Office, Einsatzgruppen could well be synonymous with homicide. One report, after stating that certain towns were freed of Jews, ends up with the abundantly clear remark that "the remaining officials were *appropriately treated*." (NO-3137.)

Kommando leaders also frequently informed headquarters that certain groups had been "taken care of". (NO-3151.) When an Einsatzkommando "took care" of anybody only one person could be of service to the person taken care of, and that was the grave digger. "Special treatment" was still one more contemptuous characterization of the solemn act of death when, of course, it applied to others.

Then some report-writers airily recorded that certain areas "had been purged of Jews."

Finally, there was one term which was gentle and polite, discreet and definitive. It in no way called up the grim things connected with shooting defenseless human beings in the back of the neck, and then burying them, sometimes partially alive, into shallow graves. This piece of rhetoric proclaimed that in certain areas

“the Jewish question was solved.” And when that wording was used one knew finally and completely that the Jews in that particular territory had been removed from the land of the living.

Einsatzgruppe C, reporting on more than 51,000 executions, declared—

“These were the motives for the executions carried out by the Kommandos—

Political officials, looters and saboteurs, active Communists and political representatives, Jews who gained their release from prison camps by false statements, agents and informers of the NKVD, persons who, by false depositions and influencing witnesses, were instrumental in the deportation of ethnic Germans, Jewish sadism and revengefulness, undesirable elements, partisans, politruks, dangers of plague and epidemics, members of Russian bands, armed insurgents—provisioning of Russian bands, rebels and agitators, drifting juveniles—”

and then came the all-inclusive phrase, “Jews in general.” (NO-3155.)

The summary cutting down of such groups as “drifting juveniles” and such vague generalizations as “undesirable elements” shows that there was no limit whatsoever to the sweep of the executioner’s scythe. And the reference to individual categories of Jews is only macabre window dressing because under the phrase “Jews in general”, *all* Jews were killed regardless of antecedents.

There were some Kommando leaders, however, who were a little more conscientious than the others. They refused to kill a Jew simply because he was a Jew. They demanded a reason before ordering out the firing squad. Thus, in White Ruthenia, a Kommando leader reported—“There has been frequent evidence of Jewish women displaying a particularly disobedient attitude.” The Kommando leader’s conscience now having been satisfied, he went on in his report—

“For this reason, 28 Jewesses had to be shot at Krugloye and 337 in Mogilev.” (NO-2656.)

At Tatarsk the Jews left the ghetto in which they had been collected and returned to their homes. The scrupulous Kommando leader here reported the serious offense committed by the Jews in taking up living in their own domiciles. He accordingly executed all the male Jews in the town as well as three Jewesses. (NO-2656.)

Further,

“At Mogilev, too, the Jews tried to prevent their removal to a ghetto, 113 Jews were liquidated.” (NO-2656.)

Operation Report No. 88, dated 19 September 1941, states that, on 1 and 2 September, leaflets and pamphlets were distributed by

Jews, but that "the perpetrators could not be found." With this declaration that the guilty ones could not be located, the leader of the execution unit involved tranquilized his moral scruples and, accordingly, as his report factually declares, he executed 1,303 Jews, among them 875 Jewesses over 12 years of age. (NO-3149.)

Always very sensitive, the occupation forces found that the Jews in Monastyrshchina and Khislavichi displayed an "impudent and provocative attitude". The Kommando accordingly shot the existing Jewish Council and 20 other Jews. (NO-3143.)

In the vicinity of Ostrovo, the resident Jews, according to Report No. 124, dated 25 October 1941, had repeatedly shown hostile conduct and disobedience to "the German authorities". Thus, the current Kommando went into Ostrovo and shot 169 Jews. (NO-3160.)

In Marina-Gorka, the labor assigned to Jews was done, according to Report No. 124, dated 25 October 1941, "very reluctantly". Thus, 996 Jews and Jewesses were given "special treatment." (NO-3160.)

Report No. 108, dated 9 October 1941, advises that for the death of 21 German soldiers near Topola, 2,100 Jews and gypsies were to be executed, thus a ratio of 100 to one. There is no pretense in the report that any of the 2,100 slain were in the slightest way connected with the shooting of Germans. (NO-3156.)

An item in Operation Report No. 108, 9 October 1941, points out that "19 Jews who were under *suspicion* of having either been Communists or of having committed arson" were executed. (NO-3156.)

In Mogilev, the Jewish women were "extremely resistive" and not wearing the prescribed badge, so 28 of them were liquidated. (NO-3156.)

Report No. 73, dated 4 September 1941, acquaints the world with the fact that 733 civilians were exterminated in Minsk, the reason being that they "were absolutely inferior elements with a predominant mixture of Asiatic blood." The method of determining the inferiority of character and the predominance of Asiatic blood is not indicated. (NO-2844.)

The executioners were, however, not always without thought for the Jews. Sometimes apparently the liquidation took place for the benefit of the Jews themselves. Thus, Einsatzgruppe B reported in December 1941—

"In Gorodok, the ghetto had to be evacuated because of the danger of an epidemic. 394 Jews were shot." (NO-2833.)

Einsatzgruppe C, reporting on conditions in Radomyshl, declared—

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

was impracticable. In consequence, there was an ever increasing danger of epidemics." (NO-3149.)

The situation was met bravely and chivalrously—

"To put an end to these conditions 1,107 Jewish adults were shot by the Kommando and 561 juveniles by the Ukrainian militia. Thereby, the Sonderkommando has taken care of a total of 11,328 Jews till 6 September 1941." (NO-3149.)

Operational Report No. 92, dated 23 September 1941, related how scabies had broken out in the ghetto of Nevel. "In order to prevent further contagion, 640 Jews were liquidated and the houses burnt down." This treatment undoubtedly overcame the scabies. (NO-3143.)

The same report proclaims further that, in the town of Janowitschi, a contagious disease, accompanied by fever, broke out. It was feared that the disease might spread to the city and the rural population. To prevent this from happening, 1,025 Jews were shot. The report closes proudly with the statement "This operation was carried out solely by a commander and 12 men." (NO-3143.)

As the Kommandos became more and more familiar with the therapeutic capabilities of their rifles, they turned to the field of preventive medicine. In October of 1941, the Kommando leader in Vitebsk came to the conclusion that there was an "imminent danger of epidemics" in the town, and to forestall that this should come to pass, he shot 3,000 Jews. (NO-3160.)

Mention had been made of the execution of the insane. The reports are dotted with references to the liquidation of inmates of mental institutions. It seems that the Kommandos, in addition to the executions carried out under their own orders, were ready to perform other killings on request. Einsatzgruppe C reports that a Teilkommando of Sonderkommando 4a, passing through Chernigov, was asked by the director of the mental asylum to liquidate 270 incurables. The Teilkommando obliged. (NO-2832.)

In Poltava, Sonderkommando 4b found that the insane asylum located there maintained a farm for the inmates. Since there was not enough full cream milk in the town to supply the three large German military hospitals there, the milk shortage was met by executing a part of the insane. The report on the subject explains—

"A way out of this difficulty was found by deciding that the execution of 565 incurables should be carried out in the course of the next few days under the pretext that these patients were being removed to a better asylum in Kharkov." (NO-2832.)

It was also stated—

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

lected on this occasion have also been handed over mainly to the hospitals." (NO-2827.)

The grim casualness with which these executions were conducted comes to light in an item taken from a report made by the Russian Government (U.S.S.R.-41 *) which reads—

"On 22 August 1941, mental patients from the psychiatric hospital in Daugavpils—approximately 700 adults and 60 children—were shot in the small town of Aglona. Among them were 20 healthy children who had been temporarily transferred to the building of the hospital from a children's home."

Report No. 47, dated 9 August 1941, after generally discussing conditions in the Ukraine, stated of the operations of Einsatzgruppe C, "Last but not least, systematic reprisals against marauders and Jews were carried out." Under their meticulous taskmasters, the Jews were bound to be wrong no matter what they did. If they wore their badges they could expect maltreatment, since they were recognized as Jews; if they left them off, they were punished for not wearing them. If they remained in the wretched and overcrowded ghettos they suffered from hunger, if they left in order to obtain food they were "marauding".

Operation Report No. 132, describing the activities of Einsatzkommando 5, declared that, between 13 and 19 October 1941, it had among others executed 21 people guilty of sabotage and looting, and 1,847 Jews. It also reported the shooting of 300 insane Jews, which achievement, according to the report, "represented a particularly heavy burden for the members of Einsatzkommando 5 who were in charge of this operation". (NO-2830.)

Operation Report No. 194, detailing the activities of Einsatzkommando 8, states that, from 6 to 30 March 1942, this Kommando executed,

"20 Russians for subversive Communist activities, sabotage, and membership of the NKVD, 5 Russians because of theft, burglary and embezzlements, 33 gypsies, 1,551 Jews." (NO-3276.)

Einsatzkommando 5, for the period between 2 and 8 November 1941, killed, as Report No. 143 succinctly states,

"15 political officials, 21 saboteurs and looters, 414 hostages, 10,650 Jews." (NO-2827.)

Report No. 150, dated 2 January 1942, speaking of actions in the western Crimea, stated—

"From 16 November thru 15 December 1941, 17,645 Jews, 2,504 Krimchaks, 824 gypsies, and 212 Communists and partisans have been shot." (NO-2834.)

* Trial of Major War Criminals, vol. VII, p. 510, Nuremberg, 1947.

The report also states, as if talking of cleaning out swamps—

“Simferopol, Yevpatoriya, Alushta, Karasubazar, Kerch, and Feodosiya, and other districts of the Western Crimea have been cleaned of Jews.”

One report complains that the Wehrmacht had failed to plan the executions and, consequently, many Jews escaped. This irritated the report-writer considerably. He stated—

“Naturally, the systematic action of Einsatzkommando 5 suffered extremely by these planless excesses against the Jews in Uman. In particular, a large number of the Jews were now forewarned and escaped from the city. Besides the numerous Jews, many of the Ukrainian officials and activists still living in Uman were warned by the excesses, and only two co-workers of the NKVD were found and liquidated. The results of these excesses were cleaned up immediately by Einsatzkommando 5, after its arrival.” (NO-3404.)

It will be noted that the word “excesses” is here used in its *opposite* sense, that is deficiency. Not as many persons were killed as should have been.

It also objected that people talked about these executions.

“Rumors about executions in other areas rendered action at Simferopol very difficult. Reports about actions against Jews gradually filter through from fleeing Jews, Russians, and also from unguarded talks of German soldiers.” (NO-2834.)

In spite of these difficulties the operations were not entirely unsuccessful because this particular report sums up with, “Altogether, 75,881 persons have been executed.”

A report from the northern Crimea reads—

“Between 1 and 15 February, 1,451 persons were executed, of which 920 were Jews, 468 Communists, 45 partisans, and 12 looters, saboteurs, asocials. Total up to now is 86,632.” (NO-3339.)

Einsatzgruppe D, giving an account of its activities from 1 to 15 October 1941, stated in Report No. 117,

“The districts occupied by the Kommandos were cleaned out of Jews. 4,091 Jews and 46 Communists were executed in the time the report covers, bringing the total up to 40,699.” (NO-3406.)

Coming back to Simferopol, in Report No. 153, dated 9 January 1942, we find—

“The operational areas of the Teilkommandos, particularly in smaller villages, were purged of Jews. During the period covered by the report, 3,176 Jews, 85 partisans, 12 looters, and 122 Communist officials were shot. Sum total: 79,276. In Simferopol,

apart from Jews also the Krimchak and gypsy question was solved." (NO-3258.)

An entry from Operational Situation Report No. 3, on the period 15 to 31 August 1941, states—

"During a scrutiny of the civilian prison camp in Minsk, 615 persons were liquidated. All those executed were racially inferior elements." (NO-2653.)

Many more examples could be given from the reports but the above will suffice to indicate their tenor and scope and the attitude of those who participated in the events described therein. How did the action groups operate? As Kommando leaders entered a town, they immediately assembled what they called a Jewish Council of Elders made up of from 10 to 25 Jews, according to the size of the town. These Jews, usually the more prominent ones, and always including a rabbi, were instructed to register the Jewish population of the community for the purpose of resettlement. The registration completed, the Jews were ordered to appear at a given place, or vehicles went to their homes to collect them. Then they were transported into the woods and shot. The last step of the Kommando in closing the books in the whole transaction was to call on the Council of Elders, express appreciation for their cooperation, invite them to mount the truck standing outside, drive them out to the same spot in the woods, and shoot them, too. One report illustrates the procedure described.

"The Jews of the city were ordered to present themselves at a certain place and time for the purpose of numerical registration and housing in a camp. About 34,000 reported, including women and children. After they had been made to give up their clothing and valuables, all were killed; this took several days." (NOKW-2129.)

Another report lauded the leader of Einsatzkommando 4b for his resourcefulness and skill in rounding up the intelligentsia of Vinnitsa.

"He called for the most prominent rabbi of the town ordering him to collect within 24 hours the whole of the Jewish intelligentsia and told him they would be required for certain registration work. When this first collection was insufficient in numbers, the intellectual Jews assembled were sent away again with the order to collect themselves more of the intellectual Jews and to appear with these the following day." (NO-2947.)

And then the report ends triumphantly on the note—

"This method was repeated for a third time so that in this manner nearly the entire intelligentsia was got hold of and liquidated."

In Kiev a clever stratagem was employed to ensnare the Jews.

The word "clever" is taken from the report covering the action.

"The difficulties resulting from such a large scale action—in particular concerning the seizure—were overcome in Kiev by requesting the Jewish population through wall posters to move. Although only a participation of approximately 5,000 to 6,000 Jews had been expected at first, more than 30,000 Jews arrived who, until the very moment of their execution, still believed in their resettlement, thanks to an extremely clever organization." (NO-3157.)

Practically every page of these reports runs with blood and is edged with a black border of misery and desolation. In every paragraph one feels the steel and flinty pen with which the report-writer cuts through the carnage described therein. Report No. 94 tells of Jews who, driven from their homes, were compelled to seek primitive existence in caves and abandoned huts. The rigors of the elements, lack of food, and adequate clothing inevitably produced serious illness. The report-writer chronicles—

"The danger of epidemics has thus increased considerably, so that, for that reason alone, a thorough clean-up of the respective places became necessary." (NO-3146.)

and then, he adds—

"The insolence of the Jews has not yet diminished even now."

Thus, after evicting, starving, and shooting their victims the evictors still complained. The Jews were not even courteous to their executioners!

One of the defendants denied that there were any Jews in his territory. In this connection the prosecution introduced an interesting letter from one Jacob, master of field police to his commanding general. The letter, dated 21 June 1942, is very chatty and companionable, the writer sends birthday greetings to the addressee, talks about his horses, his girl-friend, and then casually about Jews.

"I don't know if you, General, have also seen in Poland such horrible figures of Jews. I thank the fate I saw this mongrel race like the man in the youngest days * * *.

Now, of the 24,000 Jews living here in Kamenets Podolsk we have only a disappearing percentage left. The little Jews [Juedlein] living in the districts [Rayons] also belong to our customers. We surge ahead without pings of conscience, and then * * * the waves close and the world is at peace." (NO-5655.)

And then he becomes serious and determines to be hard with himself for the sake of his country.

"I thank you for your reprimand. You are right. We men of the new Germany have to be hard with ourselves. Even if it means a longer separation from our family. Now is the time

to clean up with the war criminals, once and forever, to create for our descendants a more beautiful and eternal Germany. We don't sleep here. Every week 3-4 actions, one time gypsies, the other time Jews, partisans, and other rabble. It is very nice that we have now an SD unit [SD Aussenkommando] with which I can work excellently." (NO-5655.)

In another letter this officer becomes very sentimental and is sorry for himself that he is far away from home and thinks of his children, "One could weep sometimes. It is not good to be such a friend of children as I was." However, this does not prevent him from taking up lodging in a former children's asylum.

"I have a cozy apartment in a former children's asylum. One bedroom and a living room with all the accessories." (NO-2653.)

THE MAGNITUDE OF THE ENTERPRISE

One million human corpses is a concept too bizarre and too fantastical for normal mental comprehension. As suggested before, the mention of one million deaths produces no shock at all commensurate with its enormity because to the average brain one million is more a symbol than a quantitative measure. However, if one reads through the reports of the Einsatzgruppen and observes the small numbers getting larger, climbing into ten thousand, tens of thousands, a hundred thousand and beyond, then one can at last believe that this actually happened—the cold-blooded, premeditated killing of one million human beings.

Operation Report 88, reporting on the activities of only one Kommando, states that up to 6 September 1941, this Kommando 4a "has taken care of a total of 11,328 Jews."

Einsatzgruppe A, reporting its activities up to 15 October 1941, very casually declares, "In Latvia, up to now, 30,000 Jews were executed in all." (L-180.)

Einsatzgruppe D, reporting on an operation near Kikerino, announces that the operational area has been "cleared of Jews. From 19 August to 25 September 1941, 8,890 Jews and Communists were executed. Total number 13,315." (NO-3148.)

This same Einsatzgruppe communicated from Nikolaev as of 5 November 1941, that total executions had reached the figure of 31,767. (NO-3159.)

Reporting on one month's activities (October 1941), Einsatzgruppe B advised that "during the period of the report, the liquidations of 37,180 people took place." (NO-2656.)

Einsatzgruppe C, reporting on its operations in Kiev as of 12 October 1941, declared that Sonderkommando 4a had now reached the total number of more than 51,000 executions. (NO-3155.)

The Commissioner General for White Ruthenia reported with self-approbation on 10 August 1942—

“During detailed consultations with the SS Brigadefuehrer Zenner and the extremely capable Chief of the SD, SS Obersturmbannfuehrer Dr. jur. Strauch, we found that we had liquidated approximately 55,000 Jews in White Ruthenia during the last 10 weeks.” (3428-PS.)

Speaking of another place, the commissioner general proclaimed —“In the Minsk-Land area the Jewry was completely exterminated.” Then he complained that the army had been encroaching on the Einsatz prerogatives.

“The preparations for the liquidation of the Jews in the Glebokie area were completely disrupted by an arbitrary action by the Rear Army Area, which has already been reported to your office. In the Rear Army Area—I was not contacted, 10,000 Jews were liquidated who were scheduled for extermination by us anyway.” (3428-PS.)

However, the commissioner general quickly got over his resentment and went on with his narrative.

“In the city of Minsk, about 10,000 Jews were liquidated on 28 and 29 July, 6,500 of whom were Russian Jews—mainly old people, women, and children—the remainder consisted of Jews unfit for work, most of whom had been sent to Minsk from Vienna, Brno, Bremen, and Berlin in November of the previous year, at the Fuehrer’s orders. The Slutsk area was also ridded of several thousand Jews. The same applies to Novogrudok and Vileika.”

In Baranovichi and Hancevichi he found that the killings had not been going as well as he desired. “Radical measures still remain to be taken.” He explained, “In Baranovichi, about 10,000 Jews are still living in the town alone.” However, he would attend to that situation at once. He promised that 9,000 of them would be “liquidated next month.” (3428-PS.)

As of 15 October 1941, Einsatzgruppe A declared that the sum total of Jews executed in Lithuania was 71,105. (L-180.)

As an appendix to the report, Einsatzgruppe A submitted the inventory of the people killed as a business house might submit a list of stock on hand.

“Total	Jews	Communists	Total
Lithuania	80,311	860	81,171
Latvia	30,025	1,843	31,868
Estonia	474	684	1,158
White Ruthenia	7,620	.....	7,620
Total	118,430	3,387	121,817

To be added to these figures (*L-180*)—

“In Lithuania and Latvia Jews annihilated by pogroms	5,500
Jews, Communists, and partisans executed in old-Russian area	2,000
Lunatics executed	748
	<hr/>
(Correct total—130,065)	122,455
Communists and Jews liquidated by State Police, and Security Service Tilsit during search actions	5,502
	<hr/>
	135,567”

It would not take, and it did not take, many reapings of this character to reach the figure of one million.

Operational Report No. 190, speaking of the activities of *Einsatzkommando D*, announces quite matter-of-factly that, in the second half of March 1942, a total of 1,501 people were executed, and then adds, perhaps boredly, “Total number shot up to date, 91,678.” (*NO-3359*.)

Descanting on the activities of *Einsatzgruppe A*, around *Lenin-grad*, Operation Report No. 150 declares: “There is no longer any Jewish civil population.” (*NO-2834*.)

Activity and Situation Report No. 9, covering the period of January 1942, apprised Berlin—

“In White Ruthenia the purge of Jews is in full swing. The number of Jews in the Territory handed over to the civil authorities up to now, amount to 139,000. 33,210 Jews were shot meanwhile by the *Einsatzgruppen* of the Security Police and the *SD*.” (*3876-PS*.)

A special report prepared by *Einsatzgruppe A*, committed to the eastern territories, left nothing to conjecture as to the purpose of their organization.

“The systematic mopping up of the eastern territories embraced, in accordance with the basic orders, the complete removal, if possible, of Jewry. This goal has been substantially attained—with the exception of White Russia—as a result of the execution up to the present time, of 229,052 Jews.” (*2273-PS*.)

Referring specifically to Lithuania, the report carried the observation that many of the Jews used force against the officials and Lithuanian auxiliaries who performed these executions and that, before they were shot, they even abused Germany! (*2273-PS*.)

Describing operations in White Ruthenia, *Einsatzgruppe A* com-

plained that it did not take over this area until a heavy frost had set in. The report points out this "made mass executions much more difficult." And then another difficulty, the report-writer emphasizes, is that the Jews "live widely scattered over the whole country. In view of the enormous distances, the bad condition of the roads, the shortage of vehicles and petrol, and the small forces of Security Police and SD, it needs the utmost effort in order to be able to carry out shootings."

The report-writer almost wistfully complains that the Jews were unreasonable in not coming themselves over these long distances to present themselves for shooting. In spite of all the difficulties, however, the report ends up with, "Nevertheless, 41,000 Jews have been shot up to now."

So inured had the executioners become to the business of death that in one report, where the question of setting up a ghetto was concerned, the report-writer communicated that in getting things started there would be "executions of a minor nature of 40 to 100 persons only."

Report No. 155, dated 14 January 1942, disclosed that in Audrini—

"On 2 January, at the order of Einsatzgruppe A of the Security Police and the Security Service, the village was completely burnt down after removal of all foodstuffs, etc., and all the villagers shot. 301 men were publicly shot in the market square of the neighboring town, Rezekne."

The report ends on the very casual note,

"All these actions were carried out without incident." (NO-3279.)

A town had been pillaged and destroyed and all its inhabitants massacred. In another village 301 people were herded into the public square and shot down mercilessly. But for the report-writer this mass violence did not even constitute an *incident!*

On two days alone (29 and 30 September 1941), Sonderkommando 4a, with the help of the group staff and two police units, slaughtered in Kiev, 33,771 Jews. The money, valuables, underwear, and clothing of the murdered victims were turned over to the racial Germans and to the Nazi administration of the city. The report-writer who narrates the harrowing details of this appalling massacre ends up with the phrase, "The transaction was carried out without friction—" and then adds, as he was about to put away the typewriter, "No incidents occurred." (NO-3140.)

The shooting of Jews eventually became a routine job and at times Kommandos sought to avoid executions, not out of charity or sympathy, but because it meant just that much more work. The defendant Nosske testified to a caravan of from 6,000 to 7,000

Jews who had been driven across the Dnester River by the Rumanians into territory occupied by the German forces, and whom he guided back across the river. When asked why these Jews had been expelled from Rumania, Nosske replied—

“I have no idea. I assume that the Rumanians wanted to get rid of them and sent them into the German territory so that we would have to shoot them, and we would have the trouble of shooting them. We didn't want to do that. We didn't want to do the work for the Rumanians, and we never did, nor at all other places where something similar happened. We refused it and, therefore, we sent them back.”

One or two defense counsel have asserted that the number of deaths resulting from acts of the organizations to which the defendants belonged did not reach the total of 1,000,000. As a matter of fact, it went far beyond 1,000,000. As already indicated, the International Military Tribunal, after a trial lasting 10 months, studying and analyzing figures and reports, declared—

“The RSHA played a leading part in the ‘final solution’ of the Jewish question by the extermination of the Jews. A special section, under the Amt IV of the RSHA was established to supervise this program. Under its direction, approximately six million Jews were murdered of which two million were killed by *Einsatzgruppen and other units of the security police.*”

Ohlendorf, in testifying before the International Military Tribunal declared that, according to the reports, his Einsatzgruppe killed 90,000 people. He also told of the methods he employed to prevent the exaggeration of figures. He did say that other Einsatzgruppen were not as careful as he was in presenting totals, but he presented no evidence to attack numbers presented by other Einsatzgruppen. Reference must also be made to the statement of the defendant Heinz Schubert who not only served as adjutant to Ohlendorf in the field from October 1941 to June 1942, but who continued in the same capacity of adjutant in the RSHA, office [Amt] III B, for both Ohlendorf and Dr. Hans Emlich, until the end of 1944. If there was any question about the correctness of the figures, this is where the question would have been raised, but Schubert expressed no doubt nor did he say that these individuals who were momentarily informed in the statistics entertained the slightest doubt about them in any way.

Schubert showed very specifically the care which was taken to prepare the reports and to avoid error.

“The Einsatzgruppe reported in two ways to the Reich Security Head Office. Once through radio, then in writing. The radio reports were kept strictly secret and, apart from Ohlendorf, his deputy Standartenfuehrer Willy Seibert and the head

telegraphist Fritsch, nobody, with the exception of the radio personnel, was allowed to enter the radio station. This is the reason why only the above-mentioned persons had knowledge of the exact contents of these radio reports. The reports were dictated directly to Fritsch by Ohlendorf or Seibert. After the report had been sent off by Fritsch I received it for filing. In cases in which numbers of executions were reported a space was left open, so that I never knew the total amount of persons killed. The written reports were sent to Berlin by courier. These reports contained exact details and descriptions of the places in which the actions had taken place, the course of the operations, losses, number of places destroyed and persons killed, arrest of agents, reports on interrogations, reports on the civilian sector, etc." (NO-2716.)

The defendant Blume testified that he completely dismissed the thought of ever filing a false report because he regarded that as unworthy of himself.

Then, the actual figures mentioned in the reports, staggering though they are, do by no means tell the entire story. Since the objective of the Einsatzgruppen was to exterminate all people falling in the categories announced in the Fuehrer Order, the completion of the job in any given geographical area was often simply announced with the phrase, "There is no longer any Jewish population." Cities, towns, and villages were combed by the Kommandos and when all Jews in that particular community were killed, the report-writer laconically telegraphed or wrote to Berlin that the section in question was "freed of Jews." Sometimes the extermination area covered a whole country like Esthonia or a large territory like the Crimea. In determining the numbers killed in a designation of this character one needs merely to study the atlas and the census of the period in question. Sometimes the area set aside for an execution operation was arbitrarily set according to Kommandos. Thus one finds in the reports such entries as "The fields of activity of the Kommandos is freed of all Jews."

And then there were the uncounted thousands who died a death premeditated by the Einsatz units without their having to do the killing. When Jews were herded into a few miserable houses which were fenced off and called a "ghetto", this was incarceration—but incarceration without a prison warden to bring them food. The reports make it abundantly clear that in these ghettos death was rampant, even before the Einsatz units began the killing off of the survivors. When, in a given instance, all male Jews and Jewesses over the age of 12 were executed, there remained, of course, all the children under 12. They were doomed to perish. Then there were those who were worked to death. All these fatalities are un-

mistakably chronicled in the Einsatz reports, but do not show up in their statistics.

In addition, it must be noted that there were other vast numbers of victims of the Einsatzgruppen who did not fall under the executing rifles. In many cities, towns, and provinces hundreds and thousands of fellow-citizens of those slain fled in order to avoid a similar fate. Through malnutrition, exposure, lack of medical attention, and particularly, if one thinks of the aged and the very young, of exhaustion, most if not all of those refugees perished. These figures, of course, do not appear in the Einsatzgruppen reports, but the criminal responsibility for their deaths falls upon the Fuehrer Order program as much as the actual shooting deaths.

EMPLOYMENT AS LABOR BEFORE EXECUTION

At times, part of the Jewish population in a given community was temporarily spared, not for humanitarian reasons, but for economic purposes. Thus, a report from Esthonia specifies—

“The arrest of all male Jews of over 16 years of age has been nearly finished. With the exception of the doctors and the Elders of the Jews who were appointed by the special [Sonder] Kommandos, they were executed by the self-protection units [home guard] under the control of the special detachment [Kommandos] 1a. Jewesses in Parnu and Tallin of the age groups from 16 to 60 who are fit for work were arrested and put to peat-cutting or other labor.” (L-180.)

In Lithuania, however, the executions went so fast that there was a great shortage of doctors for the non-Jewish population.

“More than 60 percent * of the dentists were Jews; more than 50 percent of the other doctors as well. The disappearance of these brings about an extreme shortage of doctors which cannot be overcome even by bringing in doctors from the Reich.” (L-180.)

A report from the Ukraine in September 1941 recommends that the Jews be killed by working and not by shooting.

“There is only one possibility which the German administration in the Generalgouvernement has neglected for a long time: *Solution of the Jewish problem by extensive labor utilization of the Jews.* This will result in a gradual liquidation of the Jewry—a development, which corresponds to the economic conditions of the country.” (NO-3151.)

In the cities of Latvia, German agencies used Jews as forced unpaid manpower, but there was always the danger that, despite

* Original German document read 80 percent but, due to clerical error, translation of document which was submitted in Court read 60 percent.

these economic advantages to the Germans, the security police would shoot the working Jews. (NO-3146.)

Einsatzgruppe C reports in September 1941—

“Difficulties have arisen, insofar as Jews are often the only skilled workers in certain trades. Thus, the only harnessmakers and the only good tailors at Novo-Ukrainka are Jews. At other places also only Jews can be employed for carpentry and locksmith work.

“In order not to endanger reconstruction and the repair work also for the benefit of transient troop units, it has become necessary to exclude provisionally especially the older Jewish skilled workers from the executions.” (NO-3146.)

In a certain part of the Ukraine, described as between Krivoi Rog and Dnepropetrovsk, collective farms, known as Kolkhoses, were found to be operated by Jews. They were described in the report as being of low intelligence but since they were good workers the Einsatz commander did not liquidate them. However, the report goes on to say that the Einsatz commander was satisfied with merely shooting the Jewish managers. (NO-3153.)

The Nazi Commissioner-General for White Ruthenia, reporting in July 1942, expressed quite frankly his desire to strike down all Jews in one murderous stroke. However, he was willing to stay his arm temporarily until the requirements of the Wehrmacht should be satisfied.

“I myself and the SD would certainly much prefer that the Jewish population in the District General of White Ruthenia should be eliminated once and for all when the economic requirements of the Wehrmacht have fallen off. For the time being, the necessary requirements of the Wehrmacht who is the main employer of the Jewish population are still being considered.” (3428-PS.)

Operation Report No. 11, dated 3 July 1941, also explains that in the Baltic region the Wehrmacht is not “for the time being” in a position to dispense with the manpower of the Jews still available and fit for work. (NO-4537.)

It must not be assumed, however, that once being assigned to work the Jews were free from molestation. Einsatzgruppe B, reporting on affairs in Vitebsk, declared—

“By appointed Jewish council, so far about 3,000 Jews registered. Badges for Jews introduced. At present they are being employed with clearing rubble. For deterrent, 27 Jews, who had not come to work, were publicly shot in the streets.” (NO-2954.)

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

Jews but did not kill them. He shows the superior methods of the Einsatzgruppe.

“Only by the Security Police and the SD were the Jews gradually executed as they became no longer required for work.” (2273-PS.)

He then adds as an obvious deduction—

“Today there are no longer any Jews in Esthonia.”

Just as a heartless tradesman may work a superannuated horse until he has drained from its body the last ounce of utility, so did the action unit in Minsk dispose of the Jews.

“In Minsk itself—exclusive of Reich Germans—there are about 1,800 Jews living, whose shooting must be postponed in consideration of their being used as labor.” (2273-PS.)

In White Ruthenia the Kommando leaders were instructed on orders of Heydrich to suspend the killing of Jews until after they had brought in the harvest.

INSTIGATION TO POGROMS

Certain Einsatzkommandos committed a crime which, from a moral point of view, was perhaps even worse than their own directly committed murders, that is, their inciting of the population to abuse, maltreat, and slay their fellow citizens. To invade a foreign country, seize innocent inhabitants, and shoot them is a crime, the mere statement of which is its own condemnation. But to stir up passion, hate, violence, and destruction among the people themselves, aims at breaking the moral backbone, even of those the invader chooses to spare. It sows seeds of crime which the invader intends to bear continuous fruit, even after he is driven out.

On the question of criminal knowledge it is significant that some of those responsible for these shameless crimes endeavored to keep them secret. SS Brigadier General Stahlecker, head of Einsatzgruppe A, reporting on activities of Einsatzgruppe A, stated in October 1941 that it was the duty of his security police to set in motion the passion of the population against the Jews. “It was not less important,” the report continued,

“In view of the future to establish the unshakable and provable fact that the liberated population themselves took the most severe measures against the Bolshevik and Jewish enemy quite on their own, so that the directions by German authorities could not be found out.” (L-180.)

In Riga this same Stahlecker reported:

“Similarly, native anti-Semitic forces were induced to start pogroms against Jews during the first hours after capture, though this inducement proved to be very difficult. Following

out orders, the security police was determined to solve the Jewish question with all possible means and most decisively. But it was desirable that the security police should not put in an immediate appearance, at least in the beginning, *since the extraordinarily harsh measures were apt to stir even German circles.* [Emphasis added.] It had to be shown to the world that the native population itself took the first action by way of natural reaction against the suppression by Jews during several decades and against the terror exercised by the Communists during the preceding period." (L-180.)

Stahlecker was surprised and disappointed that in Lithuania it was not so easy to start pogroms against the Jews. However, after certain prodding and assistance, results were attained. He reports—

"Klimatis, the leader of the partisan unit, mentioned above, who was used for this purpose primarily, succeeded in starting a pogrom on the basis of advice given to him by a small advanced detachment [Vorkommando] acting in Kovno, and in such a way that no German order or German instigation was noticed from the outside. During the first pogrom in the night from 25 to 26 June the Lithuanian partisans did away with more than 1,500 Jews, set fire to several synagogues or destroyed them by other means and burned down a Jewish dwelling district consisting of about 60 houses. During the following night about 2,300 Jews were made harmless in a similar way. In other parts of Lithuania similar actions followed the example of Kovno, though smaller and extending to the Communists who had been left behind." (L-180.)

In working up special squads to initiate and carry through pogroms in Lithuania and Latvia, Stahlecker made it a point to select men who for personal reasons had a grudge against the Russians. Somehow these squads were then made to believe that by killing Jews they were avenging themselves on the Russians for their own griefs.

Activity and Situation Report No. 6, prepared in October 1941, complained that Einsatz units operating in Esthonia could not provoke "spontaneous, anti-Jewish demonstration with ensuing pogroms" because "adequate enlightenment was lacking." However, as stated before, not everything was lost because under the direction of the Einsatzgruppe of the security police and security service, all male Jews over the age of 16, with the exception of doctors and Jewish elders, were arrested and killed. The report then states, "At the conclusion of the operation there will be only 500 Jewesses and children left in the Ostland." (NO-2656.)

Hermann Friedrich Graebe, manager and engineer in charge

of a German building firm in Sdolbunov, Ukraine, has described in graphic language just how a pogrom operates. When he heard that a pogrom was being incubated he called on the commanding officer of the town, SS Sturmbannfuehrer Puetz, to ascertain if the story had any basis in fact since he, Graebe, employed some Jewish workers whom he wished to protect. Sturmbannfuehrer Puetz denied the rumors. Later, however, Graebe learned from the area commissioner's deputy, Stabsleiter Beck, that a pogrom was actually in the making but he exacted from Graebe the promise not to disclose the secret. He even gave Graebe a certificate to protect his workers from the pogrom. This amazing document reads—

“Messrs. Jung
Rovno

“The Jewish workers employed by your firm are not affected by the pogrom. You must transfer them to their new place of work by Wednesday, 15 July 1942, at the latest.

“From the Area Commissioner Beck.”

That evening the pogrom broke. At 10 o'clock SS men and Ukrainian militia surged into the ghetto, forcing doors with beams and crossbars. Let Graebe tell the story in his own words.

“The people living there were driven on to the street just as they were, regardless of whether they were dressed or in bed. Since the Jews in most cases refused to leave their houses and resisted, the SS and militia applied force. They finally succeeded, with strokes of the whip, kicks and blows, with rifle butts in clearing the houses. The people were driven out of their houses in such haste that small children in bed had been left behind in several instances. In the street women cried out for their children and children for their parents. That did not prevent the SS from driving the people along the road, at running pace, and hitting them, until they reached a waiting freight train. Car after car was filled, and the screaming of women and children, and the cracking of whips and rifle shots resounded unceasingly. Since several families or groups had barricaded themselves in especially strong buildings, and the doors could not be forced with crowbars or beams, these houses were now blown open with hand grenades. Since the ghetto was near the railroad tracks in Rovno, the younger people tried to get across the tracks and over a small river to get away from the ghetto area. As this stretch of country was beyond the range of the electric lights, it was illuminated by signal rockets. All through the night these beaten, hounded, and wounded people moved along the lighted streets. Women carried their dead children in their arms, children pulled and dragged their dead parents by their

arms and legs down the road toward the train. Again and again the cries 'Open the door! Open the door!' echoed through the ghetto." (2992-PS.)

Despite the immunity guaranteed his Jewish workers by Commissioner Beck, seven of them were seized and taken to the collecting point. Graebe's narrative continues—

"I went to the collecting point to save these seven men. I saw dozens of corpses of all ages and both sexes in the streets I had to walk along. The doors of the houses stood open, windows were smashed. Pieces of clothing, shoes, stockings, jackets, caps, hats, coats, etc., were lying in the street. At the corner of the house lay a baby, less than a year old with his skull crushed. Blood and brains were spattered over the house wall and covered the area immediately around the child. The child was dressed only in a little skirt. The commander, SS Major Puetz, was walking up and down a row of about 80-100 male Jews who were crouching on the ground. He had a heavy dog whip in his hand. I walked up to him, showed him the written permit of Stabsleiter Beck and demanded the seven men whom I recognized among those who were crouching on the ground. Dr. Puetz was very furious about Beck's concession and nothing could persuade him to release the seven men. He made a motion with his hand encircling the square and said that anyone who was once here would not get away. Although he was very angry with Beck, he ordered me to take the people from 5 Bahnhofstrasse out of Rovno by 8 o'clock at the latest. When I left Dr. Puetz, I noticed a Ukrainian farm cart, with two horses. Dead people with stiff limbs were lying on the cart, legs and arms projected over the side boards. The cart was making for the freight train. I took the remaining 74 Jews who had been locked in the house to Sdolbunov." (2992-PS.)

5,000 Jews were massacred in this pogrom.

Special Kommando 7 which, as heretofore indicated, had shot the 27 Jews on the streets of Vitebsk, announced in its report—

"The Ruthenian part of the population has approved of this. Large-scale execution of Jews will follow immediately." (NO-2954.)

The active cooperation of the action units with the accomplishment of pogroms is evidenced by one report where the Sipo and SD want some of the credit for the murders committed.

"As a result of the pogroms carried out by the Lithuanians, who were nevertheless substantially assisted by Sipo and SD, 3,800 Jews in Kovno and 1,200 in the smaller town were eliminated." (2273-PS.)

In some areas special groups were set up.

"In addition to this auxiliary police force, 2 more independent groups have been set up for the purpose of carrying out pogroms. All synagogues have been destroyed; 400 Jews have already been liquidated." (NO-2935.)

APPROPRIATION OF PERSONAL EFFECTS AND VALUABLES

While no explanation was ever given as to why the Nazis condemned the Jews to extermination, the public record shows that they counted on substantial material advantage. The levying of enormous indemnities against persons considered by the Nazis as Jews or half-Jews and the expropriation of their property in Germany as well as in the countries occupied by it, brought huge returns to the coffers of the Reich. And even in the dread and grim business of mass slaughter, a definite profit was rung up on the Nazi cash register. For example, Situation Report No. 73, dated 4 September 1941, reporting on the executions carried out by a single unit, Einsatzkommando 8, makes the cold commercial announcement—

"On the occasion of a purge at Cherven 125,880 rubles were found on 139 liquidated Jews and were confiscated. This brings the total of the money confiscated by Einsatzkommando 8 to 1,510,399 rubles up to the present day." (NO-2844.)

Situation Report No. 133, dated 14 November 1941, shows the progress made by this unit in a little over two months.

"During the period covered by this report, Einsatzkommando 8 confiscated a further 491,705 rubles as well as 15 gold rubles. They were entered into the ledgers and passed to the administration of Einsatzkommando 8. The total amount of rubles so far secured by Einsatzkommando 8 now amounts to 2,511,226 rubles." (NO-2825.)

On 26 October 1941, Situation Report No. 125 gave Einsatzkommando 7b credit for 46,700 rubles taken from liquidated Jews, Einsatzkommando 9 credit for 43,825 rubles and "various valuables in gold and silver", and recorded that Einsatzkommando 8 had increased the amount of its loot to the sum of 2,019,521 rubles. (NO-3403.)

Operation and Situation Report No. 31, dated July 1941, rendering an account of operations in Lithuania, recorded the taking of "460,000 rubles in cash as well as a large number of valuables" from liquidated Jews. The report stated further:

"The former Trade Union Building in Vilna was secured for the German Labor Front [DAF] at their request, likewise the money in the trade union accounts in banks, totalling 1.5 million rubles." (NO-2937.)

Although engaged in an ideological enterprise, supposedly undertaken on the highest ethnic and cultural level, executants of the program were not above the most petty and loathsome thievery. In the liquidation of Jews in Zhitomir and Kiev the reporting Einsatzkommando collected 137 trucks full of clothing. The report does not say whether the clothing was torn from the victims while they were still alive or after they had been killed. This stolen raiment was turned over to the National Socialist People's Welfare Organization.

One of the defendants related how during the winter of 1941 he was ordered to obtain fur coats for his men, and that since the Jews had so much winter clothing, it would not matter much to them if they gave up a few fur coats. In describing an execution which he attended, the defendant was asked whether the victims were undressed before the execution. He replied, "No, the clothing wasn't taken—this was a fur coat procurement operation."

A document issuing from Einsatzgruppe D headquarters (February 1942) speaks of the confiscation of watches in the course of anti-Jewish activities. The term "confiscate" does not change the legal or moral character of the operation. It was plain banditry and highway robbery. The gold and silver watches were sent to Berlin, others were handed over to the Wehrmacht (rank and file) and to members of the Einsatzgruppe itself "for a nominal price" or even gratuitously if the circumstances warranted that kind of liberality with these blood-stained articles. This report also states that money seized was transmitted to the Reich Bank, except "for a small amount required for routine purposes (wages, etc.)". In other words the executioners paid themselves with money taken from their victims. (NOKW-631.)

The same Einsatzgruppe, reporting on the hard conditions under which some ethnic German families were living in southern Russia, showed that it helped by placing Jewish homes, furniture, children's beds, and other equipment at the disposition of the ethnic Germans. These houses and equipment were taken from liquidated Jews.

Einsatzgruppe C, proudly reporting on its accomplishments in Korovo (September 1941), stated that it organized a regular police force to clear the country of Jews as well as for other purposes. The men enlisted for this purpose, the report goes on to say, received "their pay from the municipality from funds seized from Jews." (NO-3154.)

Whole villages were condemned, the cattle and supplies seized (that is stolen), the population shot, and then the villages themselves destroyed.

Villages were razed to the ground because of the fact, or under

the shallow pretense, that some of the inhabitants had been aiding or lodging partisans.

The reports abound with itemization of underwear, clothing, footwear, cooking utensils, etc., taken from the murdered Jews.

In Poltava, 1,538 Jews were shot and their clothing was handed over to the mayor who, according to the report covering this action, "gave special priority to the ethnic Germans when distributing it." (NO-3405.)

Even those who were destined for death through the gas vans had to give up their money and valuables and sometimes their clothes before breathing in the carbon monoxide.

Money and valuables taken from victims were sent to Berlin to the Reich Ministry of Finance. When a Jewish council of elders was appointed to register the Jews for the ostensible purpose of resettlement, the council was also requested to submit the financial situation of the Jews. This facilitated the despoliation of their possessions which went hand in hand with their execution.

PRISONERS OF WAR

The extermination program on racial and political grounds also extended to prisoners of war. Even in the first weeks of Germany's war against Russia, large numbers of civilians from the invaded areas were indiscriminately thrown into prisoner-of-war camps, run by the PW department of the High Command of the Wehrmacht. On 17 July 1941, Heydrich issued Operational Order No. 8, which contained "directives" for the Einsatz units "detailed to permanent PW camps (Stalags) and transit camps (Dulags)". These directives not only grossly violated the provisions of the Hague Regulations on prisoners of war and civilians in belligerently occupied territories and of century-old rules and customs of warfare, but outraged every principle of humanity. They provided for nothing less than the cold-blooded mass-murder of prisoners of war and of civilians held in PW camps. The directives state as their "purpose"—

"The Wehrmacht must immediately free itself of all those elements among the prisoners of war who must be regarded as Bolshevik influence. The special situation of the campaign in the East, therefore, demands *special measures* [Italics original] which have to be carried out in a spirit free from bureaucratic and administrative influences, and with an eagerness to assume responsibility." (NO-3414.)

The directives instruct the Einsatz units as to which categories of persons to seek out "above all". This list mentions in detail all categories and types of Russian government officials, all influential Communist Party officials, "the leading personalities of the econ-

omy", "the Soviet Russian intellectuals", and as a separate category—the category which was again to yield the largest number of victims of this "action"—"all Jews".

It, in fact, emphasized that in—"taking any decisions, the racial origin has to be taken into consideration." (NO-3414.)

Concerning executions, the directives specified—

"The executions must not be carried out in the camp itself or in its immediate neighborhood. They are not public and are to be carried out as inconspicuously as possible." (NO-3414.)

Further—

"In order to facilitate the execution of the purge, a liaison officer is to be sent to Generalmajor von Hindenburg, commander in chief of the PW camps in Military District I, East Prussia, in Koenigsberg, Prussia, and to Generalleutnant Herrgott, commander in chief of the PW camps in the general government in Kielce."

Under this program doctors, if found in the PW camps, were doomed either because they were "Russian intellectuals" or because they were Jews. However, by 29 October 1941, Heydrich found it necessary to rule—

"Because of the existing shortage of physicians and medical corps personnel in the camps, such persons, even if Jews, are to be excluded from the segregation and to be left in the PW camps, except in particularly well-founded cases." (NO-3422.)

Another passage in this order of Heydrich vividly demonstrates to what extent the Reich went officially in flouting the most basic rules of international law and the principles of humanity—

"The chiefs of the Einsatzgruppen decide on the suggestions for execution on their own responsibility and give the Sonderkommandos the corresponding orders."

It is apparent that all those involved in this program were aware of its illegality.

"This order must not be passed on in writing—not even in the form of an excerpt. District commanders for prisoners of war and commanders of transit camps must be notified verbally." (NO-3422.)

It is to the credit of an occasional army officer that he objected to this shameful and degrading repudiation of the rules of war. In one report we find—

"As a particularly clear example the conduct of a camp commander in Vinnitsa is to be mentioned who strongly objected to the transfer of 362 Jewish prisoners of war carried out by his deputy and even started court martial proceedings against the deputy and two other officers." (NO-3157.)

Field Marshal von Reichenau, commanding the Sixth Army,

however, was not so chivalrous as the officer indicated. The report states further—

“Generalfeldmarschall von Reichenau has, on 10 October 1941, issued an order which states clearly that the Russian soldier has to be considered on principle a representative of bolshevism and has also to be treated accordingly by the Wehrmacht.”

Perhaps the nadir in heartlessness and cowardice was reached by these murder groups when one of the Kommandos brutally killed helpless, wounded prisoners of war. Einsatzgruppe C, reporting (November 1941) on an execution performed by Sonderkommando 4a, stated—

“* * * the larger part were again Jews, and a considerable part of these were again Jewish prisoners of war who had been handed over by the Wehrmacht. At Borispol, at the request of the commander of the Borispol PW camp, a platoon of Sonderkommando 4a shot 752 Jewish prisoners of war on 14 October 1941, and 357 Jewish prisoners of war on 10 October 1941, among them some commissioners and 78 wounded Jews, handed over by the camp physician.” (NO-2830.)

METHODS OF EXECUTION

How were the executions conducted? What was the *modus operandi*? On this subject history need not remain in the dark. Several of the executioners have themselves cleared away all mystery as to just how they accomplished their extraordinary deeds. Defendant Paul Blobel, who stated that his Sonderkommando killed between 10,000 and 15,000 people, described in some detail one performance he personally directed. Specifying that from 700 to 1,000 persons were involved in this execution, he related how he divided his unit into shooting squads of 30 men each. Then, the mass graves were prepared—

“Out of the total number of the persons designated for the execution, 15 men were led in each case to the brink of the mass grave where they had to kneel down, their faces turned toward the grave. At that time, clothes and valuables were not yet collected. Later on this was changed. * * * When the men were ready for the execution, one of my leaders who was in charge of this execution squad gave the order to shoot. Since they were kneeling on the brink of the mass grave, the victims fell, as a rule, at once into the mass grave. I have always used rather large execution squads, since I declined to use men who were specialists for shots in the neck [Genickschuss-spezialisten]. Each squad shot for about one hour and was then replaced. The persons who still had to be shot were assembled near the place of the execution and were guarded by mem-

bers of those squads, which at that moment did not take part in the executions." (NO-3824.)

In some instances, the slain persons did not fall into the graves, and the executioners were then compelled to exert themselves to complete the job of interment. A method, however, was found to avoid this additional exertion by simply having the victims enter the ditch or grave while still alive. An SS eyewitness explained this procedure.

"The people were executed by a shot in the neck. The corpses were buried in a large tank ditch. The candidates for execution were already standing or kneeling in the ditch. One group had scarcely been shot before the next came and laid themselves on the corpses there."

The defendant Biberstein also verified this with his statement—

"The shootings took place in a sand pit, in which the bodies afterwards were buried."

The defendant Ott, who stated his Kommando conducted 80 to 100 executions, told of one winter execution where the corpses were temporarily buried in the snow.

The business of executions was apparently a very efficient business-like procedure, illustrated by Report No. 24, dated 16 July 1941, which succinctly stated—

"The arrested Jewish men are shot without ceremony and interred in already prepared graves, the EK 1b having shot 1,150 Jews at Daugavpils up to now." (NO-2938.)

Some of the Kommando leaders, however, were a little more ceremonious. These executioners called off the names of the victims before they were loaded on to the truck which was to take them to their death. This was their whole judicial trial—the indictment, the evidence, and the sentence—a roll call of death.

There were different techniques in execution. There were Einsatz commanders who lined up their victims kneeling or standing on the edge of the grave, facing the grave, others who had the executees stand with their backs to the grave, and still others, as indicated, who had their victims stand in the grave itself. One defendant described how the victims lined up at the edge of the ditch and, as they fell, another row stepped into position so that, file after file, the bodies dropped into the pit on to the bleeding corpses beneath.

Hardly ever was a doctor present at the executions. The responsibility of the squad leader to make certain the victims were dead before burying them was simply discharged by a glance to determine whether the bullet-ridden bodies moved or not. Since in most cases the huddled and contorted bodies were strewn and piled in a trench at least six feet deep, only one more horror is added in con-

templating the inadequacy of an inspection made from the rim of a ditch as to whether life in the dark ground below was extinct or not.

In fact, one defendant did not exclude the possibility that an executee could only seem to be dead because of shock or temporary unconsciousness. In such cases it was inevitable he would be buried alive.

The defendant Blobel testified that his firing squad always aimed at the heads of the victims. If, he explains, the victim was not hit, then one member of the firing squad approached with his rifle to a distance of three paces and shot again. The scene of the victim watching the head hunter approaching with his rifle and shooting at him at three paces represents a horror for which there is no language.

Some Kommando leaders, as we have seen, made their victims lie down on the ground, and they were shot in the back of the neck. But, whatever the method, it was always considered honorable, it was always done in a humane and military manner. Defendant after defendant emphasized before the Tribunal that the requirements of militariness and humaneness were meticulously met in all executions. Of course, occasionally, as one defendant described it, "the manner in which the executions were carried out caused excitement and disobedience among the victims, so that the Kommandos were forced to restore order by means of violence," that is to say, the victims were beaten. Undoubtedly always, of course, in a humane and military manner.

Only rarely, however, did the victims react to their fate. Commenting on this phase of the executions, one defendant related how some victims, destined to be shot in the back, turned around and bravely faced their executioners but said nothing. Almost invariably they went to their end silently, and some of the defendants commented on this. The silence of the doomed was mysterious; it was frightening. What did the executioners expect the victims to say? Who could find the words to speak to this unspeakable assault on humanity, this monstrous violence upon the dignity of life and being? They were silent. There was nothing to say.

It was apparently a standing order that executions should not be performed publicly, but should always take place far removed from the centers of population. A wooded area was usually selected for this grim business. Sometimes these rules were not observed. Document NOKW-641 relates an execution which took place near houses whose occupants became unwilling witnesses to the macabre scene. The narrative states—

"A heavy supply traffic for the soldiers was also going on in the main street, as well as traffic of evacuated civilians. All

events could be followed from the window of the battalion's office, the moaning of the people to be shot could be heard, too. The following morning, a lot of clothing was lying about the place concerned and surrounded by inquisitive civilians and soldiers. An order to destroy the clothing was given immediately."

The business man, Friedrich Graebe, already quoted before, has left a moving account of a mass execution witnessed by him in October 1942 near Dubno, an account which because of its authoritative description deserves recording in its entirety in this opinion.

"Moennikes and I went direct to the pits. Nobody bothered us. Now I heard rifle shots in quick succession, from behind one of the earth mounds. The people who had got off the trucks—men, women, and children of all ages—had to undress upon the orders of an SS-man, who carried a riding or dog whip.

"They had to put down their clothes in fixed places, sorted according to shoes, top clothing, and underclothing. I saw a heap of shoes of about 800 to 1,000 pairs, great piles of underlinen and clothing. Without screaming or weeping these people undressed, stood around in family groups, kissed each other, said farewells and waited for a sign from another SS-man, who stood near the pit, also with a whip in his hand.

"During the 15 minutes that I stood near the pit I heard no complaint or plea for mercy. I watched a family of about 8 persons, a man and woman, both about 50 with their children of about 1, 8, and 10, and two grown-up daughters of about 20 to 24. An old woman with snow-white hair was holding the one-year-old child in her arms and singing to it, and tickling it. The child was cooing with delight. The couple were looking on with tears in their eyes. The father was holding the hand of a boy about 10 years old and speaking to him softly; the boy was fighting his tears. The father pointed toward the sky, stroked his head, and seemed to explain something to him. At that moment the SS man at the pit shouted something to his comrade. The latter counted off about 20 persons and instructed them to go behind the earth mound. Among them was the family which I have mentioned. I well remember a girl, slim, and with black hair, who, as she passed close to me, pointed to herself and said '23'. I walked around the mound and found myself confronted by a tremendous grave. People were closely wedged together and lying on top of each other so that only their heads were visible. Nearly all had blood running over their shoulders from their heads. Some of the people shot were still moving. Some were lifting their arms and turning their heads to show that they were still alive. The pit was already 2/3 full. I estimated that it already contained about 1,000 people. I looked for the man

who did the shooting. He was an SS man who sat at the edge of the narrow end of the pit, his feet dangling into the pit. He had a tommy gun on his knees and was smoking a cigarette. The people, completely naked, went down some steps which were cut in the clay wall of the pit and clambered over the heads of the people lying there, to the place to which the SS men directed them. They lay down in front of the dead or injured people; some caressed those who were still alive and spoke to them in a low voice. Then I heard a series of shots. I looked into the pit and saw that the bodies were twitching on the heads lying already motionless on top of the bodies that lay before them. Blood was running down their necks. I was surprised that I was not ordered away, but I saw that there were two or three postmen in uniform nearby. The next batch was approaching already. They went down into the pit, lined themselves up against the previous victims and were shot. When I walked back, round the mound, I noticed another truckload of people which had just arrived. This time it included sick and infirm persons. An old, very thin woman with terribly thin legs was undressed by others who were already naked, while two people held her up. The woman appeared to be paralyzed. The naked people carried the woman around the mound. I left with Moennikes and drove in my car back to Dubno.

“On the morning of the next day, when I again visited the site, I saw about 30 naked people lying near the pit—about 30 to 50 meters away from it. Some of them were still alive; they looked straight in front of them with a fixed stare and seemed to notice neither the chilliness of the morning nor the workers of my firm who stood around. A girl of about 20 spoke to me and asked me to give her clothes and help her escape. At that moment we heard a fast car approach, and I noticed that it was an SS detail. I moved away to my site. Ten minutes later we heard shots from the vicinity of the pit. The Jews still alive had been ordered to throw the corpses into the pit; then they had themselves to lie down in this to be shot in the neck.” (2992-PS.)

The tragedy of this scene is lost entirely on the executioner. He does his job as a job. So many persons are to be killed, just as a carpenter contemplates the construction of a shed. He must consider the material he has on hand, the possibilities of rain, etc. Only by psychologically adjusting oneself to such a state of affairs can one avoid a shock when one comes to a statement in a report very casually written, namely, “Until now, it was very difficult to carry out executions because of weather conditions.” (NO-2828.)

A report from Einsatzgruppe A, discussing events which occurred in the winter of 1941-42, remarks—

“The Commander in White Russia is instructed to liquidate the Jewish question as soon as possible, despite the difficult situation. However, a period of about 2 months is still required—according to the weather.” (2273-PS.)

It is all this same type of studied indifference that causes another report-writer to chronicle simply, “Hostages are taken in each new place, and they are executed on the slightest reason.” (NO-2948.)

One of the Einsatzgruppen leaders complains that only 96 Jews were executed at Grodno and Lida during the first days. He manifests his displeasure and declares, “I gave orders that considerable intensification was to take place there.” (NO-2937.)

Adolf Ruebe, a former SS Hauptscharfuehrer, declared in an affidavit that now and then there were executioners who devised original methods for killing their victims.

“On the occasion of an exhumation in Minsk, in November 1943, Obersturmfuehrer Heuser arrived with a Kommando of Latvians. They brought eight Jews, men and women, with them. The Latvians guarded the Jews, while Harter and Heuser erected a funeral pyre with their own hands. The Jews were bound, put on the pile alive, drenched with gasoline and burned.” (NO-5498.)

It was stated in the early part of this opinion that women and children were to be executed with the men so that Jews, gypsies, and so-called asocials would be exterminated for all time. In this respect, the Einsatzgruppen leaders encountered a difficulty they had not anticipated. Many of the enlisted men were husbands and fathers, and they winced as they pulled their triggers on these helpless creatures who reminded them of their own wives and offspring at home. In this emotional disturbance they often aimed badly and it was necessary for the Kommando leaders to go about with a revolver or carbine, firing into the moaning and writhing forms. This was hard on the executioners, personnel experts reported to the RSHA in Berlin, and to relieve their emotional sensitivity, gas vans were sent to the rescue.

These strange vehicles carried spurious windows and curtains and otherwise externally resembled family trailers. Women and children were lured into them with the announcement that they were to be resettled and that they would meet their husbands and fathers in the new place. Once inside the truck, the doors automatically and hermetically closed, the driver stepped on the accelerator, and monoxide gas from the engine streamed in. By the time the van reached its destination, which was an antitank

ditch outside the town, the occupants were dead. And here they joined their husbands and fathers who had been killed by rifles and carbines in the hands of the Einsatzkommandos.

As distressing as may be to the average person, the mere thought image of these murder wagons, they were simply articles of equipment so far as the Einsatzgruppen were concerned. Communications went back and forth, correspondence was written about these vans with the casualness which might accompany a discussion on coal trucks. For instance, on 16 May 1942 SS Untersturmfuehrer Dr. Becker, wrote SS Obersturmbannfuehrer Rauff, pointing out that vans could not be driven in rainy weather because of the danger of skidding. He, therefore, posed the question as to whether executions could not be accomplished with the vans in a stationary position. However, this suggestion offered a problem all its own. If the van was not actually set for mobility, the victims would realize what was about to happen to them, and this, Becker said, must be avoided so far as possible. He thus recommended "There is only one way left. To load them at the collecting point and to drive them to the spot." Becker then complained that members of the Kommando should not be required to unload the corpses.

"I brought to the attention of the commanders of those S.K. concerned, the immense psychological injuries and damages to their health which that work can have for those men, even if not immediately, at least later on. The men complained to me about headaches which appeared after each unloading."

Then with regard to the operation of the lethal device itself, Becker says—

"The application of gas usually is not undertaken correctly. In order to come to an end as fast as possible, the driver presses the accelerator to the fullest extent. By doing that the persons to be executed suffer death from suffocation and not death by dozing off as was planned. My directions have now proved that by correct adjustment of the levers death comes faster and the prisoners fall asleep peacefully." (501-PS.)

On 15 June 1942, the commandant of the Security Police and Security Service Ostland wrote the RSHA in Berlin as follows:

"Subject: S-vans.

A transport of Jews, which has to be treated in a special way, arrives weekly at the office of the commandant of the security police and the security service of White Ruthenia.

"The three S-vans which are there are not sufficient for that purpose. I request assignment of another S-van (5 tons). At the same time I request the shipment of 20 gas hoses for the

three S-vans on hand (2 Diamond, 1 Saurer), since the ones on hand are leady already." (501-PS.)

Ever efficient in discharging their homicidal duties, it appears that the Einsatz authorities now even set up a school in this new development of the fine art of genocide. The defendant Biberstein, describing one of these ultra-modern executions, spoke of the driver Sackenreuter of Nuernberg "who had been most carefully instructed about the handling of the gas truck, having been through special training courses." (NO-4314.) Biberstein was satisfied that this method of killing was very efficient because the faces of the dead people were "in no way distorted"; death having come "without any outward signs of spasms". He added that no physician was present to certify that the people were dead because "this type of gas execution guaranteed certain death." Who it was that guaranteed this was not vouchsafed to history.

The murder-vans were constructed in Berlin and then, under their own power, driven to the field of action. The reports tell of two vans which traveled from Berlin to the Crimea. It would be interesting to know the thoughts of the drivers of these murder-cars as they rolled over half of Europe, through city and country, climbing mountains and penetrating plains, traveling 2,000 kilometers with their gaseous guillotines to kill helpless women and children. One of the drivers was none other than the chauffeur of the arch-murderer Reinhard Heydrich.

One reads and reads these accounts of which here we can give only a few excerpts and yet there remains the instinct to disbelieve, to question, to doubt. There is less of a mental barrier in accepting the weirdest stories of supernatural phenomena, as, for instance, water running up hill and trees with roots reaching toward the sky, than in taking at face value these narratives which go beyond the frontiers of human cruelty and savagery. Only the fact that the reports from which we have quoted came from the pens of men within the accused organizations can the human mind be assured that all this actually happened. The reports and the statements of the defendants themselves verify what otherwise would be dismissed as the product of a disordered imagination. The record reveals that investigators and evidence analysts have checked and rechecked. Being human they sometimes doubted the correctness of the startling figures appearing in the reports. Thus, when one of them came across the statement of Stahlecker that Einsatzgruppe A, of which he was chief, had killed 135,000 human beings in four months, the investigator questioned Otto Ohlendorf if this were possible. Ohlendorf read the statement in question and announced—

"I have seen the report of Stahlecker (*Document L-180*) concerning Einsatzgruppe A, in which Stahlecker asserts that his group killed 135,000 Jews and Communists in the first four months of the program. I know Stahlecker personally, and I am of the opinion that the document is authentic." (2620-PS.)

How can all this be explained? Even when Germany was retreating on all fronts, many troops sorely needed on the battlefield were diverted on this insane mission of extermination. In defiance of military and economic logic, incalculable manpower was killed off, property of every description was destroyed—all remained unconsidered as against this insanity to genocide.

Here and there a protest was raised. The SS Commissioner General for White Ruthenia objected to the executions in his district—not on the grounds of humanity, but because he believed the unbridled murder program was lowering the prestige of Germany.

"Above all, any act lowering the prestige of the German Reich and its organizations in the eyes of the White Ruthenian population should be avoided. * * * I am submitting this report in duplicate so that one copy may be forwarded to the Reich Minister. Peace and order cannot be maintained in White Ruthenia with methods of that sort. To bury seriously wounded people alive, who worked their way out of their graves again, is such a base and filthy act that this incident as such should be reported to the Fuehrer and Reich Marshal. The civil administration of White Ruthenia makes very strenuous efforts to win the population over to Germany in accordance with the instructions of the Fuehrer. These efforts cannot be brought in harmony with the methods described herein." (1104-PS.)

The report referred to gave a graphic description of the extermination action. It told of the arrival of a police battalion with instructions to liquidate all Jews in the town of Slutsk within two days. The commissioner for the territory of Slutsk protested that the liquidation of all Jews, which naturally included the tradesmen, would shut down the economic life of that area. He asked, at least, for postponement of the executions. The lieutenant in charge of the battalion refused to wait. The report continues—

"For the rest, as regards the executions of the action, I must point out to my deepest regret that the latter bordered already on sadism. The town itself offered a picture of horror during the action. With indescribable brutality on the part of both the German police officers and particularly the Lithuanian partisans, the Jewish people, but also among them White Ruthenians, were taken out of their dwellings and herded to—

gether. Everywhere in the town shots were heard, and in different streets the corpses of shot Jews accumulated. * * * In conclusion I find myself obliged to point out that the police battalion has looted in an unheard of manner during the action, and that not only in Jewish houses but just the same in those of the White Ruthenians. Anything of use such as boots, leather, cloth, gold, and other valuables, has been taken away. On the basis of statements of the members of the armed forces, watches were torn off the arms of Jews in public, on the street, and rings were pulled off the fingers in the most brutal manner.

“A major of the finance department reported that a Jewish girl was asked by the police to obtain immediately 5,000 rubles to have her father released. This girl is said to have actually gone everywhere to obtain the money.” (1104-PS.)

For a nation at war nothing can be more important than that ammunition reach the soldiers holding the fighting frontiers. Yet, many vehicles loaded with ammunition for the armed forces were left standing in the streets of Slutsk because the Jewish drivers, already illegally forced into this service, had been liquidated by the execution battalion. Although the very life of the nation depended on the continued operation of every type of food-producing establishment, 15 of the 26 specialists at a cannery were shot.

The blood bath of Slutsk brought about some interesting correspondence. The commissioner general inquired of the Reich Minister of Occupied Eastern Territories if the liquidation of Jews in the East was to take place without regard to the economic interests of the Wehrmacht and specialists in the armament industry. The Reich Minister replied—

“Clarification of the Jewish question has most likely been achieved by now through verbal discussions. Economic considerations should fundamentally remain unconsidered in the settlement of the problem.” (3666-PS.)

A German inspector of armament in the Ukraine, after a thorough investigation into the Jewish liquidation program, reported to General of the Infantry, Thomas, Chief of the Industrial Armament Department, that the project was a big mistake from the German point of view. In the Ukraine he found that the Jews represented almost the entire trade and even a substantial part of the manpower.

“The elimination, therefore, necessarily had far-reaching economic consequences and even direct consequences for the armament industry (Production for supplying the troops).”

The report goes on—

“The attitude of the Jewish population was anxious-obliging

from the beginning. They tried to avoid everything that might displease the German administration. That they hated the German administration and army inwardly goes without saying and cannot be surprising. However, there is no proof that Jewry as a whole or even to a greater part was implicated in acts of sabotage. Surely, there were some terrorists or saboteurs among them just as among the Ukrainians. But it cannot be said that the Jews as such represented a danger to the German Armed Forces. The output produced by Jews who, of course, were prompted by nothing but the feeling of fear, was satisfactory to the troops and the German administration.”
(3257-PS.)

What made the program of extermination particularly satanic was that the executions invariably took place not during the stress and turmoil of fighting or defense action, but after the fighting had ceased.

“The Jewish population remained temporarily unmolested shortly after the fighting. Only weeks sometimes months later, specially detached formations of the police executed a planned shooting of Jews. * * * The way these actions, which included men and old men, women, and children of all ages, were carried out was horrible. The great masses executed make this action more gigantic than any similar measure taken so far in the Soviet Union. So far about 150,000 to 200,000 Jews may have been executed in the part of the Ukraine belonging to the Reich Kommissariat (RK) ; no consideration was given to the interests of economy.”

In a final appeal to reason this German inspector cries out—

“If we shoot the Jews, let the prisoners of war perish, condemn considerable parts of the urban population to death by starvation and also lose a part of the farming population by hunger during the next year, the question remains unanswered: who in all the world is then supposed to produce economic values here?” (3257-PS.)

No one answered the question of the German inspector. Nor did any one answer the question of humanity as to why those oceans of blood and this burning of a continent. Reason, with its partner conscience, had been lost long ago in the jungle of Nazi greed and arrogance, and so madness ruled, hate marched, the sky reddened with the flames of destruction and the world wept—and still weeps.

THE LAW

Jurisdiction

On 27 August 1928, Germany signed and later ratified the

general treaty for the Renunciation of War, more generally known as the Kellogg-Briand Pact, wherein sixty-three nations agreed—

“Article I. The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations to one another.

“Article II. The High Contracting Parties agree that the settlement or solution of all disputes or conflicts or whatever nature or whatever origin they may be, which may arise among them, shall never be sought, except by pacific means.”

In spite of this unequivocal universal condemnation of war, the fifth decade of the twentieth century witnessed a conflict at arms of global proportions which wrought such devastation on land and sea and so convulsed organized society that, for many decades yet to come, men, women, and children in every land will feel and suffer its consequences.

On 8 August 1945, representatives of Great Britain, France, Russia, and the United States met in London and entered into an agreement for the trial of war criminals ascertained to be such. Nineteen other nations expressed their adherence to this agreement.

On 30 September 1946, the International Military Tribunal, created by the London Agreement, after a trial which lasted ten months, rendered a decision which proclaimed that Germany had precipitated World War II and, by violating international commitments and obligations, had waged aggressive war. The International Military Tribunal, in addition to rendering judgment against specific individuals, declared certain organizations, which were outstanding instruments of nazism, to be criminal.

On 20 December 1945, the Allied Control Council, composed of representatives of the same four above-mentioned nations and constituting the highest legislative authority for Germany, enacted Law No. 10, concerning “Punishment of Persons Guilty of War Crimes, Crimes Against Peace, and Crimes Against Humanity”. This Tribunal came into being under the provisions of that law, but while the Tribunal derives its existence from the authority indicated, its jurisdiction over the subject matter results from international law valid long prior to World War II.

Defense counsel has advanced various arguments on the law applicable to this case. In view of their representations and the gravity of the case itself, the various phases of the law will be discussed with more detail than perhaps ordinarily the situation might require.

Under international law the defendants are entitled to a fair

and impartial trial, which the Tribunal has endeavored throughout the long proceedings to guarantee to them in every way. The precept that every man is presumed innocent until proved guilty has held and holds true as to each and every defendant. The other equally sanctified rule that the prosecution has the burden of proof and must prove the guilt of the accused beyond a reasonable doubt has been, and is, assured.

This trial opened on 15 September 1947, and the taking of evidence began on 29 September. The prosecution required but two days to present its case in chief because its evidence was entirely documentary. It introduced in all 253 documents. 136 days transpired in the presentation of evidence in behalf of the defendants, and they introduced, in addition to oral testimony, 731 documents. The trial itself was conducted in both English and German and was recorded stenographically and in both languages. The transcript of the oral testimony consists of more than 6,500 pages. An electric recording of all proceedings was also made. Copies of documents introduced by the prosecution in evidence were served on the defendants in the German language.

The judgment in this case will treat the several defendants separately in the latter part of the opinion, but since many items of defense, especially in argumentation, are common to more than one of the defendants they will be discussed collectively to avoid repetition during the individual treatments. It is to be emphasized that the general discussion and collective description of acts or defenses of defendants need not apply to each and every defendant in the box. Any general reference will necessarily apply to a majority of them but that majority need not always consist of the same persons. As already stated, the individual treatments will appear at the end.

The arguments put forth by the defense may be grouped under four different headings and will be discussed in that order by the Tribunal, jurisdiction, self-defense and necessity, superior orders and noninvolvement.

The substantive provisions of Control Council Law No. 10, which are pertinent in this case, read as follows:

Article II

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

cities, towns or villages, or devastation not justified by military necessity.

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

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

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

Control Council Law No. 10 was attacked by defense counsel at the beginning of the trial, at the end of the trial, and even after all evidence and documentation had been received and arguments closed. In a motion filed 20 February 1948, counsel renewed their representations that this law was inapplicable to the instant case because of the fact that Russia, on 23 August 1939, signed a secret treaty with Germany agreeing to a division of Poland. In the argument supporting their motion, counsel does not dwell on the fact that in signing the agreement with Russia, Germany naturally became a party to the very transaction involved. However, in spite of this very definite concurrence by Germany in Russia's acts, insofar as they arose out of the so-called secret agreement, defense counsel submitted that Russia disqualified herself from membership in the Allied Control Council and that, therefore, any agreement reached with her as one of the signatory powers must necessarily be void. The argument is wholly lacking in merit.

The matter of responsibility for breach of the international peace was fully considered and decided by the International Military Tribunal in its decision of 30 September 1946.

“The Tribunal is fully satisfied by the evidence that the war

initiated by Germany against Poland on the 1 September 1939 was most plainly an aggressive war, which was to develop in due course into a war which embraced almost the whole world, and resulted in the commission of countless crimes, both against the laws and customs of war, and against humanity.”

It was this monstrously selfish and evil aggression which precipitated, as the International Military Tribunal pointed out, a global war whose effects are visible today throughout the world. The legal consequences drawn from the International Military Tribunal adjudication, which is now *res judicata*, may not be altered by the assertion that someone else may also have been at fault.

At the final arguments in the case various defense counsel spoke of international events which followed the ending of the war. It is intended as no offense to defense counsel to say that it would seem they are seeking to fish in troubled waters, or what they assume to be an agitated sea. Nonetheless, the Tribunal must refuse representations and arguments upon that subject. The defendants in this case stand accused of crimes which occurred during the war. History's footsteps since the termination of World War II cannot obliterate the blood marks of that colossal and tragic conflict.

While the Tribunal placed no limitations on the scope of defense counsel's representations, as in justice it should not, it does not follow that everything was relevant to the issue in the case. It is only by hearing an argument that one can conclusively determine its materiality or lack of materiality. However, the Tribunal now decides, after hearing and analyzing all the evidence, that discussions in this case on the antewar relationship between Germany and Russia are immaterial. It further decides that representations on the postwar relationship, Russia and the rest of the world are equally irrelevant.

Although advancing the proposition that Russia signed a secret treaty with Germany prior to the Polish war, the defense said or presented nothing in the way of evidence to overcome the well considered conclusion of the International Military Tribunal that Germany started an aggressive war against Russia. On the basis of this finding alone, Russia's participation in the Allied Council which formulated Law No. 10 was legal and correct and in entire accordance with international law.

Furthermore, defense counsel's representations in this respect have no bearing on the charges in this indictment. They are not defending Germany as a nation in this trial. They are representing individuals accused of specific crimes under Law No. 10, which, like the Charter of the International Military Tribunal, was not

an arbitrary exercise of power of the victorious nations but the expression of international law existing at the time of its creation. Control Council Law No. 10 is but the codification and systemization of already existing legal principles, rules, and customs. Under the title of crimes against humanity, these rules and customs are the common heritage of civilized peoples, and, insofar as war crimes are concerned, they have been recognized in various international conventions, to which Germany was a party, and they have been international law for decades if not centuries. As far back as 1631, Grotius, in his *De Jure Belli ac Pacis*, wrote—

“But * * * far must we be from admitting the conceit of some, that the Obligation of all Right ceases in war; nor when undertaken ought it to be carried on beyond the Bounds of Justice and Fidelity.”

The German author Schaetzel, in his book “Bestrafungen nach Kriegsgebrauch”, published in 1920, stated—

“* * * The Laws and Customs of Warfare are law not because they are reproduced in the field manual but because they are international law. The Imperial Decree (of 1899) speaks of punishment ‘in accordance with the laws, the customs of war and special decrees of competent military authorities’ (Art. 2). This shows clearly that the customs of war are recognized as a source of law. They are binding on individuals by virtue of the Imperial Decree which orders the authorities administering justice to follow these rules.

“The customs of war are substantive penal law as good as the state’s penal legislation.”

Defense counsel have particularly thrust at Control Council Law No. 10 with Latin maxim *nullum crimen sine lege, nulla poena sine lege*. It is indeed fundamental in every system of civilized jurisprudence that no one may be punished for an act which was not prohibited at the time of its commission. But it must be understood that the “lex” referred to is not restricted to statutory law. Law does, in fact, come into being as the result of formal written enactment and thus we have codes, treaties, conventions, and the like, but it may also develop effectively through custom and usage and through the application of common law. The latter methods are no less binding than the former. The International Military Tribunal, in its decision of 30 September 1946, declared—

“International Law is not the product of an international legislature * * *. This law is not static, but by continual adaptation follows the needs of a changing world.”

Of course some fields of international law have been codified to a substantial degree and one such subject is the law of land warfare which includes the law of belligerent occupation because

belligerent occupation is incidental to warfare. The Hague Regulations, for instance, represent such a codification. Article 46 of those regulations provides with regard to invading and occupying armies that—

“Family honor and rights, the lives of persons and private property, as well as religious convictions and practice, must be respected.”

This provision imposed obligations on Germany not only because Germany signed the Hague Convention on Land Warfare, but because it had become international law binding on all nations.

But the jurisdiction of this Tribunal over the subject matter before it does not depend alone on this specific pronouncement of international law. As already indicated, all nations have held themselves bound to the rules or laws of war which came into being through common recognition and acknowledgment. Without exception these rules universally condemn the wanton killing of noncombatants. In the main, the defendants in this case are charged with murder. Certainly no one can claim with the slightest pretense at reasoning that there is any taint of *ex post factoism* in the law of murder.

Whether any individual defendant is guilty of unlawful killing is a question which will be determined later, but it cannot be said that prior to Control Council Law No. 10, there existed no law against murder. The killing of a human being has always been a potential crime which called for explanation. The person standing with drawn dagger over a fresh corpse must, by the very nature of justice, exonerate himself. This he may well do, advancing self-defense or legal authorization for the deed, or he may establish that the perpetrator of the homicide was one other than himself.

It is not questioned that the defendants were close enough to mass killings to be called upon for an explanation—and to whom are they to render explanations so that their innocence or guilt may be determined? Is the matter of some one million nonmilitary deaths to be denied judicial inquiry because a Tribunal was not standing by, waiting for the apprehension of the suspects?

The specific enactments for the trial of war criminals, which have governed the Nuernberg trials, have only provided a machinery for the actual application of international law theretofore existing. In the comparatively recent Saboteurs case (*Ex parte Quirin* 317 U. S., 1, 1942) the Supreme Court of the United States affirmed that individual offenders against the rules and customs of war are amenable to punishment under the common law of nations without any prior designation of tribunal or procedure. In this connection reference may also be made to trials

for piracy where, going back centuries, the offenders, regardless of nationality, were always tried in the arresting state without any previous designation of tribunal.

Military tribunals for years have tried and punished violators of the Rules of Land Warfare outlined in the Hague Convention, even though the Convention is silent on the subject of courts. The International Military Tribunal speaking to this subject said—

“The law of war is to be found not only in treaties, but in the customs and practices of states which gradually obtained universal recognition, and from the general principles of justice applied by jurists and practiced by military courts.”

All civilized nations have at times used military courts. Who questions that Prussia during the Franco-Prussian war and Germany during World War I and World War II utilized military courts to try subjects of other nations charged with violating the rules and laws of war?

There is no authority which denies any belligerent nation jurisdiction over individuals in its actual custody charged with violation of international law. And if a single nation may legally take jurisdiction in such instances, with what more reason may a number of nations agree, in the interest of justice, to try alleged violations of the international code of war?

In spite of all that has been said in this and other cases, no one would be so bold as to suggest that what occurred between Germany and Russia from June 1941 to May 1945 was anything but war, and, being war, that Russia would not have the right to try the alleged violators of the rules of war on her territory and against her people. And if Russia may do this alone, certainly she may concur with other nations who affirm that right.

Thus, Russia's participation in the formulation of Control Council Law No. 10 is in accordance with every recognized principle of international law, and any attack on that participation is without legal support. The Tribunal also finds and concludes that Control Council Law No. 10 is not only in conformity with international law but is in itself a highly significant contribution to written international law.

International Law Applied to Individual Wrong-Doers

Defense counsel have urged that the responsibilities resulting from international law do not apply to individuals. It is a fallacy of no small proportion that international obligations can apply only to the abstract legal entities called states. Nations can act only through human beings, and when Germany signed, ratified, and promulgated the Hague and Geneva Conventions, she bound each one of her subjects to their observance. Many German publi-

cations made frequent reference to these international pledges. The 1942 edition of the military manual [Recht der Landkriegsfuehrung] edited by a military judge of the Luftwaffe, Dr. Waltzog, carried the following preface:

“Officers and noncoms have, before taking military measures, to examine whether their project agrees with international law. Every troop leader has been confronted, at one time or another, with questions such as the following: Am I entitled to take hostages; how do I have to behave if bearing a flag of truce; what do I have to do with a spy, what with a franc-tireur; what may I do as a permitted ruse of war; what may I requisition; what is, in turn, already looting and, therefore, forbidden; what do I do with an enemy soldier who lays down his arms; how should enemy paratroopers be treated in the air and after they have landed?”

An authoritative collection of German Military Law (“Das gesamte Deutsche Wehrrecht”), published since 1936 by two high government officials, with an introduction by Field Marshal von Blomberg, then Reich War Minister and Supreme Commander of the Armed Forces, carried in a 1940 supplement this important statement—

“The present war has shown, even more than wars of the past, the importance of disputes on international law * * * In this connection, the enemy propaganda especially publicizes questions concerning the right to make war and concerning the war guilt, and thereby tries to cause confusion; this is another reason why it appears necessary fully to clarify and to make widely known the principles of international law which are binding on the German conduct of war.”

Every German soldier had his attention called to restrictions imposed by international law in his very paybook which carried on the first page what was known as “The Ten Commandments for Warfare of the German Soldier”. Article 7 of these rules provided specifically:

“The civilian populations should not be injured.

“The soldier is not allowed to loot or to destroy.”

Further arguing the proposition of individual nonresponsibility for their clients, several defense counsel have submitted that this trial in effect represents a trial of the victors over the vanquished. This objection dissolves so quickly under a serious glance that one wonders if it was presented reflectively. In the first place, the defendants are not being tried in any sense as “vanquished individuals” any more than it is to be assumed that a person taken into custody by police authorities is to be regarded as a “vanquished person”. Wars are fought between nations as such and

not between individuals as such. In war there is no legal entity such as a "defeated individual" just as there is no judicial concept of a "victorious individual". The defendants are in court not as members of a defeated nation but because they are charged with crime. They are being tried because they are accused of having offended against society itself, and society, as represented by international law, has summoned them for explanation. The doctrine that no member of a wronged community may try an accused would for all practical purposes spell the end of justice in every country. It is the essence of criminal justice that the offended community inquires into the offense involved.

In the fullest appreciation of the responsibilities devolving upon the Tribunal in this particular phase of the case, as in all phases, reference is made to the speech by Mr. Justice Jackson in the International Military Tribunal trial in which he said—

"We must summon such detachment and intellectual integrity to our task that this trial will commend itself to posterity as fulfilling humanity's aspirations to do justice."

What Mr. Justice Jackson said at the beginning of that trial, this Tribunal says at the termination of the current trial.

Self-Defense and Necessity

Dr. Aschenauer, speaking for the defendant Ohlendorf and such others whose cases fall within the general pattern of the Ohlendorf defense, declared that the majority of the defendants committed the acts with which they are charged—

"(a) In presumed self-defense on behalf of a third party. ('Putativnothilfe' is the technical term in the German legal language.)

"(b) Under conditions of presumed necessity to act for the rescue of a third party from immediate, otherwise unavoidable danger (so-called 'Putativnotstand')."

In other words, it is claimed that the defendants in committing the acts charged to them, acted in self-defense for the benefit of a third party, the third party being Germany. In developing this theme of defense for Germany, Dr. Aschenauer insisted that this Tribunal apply his interpretation of Soviet law. One cannot avoid noting the paradox of the defendant's invoking the law of a country whose jurisprudence, ideologies, government and social system were all declared antagonistic to Germany, and which very laws, ideologies, government, and social system the defendants, with the rest of the German Armed Forces, had set out to destroy. However, it is the prerogative of defense counsel to advance any argument which he deems appropriate in behalf of his

client and the fact that Dr. Aschenauer considers Soviet law more modern than German law cannot fail to be interesting.

"It has thus achieved the aim which the German reform legislation has been striving at for a long time. Acts of necessity are unrestrictedly admissible if they are necessary for the protection of higher interests insofar as the danger could not be averted by any other means."

Under this theory of law any belligerent who is hard-pressed would be allowed unilaterally to abrogate the laws and customs of war. And it takes no great amount of foresight to see that with such facile disregarding of restrictions, the rules of war would quickly disappear. Every belligerent could find a reason to assume that it had higher interests to protect. As untenable as is such a proposition, Dr. Aschenauer goes even further—

"If the existence of the state or of the nation is directly threatened, then any citizen—and not only those appointed for this purpose by the state—may act for their protection."

Under this state of law a citizen of Abyssinia could proceed to Norway and there kill a Norwegian on the basis that he, the Abyssinian, was motivated only by the desire to protect his country from an assumed aggression by the Norwegian.

And that is not all—

"An error concerning the prerequisites of self-defense or of an act for the protection of a third party is to be treated as an error about facts and constitutes, according to the reason for, the avoidability and also the degree of gravity of the individual error, a legal excuse or—at the very least—a mitigating circumstance."

Thus, if the Abyssinian mentioned above, invaded Norway out of assumed necessity to protect his nation's interest, but it developed later that he killed the wrong person, he would be absolved because he had simply made a mistake. The fact that this astounding proposition is advanced in all seriousness demonstrates how desperate is the need for a further revaluation of the sacredness of life and for emphasizing the difference between patriotism and murder.

Dr. Aschenauer does not claim that the actual circumstances supported *Staatsnothilfe* (defense of endangered state), but he submits that this state of affairs does not render the deeds of the defendants any less legal provided the defendants *assumed* that conditions existed for the application of the above-mentioned legal concepts. In support of this argument he points out what he regards the objective conditions and the subjective conditions of the German-Russian war—

"The east European Jewish problem as part of the problem

of bolshevism; origin and import of the defendants' obsession that a solution of the problem 'bolshevism versus Europe' could only be brought about by a 'solution' of the Jewish problem and in their particular sphere only be unreserved execution of the Fuehrer Order."

Thus, even an obsession becomes a valid defense, according to this theory.

Dr. Aschenauer's legal position on assumed self-defense has been discussed not because it corresponds with any accepted tenets of international law but only for the purpose of demonstrating that under any law the acts of his client and others falling in that category cannot by the widest stretch of the imagination be justified as an act of self-defense in behalf of Germany.

Even combatants may only be killed or otherwise harmed in accordance with well-established rules. And there is nothing in the most elementary rules of warfare to permit the killing of enemy civilians simply because they are deemed "dangerous". But in killing, e. g., Jews, the defendants did not succor Germany from any real danger, or assumed danger. Although they declared that the Jews were bearers of bolshevism, it was not explained how they carried that flag. Nor did any one attempt to show how, assuming the Jews to be disposed towards bolshevism, this per se translated itself into an attack on Germany. The mere adherence to the political doctrine of bolshevism did not of itself constitute an aggression or potential aggression against Germany. It was claimed that the killing of the Jews was predicated on the circumstances of the German-Russian War, but in point of fact Jews were oppressed in Germany and German-occupied territory long prior to that war. The treatment of Jews by Germany and those representing the Third Reich did not depend on the German-Russian at all. The circumstance that Jews were living in Russia when the German forces invaded Russia was simply a coincidence which did not call for their annihilation. If merely being an inhabitant of Russia made that inhabitant a threat to Germany then the Einsatzgruppen would have had to kill every Russian, regardless of race.

If, however, it is argued by the defense that the German forces considered as mortal enemies and subject to execution only those Russians who were members of the Communist Party, then even according to this theory those Jews who were not members of the Communist Party should have been spared, as were those Russians who were not members of the Communist Party. The record shows, however, that when it came to a Jew, it did not matter whether he was a member of the Communist Party or not. He was killed simply because he was a Jew.

Mass Killings for Ideological Reasons

Dr. Reinhard Maurach, Professor Criminal Law and Eastern European Law, was called by the defendant Ohlendorf to expound the international law underlying the position of the various defendants maintaining Ohlendorf's view. Some sections of his treatise, submitted as Ohlendorf Document 38, supported the prosecution rather than the defense. On three occasions he condemned mass killings for ideological reasons.

"This is the place to say with special emphasis that the shooting of entire groups of a population is not justified by any 'collective suspicion', of any group, no matter how great.

"It has already been emphasized that the issuing and execution of mass liquidation orders cannot find any justification in international law, even within the scope of a total war of this kind, and in particular cannot allow of any appeal to the objective premises of self-defense and emergency.

"General extermination measures cannot be justified by any war situations, no matter how exceptional."

However, in the end the expert arrived at an opposite conclusion. First, he stated that a state of war *as such* does not vindicate extraordinary actions, but then in a superb demonstration of legal acrobatics he declared that if the war aims of one of the opponents are total, then the opponent is vindicated in claiming self-defense and state of necessity, and, therefore, may introduce the mass killings he had previously condemned.

For the purpose of considering this argument we will ignore the fact that Germany waged an undeclared war against Russia, that Germany was the invader and Russia the invaded, and look only to the evidence adduced to support the theme that, after being invaded, Russia's actions were such as to call for the executions of which the prosecution complains.

In behalf of the defendants many so-called Russian exhibits were introduced. Among them were documents on the Soviet foreign policy, statements emanating from the Kremlin, articles from the Russian encyclopedia, and speeches made by Stalin. All these exhibits are strictly irrelevant and might well be regarded as a red herring drawn across the trail. But the Tribunal's policy throughout the trial has been to admit everything which might conceivably elucidate the reasoning of the defense. Thus, the excerpt from Stalin's speech of 3 July 1941, quoted in Ohlendorf's document book, will be cited here.

"In the areas occupied by the enemy, cavalry and infantry partisan detachments must be formed and diversion groups created for fighting the units of the enemy army, for kindling

partisan warfare everywhere and every place, for blowing up bridges and highways, for destroying telephone and telegraph connections, for burning down forests, supply camps and trains. Unbearable conditions must be created for the enemy and all of his accomplices in the occupied areas, they must be pursued and destroyed at every step and all their measures must be frustrated. One cannot regard the war against Fascist Germany as an ordinary war. It is not only a war between two armies. It is at the same time the great war of the entire Soviet people against the Fascist German Troops."

Scrutiny of this speech fails to reveal anything which orders the execution of German prisoners of war or the shooting of wounded persons, or the mass killing of Germans in German territory occupied by Russia, or anything which would justify the allegedly retaliatory killing of noncombatant Jews.

One of the most amazing phenomena of this case which does not lack in startling features is the manner in which the aggressive war conducted by Germany against Russia has been treated by the defense as if it were the other way around. Thus, one of the counsel in his summation speech said—

"However, as was the case in the campaign against Russia, when a large number of the inhabitants of this land, whether young, old, men, women or child, contrary to all acts of humanity and against every provision of international law, cowardly carries on a war from ambush against the occupying army, then certainly one cannot expect that the provisions of international law would be observed to the letter by this army."

No comment is here needed on the statement which characterizes the defense of one's country as "cowardly", and the other equally astounding remark that the invader has the right to ignore international law.

Death of Noncombatants by Bombing

Then it was submitted that the defendants must be exonerated from the charge of killing civilian populations since every Allied nation brought about the death of noncombatants through the instrumentality of bombing. Any person, who, without cause, strikes another may not later complain if the other in repelling the attack uses sufficient force to overcome the original adversary. That is fundamental law between nations as well.

It has already been adjudicated by a competent tribunal that Germany under its Nazi rulers started an aggressive war. The bombing of Berlin, Dresden, Hamburg, Cologne, and other German cities followed the bombing of London, Coventry, Rotterdam, Warsaw, and other Allied cities; the bombing of German cities

succeeded, in point of time, the acts discussed here. But even if it were assumed for the purpose of illustration that the Allies bombed German cities without Germans having bombed Allied cities, there still is no parallelism between an act of legitimate warfare, namely the bombing of a city, with a concomitant loss of civilian life, and the premeditated killing of all members of certain categories of the civilian population in occupied territory.

A city is bombed for tactical purposes; communications are to be destroyed, railroads wrecked, ammunition plants demolished, factories razed, all for the purpose of impeding the military. In these operations it inevitably happens that nonmilitary persons are killed. This is an incident, a grave incident to be sure, but an unavoidable corollary of battle action. The civilians are not individualized. The bomb falls, it is aimed at the railroad yards, houses along the tracks are hit and many of their occupants killed. But that is entirely different, both in fact and in law, from an armed force marching up to these same railroad tracks, entering those houses abutting thereon, dragging out the men, women, and children and shooting them.

It was argued in behalf of the defendants that there was no normal distinction between shooting civilians with rifles and killing them by means of atomic bombs. There is no doubt that the invention of the atomic bomb, when used, was not aimed at non-combatants. Like any other aerial bomb employed during the war, it was dropped to overcome military resistance.

Thus, as grave a military action as is an air bombardment, whether with the usual bombs or by atomic bomb, the one and only purpose of the bombing is to effect the surrender of the bombed nation. The people of that nation, through their representatives, may surrender and, with the surrender, the bombing ceases, the killing is ended. Furthermore, a city is assured of not being bombed by the law-abiding belligerent if it is declared an open city. With the Jews it was entirely different. Even if the nation surrendered they still were killed as individuals.

It has not been shown through this entire trial that the killing of the Jews as Jews in any way subdued or abated the military force of the enemy, it was not demonstrated how mass killings and indiscriminate slaughter helped or was designed to help in shortening or winning the war for Germany. The annihilation of defenseless persons considered as "inferior" in Russia would have had no effect on the military issue of the war. In fact, so mad were those who inaugurated this policy that they could not see that the massacre of the Jews in many instances actually hindered their own efforts. We have seen in the record that occasionally German officials tried to save Jews from extinction so that they

could be forced to work for the German war effort. This would have been another war crime, but at least it would not have been so immediately disastrous for the victims.

The Einsatzgruppen were out to kill "inferiors" and, first of all, the Jews. But in the documentation of the war crimes trials since the end of the war, no explanation appears as to why, from the viewpoint of the Nazis, the Jew had to die. In fact, most of the defendants in all these proceedings have expressed a great regard for the Jew. They assert they have admired him, befriended him, and to have deplored the atrocities committed against him. It would seem they were ready to help him in every way except to save him from being killed.

The Einsatzgruppen were told at Pretzsch that "the Jews" supported bolshevism, but there is no evidence that every Jew had espoused bolshevism, although, even if this were true, killing him for his political belief would still be murder. As the Einsatzkommandos entered new cities and towns and villages they did not even know where to look for the Jews. They could not even be sure who were Jews. Each Einsatzkommando was equipped with several interpreters, but it became evident throughout the trial that these invading forces did not carry sufficient linguistic talent to cope with the different languages of the States, provinces, and localities through which they moved. There can be no doubt that because of the celerity with which the order was executed countless non-Jews were killed on the supposition that they were Jews. Frequently, the only test applied to determine judaism was that of physiognomy.

One either justifies the Fuehrer Order or one does not. One supports the killing of the Jews or denounces it. If the massacres are admitted to be unsupportable and if the defendants assert that their participation was the result of physical and moral duress, the issue is clear and it becomes only a question of determining how effective and oppressive was the force exerted to compel the reluctant killer. If, however, the defendants claim that the killing of the Jews was justified, but this claim does not commend itself to human reason and does not meet the requirements of law, then it is inevitable that the defendants committed a crime.

It is the privilege of a defendant to put forth mutually exclusive defenses, and it is the duty of the court to consider them all. But it is evident that the insistence on the part of the defendants that the massacres were justified because the Jews constituted an immediate danger to Germany inevitably weakens the argument that they acted only under duress exerted on them personally; and in turn, the "personal duress" argument enfeebles the

“danger to Germany” argument. In two or three instances an attempt was made to show that the Jews in Russia held a high percentage of official positions, a percentage disproportionate to the size of the Jewish population. This was the most common theory utilized in Germany for the oppression and persecution of the Jews. By adducing the same excuse here the defendants involved acknowledged they were putting into physical effect in Russia an antipathy and prejudice already entertained in Germany against the Jewish race. There was no duty and certainly no right on the part of the defendants to go into Russia to equalize the official positions according to the proportion between Jews and non-Jews.

Defense counsel Dr. Mayer admitted that the Fuehrer Order violated the recognized laws and customs of war, but urged that Russia was not entitled to protection under international law. Apart from the fact that Russia was a party to the Hague Convention of Land Warfare—in fact, the Hague Conference of 1899 was initiated by Russia—the International Military Tribunal pointed out that the rules of the Hague Regulations have become declaratory of the common law of war. It further disposed of the objection by quoting approvingly from the memorandum issued by the German Admiral Canaris on 15 September 1941, in which he declared that it is contrary to military tradition, regardless of treaty or lack of treaty—

“To kill or injure helpless people.”

Dr. Mayer also said, taking the same line as Dr. Maurach—

“If this war was not an unjustified war of aggression, but a justified preventive war, then, on the basis of my explanations in the trial brief on the subject of the ideology, aims and practice of the U.S.S.R., to which I refer, the question arises, in how far the German Reich found itself, in this war against the U.S.S.R., in a genuine state of national emergency, and whether this justified the orders given by Hitler.”

If Dr. Mayer means this, he collides head-on with a *res judicata*. The International Military Tribunal, after studying countless documents and hearing numerous direct witnesses of and participants in the event itself, declared—

“The plans for the economic exploitation of the U.S.S.R., for the removal of masses of population, for the murder of Commissars and political leaders, were all part of the carefully prepared scheme launched on the 22d June without warning of any kind, and without the shadow of legal excuse. It was plain aggression.”

The annihilation of the Jews had nothing to do with the defense of Germany, the genocide program was in no way connected with

the protection of the Vaterland, it was entirely foreign to the military issue. Thus, taking into consideration all that has been said in this particular phase of the defense, the Tribunal concludes that the argument that the Jews in themselves constituted an aggressive menace to Germany, a menace which called for their liquidation in self-defense, is untenable as being opposed to all facts, all logic and all law.

Superior Orders

Those of the defendants who admit participation in the mass killings which are the subject of this trial, plead that they were under military orders and, therefore, had no will of their own. As intent is a basic prerequisite to responsibility for crime, they argue that they are innocent of criminality since they performed the admitted executions under duress, that is to say, superior orders. The defendants formed part of a military organization and were, therefore, subject to the rules which govern soldiers. It is axiomatic that a military man's first duty is to obey. If the defendants were soldiers and as soldiers responded to the command of their superiors to kill certain people, how can they be held guilty of crime? This is the question posed by the defendants. The answer is not a difficult one.

The obedience of a soldier is not the obedience of an automaton. A soldier is a reasoning agent. He does not respond, and is not expected to respond, like a piece of machinery. It is a fallacy of wide-spread consumption that a soldier is required to do everything his superior officer orders him to do. A very simple illustration will show to what absurd extreme such a theory could be carried. If every military person were required, regardless of the nature of the command, to obey unconditionally, a sergeant could order the corporal to shoot the lieutenant, the lieutenant could order the sergeant to shoot the captain, the captain could order the lieutenant to shoot the colonel, and in each instance the executioner would be absolved of blame. The mere statement of such a proposition is its own commentary. The fact that a soldier may not, without incurring unfavorable consequences, refuse to drill, salute, exercise, reconnoiter, and even go into battle, does not mean that he must fulfill every demand put to him. In the first place, an order to require obedience must relate to military duty. An officer may not demand of a soldier, for instance, that he steal for him. And what the superior officer may not militarily demand of his subordinate, the subordinate is not required to do. Even if the order refers to a military subject it must be one which the superior is authorized, under the circumstances, to give.

The subordinate is bound only to obey the lawful orders of his

superior and if he accepts a criminal order and executes it with a malice of his own, he may not plead superior orders in mitigation of his offense. If the nature of the ordered act is manifestly beyond the scope of the superior's authority, the subordinate may not plead ignorance to the criminality of the order. If one claims duress in the execution of an illegal order it must be shown that the harm caused by obeying the illegal order is not disproportionately greater than the harm which would result from not obeying the illegal order. It would not be an adequate excuse, for example, if a subordinate, under orders, killed a person known to be innocent, because by not obeying it he himself would risk a few days of confinement. Nor if one acts under duress, may he, without culpability, commit the illegal act once the duress ceases.

The International Military Tribunal, in speaking of the principle to be applied in the interpretation of criminal superior orders, declared that—

“The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible.”

The Prussian Military Code, as far back as 1845, recognized this principle of moral choice when it stated that a subordinate would be punished if, in the execution of an order, he went beyond its scope or if he executed an order knowing that it “related to an act which obviously aimed at a crime”.

This provision was copied into the Military Penal Code of the Kingdom of Saxony in 1867, and of Baden in 1870. Continuing and even extending the doctrine of conditional obedience, the Bavarian Military Penal Code of 1869 went so far as to establish the responsibility of the subordinate as the rule, and his irresponsibility as the exception.

The Military Penal Code of the Austro-Hungarian Monarchy of 1855 provided—

Article 158. “A subordinate who does not carry out an order is not guilty of a violation of his duty of subordination if (a) the order is obviously contrary to loyalty due to the Prince of the Land; (b) if the order pertains to an act or omission in which evidently a crime or an offense is to be recognized.”

In 1872 Bismarck attempted to delimit subordinate responsibility by legislation, but the Reichstag rejected his proposal and instead adopted the following as Article 47 of the German Military Penal Code:

Article 47. “If through the execution of an order pertaining to the service, a penal law is violated, then the superior giving the order is alone responsible. However, the obeying sub-

ordinate shall be punished as accomplice (1) if he went beyond the order given to him, or (2) if he knew that the order of the superior concerned an act which aimed at a civil or military crime or offense.”

This law was never changed, except to broaden its scope by changing the word “civil” to “general”, and as late as 1940 one of the leading commentators of the Nazi period, Professor Schwinge wrote—

“Hence, *in military life*, just as in other fields, *the principle of absolute, i.e., blind obedience*, does not exist.”

Yet, one of the most generally quoted statements on this subject is that a German soldier must obey orders though the heavens fall. The statement has become legendary. The facts prove that it is a myth.

When defendant Seibert was on the stand, his attorney asked him—

“Witness, do you remember a proverb said by a German Kaiser concerning the carrying out of orders by soldiers?”

And the defendant replied—

“I do not know whether it was William I or William II, but certainly one Kaiser emperor used the expression, ‘If the military situation or the entire situation makes it necessary a soldier has to carry out an order, even if he has to shoot his own parents.’”

The defendant was then asked whether, in the event he received such an order, he would execute it. To the surprise of everybody he replied that he did not know. He declined to answer until he should have time to consider the problem. The Tribunal allowed him until the next morning to deliberate, and then the following ensued:

“Q. Now, if in accordance with this declaration by the Chief of State of the German empire at the time, the military situation made it necessary for you—after receiving an order—to shoot your own parents, would you do so?”

“A. I would not do so.

“Q. Then there are some orders which are issued by the Chief of State which may be disobeyed?”

“A. I did not regard this as an order by the Chief of State but as a symbolic example towards the whole soldiery how far obedience had to go, but never actually asking a son to shoot his own parents. I imagine it only as follows, your Honor: if I am an artillery officer in the war and I have to fire at a very important sector, which is decisive for the whole military situation and I received the order to fire at a certain village and I know that in this village my parents are living, then I would

have to shoot at this village. This is the only way in which I can imagine this order, but never—it is inhuman—to ask a son to shoot his parents.

“Q. So, therefore, if you received such an order coming down the line, you would disincline to obey it? You would not obey it?”

“A. I would not have obeyed such an order.

“Q. Suppose the order came down for you to shoot the parents of someone else, let us say, a Jew and his wife. And in your view you saw the children of these parents. Now it is established beyond any doubt that this Jewish father and Jewish mother have not committed any crime—absolutely guiltless, blemishless. The only thing that is established is that they are Jews. And you have this order coming down the line to shoot them. The children are standing by and they implore you not to shoot their parents. Would you shoot the parents?”

“A. I would not shoot these parents.”

Then, in summing up, the witness was asked—

“And, therefore, as a German officer, you now tell the Tribunal that if an order were submitted to you, coming down the line militarily to execute two innocent parents only because they were Jews, you would refuse to obey that order?”

And the answer was—

“I answered your example affirmatively, I said ‘Yes, I could not have obeyed.’”

Although defense counsel’s query intended to establish the utter helplessness of a German soldier in the face of a superior command, the inquiry finally resulted in the defendant’s declaring that he would not only ignore the order of the supreme war lord to shoot his own parents, but also to shoot anybody else’s parents. He thus demonstrated that under his own interpretation of German Military Law, he did have some choice in the matter of obeying superior orders. Why then did he participate in the execution of the parents of other people? Why did other defendants do the same if they had a choice, as the defendant Seibert indicated?

Superior Orders Defense Must Establish Ignorance of Illegality

To plead superior orders one must show an excusable ignorance of their illegality. The sailor who voluntarily ships on a pirate craft may not be heard to answer that he was ignorant of the probability he would be called upon to help in the robbing and sinking of other vessels. He who willingly joins an illegal enterprise is charged with the natural development of that unlawful undertaking. What SS man could say that he was unaware of the attitude of Hitler toward Jewry?

As early as 24 February 1920, the National Socialist Party announced in its 25-point program, which was never changed, its opposition to Jews and declared that a Jew could never be an equal citizen. "Mein Kampf" was dedicated to what may be called the "Master Race" theory, the doctrine of Aryan superiority over all other races. When the Nazis seized power in 1933, persecution of the Jews became an official state policy. Then in September 1935 came the well-known Nuernberg Laws which among other things deprived the Jews of German citizenship.

"Mein Kampf" was not a private publication. Its brazen voice rang through Germany. One passage was proclaimed over and over—

"The soil on which we now live was not a gift bestowed by Heaven on our forefathers. They had to conquer it by risking their lives. So also in the future, our people will not obtain territory, and therewith the means of existence, as a favor from any people, but will have to win it by the power of a triumphant sword."

The Nazi Party dinned into the ears of the world its odium for the Jews. "Der Stuermer" and other publications spread the verbal poison of race hatred. Nazi leaders everywhere vilified the Jews, holding them up to public ridicule and contempt. In November 1938 an SS inspired and organized hoodlumism fell upon the Jews of Germany. Synagogues were destroyed, prominent Jews were arrested and imprisoned, a collective fine of one billion marks was imposed, ghettos were established, and now the Jews were compelled on orders of the security police to wear a yellow star on their breast and back.

Did the defendants not know of these things? Could they express surprise when, after this unbroken and mounting program of violence, plans were formulated for the "final solution of the Jewish problem"?

Some of the defendants may say they never knew of the Nazi Party extermination program or, if they did, they were not in accord with the sentiments therein expressed. But again, a man who sails under the flag of skull and cross-bones cannot say that he never expected to fire a cannon against a merchantman. When Bach-Zelewski, SS general and many years member of the Party, was asked to explain the phenomenon of the Einsatzgruppen killings, he replied—

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

The argument has, however, been advanced that the Fuehrer Order was not criminal. Although this proposition is at first blush

opposed to all common sense, contrary to natural human reactions and out of harmony with the rudimentary law of cause and effect, yet it has been presented seriously by the defendants and in fact constitutes the major item of defense. Therefore, it cannot simply be dismissed as intolerable; reasons must be advanced as to why it is intolerable.

Let us suppose that the Fuehrer Order had proclaimed the killing of all grey-eyed people, regardless of age, sex, or position. So long as the iris of the eyes responded to those light rays in the spectrum which make up grey, the possessor of such eyes was destined for evil days. Character, occupation, and health could not influence nor could religion, politics, and nationality alter the predetermined doom. The farmer at his plow, the teacher at her desk, the doctor at the bedside, the preacher in his pulpit, the old woman at her knitting, the children playing in the yard, the cooing infant at the mother's breast—would all be condemned to death, if they saw the wondering world through the tell-tale grey eyes.

Let us glance at the unfoldment of such a program and look in on a family, whose members, because of that unfathomable selection of life's chemicals and inscrutable mixing in the mystic alembic of time, all have grey eyes. Suddenly comes a thunderous knocking and the door bursts open. Steel-helmeted troopers storm in and with automatic guns and drawn pistol order the dismayed occupants into the street.

We hear the screams of the children, we see the terror in the faces of mother and sister, the biting of lips of the helpless father and brother, the wild tramping of the invaders' boots through the house, the overturning of furniture, the smashing into cupboards, attics, wardrobes seeking out the hidden, horrified grey-eyed. The tearful farewell to home, the piling into the waiting truck of the pitiful family possessions, the bewildered mounting of the doomed grey-eyes. The truck rumbles forward, stops to pick up other grey-eyes and still more grey-eyes in the market square, at the corner store, in the parish church.

Then the wild careening ride into the woods where other villagers are waiting chalk-faced, mute, staring at each other. The unloading of the truck, the guttural command to line up with the others. Then the red-mouthed machine rifles speaking their leaden sentences from left to right and from right to left. The villagers falling, some cut in two, others with blood flowing from their mouths and eyes, those grey eyes, pleading for understanding, for an explanation as to why? Why? Others only wounded but piled into a ditch already dug behind them. The shooting party rides away, piteous hands uplift from the uncovered grave,

we hear a moaning which, at times, decreases to a murmur, then mounts to a wail, then ceases altogether.

Of course, it is all fantastic and incredible, but no more fantastic and incredible than what has happened innumerable times in this very case. If one substitutes the word Jew for grey-eyed, the analogy is unassailable.

It is to be presumed that, if the defendants had been suddenly ordered to kill the grey-eyed population, they would have balked and found no difficulty in branding such an act as a legal and moral crime. If, however, fifteen years before, the Nazi Party program had denounced all grey-eyed people and since then the defendants had listened to Hitler vituperating against the grey-eyes, if they had seen shops smashed and houses destroyed because grey-eyes had worked and lived there; if they had learned of Himmler's ordering all grey-eyes into concentration camps, and then had heard speeches in Pretzsch wherein the mighty chieftains of the SS had declared that all grey-eyes were a menace to Germany—if this had happened, can we be so certain that the defendants would not have carried out a Fuehrer Order against grey-eyed people? And in that event, would there not have been the same defense of superior orders?

If now, from the vantage point of observation of a thing which did not come to pass, the defendants can denounce, as we assume they would, this hypothetical massacre, how can they less denounce a slaughter which did occur and under circumstances no less harrowing than the one pictured only for the purpose of illustration?

But throughout the trial it has been answered, in effect, that it was entirely different with the Jews. They were bearers of bolshevism. If that were their guilt, then the fact that they were Jews was only incidental. They were being exterminated not because of Judaism but because of bolshevism. If by that argument they mean that a Jew was to be executed only because he was a Bolshevik, why was it to be assumed that a Russian Jew was any more bolshevistic than a Russian Russian? Why should Alfred Rosenberg, chief Nazi philosopher, be less inclined biologically to communism than his obscure Jewish namesake and neighbor? What saved Benjamin Disraeli, leader of the Conservative Party and several times Prime Minister of Great Britain, from being a Bolshevist? And had he lived in 1941, would Hitler have declared him a carrier of bolshevism?

According to the Nazi ideology, the Jew by his very nature was simply destined to be Bolshevistic, but it is a demonstrable truism that, if the Einsatzkommandos themselves had adopted Jewish babies, those babies would have grown up to be staunch SS men.

In point of fact, during the war, thousands of Czech, Polish, Russian, and Yugoslav children were taken into Germany to be reared as Germans. No one knows how many Jewish offspring were included in these carloads of kidnaped children because it was seriously assumed that so long as they were blonds they could not belong to the hated race.

During the trial there was introduced in evidence a letter written by one of the defendants in which he quoted from Heydrich—

“Many of the Jews listed in your register are already known for continually trying to deny that they belong to the Jewish race by all possible and impossible reasons. It is, on the whole, in the nature of the matter that half-breeds of the first degree in particular try at every opportunity to deny that they are Jews.

“You will agree that in the third year of the war, there are matters of more importance for the war effort, and for the security police and the security service as well, than worrying about the wailing of Jews, making tedious investigations and preventing so many of my co-workers from other and much more important tasks. If I started scrutinizing your list at all, I only did so in order to refute such attacks by documents once and for all.

“I feel sorry to have to write such a justification six and a half years after the Nuernberg laws were issued.”

The defendant noted in his letter his enthusiastic accord with the sentiments expressed by Heydrich and added on his own that consideration for the Jews was “softness and humanitarian day-dreaming”. He also declared that it was unthinkable that a German should listen to Mendelssohn’s music, and, to hearken to Offenbach’s “Tales of Hoffman”, simply revealed ignorance of National Socialistic ideals. Yet, he saw nothing unidealistic about invading the office of his superior, the Commissioner General of White Ruthenia, trained in the same school of Nazi idealism, entered a complaint against the defendant’s action, not because seventy innocent human beings had been killed but because a subordinate had dared to come into his office and shoot his Jews without telling him about it.

The defendant was also annoyed that anyone should have questioned the propriety and correctness of removing gold fillings from the teeth of the Jews designated for killing.

The Tribunal is devoting much time and space to expounding the obvious, but perhaps it is not so obvious. Otherwise, the arguments by and on behalf of the defendants might not have been presented with such insistence. Furthermore, this is the time

and place to settle definitively, insofar as it is part of the issue in this trial, the business of the so-called Jewish problem.

A problem presupposes a situation with advantages and disadvantages to be considered on either side. But what in Nazi Germany was so delicately called the "Jewish problem", was a program, that is, an anti-Jewish program of oppression leading finally to extermination. The so-called Jewish problem was not a problem but a fixation based upon the doctrine that a self-styled "master race" may exterminate a race which it considers inferior. Characterizing the same proposition as the "Jewish menace" is equally devoid of sense. In fact, if it were not so tragic, the National Socialistic attitude toward the Jews could only be considered nonsensical.

We will recall how the Einsatz units treated the Krimchaks in the Crimea. In the same area they came across a sect known as Karaims. The Karaims resembled the Krimchaks in that they shared the same Jewish religion. However, the ethnic experts in Berlin after some kind of study, concluded that the Karaims had no Jewish blood in their veins and were, therefore, exempt from the extermination order. Thus, although the Karaims had Jewish religion in their souls, they did not have that kind of corpuscles in which the seeds of bolshevism ride. Hence they had the right to live. If one can picture an Einsatz unit rounding up the worshippers in a synagogue and distinguishing the Karaims from the Krimchaks, releasing the former and killing the latter, one is privileged to decide whether the Nazi attitude toward Jewry was not something which could well fall into the category of nonsense, that is, tragic nonsense.

It was all a matter of blood and nothing could save the person with Hebrew arteries. Although any other person could change his religion, politics, allegiance, nationality, yet, according to the National Socialist ideology, there was nothing the Jew could do. It was a matter of blood, but no one has testified as to the omniscient wisdom which counted and evaluated the offending corpuscles.

One thing can be said about the Fuehrer Order. It was specific, it was unambiguous. All Jews were to be shot. And yet, despite the unambiguity of this order, in spite of the unappealable and infallible pronunciamento that Jews were absolutely outside the pale, defendant after defendant related his great consideration for the Jew. Scores of affidavits were submitted, in behalf of nearly all the accused, demonstrating their generous conduct towards some individual Jews in Germany. One of the defendants related, in a pretrial interrogation, how he had even lived with a Jewish woman. He wished to prove by this that he was entirely devoid of prejudice.

But, if it were true that the defendants regarded the Jews as equals in Germany, why did they consider them subhuman in Russia? If they did not recognize them as a potential danger in Germany, why should they regard them as a threat in the Crimea 2,000 miles away? It is not too much to say that most of the Jews did not know of Hitler and his doctrines until the Einsatzgruppen arrived to kill them.

Although forming no part of the charges in the indictment, the systematic attempts to destroy the graves of the slain as described in official German documents are interesting in that they shed some light on the mental attitude of the executioners. Did they regard the executions as culpable acts, ocular evidence which should be destroyed? The defendant Blobel in his affidavit, signed 18 June 1947, stated that in June 1942, he was entrusted by Gruppenfuehrer Mueller with the task of removing the traces of the executions carried out by Einsatzgruppen in the East. He leaves nothing to the imagination.

"I myself witnessed the burning of corpses in a mass grave near Kiev, during my visit in August. This grave was about 55 m [meters] long, 3 m wide, and 2½ deep. When the cover had been lifted, the bodies were covered with fuel and set on fire. It took about two days for the grave to burn down. I myself saw that the grave became red-hot right down to the ground. Afterwards the grave was filled in, and thus all traces were as good as eliminated.

"Owing to the approach of the front, it was not possible to destroy the mass graves further to the south and the east, resulting from the executions of the Einsatzgruppen."

So intent was Blobel, evidently in obedience to orders, to wipe out the incriminating evidence of the killings, that he even tried to destroy the corpses by means of dynamite. Rudolf Hoess, Commandant of the Auschwitz concentration camp, who supervised these experimentations, stated that the dynamiting method was not successful.

"Blobel constructed several experimental ovens and used wood and gasoline as fuel. He tried to destroy the corpses by means of dynamiting them, too; this method was rather unsuccessful."

Hence other means were used.

"The ashes, ground to dust in a bone mill, were thrown in the vast forests around. Staf. Blobel had the order to locate all mass graves in the entire Eastern Territory and to eliminate them * * *. The work itself was carried out by Jewish work units, which, upon finishing their particular task, were shot.

Concentration camp Auschwitz had to furnish continuously Jews for this Kommando."

Duress Needed for Plea of Superior Orders

But it is stated that in military law even if the subordinate realizes that the act he is called upon to perform is a crime, he may not refuse its execution without incurring serious consequences, and that this, therefore, constitutes duress. Let it be said at once that there is no law which requires that an innocent man must forfeit his life or suffer serious harm in order to avoid committing a crime which he condemns. The threat, however, must be imminent, real, and inevitable. No court will punish a man who, with a loaded pistol at his head, is compelled to pull a lethal lever. Nor need the peril be that imminent in order to escape punishment. But were any of the defendants coerced into killing Jews under the threat of being killed themselves if they failed in their homicidal mission? The test to be applied is whether the subordinate acted under coercion or whether he himself approved of the principle involved in the order. If the second proposition be true, the plea of superior orders fails. The doer may not plead innocence to a criminal act ordered by his superior if he is in accord with the principle and intent of the superior. When the will of the doer merges with the will of the superior in the execution of the illegal act, the doer may not plead duress under superior orders.

If the mental and moral capacities of the superior and subordinate are pooled in the planning and execution of an illegal act, the subordinate may not subsequently protest that he was forced into the performance of an illegal undertaking.

Superior means superior in capacity and power to force a certain act. It does not mean superiority only in rank. It could easily happen in an illegal enterprise that the captain guides the major, in which case the captain could not be heard to plead superior orders in defense of his crime.

If the cognizance of the doer has been such, prior to the receipt of the illegal order, that the order is obviously but one further logical step in the development of a program which he knew to be illegal in its very inception, he may not excuse himself from responsibility for an illegal act which could have been foreseen by the application of the simple law of cause and effect. From 1920, when the Nazi Party program with its anti-Semitic policy was published, until 1941 when the liquidation order went into effect, the ever-mounting severity of Jewish persecution was evident to all within the Party and especially to those charged with its execution. One who participated in that program which began with Jewish disenfranchisement and depatriation and led, step by step,

to deprivation of property and liberty, followed with beatings, whippings, and measures aimed at starvation, may not plead surprise when he learns that what has been done sporadically; namely, murder, now is officially declared policy. On 30 January 1939, Hitler publicly declared in a speech to the Reichstag that if war should come it would mean "the obliteration of the Jewish race in Europe".

One who embarks on a criminal enterprise of obvious magnitude is expected to anticipate what the enterprise will logically lead to.

In order successfully to plead the defense of superior orders the opposition of the doer must be constant. It is not enough that he mentally rebel at the time the order is received. If at any time after receiving the order he acquiesces in its illegal character, the defense of superior orders is closed to him.

Many of the defendants testified that they were shocked with the order when they first heard it. This assertion is, of course, contradicted by the other assertion made with equal insistence, and already disposed of, that the Fuehrer Order was legal because the ordered executions were needed for the defense of the Fatherland. But if they were shocked by the order, what did they do to oppose it? Many said categorically that there was nothing to do. It would be enough, in order to escape legal and moral stigmatization to show the order was parried every time there was a chance to do so. The evidence indicates that there was no will or desire to depreciate its fullest intent. When the defendant Braune testified that he inwardly opposed the Fuehrer Order, he was asked as to whether, only as a matter of salving his conscience in the multitudinous executions he conducted, he ever released one victim. The interrogation follows:

"Q. But you did not in compliance with that order attempt to salve your conscience by releasing one single individual human creature of the Jewish race, man, woman, or child?

"A. I have already said that I did not search for children. I can only say the truth. There were no exceptions, and I did not see any possibility."

One may accuse the Nazi military hierarchy of cruelty, even sadism of one will. But it may not be lightly charged with inefficiency. If any of these Kommando leaders had stated that they were constitutionally unable to perform this cold-blooded slaughter of human beings, it is not unreasonable to assume that they would have been assigned to other duties, not out of sympathy or for humanitarian reasons, but for efficiency's sake alone. In fact Ohlendorf himself declared on this very subject—

"In two and a half years I had sufficient occasion to see how many of my Gruppe [group] did not agree to this order in their

inner opinion. Thus, I forbade the participation in these executions on the part of some of these men, and I sent some back to Germany."

Ohlendorf himself could have got out of his execution assignment by refusing cooperation with the army. He testified that the Chief of Staff in the field said to him that if he, Ohlendorf, did not cooperate, he would ask for his dismissal in Berlin.

The witness Hartel testified that Thomas, Chief of Einsatzgruppe B, declared that all those who could not reconcile their conscience to the Fuehrer Order, that is, people who were too soft, as he said, would be sent back to Germany or assigned to other tasks, and that, in fact, he did send a number of people including commanders back to the Reich.

This might not have been true in all Einsatzgruppen, as the witness pointed out, but it is not enough for a defendant to say, as did Braune and Klingelhoefler, that it was pointless to ask to be released, and, therefore, did not even try. Exculpation is not so easy as that. No one can shrug off so appalling a moral responsibility with the statement that there was no point in trying. The failure to attempt disengagement from so catastrophic an assignment might well spell the conclusion that the defendant involved had no deep-seated desire to be released. He may have thought that the work was unpleasant but did it nonetheless. Even a professional murderer may not relish killing his victim, but he does it with no misgivings. A defendant's willingness may have been predicated on the premise that he personally opposed Jews or that he wished to stand well in the eyes of his comrades, or by doing the job well he might earn rapid promotion. The motive is unimportant if he killed willingly.

The witness Hartel also related how one day as he and Blobel were driving through the country, Blobel pointed out to him a long grave and said, "Here my Jews are buried." One can only conclude that Blobel was proud of what he had done. "Here my Jews are buried." Just as one might speak of the game he had bagged in a jungle.

Despite the sustained assertion on the part of the defendants that they were straight-jacketed in their obedience to superior orders, the majority of them have, with testimony and affidavits, demonstrated how on numerous occasions they opposed decrees and orders handed down by their superiors. In an effort to show that they were not really Nazis at heart, defendant after defendant related his dramatic clashes with his superiors. If one concentrated only on this latter phase of the defense, one would conclude that these defendants were all ardent rebels against National Socialism and valiantly fought against the inhuman proposals put to

them. Thus, one affiant says of the defendant Willy Seibert that he "was strongly opposed to the measures taken by the Party and the government".

Of Steimle an affiant said, "Many a time he opposed the Party agencies and so-called superior leaders." Another affidavit not only states that Steimle opposed violence but that in his zeal for justice he shrewdly joined the SD in order to be able "to criticize the short comings in the Party". Again it was stated that "repeatedly his sense of justice led him to oppose excesses, corruptions, and symptoms of depravity by Party officers."

Of Braune an affiant states, "over and over again Dr. Braune criticized severely our policy in the occupied territories (especially in the East, Ukraine, and Baltic States)".

During the time he served in Norway, Braune was a flaming sword of opposition to tyranny and injustice in his own camp. He bitterly opposed the Reich Commissioner Terboven, cancelled his orders, condemned large-scale operations, released hostages, and freed the Norwegian State Minister Gerhardsen. One affidavit said that in these actions "Braune nearly always went beyond his authority." And yet in spite of this open rebellion Braune was not shot or even disciplined. Why is it that in Norway he acted so differently from the manner in which he performed in Russia? Was he more the humanitarian in Norway? The answer is not difficult to find. One of the affiants very specifically states—

"Right from the beginning of our conferences, Braune opposed the large-scale operations which Terboven and Fehlis continually carried out. He did not expect the slightest success from such measures, and saw in them only the danger of antagonizing the Norwegian population more and more against German policy and the danger of increasing their spirit of resistance."

Thus, the defendants could and did oppose orders when they did not agree with them. But when they ideologically espoused an order such as the Fuehrer Order they had no interest in opposing it.

German Precedent on Superior Order Doctrine

The defense of superior orders has already been passed upon by a German court. In 1921 two officers of the German U-boat 68 were charged with violation of the laws of war in that they fired at and killed unarmed enemy citizens seeking to escape from the sinking Hospital Ship H.M.S. Llandoverly Castle. The defendants pleaded lack of guilt in that they had merely carried into effect the order given them by their commander, First Lieutenant Patzig. The German Supreme Court did find as a fact that Patzig

ordered his subordinates Dithmar and Boldt to fire at the lifeboats, but it adjudicated them guilty nonetheless, stating—

“It is certainly to be urged in favor of the military subordinates, that they are under no obligation to question the order of their superior officer, and they can count upon its legality. But, no such confidence can be held to exist, if such an order is universally known to everybody, including also the accused, to be without any doubt whatever against the law. This happens only in rare and exceptional cases. But, this case was precisely one of them. For in the present instance, it was perfectly clear to the accused that killing defenseless people in the lifeboats could be nothing else but a breach of law. As naval officers by profession they were well aware, as the naval expert, Saalwaechter, has strikingly stated, that one is not legally authorized to kill defenseless people. They quickly found out the facts by questioning the occupants in the boats when these were stopped. They could only have gathered, from the order given by Patzig, that he wished to make use of his subordinates to carry out a breach of law. They should, therefore, have refused to obey. As they did not do so they must be punished.” (*American Journal of International Law*, Vol. 16, 1922 p. 721-2.)

Despite this very telling precedent several of the attorneys for the defense asked in behalf of their clients, What could they have done? After all, the defendants were soldiers and were required to obey orders. Ordinarily, in war, the proposition of unquestioning obedience involves a set of circumstances which subjects the subordinate to the possibility of death, wounding, or capture. And it is traditional in such a situation that, in consonance with the honor of his calling, the soldier does not question or delay but sets out stoically to face the peril and even self-immolation. Lord Tennyson immortalized this type of glorious self-sacrifice when he commemorated the Cavalry Charge at Balaklava in the Crimea:

“Theirs not to make reply,
Theirs not to reason why,
Theirs but to do and die.”

The members of the Einsatzgruppen, which, by a twist of ironic fate, were operating in the same Crimea and surrounding territory about one hundred years later, were not, however, facing the same situation which confronted Tennyson's Light Brigade. The Einsatz battalions were not being called upon to face shot and shell. They were not ordered to charge into the mouths of cannon. They were called upon to shoot unarmed civilians standing over their graves.

No soldier would be disgraced in asking to be excused from so

one-sided a battle. No soldier could be accused of cowardice in seeking relief from a duty which was, after all, not a soldier's duty. No soldier or officer attempting escape from such a task would be pleading avoidance of a military obligation. He would simply be requesting not to be made an assassin. And if the leaders of the Einsatzgruppen had all indicated their unwillingness to play the assassin's part, this black page in German history would not have been written.

What could the defendants have done, if they could not have been relieved? They could have been less zealous in the execution of the inhuman order. Whole populations of cities, districts, and wide lands were within their power. No Roman emperor had greater absolutism of decision over life and death than they possessed in their areas of operation. They were not ordered within any given town to shoot a precise number of people and a fixed number of women and children. But men like Braune could see no reason for making exceptions.

Several of the defendants stated that it would have been useless to avoid the order by subterfuge, because had they done so, their successors would accomplish the task and thus nothing would be gained anyway. The defendants are accused here for their own individual guilt. No defendant knows what his successor would have done. He could possibly have also indicated his reluctance and with a succession of refusals properly submitted, the order itself might have lost its efficacy. But in any event no execution would have taken place that day. One defendant stated that to have disobeyed orders would have meant a betrayal of his people. Does he really mean that the German people, had they known, would have approved of this mass butchery?

The masses of the home-loving German people, more content to have a little garden in which to grow a plant or two than the promise of vast lands beyond the horizon, will here learn how they were betrayed by their supposed champions. Here they will also learn of the inhumanity and the oppression and the shedding of innocent blood committed by the regime founded on the Fuehrerprinzip [leadership principle].

In his attack on Control Council Law No. 10, Dr. Mayer declared that it invalidates two fundamental principles of the legal systems of all civilized nations:

“(1) The principle *nulla poena sine lege*.

“(2) Validity of the excuse of having acted under order.”

The Tribunal has already disposed of objection number 1. Objection number 2 is no more convincing than was objection number 1. Law No. 10 does not invalidate the excuse of superior orders. It states—

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

Dr. Mayer, like others, misreads this provision and substitutes for the word “crime” some other word, possibly “act”. This makes the provision to read that anyone acting pursuant to the orders of his Government or superior does not free himself from responsibility for any “act”. But the provision specifically states “crime”. Unless it is established that the deed in question is a crime, then naturally there needs to be no explanation for its commission. If, however, the act is a crime then there can be no excuse for its commission. No superior can authorize a crime. No one can legalize what is demonstrated categorically and definitely to be a crime.

The main objective of the defense in this case has been to prove that the acts of the Einsatzgruppen were not crimes, that they were acts of self-defense committed in accordance with the rules of war. If, however, it is proved that they were crimes, then, naturally, the approval of another criminal would not make the acts any the less crimes. Once it is juridically established that a certain act is a crime, then all those who participated in it, both superior and subordinates, are accomplices.

How could the approval of Hitler possibly condone the offense, if offense it was? Hitler was not above international law. Let us suppose that in 1935 Hitler ordered one of his men to go to Siam and there assassinate its King. Would it be argued that the assassin in that situation would be immune because acting under superior orders? Any judicial inquiry would establish that the Siam assassin had committed a crime and the fact that he had acted in pursuance to the order of his government or a superior could not possibly free him from responsibility for the crime. This is exactly what Control Council Law No. 10 says, and this is what the law has always said, or ever since there was international law.

As a matter of fact, Article 47 of the German Military Penal Code goes much farther than Control Council Law No. 10. Under the German code the subordinate may be convicted even if no crime was actually committed. It is sufficient if the order aims at the commission of a crime or offense. The German code makes the obeying subordinate responsible even for any “civil” or “general offenses”, i.e., for comparatively insignificant breaches of law which are not contemplated in the Allied law. Nor does the German code, as contrasted to the Allied law, mention the defense of superior orders as a possible mitigating circumstance.

Several counsel have quoted article 347 of the American Rules of Land Warfare in support of their position on superior orders.

The section in question, after listing various offenses against the rules of warfare, declares—

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

What has escaped some analysts of this provision is that the word “individuals” is intended to apply to individuals who make up a military unit, that is, ordinarily, soldiers of lower rank. It applies naturally also to officers, but only provided they are serving under another officer of a higher rank. Unless one accepts this meaning the word “commanders” appearing in his second sentence would be entirely elusive as to its significance. But it is to be noted that in square juxtaposition to the men (and perhaps officers) who make up the military unit, the Article puts the *commanders* of such units; and by “commanders” is obviously meant the officers or acting officers, in charge of any armed unit.

As the colonel is commander of a regiment, the major of a battalion, and the captain of a company, the sergeant or 2d lieutenant may be in charge of a platoon. If the unit commander were not responsible, and the responsibility climbed upward from grade to grade, the result would be that the only one who could ever be accountable for an illegal order would be the chief executive of the nation, that is, the President, King, or Prime Minister, depending on the country involved. That such singular responsibility was not intended is evidenced in the use of the plural “commanders” instead of the singular “commander”. Making this meaning absolutely clear, the provision specifically mentions *two* types of “commanders” who are to be held responsible—

(a) commanders who *order* their units to commit war crimes; and

(b) commanders if the troops *under their authority* commit such crimes.

Thus, the provision proclaims clearly that the commander is to be responsible—whether *he* gives the order to commit war crimes, or whether the troops under his authority commit them at the behest of somebody else, since he has the control over the troops and is responsible for their acts.

Since it has not been denied that the defendants were commanders of Einsatz units, they clearly would fall within the provisions of Article 347, American Rules of Land Warfare. This Article 347 was repealed in 1944, but it has here been discussed at length because defense counsel made much of it, and because

it was still law at the time the Einsatzgruppen were operating.

In further confirmation of the interpretation above given of Article 347, reference is made to Article 64 of the American Articles of War which announces punishment for the disobedience of any *lawful* command of a superior officer. Obviously if the order is *unlawful* he may not be punished for refusing to obey it.

The subject of superior orders is not so confusing and complicated as it had been made by some legal commentators. In considering the law in this matter, we must keep in mind that fundamentally there are some legal principles that stand out like oak trees. Much underbrush has grown up in the vicinity and they seem to confuse the view. But even the most casual observation will catch on the legal landscape these sturdy oaks which announce that—

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

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

3. Deciding the question of free will, all the circumstances of the case must be considered because it is impossible to read what is in a man's heart.

Dr. Aschenauer correctly referred to one of these trees in Lord Manfield's charge to the jury in Stratton's case (1780) Howell, State Trials, Volume 21, page 1062-1224—

“A state of emergency is a reason for justification, since nobody can be guilty of a crime without having intended it. If there is irresistible, physical duress, then the acting person has no volition with regard to the deed.”

Was there irresistible, physical duress? Was there volition with regard to the deed? The answering of these two questions will serve as safe guides in applying the criteria herein announced in the discussion on the subject of superior orders.

Noninvolvement

Several of the defendants pleaded not guilty on the ground that they were in no way involved in the homicidal operations of the Einsatz units. These denials of participation took various forms. It was stated that the defendant, although traveling with the Kommando, never learned of executions and certainly did not participate in them, it was asserted that, although the defendant participated in executions, the executees were partisans, saboteurs, looters, and the like; and it was also claimed on behalf of some of the defendants that, although they actually ordered and supervised executions, these executions always followed an

investigation in the case involved. No one was shot unless he was proved guilty of a crime.

How thorough were these investigations if and when they took place? An order issuing from the Fuehrer's Headquarters on 6 June 1941—that is, 15 days before the beginning of the Russian war—spoke of the conduct of the German forces entering Russia. One paragraph discussed the disposition of political commissars who “for the time being” were not to be executed unless they committed or were suspected of hostile acts. Then came this very significant instruction—

“As a matter of principle in deciding the question whether guilty or not guilty, the personal impression which the commissar gives of his mentality and attitude will have precedence over facts which may be unprovable.”

Thus Kommando leaders were not only empowered but encouraged to execute a man more on his looks than on evidence. One of the defendants corroborated this practice. He was asked what he would do if he came upon a person speaking to four or five people in a room, advocating communism but in no way opposing the Germans. The defendant replied—

“I would have got a look at the man, and if I was under the impression that he would put his theoretical conviction into deed, in that case I would have had him shot. The actual speech or lecture could not be decided upon theoretically.”

He was asked further—

“So that you would listen to the speech and then you would look at him under a microscope, and after this big look, if you thought he might have done something, then you would have him shot. That is what we understood by your answer?”

And the reply was a categorical “Yes”.

Many of the so-called investigations, moreover, were merely inquiries for the purpose of obtaining from the victim information which would enable the executioners to locate and seize other victims. For instance, the defendant Ott testified from the witness stand, as will be noted later, how arrested persons were arrested, “investigated”, and shot.

Several of the defense counsel have argued that their clients were soldiers and that their only job was combat. But if the job with the Einsatzgruppen was strictly military, why did the high command not send military men to do it? Why did they choose Ohlendorf who had had no military training of any kind to head a military organization? Very few of the Kommando leaders had been soldiers, and the brief three or four weeks' training at Pretzsch, prior to marching into Russia, consisted only of drilling and target practice on the rifle range. It is obvious that

they were being sent into Russia not as combat soldiers, but as ideological exponents. In the field they were a travelling RSHA, they were a Gestapo on wheels.

Report No. 128 describes the executions by Einsatzgruppe C of 80,000 persons and explains that 8,000 of them were "convicted of anti-German or Bolshevistic activities".

The report goes on further to say—

"Even though *approximately 75,000 Jews* have been liquidated in this manner, it is already at this time evident that this cannot be a *possible solution of the Jewish problem.*"

The report-writer explains that, in small towns and villages, they had achieved a complete liquidation of the "Jewish problem, and that, in the larger cities, after executions, all Jews had disappeared". It is evident from this statement that the main objective of the Kommandos was to kill Jews, not partisans.

Counsel for Sandberger, in his final argument, quoted from the United States [War Department] Basic Field Manual, Rules of Land Warfare—

"If the people of a country, or any portion thereof, already occupied by an army rise against it, they are violators of the laws of war and are not entitled to their protection."

Dr. von Stein, however, failed to show that the people in the respective German-occupied areas took part in any uprising. On the contrary, it was the Einsatz leaders who attempted to stir up popular tumult by instigating pogroms.

The defendant Haensch declared that, during the entire time he served in Russia, he never saw a Jew, and that he never heard of the Fuehrer Order. Although his Kommando, prior to his arrival in Russia, had admittedly slaughtered thousands of Jews, no one ever told him of this nor did he ever hear of it. This is simply incredible. And, in support of this admittedly incredulous utterance, an even more extraordinary assertion was made by his attorney, namely, that Heydrich was anxious for Haensch not to know about these things since they had nothing to do with his work in Berlin.

In defense of Blobel, who admitted in a pretrial statement that his Kommando had killed 10,000 to 15,000 people, his attorney declared in a final summation that Blobel's duties were purely administrative—adding, to be sure that these administrative duties were to be interpreted in their "widest sense".

One of Blobel's administrative duties was to conduct executions. History will be his debtor for the authoritative account he rendered on mass executions from the standpoint of the spirit and philosophy of slayer and slain. He was asked at the trial whether the doomed, as they were being led to their waiting

graves, ever attempted to break away before the shots were fired. He replied that there was no resistance and this surprised him greatly. The following interrogation then occurred:

“Q. You mean that they resigned themselves easily to what was awaiting them?”

“A. Yes, that was the case. That was the case with these people. Human life was not as valuable as it was with us. They did not care so much. They did not know their own human value.

“Q. In other words, they went to their death quite happily?”

“A. I would not say that they were happy. They knew what was going to happen to them. Of course, they were told what was going to happen to them, and they were resigned to their fate, and that is the strange thing about these people in the East.

“Q. And did that make the job easier for you, the fact that they did not resist?”

“A. In any case the guards never met any resistance, or, at least, not in Sokal. Everything went very quietly. It took time, of course, and I must say that our men who took part in these executions suffered more from nervous exhaustion than those who had to be shot.

“Q. In other words, your pity was more for the men who had to shoot than for the victims?”

“A. Our men had to be cared for.

* * * * *

“Q. And you felt very sorry for them?”

“A. Yes. These people experienced a lot, psychologically.”

Thus, to murder was added criminal impertinence. The victim is shown to be inhuman while the executioner is to be pitied. The condemned is put in the wrong and the slayer in the right. A person is robbed of his all—his very life—but it is the assassin who is the sufferer. To these people “human life was not as valuable as it was to us”. Thus we behold the moral supremacy of the murderer over the depravity of the massacred. “Our men who took part in the executions suffered more from nervous exhaustion than those who had to be shot.”

Here in cogent language is symbolized the whole story of the simple “administrative duties” of one of the leaders of the *Ein-satzgruppen* in land not his own.

Partisans

Many of the defendants admitting that they had conducted executions, explained that they had not killed any innocent persons but had merely shot partisans, to be sure, not in combat, but puni-

tively. This bald statement in itself does not suffice to exonerate one from a charge of unlawful killings. Article I of the Hague Regulations provides—

“The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

“1. To be commanded by a person responsible for his subordinates.

“2. To have a fixed distinctive emblem recognizable at a distance.

“3. To carry arms openly; and

“4. To conduct their operations in accordance with the laws and customs of war.”

It is unnecessary to point out that, under these provisions, an armed civilian found in a treetop sniping at uniformed soldiers is not such a lawful combatant and can be punished even with the death penalty if he is proved guilty of the offense.

But this is far different from saying that resistance fighters in the war against an invading army, if they fully comply with the conditions just mentioned, can be put outside the law by the adversary. As the Hague Regulations state expressly, if they fulfill the four conditions, “the laws, rights, and duties of war” apply to them in the same manner as they apply to regular armies.

Many of the defendants seem to assume that by merely characterizing a person a partisan, he may be shot out of hand. But it is not so simple as that. If the partisans are organized and are engaged in what international law regards as legitimate warfare for the defense of their own country, they are entitled to be protected as combatants.

The record shows that in many of the areas where the Einsatzgruppen operated, the so-called partisans had wrested considerable territory from the German occupant, and that military combat action of some dimensions was required to reoccupy those areas. In belligerent occupation the occupying power does not hold enemy territory by virtue of any legal right. On the contrary, it merely exercises a precarious and temporary actual control. This can be seen from Article 42 of the Hague Regulations which grants certain well limited rights to a military occupant only in enemy territory which is “actually placed” under his control.

In reconquering enemy territory which the occupant has lost to the enemy, he is not carrying out a police performance but a regular act of war. The enemy combatants in this case are, of course, also carrying out a war performance. They must, on their part, obey the laws and customs of warfare, and if they do, and then

are captured, they are entitled to the status and rights of prisoners of war.

The language used in the official German reports, received in evidence in this case, show, however, that combatants were indiscriminately punished only for having fought against the enemy. This is contrary to the law of war.

Reprisals

From time to time the word "reprisals" has appeared in the Einsatzgruppen reports. Reprisals in war are the commission of acts which, although illegal in themselves, may, under the specific circumstances of the given case, become justified because the guilty adversary has himself behaved illegally, and the action is taken in the last resort, in order to prevent the adversary from behaving illegally in the future. Thus, the first prerequisite to the introduction of this most extraordinary remedy is proof that the enemy has behaved illegally. While generally the persons who become victims of the reprisals are admittedly innocent of the acts against which the reprisal is to retaliate, there must at least be such close connection between these persons and these acts as to constitute a joint responsibility.

Article 50 of the Hague Regulations states unequivocally—

"No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as *jointly and severally* responsible."

Thus when, as one report says, 859 out of 2,100 Jews shot in alleged reprisal for the killing of 21 German soldiers near Topola were taken from concentration camps in Yugoslavia, hundreds of miles away, it is obvious that a flagrant violation of international law occurred and outright murder resulted. That 2,100 people were killed in retaliation for 21 deaths only further magnifies the criminality of this savage and inhuman so-called reprisal.

Hyde, *International Law*, Volume III, page 35, has this to say on reprisals—

"A belligerent which is contemptuous of conventional or customary prohibitions is *not* in a position to claim that its adversary when responding with like for like, lacks the requisite excuse."

If it is assumed that some of the resistance units in Russia or members of the population did commit acts which were in themselves unlawful under the rules of war, it would still have to be shown that these acts were not in legitimate defense against wrongs perpetrated upon them by the invader. Under international law, as in domestic law, there can be no reprisal against re-

prisal. The assassin who is being repulsed by his intended victim may not slay him and then, in turn, plead self-defense.

Reprisals, if allowed, may not be disproportionate to the wrong for which they are to retaliate. The British Manual of Warfare, after insisting that reprisals must be taken only in last resorts, states—

“459 * * * Acts done by way of reprisals must not, however, be excessive and must not exceed the degree of violation committed by the enemy.”

Similarly, Article 358 of the American Manual states—

“(b) *When and how employed*—Reprisals are never adopted merely for revenge, but only as an unavoidable last resort to induce the enemy to desist from illegitimate practices. * * *

* * * * *

“(e) *Form of reprisal*—The acts resorted to by way of reprisal * * * should not be excessive or exceed the degree of violations committed by the enemy.”

Stowell, in the American Journal of International Law, quotes General Halleck on this subject—

“Retaliation is limited in extent by the same rule which limits punishment in all civilized governments and among all Christian people— it must never degenerate into savage or barbarous cruelty.” (*Stowell American Journal of International Law, Vol. 36, p. 671.*)

The Einsatzgruppen reports have spoken for themselves as to the extent to which they respected the limitations laid down by international law on reprisals in warfare.

Criminal Organizations

Article 9 of the London Charter provided, *inter alia*, as follows:

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

Article 10 provided that the criminality of such groups and organizations declared criminal by the International Military Tribunal was to be considered proved and not to be questioned in any succeeding proceedings. Control Council Law No. 10 defined membership in any organization declared criminal by the International Military Tribunal as a crime.

The trial briefs on both sides in this case have devoted a great deal of space to the discussion of count three in the indictment. To the extent that the discussion has to do with the facts, it is welcome and helpful. So far as the law on the subject is concerned,

it has been stated completely and definitively by the judgment of the International Military Tribunal and therefore needs no amplification here. The International Military Tribunal declared the SS, SD and the Gestapo to be criminal organizations within the purview of the London Charter. The pertinent provisions of that judgment declaring these organizations criminal and defining the categories of membership therein follow:

SS

"The SS was utilized for purposes which were criminal under the Charter involving the persecution and extermination of the Jews, brutalities, and killings in concentration camps, excesses in the administration of occupied territories, the administration of the slave-labor program and the mistreatment and murder of prisoners of war. * * * In dealing with the SS the Tribunal includes all persons who had been officially accepted as members of the SS including the members of the Allgemeine SS, members of the Waffen SS, members of the SS Totenkopf Verbaende, and the members of any of the different police forces who were members of the SS. * * *

"The Tribunal declares to be criminal within the meaning of of the Charter the group composed of those persons who had been officially accepted as members of the SS as enumerated in the preceding paragraph who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes, excluding, however, those who were drafted into membership by the state in such a way as to give them no choice in the matter, and who had committed no such crimes. The basis of this finding is the participation of the organization in war crimes and crimes against humanity connected with the war; this group declared criminal cannot include, therefore, persons who had ceased to belong to the organizations enumerated in the preceding paragraph prior to 1 September 1939."

Gestapo and SD

"The Gestapo and SD were used for purposes which were criminal under the Charter involving the persecution and extermination of the Jews, brutalities, and killings in concentration camps, excesses in the administration of occupied territories, the administration of the slave-labor program, and the mistreatment and murder of prisoners of war. * * * In dealing with

the Gestapo, the Tribunal includes all executive and administrative officials of Amt IV of the RSHA or concerned with Gestapo administration in other departments of the RSHA and all local Gestapo officials serving both inside and outside of Germany, including the members of the frontier police, but not including the members of the border and customs protection or the secret field police, except such members as have been specified above. * * * In dealing with the SD the Tribunal includes Aemter III, VI, and VII of the RSHA and all other members of the SD, including all local representatives and agents, honorary or otherwise, whether they were technically members of the SS or not, but not including honorary informers who were not members of the SS, and members of the Abwehr who were transferred to the SD.

“The Tribunal declares to be criminal within the meaning of the Charter the group composed of those members of the Gestapo and SD holding the positions enumerated in the preceding paragraph who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes. The basis for this finding is the participation of the organization in war crimes and crimes against humanity connected with the war; this group declared criminal cannot include, therefore, persons who had ceased to hold the positions enumerated in the preceding paragraph prior to 1 September 1939.”

In order to avoid unnecessary repetition in the individual judgments, the Tribunal here declares that where it finds a defendant guilty under count three it will be because it has found beyond a reasonable doubt from the entire record that he became or remained a member of the criminal organization involved subsequent to 1 September 1939 under the conditions declared criminal in the judgment of the International Military Tribunal.

Crimes Against Humanity

These defendants are charged with war crimes and crimes against humanity. The concept of war crimes is not a new one. From time immemorial there have existed rules, laws, and agreements which kept opposing forces within bounds in the matter of the conduct of warfare, the treatment of prisoners, wounded persons, civilian noncombatants, and the like. Those who violated these rules were subject to trial and prosecution by both the country whose subjects they were and by the country whose subjects they maltreated.

But an evaluation of international right and wrong, which heretofore existed only in the heart of mankind, has now been written into the books of men as the law of humanity. This law is not restricted to events of war. It envisages the protection of humanity at all times. The crimes against which this law is directed are not unique. They have unfortunately been occurring since the world began, but not until now were they listed as international offenses. The first count of the indictment in this case charges the defendants with crimes against humanity. Not crimes against any specified country, but against humanity.

Humanity is the sovereignty which has been offended and a tribunal is convoked to determine why. This is not a new concept in the realm of morals, but it is an innovation in the empire of the law. Thus a lamp has been lighted in the dark and tenebrous atmosphere of the fields of the innocent dead.

Murder, torture, enslavement, and similar crimes which heretofore were enjoined only by the respective nations now fall within the prescription of the family of nations. Thus murder becomes no less murder because directed against a whole race instead of a single person. A Fuehrer Order, announcing the death of classifications of human beings can have no more weight in the scales of international justice than the order of a highwayman or pirate.

Despite the gloomy aspect of history, with its wars, massacres, and barbarities, a bright light shines through it all if one recalls the efforts made in the past in behalf of distressed humanity. President Theodore Roosevelt in addressing the American Congress, said in 1903—

“There are occasional crimes committed on so vast a scale and of such peculiar horror as to make us doubt whether it is not our manifest duty to endeavor at least to show our disapproval of the deed and our sympathy with those who have suffered by it.”

President William McKinley in April 1898, recommended to Congress that troops be sent to Cuba “in the cause of humanity—and to put an end to the barbarities, bloodshed, starvation, and horrible miseries now existing there, and which the parties to the conflict are either unable or unwilling to stop or mitigate.”

These two American Presidents were but expressing the yearning of all mankind for a medium by which crimes against humanity could be stopped and the instigators punished. One recommended diplomatic protest, the other armed intervention. Both methods have been used but they do not express the ideal. The former is often ineffectual and the latter achieves its benevolent objective only at further expenditure of blood. No recourse was had to law because there was no jurisprudence on the subject, nor

was there any legal procedure to punish the offenders. Humanity could only plead at the doors of the mighty for a crumb of sympathy and a drop of compassion.

But now it has been seen that humanity need not supplicate for a tribunal in which to proclaim its rights. Humanity need not plead for justice with sobs, tears, and piteous weeping. It has been demonstrated here that the inalienable and fundamental rights of common man need not lack for a court to proclaim them and for a marshal to execute the court's judgments. Humanity can assert itself by law. It has taken on the robe of authority.

Following the London Agreement of 8 August 1945 between the four Allied powers, 19 other nations expressed their adherence to that agreement. In giving effect to the London Agreement and the Charter pursuant thereto, as well as the Moscow Declaration of 30 October 1943, the Allied Control Council formulated its Law No. 10 which treated, among other things, of crimes against humanity. Those who are indicted under this provision, however, are not responding alone to the nations which have approved the principles expressed in the London and Moscow Agreements, they are answering to humanity itself, humanity which has no political boundaries and no geographical limitations. Humanity is man itself. Humanity is the race which will go on in spite of all the fuehrers and dictators that little brains and smaller souls can elevate to platforms of tinsel poised on bastions of straw.

Crimes against humanity are acts committed in the course of wholesale and systematic violation of life and liberty. It is to be observed that insofar as international jurisdiction is concerned, the concept of crimes against humanity does not apply to offenses for which the criminal code of any well-ordered state makes adequate provision. They can only come within the purview of this basic code of humanity because the state involved, owing to indifference, impotency or complicity, has been unable or has refused to halt the crimes and punish the criminals.

At the 8th Conference for the Unification of Penal Law held on 11 July 1947, the Counselor of the Vatican defined crimes against humanity in the following language:

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

The International Military Tribunal, operating under the London Charter, declared that the Charter's provisions limited the Tribunal to consider only those crimes against humanity which were committed in the execution of or in connection with crimes against peace and war crimes. The Allied Control Council, in its Law No. 10, removed this limitation so that the present Tribunal has jurisdiction to try all crimes against humanity as long known and understood under the general principles of criminal law.

As this law is not limited to offenses committed during war, it is also not restricted as to nationality of the accused or of the victim, or to the place where committed. While the overwhelming majority of those killed in the present case were Soviet citizens, some were German nationals. A special report prepared by Einsatzgruppe A, and previously quoted in another connection, declared—

“Since December 1940 transports containing Jews had arrived at short intervals *from the Reich*. Of these 20,000 Jews were directed to Riga and 7,000 Jews to Minsk * * * all evacuated Jews who survive the winter can be put into this camp (apart of the Riga ghetto) in the spring. Only a small section of the Jews *from the Reich* is capable of working. About 70 to 80 percent are women and children or old people unfit for work. The death rate is rising continually also as a result of the extraordinary hard winter.” [Emphasis supplied.]

Another report, already referred to, spoke of the execution of 3,500 Jews “most of whom had been sent to Minsk from Vienna * * * Bremen and Berlin.”

These two instances fall clearly within count one of the indictment which covers, *inter alia*, crimes against German nationals.

Although the Nuernberg trials represent the first time that international tribunals have adjudicated crimes against humanity as an international offense, this does not, as already indicated, mean that a new offense has been added to the list of transgressions of man. Nuernberg has only demonstrated how humanity can be defended in court, and it is inconceivable that with this precedent extant, the law of humanity should ever lack for a tribunal.

Where law exists a court will rise. Thus, the court of humanity, if it may be so termed, will never adjourn. The scrapping of treaties, the incitement to rebellion, the fomenting of international discord, the systematic stirring up of hatred and violence between so-called ideologies, no matter to what excesses they may lead, will never close the court doors to the demands of equity and justice. It would be an admission of incapacity, in contradiction of every self-evident reality, that mankind, with intelligence and will, should be unable to maintain a tribunal holding inviolable the

law of humanity, and, by doing so, preserve the human race itself.

Through the centuries, man has been striving for a better understanding between himself and his neighbor. Each group of people through the ages has carried a stone for the building of a tower of justice, a tower to which the persecuted and the down-trodden of all lands, all races, and all creeds may repair. In the law of humanity we behold the tower.

Simferopol

Although the tone of this opinion is of necessity severe, it is without bitterness. It can only be deplored that all this could happen. The defendants are not untutored aborigines incapable of appreciation of the finer values of life and living. Each man at the bar has had the benefit of considerable schooling. Eight are lawyers, one a university professor, another a dental physician, still another an expert on art. One, as an opera singer, gave concerts throughout Germany before he began his tour of Russia with the Einsatzkommandos. This group of educated and well-bred men does not even lack a former minister, self-unfrocked though he was. Another of the defendants, bearing a name illustrious in the world of music, testified that a branch of his family reached back to the creator of the "Unfinished Symphony", but one must remark with sorrow that it is a far cry from the Unfinished Symphony of Vienna to the finished Christmas massacre of Simferopol, in which the hapless defendant took an important part.

It was indeed one of the many remarkable aspects of this trial that the discussions of enormous atrocities was constantly interspersed with the academic titles of the persons mentioned as their perpetrators. If these men have failed in life, it cannot be said that it was lack of education which led them astray, that is, lack of formal education.

Most of the defendants, according to their own statements, which there is no reason to disbelieve, came of devout parents. Some have told how they were born in the country and that, close to nature and at their mothers' knee, learned the virtues of goodness, charity, and mercy. It could be said that the one redeeming feature about this entire sordid affair is that those virtues are still recognized. One inexperienced in the phenomena of which the human soul is capable, reading the reports of the Einsatzgruppen, could well despair of the human race. Here are crimes that defy language in the depths and vastness of their brutality. Here pitilessness reaches its nadir and nothing in Dante's imagined Inferno can equal the horror of what we have discovered happened in 1941, 1942, and 1943 in White Ruthenia, the Ukraine, Lithuania, Esthonia, Latvia, and the Crimea.

In this trial, one was constantly confronted with acts of men which defied every concept of morality and conscience. One looked in on scenes of murder on so unparalleled a scale that one recoiled from the sight as if from a blast of scalding steam.

But herein is the paradox, and with it the moral encouragement of redemption. Some of the defendants called witnesses to testify to their good deeds, and practically all of them submitted numerous affidavits extolling their virtues. The pages of these testimonials fairly glitter with such phrases as "honest and truth-loving", "straight-thinking and friendly manner", "industrious, assiduous, and good-natured", "of a sensitive nature", "absolutely honest".

Through the acrid smoke of the executing rifles, through the fumes of the gas vans, through the unuttered last words of the one million slaughtered, the defendants have recalled the precepts gained at their mothers' knee. Though they seemed not to see the frightful contrast between their events of the day and those precepts of the past, yet they do recognize that the latter are still desirable. Thus, the virtues have not vanished. So long as they are appreciated as the better rules of life, one can be confident of the future.

Nor are the affidavits merely subjective in phrase. They point out objectively what the defendants did in attacking injustice and intolerance. In various parts of Europe (always with the exception of Russia) the Tribunal is told they occasionally interceded in behalf of oppressed populations and broke lances with the local Nazi despots. The affidavits state, for example, that Ott who enforced the Fuehrer Order from beginning to end in Russia was all kindness and gentleness to the villagers in Grosbliederstroff in the Lorraine, and that Haensch, whose conduct in the East leaves much to be desired, was the epitome of charity in Denmark where the population in paeons of thanksgiving showered him with adulatory messages and bouquets of flowers. During the period that Naumann was stationed in Holland, one affiant states, Naumann befriended the Jews, got them out of concentration camps, and released hostages. In fact, according to one affidavit, Naumann was known as a man "with softness toward Jews".

What is the explanation for the appalling difference between the virtues which others saw in these defendants and their deeds as described by themselves? Was it the intimate companionship with evil? The poet Pope sought to describe this phenomenon in his quatrain—

"Vice is a monster of so frightful a mien,
As to be hated needs but to be seen;

Yet seen too oft, familiar with her face,
We first endure, then pity, then embrace."

One of the defense counsel, a highly respected member of the local bar apparently would seem, unwittingly, to have given an explanation. From the constant association with the case, he found himself arguing in his summation speech, "What did Schubert actually do which was criminal?" And then he outlined Schubert's actions—

"Schubert first goes to the gypsy quarter of Simferopol and sees them being loaded aboard and shipped off. Then he drives to the place of execution, sees the rerouting of traffic, the roads blocked off, persons being unloaded, valuables handed over, and the shooting. Finally he drives back once more along the way to the gypsy quarter and there again sees them being loaded aboard and carried off, and then returns to his office. That is what he did."

SS Obersturmfuehrer Schubert oversees an execution of human beings who happen to be gypsies, there is no assertion anywhere that these gypsies were guilty of anything but being gypsies. He sees that the roads are blocked off, that the victims are loaded on trucks and taken to the scene of execution, that their valuables are taken from them and then he watches the shooting. This is what Schubert did, and the question is asked: What is wrong about that? There is no indication of any realization here that Schubert was taking an active part in *mass murder*. Counsel even goes further and says that when Schubert reported to Ohlendorf what had happened, he stated that he saw "nothing unusual".

The reference to counsel, when it occurs, is not intended as any criticism of professional conduct. It is the function of a lawyer to represent to the best of his ability his client's cause and it must now be apparent what difficulties confronted the attorneys in this case. Nonetheless, with industry and skill, with patience and perseverance they made their presentations so that the Tribunal was not denied any fact or argument which could be submitted in behalf of the accused. Regardless of the results of the judgment, it cannot be said that the accused did not have the utmost and fullest defense.

Many of the affidavits introduced in behalf of defendants spoke of religion. One related how Seibert often accompanied his mother to church. While he was in the Crimea, did he recall these visits to the house of God with his mother, and if he did, could he reconcile his activities there with the teachings of religion and of his mother?

This is a court of law, and the presence or absence of religion on the part of any defendant is not an issue in this trial. The fact,

however, that Seibert advanced his early Christian training as an item of defense is indication that he at least recognizes there is a dissimilarity between what he learned and what he later did. This affidavit is additionally interesting because it impliedly repudiates the condemnations of religion by men like Goebbels, Rosenberg, Himmler, and above all, Hitler himself, who designated the church as the only remaining unconquered ideological opponent of National Socialism, continually insulting it in speeches and pronouncements.

Bormann said—

“National Socialist and Christian concepts are irreconcilable. * * * If therefore in the future, our youth knows nothing more of this Christianity whose doctrines are far below ours, Christianity will disappear by itself. * * * All influences which might impair or damage the leadership of the people exercised by the Fuehrer with the aid of the NSDAP must be eliminated. More and more the people must be separated from the churches, their organs, and the pastors.”

With this antireligious attitude dominating National Socialism, it is interesting to note that at least ten of the defendants, according to their own statements, formally left the church of their childhood.

And here one must tell of the Christmas of Simferopol in the year of 1941. In the early part of December the commander of the 11th Army, which was located in that area, notified the chief of Einsatzkommando 11b that the army expected them to kill some several thousand Jews and gypsies before Christmas.

This savage proposal, coming on the eve of one of the holiest days of the year, did not consternate the Kommando leader, as one might expect. On the mystic chords of memory, no echo sounded of the Christmas carols he had heard in childhood, nor did he recall the message of Peace on Earth and Good Will Toward Men. The only impediment this Kommando leader saw in the execution of the order was that he lacked enough men and equipment for so accelerated an assignment, but he would do his best. He called on the army quartermaster and obtained sufficient personnel, trucks, guns, and ammunition to do the bloody deed, and it was done! The Jews and gypsies—men, women, and children—were in their graves by Christmas.

On Christmas Day the executioners were depressed, the Tribunal was told, not because of the slaughter, but because they now feared for their own lives. Death, which had been so commonplace a day or two before, presently revealed itself as vivid and frightening. It might overtake the executioners themselves. Life became

sweet and precious. The Kommando leader testified that the danger existed they might fall into the hands of the Russians.

But at last they overcame their apprehensions and they found themselves in the mood to celebrate their own Christmas party. Their chief, Otto Ohlendorf, made a speech on that occasion. The defendant Braune was questioned on this speech.

“Q. And did he talk on religious matters?”

“A. I cannot give any details of the words any more. I don’t know whether he mentioned Christ, but I know Herr Ohlendorf’s attitude on all this.

“Q. What was his attitude as he delivered it in his speech? What did he say that was of religious significance?”

“A. I really cannot give any details any more.

“Q. Did anybody offer any prayers on Christmas Day of 1941?”

“A. Your Honor, I do not know. * * *

“Q. Were any prayers offered for the thousands of Jews that you had killed * * *?”

“A. Your Honor, I don’t know whether anyone prayed for these thousands of Jews.”

Did this Christmas massacre serve the best interests of Germany and her people? Did it harmonize with the theory of moral revulsion to the Fuehrer Order, as proclaimed by the defendants?

How far did the defendants get away from religion? It is to be repeated here that it is entirely irrelevant to the issue before the Tribunal as to whether the defendants are religious or not. They can be atheists of the first degree and yet be as innocent as the driven snow of any crime. Religion is mentioned because several of the defendants introduced the subject, and their references to religion are pertinent in the evaluation of the credibility of certain testimony.

Ernst Biberstein, the defendant who was a minister of the Gospel, left the church in 1938. At that time he repudiated organized religion and claims to have founded a religion of his own. This religion, he stated, was based on the love of his fellowmen. Despite his definite abandonment of the church, he states he was regarded as a clergyman by his fellow officers and emphasized this point as a reason why he could not have committed the murders with which he is charged. He did admit to attending various executions. Since, according to his testimony, he still worshipped at the invisible altar of his own religion, he was asked whether he attempted to offer comfort and solace to those who were about to die. His answer was that since the Bolshevik ideology advocated the movement of atheism, “one should not throw pearls before swine”. Then came the following:

“Q. Did you think that because they were Bolsheviks and had been fighting Germany that they did not have souls?”

“A. No.

“Q. You did believe they had souls then, didn’t you?”

“A. Of course.

“Q. But because they were of the attitude which you have expressed, you did not think it was worth while to try to save those souls?”

“A. I had to assume that these were atheists. There are people who do not believe in God, who have turned away from God; and if I tell such a man a word of God, I run the danger that the person will become ironic.

“Q. Well, suppose he did become ironic, that could not be any worse than the fact that he was going to be killed rather soon. Suppose he did become ironic, how did that harm anyone?”

“A. These things are too sacred to me that I would risk them in such situations.”

He was further asked—

“Do you think that you demonstrated that ‘Love of fellow men’ by letting these people go to their deaths without a word of comfort along religious lines, considering that you were a pastor? Did you demonstrate there a ‘love of fellow men?’”

And his answer was—

“I didn’t sin against the Commandments of Love.”

Did Biberstein tell the truth when he said that the core of his religion was “Love of his fellow men” and then ordered the shooting of innocent people whom he regarded as swine? Was he trustworthy when he declared that he never heard of the Fuehrer Order until he arrived in Nuernberg? Was he credible when he announced that during all the time he was in Russia, he never learned that Jews were shot because they were Jews?

Religion, which through the ages, has strengthened the weak, aided the poor, and comforted the lonely and oppressed, is man’s own determination, but that a minister of the Gospel, via the road of Nazism, participated in mass executions is an observation that cannot go unnoticed. When the Swastika replaced the Cross and Mein Kampf dislodged the Bible, it was inevitable that the German people were headed for disaster. When the Fuehrerprinzip took the place of the Golden Rule, truth was crushed and the lie ruled with an absolutism no monarch has ever known. Under the despotic regime of the lie, prejudice supplanted justice, arrogance canceled understanding, hatred superseded benevolence—and the columns of the Einsatzgruppen marched. And in one of the front ranks strode the ex-minister Ernst Biberstein.

The Fuehrerprinzip

In every Nuernberg trial, an invisible figure appears in the defendant's dock. At each session in this Palace of Justice, he has entered the door and quietly moved to his place among the other defendants. For over two years he has been making his entrance and exits. He never takes the witness stand, he never speaks, but he dominates every piece of evidence, his shadow falls over every document.

Some of the accused are ready to charge this sinister shadow with responsibility for their every reverse and misfortune. But were he to cast off the cloak of invisibility and appear as he was, the animadversions of the other occupants of the defendants' box might not be so audible, because he knows them well. He was no sudden interloper in Germany's destiny. He did not appear in a flash and order his present companions into action. Had it happened that way, the story of physical and moral duress they recounted from the witness stand would not be so incongruous. But, of their own free will, they threw in their lot with that of the specter's, and in their own respective functions enthusiastically carried out the shadow's orders, who was then not a shadow but a fire-breathing reality.

In explanation of their willingness to follow him in those days, they explain they had no reason to doubt him. He had been so successful. But the very successes they cheered most were usually this man's greatest crimes. Each defendant has claimed that the propaganda of the day assured them that Germany was always fighting a defensive war, but these men were not outsiders, nor were they children. They were part of the government, they belonged to the regime. It is incredible that they should believe that Germany was being attacked by Denmark, Yugoslavia, Czechoslovakia, Greece, Belgium, and even little Luxembourg. Indubitably they revelled in these successes. One of the defense counsel declared that the defendants could well believe of Hitler that "here was a man whom no power could resist".

And indeed never did a man wield so much power and never was a living man so ignominiously and stupidly obeyed by other men. Never did living beings, made in the image of man, so pusillanimously grovel at feet of clay. But it is not true that no one could resist him. There were people who could resist him, or at least refused to be a party to his monstrous criminality. Some voluntarily left Germany rather than acknowledge him as their spiritual leader. Others opposed him and ended up in concentration camps. It is a mistake to say or assume that all the German people approved of nazism and the crimes it fostered and committed. Had that been true, there would have been no need of

Stormtroopers in the early days of the Party, and there would have been no need for concentration camps or the Gestapo, both of which institutions were inaugurated as soon as the Nazis gained control of the German State.

But against those who looked with alarm and foreboding on the violences of nazism, there were those who could not resist the glory, pomp, and circumstance of war, nor the greed of unbridled domination. They accepted Hitler with fervor and passion because they believed Hitler could lead them to gratification of their bloated vanity and lust for power, position, and luxurious living.

Nor have all forsaken their "successful" leader. Several of the defendants in this case have expressed their continuing belief in the Fuehrer. One could not bring himself to blame Hitler for any of the illegal deaths under discussion. Another regarded him as a great leader, if not a great statesman. Still another, when asked if he would have been satisfied if Hitler had succeeded in his aims, replied with a categorical affirmative. The defendant Klingelhoefler stated that he would have been happy if Hitler had won the war, even at the expense of Germany in ruins, with two million Germans killed and the entirety of Europe devastated. One other defendant told of his adoration for Hitler which apparently had not changed since 1945. The expression of such adoration offers convincing testimony on the mental attitude of the defendant at the time he received and executed the Fuehrer Order.

That Hitler was a man of extraordinary capacities cannot be doubted, but his capabilities for harm would have been *nil* had he not had willing, enthusiastic collaborators like the defendants who accepted his mad out-pourings and hysterical maledictions against defenseless minorities, as if his pronouncements were the apostrophies of a semidivinity.

These defendants were among those who made it possible for a megalomaniac to achieve his ambition of putting the world beneath his heel or to bring it crashing in ruins about his head. Some of these defendants, in following Hitler, may have believed that, in executing his will, they were serving their country. Their sense of justice staggering from the intoxication of command, their normal reactions drugged by the opiate of their blind fealty, their human impulses twisted by the passion of their ambitions, they made themselves believe that they were advancing the cause of Germany. But Germany would have fared better without such patriotism. When Samuel Johnson uttered his cynical line that patriotism is the last refuge of a scoundrel, he could well have had in mind a Hitlerian patriotism.

Hitler struck the match, but the fire would have died a quick death had it not been for his fellow arsonists, big and little, who

continued to supply the fuel until they, themselves, were scorched by the flame they had been so enthusiastically tending. If history has taught anything, it has demonstrated with devastating finality that most of the evils of the world have been due to craven subservience by subchiefs upon a man who through boundless ambition unrestrained by conscience has formulated plans which, proposed by anyone else, would be rejected as mad.

Dictatorship in government can only lead to disaster because whatever benefits derive from centralized control are lost in the infinite damage which inevitably follows lack of responsibility. That unlimited authority and power are poisons which destroy judgment and reason is a demonstrable fact as conclusively established as any chemical formula tried and tested in a laboratory. The genius of true democratic government is that no one person is allowed to take the nation with its millions of people into the valley of decisive action without the advice, counsel, and approval of those who are to be subjected to the hazards, hardships, and potentially fatal consequences of that decision.

The defendants must have found themselves repeatedly at the crossroads where and when there was still the opportunity to turn in the direction of the ideals which they had once known, but the willful determination to follow the trail of blood prints of their voluntarily accepted leader could only take them to the goal they had never intended. It is possible that currently the defendants realize the mistake which they made. Though most of them have sought to rationalize their deeds, though they attempted to explain that every executioner's rifle was aimed at a national peril, it is possible they now grasp the disservice they have done not only to humanity but to their own Fatherland. It may even be that through this trial with its sobering revelations, they will have demonstrated what are the inevitable consequences of any plan which stems from hatred and intolerance; and here they may have proved what has never been disproved: There is only one Fuehrer, and that is truth.

Alfred Rosenberg, the acknowledged master philosopher of nazism wrote on "The Myth of Blood"—

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

What does this mean? No one has yet deciphered its cadenced incoherence, but as Rosenberg himself claimed in it conclusive proof of the master race, others were willing to assume in this torturing abstruseness the authority of a revealed writing. Be-

neath the meaningless phrases went the subtle theme of a race of men so different from, and superior to, other men that it required an occult language, whose alphabet was understood only by the elect, to carry the wisdom of this ineffable superiority. From it could be proved everything and nothing. From it the Nazi hierarchists drew their meretricious inspiration which led to their licentious and profligate deeds.

There have been Alfred Rosenbergs in other eras as well, and they also have confirmed the rulers of nations, states and tribes in their superiority over other nations, states and tribes, but the results have invariably been the same. The theme of might against right has, through the centuries, led to consequences which were catastrophic to the assumed stronger. Through the pauseless sweep of the centuries, despots and tyrants have ever and again appealed to the weakness of their followers, the weakness of supposed strength, and have utilized this primitive vanity and arrogance of the little man in the accomplishment of their monumental horrors. Over and over, this monotonous and savage drama has appeared on the stage of history, but never was it played with such totality, fury, and brutality as it was with the Nazis in the title role.

That so much man-made misery should have happened in the twentieth century, which could well have been the fruition of all the aspirations and hopes of the countries which went before, makes the spectacle almost unsupportable in its unutterable tragedy and sadness. Amid the wreckage of the six continents, amid the shattered hearts of the world, amid the sufferings of those who have borne the cross of disillusionment and despair, mankind pleads for an understanding which will prevent anything like this happening again. That understanding goes back to the words spoken 1900 years ago, words which had they been honored in the observance rather than in the breach would have made the events narrated in this trial impossible—

“Therefore, all things whatsoever ye would that men should do to you, do ye so to them.”

Individual Judgments

In the judgments on the individual defendants now to follow, no attempt will be made to cite from all the testimony and documents introduced on both sides. Such a treatment would give to the over-all judgment a length out of all proportion to the nature of a final adjudication. Nor is it necessary. Although the indictment has charged the several defendants with multiplicitous murders, the verdict of guilty, where arrived at, does not need to be predicated on the total number contended for by the prosecution.

It is also to be noted that while emphasis throughout the trial has been on the subject of murder, the defendants are charged also in counts one and two with crimes against humanity and violations of laws or customs of war which include but are not limited to atrocities, enslavement, deportation, imprisonment, torture, and other inhumane acts committed against civilian populations. Thus, if and where a conclusion of guilt is reached, such conclusion is not based alone on the charge of murder but on all committed acts coming within the purview of crimes against humanity and war crimes. In each adjudication, without its being stated, the verdict is based upon the entire record.

DEFENDANT OTTO OHLENDORF

The evidence in this case could reveal not one but two Otto Ohlendorfs. There is the Ohlendorf represented as the student, lecturer, administrator, sociologist, scientific analyst, and humanitarian. This Ohlendorf was born on a farm, studied law and political science at the universities of Leipzig and Goettingen, practiced as a barrister at the courts of Alfeld Leine and Hildesheim, became deputy section chief in the Institute for World Economics in Kiel, then section chief at the Institute for Applied Economic Science in Berlin, and in 1936 became economic consultant in the SD. On behalf of this Ohlendorf, defense counsel has submitted several hundred pages of affidavits which speak of Ohlendorf's efforts to make the SD purely a fact-gathering organization, of his opposition to totalitarian and dictatorial tendencies in the cultural life of Germany, of his defense of the middle classes, and of his many clashes with Himmler, the SS Chief, and Mueller, the Chief of the Gestapo. One of these affidavits declares—

“Ohlendorf did not see superior and inferior races in various peoples * * *. He considered race only as a symbolic notion. The individual nations to him were not superior or inferior, but different. The domination of one people with its principles of life over the other he considered, therefore, wrong and directed against the laws of life. For him, the goal to be desired was a system among peoples by which every nation could develop according to its own nature, potentialities, and abilities. Folk, in his view, also was not dependent on a state organization.”

On the other hand, we have the description of an SS General Ohlendorf who led Einsatzgruppe D into the Crimea on a race-extermination expedition. That Otto Ohlendorf is described by that same Ohlendorf. If the humanitarian and the Einsatz leader are merged into one person, it could be assumed that we are here dealing with a character such as that described by Robert Louis Stevenson in his “Dr. Jekyll and Mr. Hyde”. As interesting as it

would be to dwell on this possible dual nature, the Tribunal can only make its adjudication on the Ohlendorf who, by his own word, headed an organization which, according to its own reports, killed 90,000 people.

The Tribunal finds as a fact from the reports, records, documents, and testimony in this case that Einsatzgruppe D did kill 90,000 persons in violation of the laws and customs of war, of general international law, and of Control Council Law No. 10.

Whatever offense Ohlendorf may have to answer for, he will never need to plead guilty to evasiveness on the witness stand, which indeed cannot be said of all the defendants. With a forthrightness which one could well wish were in another field of activity, Otto Ohlendorf related how he received the Fuehrer Order and how he executed it. He never denied the facts of the killings and only seeks exculpation on the basis of the legal argument that he was acting under superior orders. Further, that, as he saw the situation, Germany was compelled to attack Russia as a defensive measure and that the security of the army, to which his group was attached, called for the operations which he unhesitatingly admits. All these defenses have been treated in the general opinion and need not be repeated here.

In addition to Ohlendorf's direct testimony in this present trial, he voluntarily appeared as a witness in the International Military Tribunal trial and there described under oath the entire Einsatz program of extermination. With but a minor exception, he confirmed in this trial the testimony presented before the IMT. Thus, that testimony, by reference, is incorporated into the record of the instant trial and forms further evidence in support of the findings reached in this judgment. Even outside the courtroom Ohlendorf admitted untrammelledly the activities of the Einsatzgruppe under his charge. In at least four affidavits he related how his command functioned. He told of the area covered by his Einsatzgruppe, the division of his group into smaller units, the manner and methods of execution, the collection of the valuables of the victims, and the writing and submitting of reports to Berlin.

The record of Otto Ohlendorf, the chief of department III of the RSHA and the Chief of the Einsatzgruppe D, is complete.

The record and analysis of the Otto Ohlendorf who was born in the country and showed great promise in the field of learning, purposeful living, and sociological advancement will need to be made elsewhere. Unfortunately, it cannot form part of this judgment which can only dispose of the charges of criminality presented in the indictment. Those charges against Otto Ohlendorf have been proved before this Tribunal beyond a reasonable doubt.

The Tribunal accordingly finds Otto Ohlendorf guilty under counts one and two of the indictment.

It has been argued by Dr. Aschenauer that Ohlendorf was not a member of a criminal organization as determined by the International Military Tribunal decision and Control Council Law No. 10. In support of this argument, it is asserted that Ohlendorf was ordered to Russia as an employee of the Reich Group Commerce. It is impossible that Ohlendorf, as the leader of Einsatzgruppe D, should have been functioning as a member of the Reich Group Commerce. He headed office III of RSHA before he went to Russia, and he headed it when he returned.

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

HEINZ JOST

SS Brigadier General and Major General of Police Heinz Jost specialized in law and economics when he studied at the universities of Giessen and Munich. He later worked in the district court at Darmstadt. He joined the Nazi Party in February 1928 and subsequently became a member of the SA, the SS, and SD. He served as an SS officer in the Polish campaign. He headed Einsatzgruppe A in the Russian campaign. His attorney devoted many pages in his final plea to arguments on self-defense, necessity, and national emergency, confirming and emphasizing what was said at great length by Dr. Aschenauer on these subjects. In the latter part of the plea, defense counsel insisted that his client in no way participated in the execution of the Fuehrer Order. If, as a matter of fact, the defendant committed or approved of no act which could be interpreted either as a war crime or crime against humanity, the argument of self-defense and necessity is entirely superfluous.

The record clearly demonstrates, however, that as Chief of Einsatzgruppe A, the defendant was aware of the criminal purpose to which that organization was put, and, as its commander, cannot escape responsibility for its acts. Jost outlined his activities outside of Germany in the following language:

“During my activity as Chief of the Einsatzgruppe A, I was also Commander in Chief of the Security Police and SD in Eastland (BdS Ostland). Headquarters for the Einsatzgruppe A was located in Krasnogvardeisk, while headquarters for the Commander in Chief for the Security Police and SD Eastland was located in Riga. On the whole, the duties of a Commander in Chief of the Security Police and SD were the same as those of a Chief of an Einsatzgruppe, and the duties of a Commander of

the Security Police and SD (KdS) the same as those of a Chief of a Sonderkommando or Einsatzkommando, respectively.”

During the time the territory under his jurisdiction was subject to army control, Jost as Chief of Einsatzgruppe A cooperated with the army command. When the territory came under civilian administration, he, as Commander in Chief of Security Police and SD received his orders from the Higher SS and Police Leader or SS and Police Leader. Under this double designation he was responsible for all operations conducted in his territory.

Report No. 195, dated 24 April 1942, reporting on activities within the area under the command of Einsatzgruppe A, states—

“Within the period of the report a total of 1,272 persons were executed, 983 of them Jews, who had infectious diseases or were so old and infirm that they could not be any more used for work, 71 gypsies, 204 Communists and 14 more Jews who had been guilty of different offenses and crimes.”

The prosecution charges the defendant with responsibility for these murders. The item itself does not carry the exact date of its happening, but the latest date revealed in the entire document is 26 March. Thus the execution of the 1,272 persons mentioned therein could not have occurred on a date subsequent to 26 March. The defendant testified that he was in Smolensk when, on 24 or 25 March he received his orders to take over the command of Einsatzgruppe A and that he did not arrive in Riga, headquarters of the Einsatzgruppe, until 28 and 29 March.

The record shows that Einsatzgruppe A had accomplished some hundred thousand murders prior to 29 March and, as late as 26 March as indicated by the report above-mentioned, was still killing Jews. It would be extraordinary that it should suddenly cease this slaughter for no given reason and with the Fuehrer Order still in effect, three days before Jost arrived.

The prosecution argues that it would not take an officer of Jost's rank (major general of police) four days to travel the 400 miles between Smolensk and Riga. But whether Jost arrived the day before or the day after is not controlling in the matter of responsibility for the program involved. The Fuehrer Order was in effect prior to Jost's arrival at Riga, and he did not revoke it when he took over the Einsatzgruppe. The defendant does state that, when in May 1942 he received an order from Heydrich to surrender Jews under 16 and over 32 for liquidation, he placed the order in his safe and declined to transmit it.

Report No. 193, dated 17 April 1942, reports an execution in Kovno [Kaunas], as of 7 April 1942, of 22 persons “among them 14 Jews who had spread Communist propaganda”. The defendant was asked on the witness stand—

“Do you regard it proper, militarily proper, to shoot fourteen people, or only one person for that matter, because he spreads Communist propaganda?”

and he replied—

“According to my orders these measures had to be carried out. In that far it was correct and justified.”

Defense counsel in arguing this phase of the case said that the victims had indulged in Communist propaganda “up to the last moment”. But there is nothing in international law which justifies or legalizes the sentence of death for political opinion or propaganda.

At the trial the defendant testified that he did not remember any reports about “mass executions” during his time. If there had been no such executions during his incumbency, it is reasonable to suppose that Jost would have emphatically so declared. It cannot be assumed that so grave and solemn an event as a mass execution could fall into the realm of the forgettable. Thus, the only possible conclusion is that here the defendant was equivocating.

On 15 June 1942, at a time when Jost was admittedly in charge of the area, one of his subordinates, SS Hauptsturmfuehrer Truebe, wrote to the RSHA, requesting shipment of a gas van and gas hoses for three gas vans on hand. Jost denied any knowledge of this letter but admitted that the subordinate in question had the authority to order equipment. It is not reasonable to suppose that the ordering of such extraordinary equipment would not come to the attention of the leader of the organization and the fact that the ordered gas van was to go to White Ruthenia (where he was also in command) does not absolve the defendant from responsibility.

The defendant, as all other defendants in this case, is not charged alone with the crime of murder. The indictment lists various offenses, including enslavement, imprisonment, and other inhumane acts against civilian populations. Thus, the defendant cannot escape responsibility for a consenting part at least in the slave-labor program instituted by Sauckel in his territory. Report No. 193, dated 17 April 1942, carried this item—

“On orders by the new Plenipotentiary for Mobilization of Labor, Gauleiter Sauckel, the commissioner general, ‘White Ruthenia’, has to muster about 100,000 workers. But until now only 17,000 have been shipped. In order to make available the manpower requested, the principle of voluntary recruiting is abandoned and compulsory measures will be adopted.”

As already mentioned, Jost claims that he opposed the Heydrich order of 19 May 1942. He testified that he visited Heydrich and Himmler and urged his recall and even spoke to Rosenberg against

the extermination program in principle. He asserted that later he was recalled and subjected to disciplinary action. Although he retained his general officer rank in the police he was sent to the front, as a sergeant in the Waffen SS. The credibility of this story depends entirely on Jost, since all the other alleged conferees are dead, and there were apparently no surviving witnesses that he could call to confirm his conversations.

Although it is possible that his illness at the time had something to do with the reversal in his military fortunes, it can be believed that illness alone could not have brought about such a drastic change in his situation. Nonetheless the evidence is irrefutable that he was a principal in and an accessory to the extermination program in his territory. He may have, after participation in this enterprise, at last relented, and this is to his credit, but this cannot wipe out the criminality which preceded his withdrawal from the field.

The Tribunal finds from all the evidence in the case that the defendant is guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

DEFENDANT ERICH NAUMANN

SS Brigadier General Erich Naumann left school at the age of sixteen and obtained employment in a commercial firm in his home town of Meissen, Saxony. In 1933 he joined the SA in a full-time capacity and then became official and officer of police. He joined the SD in 1935. He was Chief of Einsatzgruppe B from November 1941 until February or March 1943. The prosecution contends that he took over the command of this organization on 1 November 1941 and points to various pieces of evidence to confirm that contention.

(1) Naumann's personal SS record.

(2) Reports listing Naumann as being in Smolensk (Headquarters of Einsatzgruppe B) on 12 November 1941.

(3) Testimony of Steimle that he met Naumann in Russia about the middle of November.

(4) Naumann's note to the codefendant Klingelhoefler under circumstances which would suggest an attempt to influence Klingelhoefler's testimony that Naumann's duties began on 30 November.

Naumann's purpose in establishing the latter date of induction into the chiefship of Einsatzgruppe B is to refute the prosecution's

claim that he is responsible for executions committed by Einsatzgruppe B in the month of November. One report, dated 19 December 1941, described various actions which resulted in the liquidation of several thousands of people. Another report carrying the date of 22 December 1941 told of the execution of 324 Jewish prisoners of war and 680 civilian Jews.

Naumann contends that he cannot be held accountable for these executions, since the reports were published four to five weeks following the events described therein. This would date the indicated events as having occurred about the middle of November and, consequently, prior to the date he claims he took over the Einsatzgruppe command. It has not established as a fact that the operational and situation reports always appeared four to five weeks subsequent to the chronicled events. It was testified during the trial that this period of delay fluctuated and that sometimes the reports were published within two weeks after the happening of the events.

However, this discussion is more interesting than practical. Even if Naumann were to prove irrefutably and conclusively that the reports were delayed and that he did not arrive in Smolensk until 30 November this would still not exonerate him from the charges under counts one and two, for there is existing the Operational Report of 21 April 1942, covering operations from 6 March to 30 March, a period during which indubitably Naumann commanded the area under consideration. This report shows, *inter alia*, that the Einsatzkommando 9 killed 273 persons made up of 85 Russians "belonging to partisan groups", 18 "because of Communistic, seditious acts, and criminal offenses" and 170 Jews. Sonderkommando 7a executed 1,657 persons, 27 of whom were partisans and former Communists, 45 were gypsies, and 1,585 were Jews. The same report shows that Einsatzkommando 8 killed 1,609 persons made up of 20 Russian Communists, 5 criminals, 33 gypsies, and 1,551 Jews.

Defense counsel meets this report with the argument that the report was not "derived from the actual observation of the author of the document". This indeed is equivocation. The operational report was made up from accounts sent in by Einsatzgruppe B, accounts controlled by Naumann himself. In his affidavit of 27 June 1947, Naumann declared—

"The Einsatzgruppe B reported regularly on the events within its scope to the Reich Main Security Office. Written reports were sent to Berlin every three weeks and only small matters such as changes of location, transfers, and the like were transmitted by radio. The reports were prepared by my staff and submitted to me as a matter of routine."

After his attack on the reliability of the report defense counsel states—

“It is in no way intended to disclaim the assertion that executions were carried out by the Einsatz and Sonderkommandos subordinate to the Einsatzgruppe while Naumann was Chief of Einsatzgruppe B.”

But he states that perhaps the report erred because the number of executions appeared “much too high”. In other words, Dr. Gawlik claims that the numbers are incredible. To say that these figures are incredible is an entirely credible and sane observation. This whole case is incredible. This is a case where the incredible has become the norm. It is not necessary to look at the reports to be shocked with incredulity. Many of the defendants themselves made statements on the incredulous things which they did.

Naumann asserts that he did not transmit the Fuehrer Order but that it was in effect when he arrived. From this he seems to argue an absence of guilt. But Naumann had the power of command.

“The law of war imposes on a military officer in a position of command an affirmative duty to take such steps as are within his power and appropriate to the circumstances to control those under his command for the prevention of acts which are violations of the law of war.” (*Judgment, Military Tribunal I, Case No. I, the United States of America against Karl Brandt, et al., page 70.*) [See Vol. II.]

Naumann met from time to time with his Kommando leaders. He knew that they were giving full effect to the Fuehrer Order. He knew that executions were taking place and even stated that if any of his subordinates had refused to carry out the order, he would have taken disciplinary action against them.

Then it is to be noted from Naumann’s own testimony that he knew of the liquidation order even before he took command of the Einsatzgruppe. He testified—

“* * * I was ordered to Heydrich and I received clear orders from him for Russia. Now, first of all, I received the Fuehrer Order concerning the killing of Jews, gypsies, and Soviet officials * * *.”

The Tribunal finds as a fact from all the evidence in the case that Naumann was aware of the Fuehrer Order and that he carried it into effect. The only defense left him is that of the so-called superior orders. Did he agree with the order or not? If he did not and thus was compelled by chain of command and fear of drastic consequences to kill innocent human beings, the avenue of mitigation is open for consideration. If, however, he agreed with the order, he may not, as already demonstrated in the general

opinion, plead superior orders. The answer to this question can be found in his own testimony.

On 17 October 1947, he was asked on the witness stand if he saw anything morally wrong about the Fuehrer Order, and he replied in the negative. He was asked again the same question, and he replied specifically—

“I considered the decree to be right because it was part of our aim of the war and, therefore, it was necessary.”

So that there should be no doubt about his position, the Tribunal inquired if Naumann intended by his answer to say that he “saw nothing wrong with the order, even though it did involve the killing of defenseless human beings”, and he replied “yes”.

The Tribunal finds from all the evidence in the case that the defendant is guilty under counts one and two of the indictment.

The Tribunal finds also that the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

ERWIN SCHULZ

SS Brigadier General Erwin Schulz entered the army in 1918. After the First World War, he successively studied law at the University of Berlin, was employed on the staff of the Dresden Bank and joined the security police. In 1940 he became commissioner inspector of the security police and SD. He was serving as Commandant of the Fuehrerschule of the Security Police in Berlin-Charlottenburg when he was assigned to the command of Einsatzkommando 5 which formed part of Einsatzgruppe C. He left Pretzsch with his Kommando on 23 June 1941 and arrived in Lemberg [Lvov] in the early part of July. Here he was told that, prior to the evacuation of Lemberg [Lvov] by the Russians, 5,000 of the inhabitants had been murdered, and reprisals were in order, 2,500 to 3,000 people were arrested and within several days executions began. Schulz's Kommando was ordered to participate in the executions and, under his direction, shot from 90 to 100 people.

Schulz states that each executee who fell under the rifles of his Kommando had been thoroughly investigated and found guilty of participation in the massacre which preceded his arrival. He stated further that after the execution, he observed that Wehrmacht members were abusing the other 2,000 detainees being held in a stadium, and that he opened the gate and allowed these detainees to escape.

These Lemberg [Lvov] shootings, despite the defendant's explanation, still remain unexplained. Schulz states that 5,000 Ukrainians and Poles had been massacred by the Russians and

that then the invading forces, which had already executed hundreds of thousands of Poles, took reprisals against the Jews for the murder of Poles. If the operation was a "reprisal" one, as the report states, the Einsatz leaders would not have conducted investigations. If those executed were actually guilty of murder then the measure was not a reprisal but an orderly juridical procedure. Defense counsel argues that Einsatzkommando 5 really had nothing to do with this affair—

"* * * it was only to fire the shot, without having been consulted in any manner in the clarifying of the incidents which preceded the shootings."

That should have been all the more reason why Schulz should not have proceeded with the execution. Schulz testified that German soldiers had also been murdered in the Lemberg [Lvov] affair, but he could not state how many. Hitler had ordered a reprisal measure and that seemed to suffice. The defendant admitted that he conducted the execution of those allotted to him without any report of their guilt. He was not even furnished with a list of the executees.

Following the Lemberg [Lvov] affair Einsatzkommando 5 marched on to Dubno and was successively at Zhitomir and Berdichev. On 10 August while at Zhitomir, Schulz was instructed by the Einsatzgruppen leader that Jewish women and children, as well as men, were to be executed. Schultz states that, in moral rebellion against the order, he left for Berlin on 24 August, arriving there 27 August. He spoke with Streckenbach and asked to be relieved from his post, and he was assured that this would be done. He returned to the Kommando on 15 September and turned over the unit to his successor on 25 September.

Whether Schulz was actually relieved because of his protestations against the execution order cannot be conclusively known, since the other participants in that discussion, assuming that it took place, are not available. It is true that he did give up his Kommando in the latter part of September 1941. Whether this excluded him from responsibility for executions, however, remains to be seen.

Report No. 88 states that "between 24 August and 30 August, Einsatzkommando 5 carried through 157 executions by shooting comprising Jews, officials, and saboteurs." Schulz used his trip to Berlin which embraces the six days indicated in the report, as an alibi for this shooting. But if the operation was planned before he left, his absence would not exonerate him. The man who places a bomb, lights the fuse, and rapidly takes himself to other regions is certainly absent when the explosion occurs, but his responsibility is no less because of that prudent nonpresence.

The fact that Schulz still regarded himself as commander of Einsatzkommando 5, even though he knew he intended to be absent while on the trip to Berlin, is established by the fact that on the actual date of his departure, 24 August, he ordered the Kommando to move on from Berdichev to Skvira, 100 kilometers east of Berdichev, which removal actually took place on 26 August. Schulz' explanation for this removal is a laudable one, if true. He says that he wanted to avoid that his Kommando should come in contact with Higher SS and Police Leader Jeckeln who was set on execution of all Jews, including women and children. In any event, the fact remains that Schulz retained control of the Kommando until the actual arrival of his successor in the latter part of September.

Schulz has denied knowledge of the Fuehrer Order as such, but admitted that before leaving for Russia, he heard Heydrich's speech in which Heydrich said—

“That every one should be sure to understand that, in this fight, Jews would definitely take their part and that, in this fight, everything was set at stake, and the one side which gave in would be the one to be overcome. For that reason, all measures had to be taken against the Jews in particular. The experience in Poland had shown this.”

The expression “all measures” certainly put Schulz on notice as to what was expected of the Einsatz units.

The prosecution has endeavored to charge Schulz with responsibility for the executions described in Report Nos. 132 and 135. The former is dated 12 November and the latter 19 November, so that if one allowed even the maximum of five weeks' delay in publication of the reports, these executions would still fall subsequent to the date Schultz admittedly left Russia.

However, Report No. 47, dated 9 August 1941 which describes the shooting of 400 Jews (mostly saboteurs and political functionaries) would be within the time Schultz was on duty in Russia. This report makes the further statement, “Einsatzkommando 5 shot an additional 74 Jews up to this date.”

Report No. 94 definitely chronicling a period when Schulz was in command, even though absent on the Berlin trip, says, “Einsatzkommando 5 for the period between 31 August and 6 September 1941 reports the liquidation of 90 political officials, 72 saboteurs and looters, and 161 Jews.”

It has been insisted on behalf of Schulz that such Jews as were executed by his Kommando were only those who had committed offenses entitling them to be shot and in this connection Dr. Durchholz said that the “perpetrators, who were Jews, were designated only as ‘Jews’ in the reports of the Einsatzgruppe, upon orders

from superior offices, that they were not to be listed as 'saboteurs, plunderers, etc.' ”.

The only authority for this statement is the defendant Sandberger whose handling of the truth was as careless as his review of the evidence in capital cases in Esthonia. The Tribunal now declares that the record is absolutely bare of credible evidence that those listed in the column headed "Jews" fell into any category than those who were shot merely because they were Jews. The whole documentation in the case is directly to the contrary.

Dr. Durchholz claims of his client a liberal attitude towards the Jews, but he adds—

“It goes without saying that he wanted to reduce again the tremendous influence of Jewry in his Fatherland to normal proportions.”

It was just this spirit of reduction to what the Nazis called "normal proportions" which brought about the excesses in Germany leading to disfranchisement, appropriation of property, concentration camp confinement, and worse.

In his final plea, Dr. Durchholz devoted some 20 pages to Schulz' activities prior to his Russian venture. He says here that Schulz was a competent police officer, that he was considerate and polite and was regarded as an "exemplary, modest, plain person who looked after his officials like a father". That the defendant is a person of innate courtesy has been evidenced in the courtroom, but the issue in this case is whether he lived up to international law.

In this regard the Tribunal is forced to the conclusion that Schulz did not respond to the obligations imposed upon him not only by the international law but the concept of law itself, of which, as a long police official, he could not be ignorant. In spite of this, however, it can be said in his behalf that, confronted with an intolerable situation, he did attempt to do something about it.

The Tribunal finds from all the evidence in the case that the defendant is guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and Gestapo under the conditions defined by the judgment of the International Military Tribunal, and is, therefore, guilty under count three of the indictment.

FRANZ SIX

Franz Six studied at the Realschule, graduated from the classical high school at Mannheim in 1930 and then matriculated at the University of Heidelberg where he specialized in sociology and political science, receiving the degree of doctor of philosophy in

1934. He then taught at the University of Koenigsberg (where he also took up the position of press director of the German Students' Association). In 1936 he received the high academic degree of Dr. phil. habil. from the University of Heidelberg, and became Dozent in the faculty of law and political science at Koenigsberg; later, he passed examinations for the *venia legendi* at the University of Leipzig. By 1938, he was Professor at the University of Koenigsberg, and by 1939, he had obtained the chair for Foreign Political Science at the University of Berlin and was its first dean of the faculty for foreign countries.

It is to be supposed that with this formidable array of scholastic achievements, duly enumerated by the defendant himself, the youth who came to him for guidance and instruction could expect in him a comparable degree of achievement in moral honesty. Unfortunately, this may not have been true, and therein is a tragedy of its own. A school teacher is bound in conscience to hold himself impeccable in deportment because of the example he constantly presents the future citizens of the state. The example afforded by Six left something to be desired. Reference will be made to the defendant's own words on the witness stand in support of this observation.

In the early part of his testimony, on 29 October 1947, Six related to the Tribunal the tale of his student days at the University of Heidelberg. He said—

“I carried on my studies at Heidelberg for four years on an average of twenty marks a month. I needed eleven marks to live in an attic, and that left me nine marks to live on. Nine marks; that meant thirty pfennigs a day, at ten pfennigs for four rolls in the evening, and ten pfennigs for cigarettes, and this I lived through—for four years in the midst of Heidelberg Student Romanticism, where the main problems were welfare and donation and then I asked myself whether society was still healthy, if it finds so much complacency, and how it can reconcile this complacency with so much distress.”

Then on his own words he solved the enigma, “The answer which I gave myself was joining the Nazi Party.”

The fact of the matter was, however, as his own personnel record showed, he had become a Nazi in 1930, that is, even before he matriculated at the University of Heidelberg, so that whatever advantages, benefits, and comforts derived from National Socialism were already due to him at Heidelberg. Thus, by failing to tap the munificent resources which Nazism offered, while already a full-fledged Nazi, Six suffered needlessly during those four sad years at Heidelberg.

There is another illustration. Six declared he had no animosity

toward Jews and advanced his respect for two certain Jewish university professors as proof of this assertion. He was then asked whether it disturbed him that these two Jews, because of their race, were persecuted. He replied that he regarded it as "highly unpleasant" that these people should have been "affected by the new laws and regulations". Whereupon the inquiry was made as to whether he was offended by the persecution of thousands and millions of the brothers and sisters of those two professors. He answered, "What do you mean by persecution? When did the persecution begin"? When this was explained to him he conceded that the burning down of the Jewish synagogues on 9 November 1938 was a "shame and a scandal". Counsel for the prosecution now inquired if he regarded the Fuehrer Order, which called for the physical extermination of all Jews, as a "shame and a scandal". Here he saw a difference. The synagogues had been burned down without an order and therefore the destruction was a "shame and a scandal". The Fuehrer Order, however, to destroy human beings, issued from the Chief of State and consequently could not be a shame and a scandal. He later conceded that the execution of women and children was deplorable, but the killing of male Jews was proper because they were potential bearers of arms.

A great German scholar, Wilhelm von Humboldt, who founded the University of Berlin at which Six was professor and dean, had, as far back as 1809, defined "the limits beyond which the activities of the state must not go." Obviously, Six did not agree with the doctrine that there could be a limit to the activities of the state. The name of Adolf Hitler apparently threw a shade over the light of his learning, and thus, for him there was nothing wrong, even mass killings, so long as the order therefor originated with the Fuehrer.

Six became a member of the SA in 1932 and of the SS and SD in 1935. In this last named organization he attained the grade of brigadier general. On 20 June 1941 he was appointed Chief of the Vorkommando Moscow. According to the defendant, the task of this Kommando was to secure the archives and files of Russian documents in Moscow when the German troops should arrive there. The defendant arrived in Smolensk on 25 July 1941 and remained there until the latter part of August when he returned to Berlin.

It is the contention of the prosecution that the defendant's duties were not as innocuous as made out by him. The prosecution submits that the Vorkommando Moscow was used in liquidating operations while under the command of Six. Further, that the seizing of documents in Russia was done not for economic and cultural purposes, but with the object of obtaining list of Com-

unist functionaries who had themselves become candidates for liquidation.

In support of its position, the prosecution introduced Report No. 73 dated 4 September 1941, which carries on its final page the heading "Statistics of the Liquidation", and then enumerates various units of Einsatzgruppe B with the executions performed by each.

"The total figures of persons liquidated by the Einsatzgruppe as per 20 August 1941 were—

1. Stab and Vorkommando 'Moskau'	144
2. Vorkommando 7a	996
3. Vorkommando 7b	886
4. Einsatzkommando 8	6,842
5. Einsatzkommando 9	8,096

Total16,964"

The same report carries the item—

"The Vorkommando 'Moskau' was forced to execute another 46 persons, among them 38 intellectual Jews who had tried to create unrest and discontent in the newly established Ghetto of Smolensk."

Defense counsel argues that the date of this report shows that Vorkommando Moscow could not have performed the executions mentioned therein. His argument is as follows: Assuming that the executions occurred 20 August, two days must have elapsed before the report left Smolensk. Allowing then two or three days more for evaluation of the events, the report, according to Dr. Ulmer, could only have left Smolensk on 25 or 26 August. A few days were added for the transmission to Berlin and there, on 4 September 1941, it appeared as Operation Report No. 73, Dr. Ulmer then says—

"The report can therefore—and that is essential—only have been drawn up on 25 August 1941 at the earliest, i. e., on the sixth day after the defendant had left Smolensk."

But his argument is in direct conflict with the logic of chronology. No one questioned the correctness of the date of 4 September when the report was published in Berlin. Therefore, the longer the time required for the submission of the report to Berlin, the further back must be the happening of the events narrated therein, and thus the further back into the period when Six was incontrovertibly in Smolensk. The usual argument presented in matters of this kind has been that the delay between the event and the eventual publishing of the report was a longer one rather than a shorter one. In this case the date in the document itself indicates a delay of only 14 days. If Dr. Ulmer argues that the lapse of time

was longer than 14 days, then the events in question occurred prior to 20 August when no one questions that Dr. Six was present in Smolensk.

The defendant denies having anything to do with Einsatzgruppe B, and specifically states that he never made any reports to Einsatzgruppe B. Report No. 34 declares, under the heading of Einsatzgruppe B—

“Smolensk, according to the report by Standartenfuehrer Dr. Six, is as thoroughly destroyed as Minsk * * *. It was therefore not possible to have the entire Vorkommando follow to Smolensk.”

Report No. 11, dated 23 July 1941 listed Vorkommando Moscow as one of the units of Einsatzgruppe B. Furthermore, Six admitted having supplied Einsatzgruppe B with some of his interpreters.

The defendant has described himself as a “pure” scientist. His duties were so scientific that in April 1944 he made a speech in Krummhuebel at a session of consultants on the Jewish question in which he was reported as follows:

“Ambassador Six speaks then about the political structures of world Jewry. The physical elimination of Eastern Jewry would deprive Jewry of its biological reserves * * *. The Jewish question must be solved not only in Germany but also internationally.”

At this same session—

“Embassy counsellor *v.* Thadden speaks about the Jewish political situation in Europe and about the state of the anti-Jewish executive measures * * *. (As the details of the state of the executive measures in the various countries, reputed by the consultant, are to be kept secret, it has been decided not to enter them in the protocol.)”

Six admitted having been present and having addressed the meeting but denied making the remarks attributed to him.

Six claimed that office VII of the RSHA, over which he was chief, had no special section devoted to the Jewish situation, but it developed that the organizational chart of the RSHA very clearly described section VII-B-1 as dealing with Free Masonry and Jewry.

Six declared that he opened and protected the churches of Smolensk so that the population could worship, and then later stated that he protected these churches mainly for the reason that “there were archives there and valuable treasures.”

When asked by prosecution counsel if he had been promoted because of exceptional service with the Einsatzgruppe, he denied that his promotion had anything to do with special merit, but the letter from Himmler specifically stated—

"I hereby promote you, effective 9 November 1941 to SS Oberfuehrer for *outstanding service in Einsatz*. [Emphasis supplied.]

[Signed] H. HIMMLER."

When asked about his succeeding promotion he said further that it was "quite unimaginable" that "special merits in the past should be mentioned" in the "promotion". Whereupon the prosecution introduced the following document:

"Mémorandum: The Reich Security Main Office requests the promotion of SS Oberfuehrer Dr. Six to Brigadefuehrer, effective 31 January 1945 * * * SIPO Einsatz; 22 June 1941-28 August 1941, East Einsatz * * *. On 9 November 1941, Six was promoted by the RF-SS to SS Oberfuehrer for outstanding service in Security Police Einsatz in the East."

Six testified that he tried to be discharged from the SD and the SS prior to 1939, but it is incongruous to say the least that one who joins the Nazi Party voluntarily because he believes it to be the salvation of Germany, joins the SA voluntarily, becomes a brigadier general in the SS, and joins the SD voluntarily, should seek to leave it when Germany was riding the crest of the high wave running toward ever continuing and ever more glorious victories and triumphs.

Despite the finding that Vorkommando Moscow formed part of Einsatzgruppe B and despite the finding that Six was aware of the criminal purposes of Einsatzgruppe B, the Tribunal cannot conclude with scientific certitude that Six took an active part in the murder program of that organization. It is evident, however, that Six formed part of an organization engaged in atrocities, offenses, and inhumane acts against civilian populations. The Tribunal finds the defendant guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under the conditions defined in the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

PAUL BLOBEL

It was the contention of the prosecution that SS Colonel Paul Blobel commanded Sonderkommando 4a from June 1941 to January 1942, and in that capacity is responsible for the killing of 60,000 people. Defense counsel in his final plea, argued that the maximum number of persons executed by Sonderkommando 4a cannot have exceeded 10,000 to 15,000 which in itself, it must be admitted, would anywhere be regarded as a massacre of some

proportions, except in the annals of the Einsatzgruppen.

Defense counsel maintains that the reports which chronicled the 60,000 killings are subject to error. He points out first that the reports are not under oath. This overlooks the fundamental fact that the reports are strictly military documents and that every soldier who collects, transmits, and receives reports is under oath. He then states that the reports were compiled and issued by an office unfamiliar with the subject covered in the reports. But this is to say that a military headquarters is stranger to its own organization. But the crowning objection to the reliability of the reports is the conjecture that possibly headquarters did not have a map with which to check the locations!

Then, if the reports are assumed to be correct, it is argued that the defendant was under the jurisdiction of the army, coming directly under the orders of Field Marshal von Reichenau of AOK 6 [Sixth Army]. The Tribunal has already spoken on the defense of superior orders. But Blobel asserts that the persons executed by his Kommando were investigated and tried, and that Field Marshal von Reichenau had reviewed every case. There is nothing in Blobel's record which would suggest that his bare statement would be sufficient to authenticate a proposition which, on its face, is unbelievable. It is enough to refer to the massacre at Kiev where 33,771 Jews were executed in two days immediately after an alleged incendiary fire, to disprove Blobel's utterance in this regard. Incidentally Blobel, whose Kommando took an active part in this mass killing, said that the number reported was too high. "In my opinion", he states, "not more than half of the mentioned figure was shot."

The defendant stated further that all his shootings were done in accordance with international law. He testified—

"Executions of agents, partisans, saboteurs, *suspicious* people, indulging in espionage and sabotage, and those who were of a *detrimental* effect to the German army were, in my opinion, completely in accordance with the Hague Convention." [Emphasis supplied.]

It is to be noted that Blobel's ideas of international law are somewhat primitive if he is of the opinion that he may execute people merely because he thinks they are *suspicious*.

Sixteen separate reports directly implicate Blobel's Kommando in mass murder, many of them referring to him by name. Report No. 143 declares that, as of 9 November 1941, Sonderkommando 4a had executed 37,243 persons. Report No. 132, dated 12 November 1941, tells of the execution of Jews and prisoners of war by Blobel's Sonderkommando. That report closes on the note, "The number of executions carried out by Sonderkommando 4a mean-

while increased to 55,432." Report No. 156 declares that, as of 30 November 1941, Sonderkommando 4a had shot 59,018 persons.

In his final plea for the defendant, defense counsel offers the explanation why Blobel became involved in the business just related. He said that in 1924 Blobel began the practice of his profession, that of a free lance architect. By untiring efforts he became successful, and at last he realized his dream of owning his own home. Then came the economic crisis of 1928-29. "The solid existence for which he had fought and worked untiringly was smashed by the general economic collapse." He could get no new orders, his savings disappeared, he could not pay the mortgage on his house, which he had previously stated he owned. Paul Blobel was, as his counsel tells us, "down to his last shirt". The defendant was seized by the force of the quarrels between major political parties, and his counsel sums it up—

"This situation alone makes the subsequent behavior of the defendant Blobel comprehensible."

But this hardly explains to law and humanity why a general economic depression which affected the whole world justified the defendant's going into Russia to slay tens of thousands of human beings and then blowing up their bodies with dynamite.

The defendant joined the SA, SS, and NSDAP, not, he explains, because he believed in the ideology of National Socialism, but to improve his economic condition. In 1935 he received an order as architect to furnish the office of the SS in Duesseldorf. Despite the miraculous prosperity promised by National Socialism, the defendant in 1935 still found himself in distress and so he thus decided to take up Nazi work seriously and become clothed again. He would give his entire time to National Socialism.

He was now working for the SD collecting news from all spheres of life in ascertaining public opinion. Defense counsel states that Blobel tried to withdraw from the SD prior to the outbreak of World War II, but later contradicts this with the statement that "up to 1939 there was no reason for him to withdraw from his activities with the SD and to turn his back upon this organization."

In June 1941, Blobel was called from Duesseldorf to Berlin, took charge of Sonderkommando 4a and marched into Russia. In one operation his Kommando killed so many people that it could collect 137 trucks full of clothes. Blobel's attitude on murder in general was well exemplified by his reaction to the question as to whether he believed that the killing of 1,160 Jews in the retaliation for the killing of 10 German soldiers was justified. His words follow:

"116 Jews for one German? I don't know. I am not a militarist, you see. One can only judge it from a sort of public senti-

ment and from one's own human ideas. If they are enemies and if they are equal enemies the question would have to be discussed whether one to 116 is a justified ratio of retaliation."

The defendant Blobel, like every other defendant, has been given every opportunity to defend himself against the serious charges advanced by the prosecution.

The Tribunal finds from all the evidence in the case that the defendant is guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

WALTER BLUME

SS Colonel Blume obtained his Doctor's Degree in Law at the University of Erlangen. He later served with the Prussian Secret State Police. In May 1941 he was called to Dueben where he was given command of Sonderkommando 7a and instructions on the task of exterminating Jews. This unit formed part of Einsatzgruppe B which in the execution of the Fuehrer Order killed Jews, Communists and alleged asocials in no inconsiderable numbers. Blume states that he left his Kommando on 15 or 17 August 1941. The defendant Steimle stated that Blume remained with the Kommando until September 1941.

Report No. 73, dated 4 September 1941, credited Vorkommando 7a with 996 killings as of 20 August. Even if Blume's assertion as to the date of his leaving the assignment were correct, that would only mean that he cannot be charged with that proportion of the 996 murders which occurred during the last 3 or 5 days of this period; and even this only under the additional assumption that prior to his departure he had not given orders which were executed within those 3 or 5 days.

Report No. 11, dated 3 July 1941, states that Blume's Kommando liquidated "officials of the Komsomol (Communist organization) and Jewish officials of the Communist Party."

Report No. 34, dated 26 July 1941, speaks of the incident already described in the general opinion—the killing of the 27 Jews who, not having reported for work, were shot down in the streets. This happened in the territory under Blume's jurisdiction.

Blume admits having witnessed and conducted executions. He states that he was opposed to the Fuehrer Order and that he made every effort to avoid putting it into effect. But the facts do not support this assertion. From time to time during this trial, various defendants have stated that certain reports were incorrect, that

the figures were exaggerated, even falsified. Yet, when Blume was asked why, since he was so morally opposed to the Fuehrer Order, he did not avoid compliance with the order by reporting that he had killed Jews, even though he had not, he replied that he did not consider it worthy of himself to lie.

Thus, his sense of honor as to statistical correctness surpassed his revulsion about cold bloodedly shooting down innocent people. In spite of this reasoning on the witness stand, he submitted an affidavit in which it appears he did not have scruples against lying when stationed in Athens, Greece. In this affidavit he states that the Kriminalkommissar [Criminal police commissioner] ordered him to shoot English commando troops engaged in Greek partisan activity. Since Blume was inwardly opposed to the Commissar Decree as he pointed out, he suggested to his superior that the order to kill these Englishmen could be circumvented by omitting from the report the fact that the Englishmen were carrying civilian clothes with them.

Although Blume insisted at the trial that the Fuehrer Order filled him with revulsion, yet he announced to the firing squad after each shooting of ten victims—

“As such, it is no job for German men and soldiers to shoot defenseless people, but the Fuehrer has ordered these shootings because he is convinced that these men otherwise would shoot at us as partisans or would shoot at our comrades, and our women and children were also to be protected if we undertake these executions. This we would have to remember when we carried out this order.”

It is to be noted here that Blume does not say that the victims had committed any crime or had shot at anybody, but that the Fuehrer had said that he, the Fuehrer, was convinced that these people “would shoot” at them, their women and children, 2,000 miles away. In other words, the victims were to be killed because of the possibility that they might at some time be of some danger to the Fuehrer and the executioners. Blume says that he made this speech to ease the feelings of the men, but in effect he was convincing them that it was entirely proper to kill innocent and defenseless human beings. If he was not in accord with the order, he at least could have refrained from propagandizing his men on its justness and reasonableness, and exhortation which could well have persuaded them into a zestful performance of other executions which might otherwise have been avoided or less completely fulfilled.

Blume's claims about revulsion to the Fuehrer Order are not borne out by his statement—

“I was also fully convinced and am so even now, that Jewry in

Soviet Russia played an important part, and still does play an important part, and it has the especial support of Bolshevistic dictatorship, and still is."

While tarrying in the town of Vilnyus with his Kommando, Blume instructed the local commander to arrest all Jews and confine them to a ghetto. Since the local commander of Vilnyus was not Blume's subordinate, Blume was not called upon to issue the order for the incarceration of the Jews which only brought them one step closer to execution under the Fuehrer Order. Blume's explanation that he hoped the Fuehrer Order might be recalled is scarcely adequate. He could have done nothing. Duty did not require him to incarcerate these Jews.

When the defendant stated that he had ordered the execution of three men charged with having asked the farmers not to bring in the harvest, he was asked whether such an execution was not contrary to the rules of war.

"Q. Are you familiar with the rules of war?

"A. In this case I acted by carrying out the Fuehrer Order which decreed that saboteurs and functionaries were to be shot.

"Q. Did you regard a person who told a farmer not to assist the Nazi invaders as a saboteur, because he refused to help the Nazis and that was worthy of the death sentence which you invoked?

"A. Yes.

"Q. Are you familiar with the rules of war?

"A. I already stated that for me the directive was the Fuehrer Order. That was my war law."

The defendant stated several times that he was aware of the fact that he was shooting innocent people and admitted the shooting of 200 people by his Kommando.

Blume is a man of education. He is a graduate lawyer. He joined the NSDAP voluntarily, swore allegiance to Hitler voluntarily, and became director of a section of the Gestapo voluntarily. He states that he admired, adored, and worshipped Hitler because Hitler was successful not only in the domestic rehabilitation of Germany, as Blume interpreted it, but successful in defeating Poland, France, Belgium, Holland, Norway, Yugoslavia, Greece, Luxembourg, and other countries. To Blume these successes were evidence of great virtue in Hitler. Blume is of the notion that Adolf Hitler "had a great mission for the German people."

In spite of his declared reluctance to approve the Fuehrer Order he would not go so far as to say that this order which brought about the indiscriminate killing of men, women, and children, constituted murder and the reason for the explanation was that Hitler had issued the order and Hitler, of course, could not commit a

crime. In fact Blume's great sense of guilt today is not that he brought about the death of innocent people, but that he could not execute the Fuehrer Order to its limit.

"Q. We understood you to say that you had a bad conscience for only executing part of the order. Does that mean that you regretted that you had not obeyed entirely the Fuehrer Order?

"A. Yes. This feeling of guilt was within me. The feeling of guilt about the fact that I as an individual, was not able, and considered it impossible, to follow a Fuehrer Order."

Dr. Lummert, Blume's lawyer, made a very able study of the law involved in this case. His arguments on necessity and superior orders have been treated in the general opinion. Dr. Lummert, in addition, has collected a formidable list of affidavits on Blume's character. They tell of Blume's honesty, good nature, kindness, tolerance, and sense of justness, and the Tribunal does not doubt that he possessed all these excellent attributes at one time. One could regret that a person of such excellent moral qualities should have fallen under the influence of Adolf Hitler. But on the other hand one can regret even more that Hitler found such a resolute person to put into execution his murderous program. For let it be said once for all that Hitler with all his cunning and unmitigated evil would have remained as innocuous as a rambling crank if he did not have the Blumes, the Blobels, the Braunes, and the Bibersteins to do his bidding—to mention only the B's.

The Tribunal finds the defendant guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS, SD and Gestapo under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

MARTIN SANDBERGER

SS Colonel Martin Sandberger studied jurisprudence at the Universities of Munich, Freiburg, Cologne, and Tuebingen. He worked as an assistant judge in the Inner Administration of Wuerttemberg and became a government councillor in 1937. In October 1939 he was chief of the Immigration Center and in June 1941 was appointed chief of Sonderkommando 1a of Einsatzgruppe A. He left for Esthonia on the 23d day of that month. On 3 December 1941 he became commander of the Security Police and SD for Esthonia. He returned to Germany in September 1943. During this long period of 26 months he had ample opportunity to be involved in the execution of the Fuehrer Order which he originally heard in Pretzsch and which was fully discussed again in Berlin before he left for the East.

Despite the defendant's protestations from the witness stand, it is evident from the documentary evidence and his own testimony, that he went along willingly with the execution of the Fuehrer Order. Hardly had his Kommando reached its first stopping place, before it began its criminal work. Operational Report No. 15 reads—

“Group leader entered Riga with Einsatzkommando 1a and 2.”

It then describes the destruction of synagogues, the liquidation of 400 Jews, and the setting up of groups for the purpose of fomenting pogroms. Sandberger seeks to deny responsibility for the executions, although it has been demonstrated that not only he was in Riga at the time they occurred, but he actually had a conversation about them with the Einsatzgruppe Chief Stahlecker before he left Riga.

This same report shows that a Teilkommando of Sandberger's unit, Einsatzkommando 1a, was assigned to an operation in Tartu, and it is interesting to note that a subsequent report (No. 88, dated 19 September 1941) tells of an execution in Tartu of 405 persons of whom 50 were Jews. This report closes with the significant statement—

“There are no more Jews in prison.”

A report dated 15 October 1941 on executions in Ostland included one item under Esthonia of 474 Jews and 684 Communists. The defendant also denies responsibility for these killings, placing the credit or blame for them on the German field police and Esthonian home guard. It is a fact, however, that the Esthonian home guard was under Sandberger's jurisdiction and control for specific operations, as evidenced by the same report.

“The arrest of all male Jews of over 16 years of age has been nearly finished. With the exception of the doctors and the elders of the Jews who were appointed by the special Kommandos, *they were executed by the self-protection units under the control of the special detachment 1a.* Jewesses in Parnu and Tallin of the age groups from 16 to 60 who are fit for work were arrested and put to peat-cutting or other labor.

“At present a camp is being constructed in Harku in which all Esthonian Jews are to be assembled, so that Esthonia will be free of Jews in a short while.” [Emphasis supplied]

Report No. 17, dated 9 July 1941 carried the item—

“With the exception of one, all leading communist officials in Esthonia have now been seized and rendered harmless. The sum total of communists seized runs to about 14,500. Of these about 1,000 were shot and 5,377 put into concentration camps. 3,785 less guilty supporters were released.”

The defendant again admitted that his sub-Kommando leader participated but argued responsibility for only a fraction of the mentioned figure. He placed this "fraction" at 300 to 350 persons. In further attempted exculpation from responsibility for the numerous killings which admittedly occurred in the territory under his jurisdiction, Sandberger announced in court a system of investigation, appeal, review, and re-review which involved eleven different people, one of whom was himself. The real difficulty about Sandberger's explanation is that it lacks not only support, documentary or otherwise, but it lacks credibility in itself. Sandberger's story would argue that these involved and elaborate pains were taken under the Nazi aegis to protect the lives of the very people, the supreme order under which they were operating had doomed to summary extermination.

Sandberger leaves no doubt about the fact of his responsibility for at least 350 deaths in this instance—

"Q. The sum total of Communists seized runs to about 14,500; do you see that?

"A. Yes, 14,500, yes.

"Q. That means 1,000 were shot?

"A. Yes, I get that from the document.

"Q. You know it. Did you know of it? Do you remember it?

"A. The report must have been submitted to me.

"Q. Then at one time, at least, you knew of it?

"A. Yes.

"Q. Were you in Esthonia then?

"A. Yes, but they were not shot on my own responsibility. I am only responsible for 350.

"Q. You are responsible for 350?

"A. That is my estimate."

On 10 September 1941, Sandberger promulgated a general order for the internment of Jews which resulted in the internment of 450 Jews in a concentration camp at Pskov. He states he did this to protect the Jews, hoping that during the internment the Fuehrer Order might be revoked or its rigorous provisions modified. The Jews were later executed. Sandberger claims that the execution took place without his knowledge and during his absence, but his own testimony convicts him.

"Q. You collected these men in the camps?

"A. Yes. I gave the order.

"Q. You knew that at some future time they could expect nothing but death?

"A. I was hoping that Hitler would withdraw the order or change it.

"Q. You knew that the probability, bordering on certainty, was that they would be shot after being collected?

"A. I knew that there was this possibility, yes.

"Q. In fact, almost a certainty, isn't that right?

"A. It was probable."

Later on in his testimony his responsibility for these deaths which, of course, constituted murder, was even more definitely admitted.

"Q. You collected these Jews, according to the basic order, didn't you, the Hitler Order?

"A. Yes.

"Q. And then they were shot; they were shot; isn't that right?

"A. Yes.

"Q. By members of your command?

"A. From Esthonian men who were subordinated to my Sonderkommando leaders; *that is also myself then.*

"Q. Then, in fact, they were shot by members under your command?

"A. Yes.

* * * * *

"Q. Then, as a result of the Fuehrer Order, these Jews were shot?

"A. Yes." [Emphasis supplied]

Sandberger's temporary absence, on the date of the execution, of course, in no way affects his criminal responsibility for the deed.

Although Sandberger devoted a great deal of his time on the witness stand to denial, the one admission he did make was that executive measures in Esthonia were taken under his supervision. He stated that he objected to the Fuehrer Order—

"I objected to the decree so strongly that at first I did not think it was possible that such an order was at all thinkable * * *. I could not imagine that I myself would be able to do this and, on the other hand, I believed I could not ask my men to do something which I could not do myself."

Yet he testified that he regarded the order as legal, that Hitler was the highest legislative authority, and, although the Fuehrer Order offended his moral sense, it had to be obeyed. His moral sense apparently did not always prevail for the defendant betrayed himself into a note of justification of the Fuehrer Order when he testified—

"* * * when we saw in this Baltic area to what a large extent the forces then in power there had deviated in the preceding years from the basic principles of law, we were doubtlessly influenced in the sense that any possible misgivings about

the legality which one still might have had were removed by this."

That Sandberger willingly and enthusiastically went along with the Fuehrer Order and other Nazi dictates is evidenced by the eulogistic remarks which appeared in the recommendation for his promotion.

"* * * He is distinguished by his great industry and better than average intensity in his work. From the professional point of view, S. has proved himself in the Reich as well as in his assignment *in the East*. S. is a versatile SS Fuehrer, suitable for employment.

"S. belongs to the Officers of the Leadership Service and has fulfilled the requirements of the promotion regulations up to the minimum age set by the RF-SS (36 years). Because of his political service and his efforts, which far exceed the average, the Chief of the Sipo and SD already supports his *preferential* promotion to SS Standartenfuehrer." [Emphasis supplied]

From all the evidence in the case the Tribunal finds the defendant guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

WILLY SEIBERT

SS Colonel Willy Seibert graduated from the University of Goettingen in 1932 as a graduate economist. He served in the army from 1932 until 1935 when he entered the SD as an expert in economics. In 1939 he became chief of group III D, economics, in the RSHA and, as such, deputy to defendant Ohlendorf. He continued in this capacity until transferred to service with Einsatzgruppe D in May 1941.

The defendant Ohlendorf, in his affidavit made on 2 April 1947, declared—

"The former Standartenfuehrer Willy Seibert was my chief III. Since he was the senior officer from point of service after me, he was entrusted by me with the duties of a deputy during my absence. One of his tasks was the composition of all reports which went to the higher headquarters, to the Reich Main Security Office, Berlin, and to the 11th Army. In rare cases only, if very important reports had to be written, I dictated them myself and later informed Seibert of the contents as a routine matter. Seibert had full access to all the secret files; including those which were designated as top secret. In cases

where reports bear my signature these can just as well have been written by Seibert as by me. Reports which are signed by Seibert were, as a rule, written by him during my absence from the Einsatzgruppe. Seibert was acquainted with all the duties and problems within the framework of Einsatzgruppe D. Only two people could have had complete knowledge of the number of executions which took place, namely, Seibert and myself."

In an affidavit dated 4 February 1947, which has already been cited and quoted from, the defendant Seibert stated that the radio reports on the activities of Einsatzgruppe D were known only to Ohlendorf, Seibert, and the telegraphist. Further, that Seibert accompanied Ohlendorf on journeys of inspection.

On the witness stand both Ohlendorf and Schubert modified their original statements as to Seibert's activities with the Einsatzgruppe and endeavored to delimit his functions to those of chief of office III. This modification could well have stemmed from a desire to help a codefendant, rather than because of a mistaken statement in the first instance. One could err in the general summing up of another's activities, but it is difficult to comprehend how one in the normal possession of faculties of memory and reflection could ascribe the accomplishment of a very specific act to another if, in fact, it had not occurred. Thus, in his affidavit of 2 April 1947, Ohlendorf stated, "The only people whom I generally assigned to inspections were, except for Schubert, Willy Seibert and Hans Gabel." Here we have a very definite type of work.

Schubert, in his affidavit of 24 February 1947, very specifically declared that Willy Seibert was Ohlendorf's deputy, and that Ohlendorf *or Seibert* had assigned him to supervise and inspect an execution which involved some 700 people. Schubert could scarcely have credited Seibert with this type of executive authority, unless he was aware he possessed it. One Karl Jonas declared by affidavit that Seibert was deputy to Ohlendorf.

In his own affidavit Seibert declared that, although he was not Ohlendorf's deputy generally for Einsatzgruppe D, he did represent his chief "in all matters which a Chief III had to work out." And then he explained that "as senior officer on the staff of the Einsatzgruppe" he "took over all tasks within the group whenever Ohlendorf was absent from the group."

Although the defendant attempted to testifying to confine his activities to those falling within the normal scope of office III, he did state that he made inspections of Tartar companies, that he engaged in combat actions against partisans and that he did make reports on executions. These assignments obviously do not fall within the duties of a chief of office III, as office III was described by Seibert.

Ohlendorf testified that Standartenfuehrer Setzen had been originally appointed by Heydrich as chief of the department IV in his Einsatzgruppe. Under the plan of organization, Setzen would thus become Ohlendorf's deputy in executive functions of the Einsatzgruppe. However, Ohlendorf did not use Setzen for this purpose. He assigned him to the leadership of a sub-Kommando, and the evidence is entirely convincing that he used Seibert for functions which would otherwise have been performed by Setzen. Seibert had been Ohlendorf's deputy in office III of the RSHA since 1939. It would be quite natural for Ohlendorf to want Seibert, who had been his deputy in Berlin, to continue in a similar capacity in the field. And it is significant that they both returned at about the same time to the RSHA in Berlin and Seibert once more took up his duties as deputy to Ohlendorf in office III.

The prosecution submitted two documents in the nature of reports signed by Seibert as acting commander for Ohlendorf during the latter's absence. These reports show conclusively that Seibert was reporting upon the general activities of the Einsatzgruppen, which included executions, planning for operations, and negotiations with army officials, and in one of the documents Seibert is revealed requesting a conference with the chief of staff of the army. A report (Register No. 1118-42) dated 16 April 1942, carried the phrase "The Crimea is freed of Jews." Seibert knew the full significance of that phrase. He was questioned about it on the witness stand.

"Q. When you signed the report which contained a reference to the settlement of the Jewish problem, you were aware that the settlement of the Jewish problem meant the execution of Jews?

"A. That did not have to be the case, your Honor, because in the country Jews were not executed, or at least during the first time; they were assigned to labor, and then they were collected for such purpose and, of course, Jews were also executed.

"Q. Eventually they were executed?

"A. Yes. That is probably the case * * *.

"Q. And when you signed the report which contained the phrase, 'The Crimea is freed of Jews', you knew what had happened to the Jews?

"A. Yes. I knew that."

Seibert admitted having witnessed two executions and stated that he did not exclude the possibility that Jews were among the executees. He also knew that Jews and Communist functionaries were shot without investigation.

"Q. So you know that of your own knowledge that people were sentenced to be shot without any investigation or trial?

"A. Yes. I had to assume that from the Fuehrer Order."

Seibert admits that he passed on to the commanders of Einsatzgruppe D any orders from army headquarters which should arrive during Ohlendorf's absence.

The Tribunal finds that Seibert was in fact, if not in name, Ohlendorf's deputy in the Einsatzgruppe D. It finds further that he was thoroughly aware of the activities of Einsatzgruppe D and participated as a principal as well as an accessory in its operations which violated international law, and falls within the provisions of Control Council Law No. 10.

The Tribunal finds from all the evidence in the case that the defendant is guilty under counts one and two in the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and, therefore, is guilty under count three of the indictment.

EUGEN STEIMLE

SS Colonel Steimle studied history, Germanic languages, and French at the Universities of Tuebingen and Berlin. In May 1935 he qualified as instructor of secondary schools, and in March 1936 he passed the examination as Studienassessor. In April 1936 he entered the security service and on 1 September 1936 was appointed leader of the SD Regional Headquarters in Stuttgart.

From 7 September to 10 December 1941, Steimle was chief of Sonderkommando 7a of Einsatzgruppe B. During this time his unit executed 500 people. Report No. 92. (*NO-3143, II B-53*); Report No. 108. (*NO-3156, II B-18, 21*); Report No. 125. (*NO-3403, II B-12*); and Report No. 133. (*NO-2825, II B-14-15*).

From August 1942 to January 1943, the defendant was chief of Sonderkommando 4a of Einsatzgruppe C, which unit also participated in liquidating operations.

It is the contention of the defendant that all executions ordered by him were in the nature of punitive actions falling under established offenses against the laws of war, such as sabotage, looting, and partisan activity. It is evident that this defendant, like the defendant Blobel, has a distorted view of what constitutes established offenses when he states, as he does in his pre-trial affidavit, that under his leadership his Kommando executed even "persons suspected of being partisans." [Emphasis supplied.]

Defense counsel in his trial brief complains that the prosecution did not submit any evidence to contest the defendant's assertion

that every execution of partisans was preceded by a thorough examination on the basis of a regular procedure. The defendant himself gave one highly illuminative demonstration on his idea of regular procedure. He was asked what he would do to a man he came upon lecturing on communism, and he replied that, after taking a look at him—

“If I was under the impression he would put his theoretical conviction into deed in that case I would have him shot.”

Another example of his idea of justice arose out of his voluntary narrative of an episode involving the shooting of three girls who, according to the defendant, *were about to form a partisan group*. He explained that the case of these three girls was investigated for eight days. Whether such an investigation actually took place or not can only depend on the credibility of the defendant himself. In this respect it must be remarked that, if his concern for the girls' civil rights rose no higher than his regard for their spiritual comfort, the victims could not have had much of a chance to defend themselves. Steimle himself commanded the firing squad, and he was asked if the girls were afforded any religious assistance before the shots were fired. He replied that, since they were Communists, they could not have had a religious conviction. Then the question was put to him as to what he would have done in the event they were religious. His reply was—

“If the wish had been uttered I can imagine that this would have been done. *I, myself, wouldn't have bothered.*” [Emphasis supplied.]

The defendant undertook to deny responsibility for various executions performed by his two units by stating that the alleged investigations were conducted by his subordinates. His admission, however, that he reviewed investigations and ordered death sentences makes him coresponsible with the persons in charge of the examinations. A superior may not delegate authority to a subordinate and then plead noninvolvement for what the subordinate does. Especially, when the superior reserves the right of supervision, as Steimle testified he did.

The Tribunal is satisfied from the evidence in the case that the defendant understood his responsibility in this regard but failed to meet it.

The Tribunal further finds that the credible evidence in the case does not support any conclusion that all Jews admittedly executed under Steimle's orders were accorded a trial and judicial process guaranteed by the rules of war and international law.

The defendant then claims that no Jews were executed by either of his sub-Kommandos while he was chief. In his pretrial affidavit he stated—

"From talk by members of the Kommando, I know that SS Standartenfuehrer Dr. Blume, my predecessor in this Kommando in White Ruthenia, carried out shooting of Jews besides fighting against partisans."

And—

"I know that my predecessors, SS Standartenfuehrer Blobel and SS Standartenfuehrer Weinmann carried out shootings of Jews and other atrocities, mainly during the march through the Ukraine."

It is incredible that, although the two Kommandos involved were engaged in the execution of Jews prior to Steimle's arrival, they should suddenly cease performing their principal function while the Fuehrer Order was still in force.

The defendant's other statement that there were no more Jews in his territory is discredited by Report No. 108.

"The Sonderkommando 7a executed a local, leading Bolshevik official and 21 *Jewish* plunderers and terrorists in Gorodnya. In Klinty 83 *Jewish* terrorists and 3 leading party officials were likewise liquidated. At a further checking up 3 Communist officials, 1 Politruk [political commissar at the front] and 82 *Jewish* terrorists were dealt with, according to orders." [Emphasis supplied.]

The defendant stated that, when he took over the command of Sonderkommando 7a, Foltis, the subcommander, informed him of the Fuehrer Order. He added that he was opposed to it and, thus, by failing to shoot Jews, he exculpated himself from any responsibility under that order. But, neither the Fuehrer Order nor the indictment in this case is limited to the extermination of Jews. The ruthless killing of members of the civilian population other than Jews is also murder. Nonetheless the Tribunal is convinced that the Einsatz units under Steimle's leadership and authority killed Jews on racial grounds and also killed Jews on supposed offenses without affording them the trial called for under the rules of war and international law. It is also clear that Steimle did not attempt to prevent Foltis, his subordinate, from killing Jews under the Fuehrer Order. The Tribunal finds from all the evidence in the case that Steimle authorized and approved of killings in violation of law and is guilty of murder.

From all the evidence in the case, the Tribunal finds the defendant guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and, therefore, is guilty under count three of the indictment.

ERNST BIBERSTEIN

Ernst Emil Heinrich Biberstein was originally named Szymanski. This striking change in name was no more extraordinary than the change in his profession. From clergyman in the Lutheran Protestant Church in Kating, Schleswig-Holstein, he went to a chiefship in the Gestapo in Oppeln, Germany, in the meantime having renounced the church and his ecclesiastical garb. In August 1935 he entered the Reich Ministry for Church Affairs and in May 1936 was promoted to Oberregierungsrat in the State service. He served in the Wehrmacht from 10 March 1940, until 20 October 1940, when he became chief of Gestapo at Oppeln. In the meantime, he had become SS Sturmbannfuehrer and as such went to Russia as chief of Sonderkommando 6 under Einsatzgruppe C. He served in this capacity from September 1942 until June 1943.

On 25 June 1947, at Edselheide, Germany, Biberstein declared in a sworn statement that his Kommando during the time he was its chief killed from 2,000 to 3,000 people. In Nuernberg he twice repeated these figures under oath. At the trial he sought to repudiate the total, saying that the interrogator, on the three different occasions, had insisted that he name a figure and that a discrepancy of one thousand more or less did not matter. It was then put to him that allowing for a margin of one thousand he had still admitted to from one to two thousand killings. He refused, however, at the trial to name any figure.

Although he repudiated the totals, he did not attempt to deny that he had witnessed two executions, the precise details of which he had described in his three pretrial declarations. In his affidavit of 2 July 1947, he related—

“I personally superintended an execution in Rostov which was performed by means of a gas truck. The persons destined for death—after their money and valuables (sometimes the clothes also) had been taken from them—were loaded into the gas truck which held between 50 and 60 people. The truck was then driven to a place outside the town where members of my Kommando had already dug a mass grave. I have seen myself the unloading of the dead bodies, their faces were in no way distorted, death came to these people without any outward signs of spasms. There was no physician present at unloading to certify that the people were really dead.”

* * * * *

“I have also witnessed an execution carried out with firearms. The persons to be executed had to kneel down on the edge of a grave and members of my Kommando shot them in the back of the neck with an automatic pistol. The persons thus killed mostly dropped

straight into the pit. I had no special expert for these shots in the neck. No physician was present either at this form of execution."

At the trial he explained that he witnessed these executions only because the chief of the Einsatzgruppe wished him to experience the sensation of watching an execution so that he might know how he would feel about a spectacle of that kind.

"Q. You didn't know that before you witnessed the execution that you would have a feeling of revulsion against the execution. You didn't feel that before you actually witnessed the execution?"

"A. Of course not, your Honor, for before, I had never seen an execution.

"Q. So you had to see an execution in order to know that it offended against your sentiments?"

"A. Yes. I had to see what kind of an effect this would have on me."

The defendant denied having executed any Jews and in substantiation of this assertion he advanced various explanations (1) that Thomas, the Einsatzgruppe chief, was aware of his religious background and therefore wished to spare him his feelings; (2) that there were no Jews in his territory anyway; (3) that he did not know of the Fuehrer Order.

The defendant carried this third incredible proposal to the point where he declared that although he had led an Einsatzkommando in Russia for 9 months, he did not learn of the Fuehrer Order until he reached Nuernberg. In fact he states that the very first time the order ever came to his attention was when it was talked about in the courtroom and its contents shocked him considerably.

Many of the defendants in seeking to justify killings have pronounced the word "investigation" with a certain self-assurance which proclaimed that so long as they "investigated" a man before shooting him, they had fulfilled every requirement of the law and could face the world with an untroubled conscience. But an investigation can, of course, be useless unless proof of innocence of crime releases the detainee. Investigating a man and concluding he is a Jew or Communist functionary or suspected franc-tireur gives no warrant in law or in morals to shoot him. Biberstein claims that all executees of his Kommando were given a proper investigation and killed only in accordance with law. Can this statement be believed? In testing Biberstein's credibility he was questioned regarding his work as a Gestapo chief. His answers to the questions put to him shed some light on the extent to which Biberstein can be believed in his wholesale denials.

"Q. Suppose that you learned that in the town of Oppeln there was, let us say, a Hans Smith, who made a declaration to

the effect that he hoped that Germany would lose the war because it was an unjust war that she was waging, what would you do?

“A. I would have asked the man to come to me and would have told him to hold on to his own views and keep them to himself and just would have warned him.”

* * * * *

“Q. You are on your way home one evening from the office and someone comes up to you and tells you that he overheard Hans Smith inveigh against the German Army, the German Government, Hitler and the whole National Socialist regime * * * What would you do?

“A. Nobody would have done this, I don't think.

“Q. Well, let us suppose someone did. Peculiar things happen.

“A. I would have told him, ‘Don't talk about it. Keep it to yourself, keep it quite.’”

* * * * *

“Q. Well, let's go a little further. This man who stops you on your way home, says ‘by the way, I just found out that there is a plot on here to kill Hitler. I heard the men talking about this; I know the house in which they gather; I saw some bombs being taken into the house and I want you to know about this, Herr Biberstein.’ What would you do?

“A. I would have told him, ‘Go to Official So-and-So and report it to him’.

“Q. And you would have done nothing?

“A. Why what could I have done? I didn't know what to do. I had no police directives.”

In a further denial that he ordered executions Biberstein said that a pastor has the task “to help souls but never to judge”. Biberstein was no longer a pastor, professionally, spiritually, or intellectually. He had already denounced his church and his religion and when asked why he did not offer religious comfort to those who were about to be killed under his orders and in his presence, he said that he could not cast “pearls before swine”.

But despite his never swerving determination to avoid an incriminating answer, truth in an unguarded moment emerged and Biberstein confessed to murder from the witness stand. He steadfastly had maintained that every execution had been preceded by an investigation. As chief of the Kommando which conducted the executions, his was the responsibility to be certain that these investigations revealed guilt. However, if conceivably he could—although in law and in fact he could not—but even if arguendo he could be excused from responsibility for the death of those who

were executed outside his presence, he could not escape responsibility for the death of those killed before his eyes.

With regard to the two executions which he witnessed (one by gas van and the other by shooting), he testified that the first involved some 50 people and the second about 15. He was questioned as to whether investigations had been made to determine guilt or innocence of these 65 executees. He replied—

“I did not see the files of these 65 cases. I only know that men of the Kommando had received orders ever since the time of my predecessor to investigate the cases.”

The interrogation continued—

“Q. You do not know of your own knowledge that these cases were investigated? These 65 deaths?”

“A. I did not see it.

“Q. No. So, therefore, you permitted 65 people to go to their deaths without knowing yourself whether they were guilty or not?”

“A. I said that I only made spot checks.

“Q. Did you make any spot checks in these 65?”

“A. Not among these 65.

“Q. Then we come back to the conclusion that you permitted 65 people to go to their death without even a spot check?”

“A. Without having made a spot check, yes.”

It is, therefore, evident that in this instance alone Biberstein is guilty of murder in ordering the death of 65 persons and supervising their very executions without evidence of guilt.

The Tribunal finds from all the evidence in the case that Sonderkommando 6, during the time that Biberstein was its chief accomplished mass murder. It finds further that as its chief, Biberstein was responsible for these murders.

The Tribunal finds from the entire record that the defendant is guilty under counts one and two of the indictment.

It finds further that he was a member of the criminal organizations SS, SD, and Gestapo under the conditions defined by the judgment of the International Military Tribunal and, therefore, is guilty under count three of the indictment.

WERNER BRAUNE

SS Colonel Werner Braune received his law degree at the University of Jena in July 1932 and in 1933 was awarded the degree of Doctor of Juridical Science. He joined the SS in November 1934. In 1940 he became chief of the Gestapo in Wesermuende. In October 1941 he was assigned to Einsatzkommando 11b. As chief of this unit Braune knew of the Fuehrer Order and executed it to

the hilt. His defense is the general one of superior orders which avails Braune no more than it does anyone else who executes a criminal order with the zeal that Braune brought to the Fuehrer Order. Various reports implicate Braune and his Kommando in the sordid business of illegal killings.

The Tribunal has already spoken of the Christmas massacre of Simferopol. Braune was the Kommando leader in charge of this operation. He has admitted responsibility for this murder in unequivocal language.

"It took place under my responsibility. Once I was at the place of execution with Mr. Ohlendorf and there we convinced ourselves that the execution took place according to the directives laid down by Ohlendorf at the beginning of the assignment. I personally was there several times more and I supervised * * *. Furthermore, my sub-Kommando leader Sturmbannfuehrer Schulz was always present, the company commander of the police company and, I think, another captain."

The Fuehrer Order did not offer reasons or ask for explanations. Like a guillotine blade in its descent it did not stop to inquire into cause and premise. Nonetheless, the question was put to Braune as to why the army, which apparently had immediately ordered this execution, was so anxious that the slaughter be accomplished before Christmas. Braune enlightened the Tribunal and simultaneously horrified humanity for all time as follows:

"The Fuehrer Order was there, and now the army said 'We want it finished before Christmas'. I wasn't able at the time to find out all the reasons. Maybe the reasons were strategic reasons, military reasons, which caused the army to issue that order. Maybe they were territorial questions. Maybe they were questions of food. The army, at that time, was afraid that hundreds of thousands of people might have to starve to death during that winter because of the food situation * * *"

There were also executions after Christmas. Einsatz Order, dated 12 January 1942, speaks of an operation destined—

"* * * to apprehend unreliable elements (partisans, saboteurs, possibly enemy troops, parachutists in civilian clothes, Jews, leading Communists, etc.)."

Braune admitted that he took an active part in this operation. He was asked what happened to the Jews who fell into the dragnet which he had spread, and Braune replied—

"If there were any Jews, Mr. Prosecutor, they were shot, just as the other Jews."

The question was then put if the Jews were given a trial, and the defendant replied—

"Mr. Prosecutor, I believe that it has been made adequately

clear here that under the order which has been issued there was no scope to hold trials of Jews."

Document NOKW-584, describing the executions mentioned in that document carried this significant item—

"SS Sturmbannfuhrer Dr. Braune gave orders on the place of execution for the carrying out of the shooting."

Although Braune denies that he actually gave the order to fire he does admit that he marched with the condemned men to the place of execution.

Speaking of the Yevpatoriya action the defendant explained that he was convinced that "the whole lot of them had engaged in illegal activities", but he admitted that there was the possibility, theoretically, as he described, that among these 1,184 executees—

"There were some people who had not participated in murdering the German soldiers or who had not participated in sniping activities."

The Tribunal finds from all the evidence in the case that the defendant is guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS, SD and Gestapo under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

WALTER HAENSCH

SS Lieutenant Colonel Walter Haensch studied law at the Leipzig University, trained as Referendar in various cities and passed his final State law examination in December 1934. He took a position with the town administration of Doebeln in February 1935 and in the fall of that year entered the SD. In the early part of 1942 Haensch was assigned to Sonderkommando 4b as its leader. It is the contention of the prosecution that his authority over this unit began on 16 January 1942. The defendant asserts on the contrary that although it is true he was ordered to this post in January, he did not arrive at the site of the Kommando until 15 March 1942.

In support of this asserted delayed inauguration of his Einsatz service, the defendant presented evidence to show that he was in Berlin on 7 February 1942 for some dental work, that on 20 February 1942 he opened up a bank account, on 21 February 1942 he posed for some pictures, and on another date attended a birthday party, all in Berlin.

A great deal of time was devoted at the trial to the presentation of evidence both for and against the alibi contended for by the defendant. The question of alibi, however, remains moot, in view

of the fact that even if the Tribunal assumed that the defendant did not arrive in Russia until 15 March 1942, the date asserted by him as the beginning of his active service with the Sonderkommando, this assumption would not exculpate him. The record proves beyond a reasonable doubt that Sonderkommando 4b, under the leadership of the defendant Haensch, was active in war crimes and crimes against humanity, even subsequent to 15 March 1942.

On 3 April 1943, Sonderkommando 4b arrested 50 hostages and killed one-half of them. The identification of Haensch's unit in this mass execution is established by the following:

(1) Report No. 188, dated 1 April 1942 shows that Sonderkommando 4b had an active unit operating in Zhitomir.

(2) Report No. 189, dated 3 April 1942 states—

“Locations and communications as reported in Situation Report 188, dated 1 April 1942, remain unchanged.”

This proves that Sonderkommando 4b was still at Zhitomir so that it was bound to be the unit responsible for the incident described in the report as follows:

“Zhitomir—50 hostages from Gayssen and vicinity were arrested in the course of the investigation and half of them were shot.”

(3) Report No. 190, dated 8 April 1942 (NO-3359) confirms the responsibility of Sonderkommando 4b for the events of 3 April by declaring that units of Sonderkommando 4b were still stationed at Zhitomir.

Report No. 189 above indicated, carries also another item under “Einsatzgruppe C”.

“From 28 March up to and inclusive 31 March a total of 434 persons were subjected to ‘special measures’ (executed). The figures breaks down as follows:

33 political officials,
48 saboteurs and plunderers, and
352 Jews and 1 insane.”

This item is quoted not as conclusively proving that Sonderkommando 4b was responsible for the 434 executions, but for the purpose of demonstrating that Einsatzgruppe C (and, therefore, its integral units, including Sonderkommando 4b) was at the time actively engaged in the carrying out of the extermination program.

Haensch was involved in still further executions following 15 March. Report No. 6, dated 5 June 1942 (NO-5187) shows that Sonderkommando 4b, under the leadership of Haensch, was located at Gorlovka. The same report carries this item:

“Several large-scale actions against partisans and Communists were carried out in the district of the Gorlovka in late April—early May 1942. 727 out of 1,038 persons arrested were

given special treatment. Among them there were 461 partisans, members of destruction battalions, saboteurs, looters, and some Communist activists and NKVD agents."

The conclusion is inescapable that Haensch's organization is responsible for the various executions mentioned herein.

The defendant endeavored at the trial testifyingly to absent himself from Gorlovka at the time of the executions, but his evidence in this respect was vacillating and entirely inconclusive. He admitted that officials under his command participated in the action. Whether he personally was present in the actual physical arresting and shooting of the victims is of no consequence legally. A high ranking officer who plans an operation or participates in the planning and has control over officers taking part in the movement certainly cannot escape responsibility for the action by absenting himself the day of execution of the plan. Haensch was not only responsible for the Sonderkommando during the operation, but he admits having been informed on the results thereof.

It is urged by defense counsel in behalf of Haensch that—

"In addition, nothing happened during the course of these operations which could be regarded as a crime. The containing of partisans, members of the destruction battalions, saboteurs, and looters is an action permissible according to international law. I believe I do not have to touch upon this matter further. The report also shows that those persons apprehended were not killed indiscriminately but that only some 75 percent were actually affected by the so-called 'special treatment'. In other words, the cases were all investigated."

The report clearly states that the actions were taken against partisans and Communists. Membership in any political party is not a capital offense according to the rules of war and international law. And executions for membership in a general political party can only be murder. It is asserted that all the cases were investigated. The report says nothing about investigations and, in any event, there is no evidence in the record that the investigations, if held, conformed to the accepted trial requirements, recognized by the rules of war and international law insofar as they appertain to civilians. Whatever defense exists to the charges contained in this item depends on the defendant's word. Can he be believed?

He asserted that during the entire time he served in Russia he never heard of the execution of Jews as Jews. Only three or four weeks prior to his alleged assumption of command over Sonderkommando 4b, the Kommando killed 1,224 Jews. He professed to know nothing about this massacre. He was asked—

"You have now stated that you have no reason to doubt the

correctness of these reports. Therefore, if 1,224 Jews were shot by your organization before you took over, does it not seem strange to you that in all the time that you were with the very men who conducted these executions, that not a word was ever said about so extraordinary a phenomenon as the execution of 1,224 human beings because they were Jews?"

His only reply was that no one talked about these killings or any killings at all, and that he did not learn that Jews were executed for racial reasons until he arrived in Nuernberg five years later!

The witness stated that before he took over command of Sonderkommando 4b he was told by Mueller, Chief of the Gestapo, and Thomas, Chief of Einsatzgruppe C, that the executive activities of Sonderkommando 4b were to remain unchanged. He was asked whether he carried out these directives of Mueller and Thomas and he replied in the affirmative.

Report No. 24, dated 16 July 1941, discloses the killing of 180 Jews and the burning of Jewish homes by Sonderkommando 4b. Report No. 88, dated 19 September 1941, spoke of the execution of 435 Jews as well as 28 saboteurs and 56 officials and agents of the NKVD. Report No. 94, dated 25 September 1941, contained an item on the execution of 290 Jews. Report No. 111, dated 12 October 1941, declared that 125 Jews had been liquidated. Report No. 132, dated 12 November 1941, reported 161 Jews killed. Report No. 135, dated 19 November 1941, reported 562 Jews liquidated. Report No. 143, dated 8 December 1941, described the killing of not only 137 Jews but also 599 "mentally deficient". Report No. 173, dated 25 February 1942, revealed the killings of 649 political officials and 139 Jews. Report No. 177, dated 6 March 1942, chronicled the execution of 1,224 Jews.

If, as Haensch stated, he continued to carry out the executive policy of Sonderkommando 4b as it existed prior to his arrival in Russia, and the above enumeration indicates quite clearly what that policy was, this can only mean that he continued with the execution of the Fuehrer Order. The Tribunal rejects completely the defendant's statement that he did not know of the execution of Jews. In the face of what appears in the record, the Tribunal also refuses to accept as fact the statement of the defendant that he was only personally aware of four executions involving, in all, 60 deaths.

On 21 July 1947 he wrote out by hand a 25-page statement on his Einsatz service. Over eight pages (which is over one-third of the entire statement) were devoted to a discussion on executions and his, the defendant's, manner of conducting them. On page 22 he said—

"I was requested to make statements concerning the number

of executions which, in my estimation, were carried out by the Kommando according to orders during my time as leader of the Sonderkommando 4b. To this I must state the following: In the absence of records I am no longer able to give such information. An estimated number would lack any basis of fact. For this reason and those reasons stated above, I cannot give such an estimate."

This statement that he was unable even to *estimate* the number of executions performed by the Kommando during the time he was its chief is practically conclusive, if words have any meaning, that the number was a very large one. There is additional reason for this conclusion, in spite of his mentioning specifically three or four executions. His long eight-page description of executions is written in a manner and style which reveals irrefutably that mass killings formed a regular routine to him and were not unusual events. A few sentences taken from this volunteered statement are quite illuminating on this point—

"The executions were effected by shooting from the nearest sure-aim distance. That distance, as I recall it, was not more than 8-10 paces. The assumption that the shootings were effected 'by revolver' does not correspond with the facts. I have already explained that during my interrogation of the 14 July 1947.

"I must once again energetically repudiate the assumption that the shootings were carried out in a mean manner, e. g., in the form of mass shootings by machine gun bursts from a considerable distance or by shooting in the neck or in an otherwise lowdown manner.

"After quiet reflection I am bound to state that I cannot say exactly which of the two weapons was used in the individual cases. The Sonderkommando 4b was equipped partly with sub-machine guns—I believe predominately with these—and partly with rifles.

"Moral sufferings for the victims as well as for the members of the execution command were to be avoided as far as possible. Thus, great care was to be taken that a person waiting to be executed would not be eyewitness to a preceding shooting, and that the corpses of people shot would be removed before a further execution took place.

"I myself watched a few executions. Where possible this was done in a manner so as to surprise the execution command by my sudden appearance. During this I saw nothing which indicated that the considerations enumerated were being disregarded.

"Occasionally, officers or authorized persons also attended the

executions as representatives or deputies of their appropriate offices.

"I still remember that the absolutely necessary insuring of instantaneous death without previous mere wounding was brought up during those discussions, and that it was emphasized to aim at the head as a sure guarantee for instantaneous death.

"I recall that the executions were effected from one side of the hill or the access to the groove, and that the corpses, after the conclusion of each execution, were carried to a grave prepared on the other side.

"As far as I remember in the executions which I attended, one to three persons were led to the place of execution at intervals and shot together.

"In those executions which I attended, death was instantaneous. Immediately after the execution the leader and the medical orderly went to the dead and personally satisfied themselves that they were really dead. I do not recall either ever having heard a cry of pain.

"As to the composition of the execution command, the rule existed that under no circumstances were so-called 'shooting Kommandos' formed, that is to say, that for the different executions not always the same men were to be used. The leader of each execution command varied his choice of men according to these directives and assigned them on the day before the execution."

These harrowing details, announced with the insouciance of an expert with long experience, belies the defendant's assertion on the witness stand that his Kommando conducted only four executions with a maximum of sixty deaths.

As above indicated, the defendant claimed that every executee was given the benefit of a hearing, but no evidence was adduced to indicate the character of the charges brought against the arrestees, except the general statement that they were partisans, saboteurs, looters, or Communist activists. Nor was there any evidence that these persons received a trial. Furthermore, the large number of victims and the haste with which they were executed would demonstrate, considering the time element, the impossibility of trials for all of them. As a matter of fact, the defendant testified that Streckenbach pointed out to him that in the East there would be no "formal court proceedings such as we were accustomed to carrying out in the homeland, in the police courts, or another court." And on the contrary, he was instructed that the procedure was to follow the decree of the highest political authorities, and it is a matter of record that all Einsatz units had received the Fuehrer decree. The Fuehrer Order, of course, provided for no trial whatso-

ever. The Tribunal is convinced that the civilians shot by Sonderkommando 4b under Haensch's leadership did not receive the trial intended by the rules of war and international law. The credible evidence shows further that if there were any proceedings they were entirely of an ephemeral nature.

The defendant testified that he was thoroughly familiar with the cases of the sixty persons executed by his Kommando.

"Yes, I knew exactly about the individual cases, that is to say, the decision in both these executions in the Gorlovka district. I also knew about the other executions and I was able to convince myself that these were only cases which occurred in accordance with law and order, and where the people concerned were actually proven violators against the laws of war and against security of the people."

Later he said that sub-Kommando leaders could make independent decisions, but when he was asked—

"Would you have been able to reverse the decision of the sub-Kommando leader if you would have been of the opinion that the execution of a certain individual was not justified?"

He replied—

"Yes, without any trouble. If I had become convinced that something was not quite in order, I certainly would have been able to do that."

It developed then that the sixty who were executed by his Kommando were killed under his orders.

"Q. There were 60 people killed under your orders?"

"A. Yes."

He was now asked whether he investigated these 60 cases before he pronounced the death sentence.

"Q. Now, how many of these 60 cases did you investigate yourself, or reviewed the evidence on?"

"A. The evidence? I only looked through the evidence and made a final decision for about twenty-five cases, and seven that—

"Q. All right.

"A. (Continuing) came thereafter.

"Q. That is thirty-two that you investigated yourself?"

"A. Yes.

"Q. So that means that twenty-eight went to their deaths under your orders without your having reviewed the evidence?"

"A. No.

"Q. Sixty were killed under your orders?"

"A. Yes.

"Q. Thirty-two you investigated?"

"A. Yes."

In spite of this very definite pronouncement, the defendant later went on to say he investigated the sixty cases. The defendant's manner of testifying, his shifting and evasive attitude while discussing this subject, convince the Tribunal that he did not tell the entire truth about the sixty alleged investigations. The defendant stated that some of the killings had been ordered by the army, but that he reviewed those cases also. It developed, however, that no written report was made so that it is not clear, if he had no personal knowledge of the facts and received no written report, how he could review the cases. His explanation, which is obviously no explanation, follows:

“* * * these cases of executions which I was questioned on in Barvenkova became known to me when, by accident, I happened to the place, and the corresponding report about the respective orders of the army units were given to me for information. Today, I cannot state exactly from memory or with certainty that the subcommander received this order from the military officer, who had the right to give this order, and he was also told the crime itself which had been committed by the defendants. I considered this type of handling not correct, and I expressed my opinion to this effect at the AOK, namely, that in my opinion the army when it conducted the investigation and made the decision itself should carry out the executions by its own Kommandos.”

Much of the defendant's testimony, even if believable, does not exculpate him. Much is simply not worthy of belief. For instance, when he says that Streckenbach, who was the man responsible for the announcement of the Fuehrer Order in Pretzsch, said nothing to him about this momentous program as he was about to depart for the East, Haensch utters an obvious falsehood. When he says that in his conversation with Heydrich, Heydrich was silent about the Fuehrer Order, he declares what is incredible. And even more incredible is his statement that the very Chief of the Einsatzgruppe, under whom he was to operate, remained mute on the subject of the order of the head of the state, the very order which brought the Einsatzgruppen into being. And then one can only dismiss as fantastic the declaration of the defendant that his predecessor who had admittedly executed thousands of Jews under the Fuehrer Order, and whose program Haensch was to continue, said nothing to Haensch about that program. And when Haensch boldly uttered that the first time he ever had any inkling of the Fuehrer Order was when he arrived in Nuernberg six years later, he entered into a category of incredulousness which defies characterization.

The guilt of the defendant in the commission of war crimes and

crimes against humanity has been clearly and conclusively established. From all the evidence in the case the Tribunal finds the defendant guilty under counts one and two of the indictment.

The tribunal also finds that the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

GUSTAV NOSSKE

SS Lieutenant Colonel Nosske studied banking, economics, and law, passed his examinations as assessor in 1934, and entered the Administration of Justice at Halle. In June 1935 he became employed in the National Ministry of the Interior at Aachen and then transferred to the Gestapo. From 19 June 1941 until March 1942 he served as commander of Einsatzkommando 12.

He testified that he morally opposed the Fuehrer Order but did not put it into effect because it was his good fortune never to have been in a position where he had to execute the order. When he was asked if he had been called upon to shoot 500 Jews under the Fuehrer Order whether he would have done so, he replied—

“If I had been in a situation where the Einsatzgruppe chief would have been in a position to reprimand me for disobeying the Hitler Order, and had stressed it, then probably I would have done it.”

Later, he said that if he were confronted with such a situation he would take the matter up with his conscience.

“Q. * * * you are before 500 innocent people, men, women, and children—Jews—and you are presented with this order to kill them. Now, are you going to confer with your conscience and, if so, what is going to be your conclusion?”

“A. I would have taken it upon my conscience.

“Q. And you would have killed them?”

“A. I would have probably done it.”

But he did face situations which were not hypothetical.

Report No. 61, referring to Einsatzkommando 12, says—

“* * * only in Babchinzy resistance was partially shown toward an orderly harvesting caused at the instigation of Jewish inhabitants and such Jews who had only come to this territory a few months ago. By spying on the population, those Jews had already created a basis for numerous deportations to Siberia. As a countermeasure, 94 Jews were executed.”

The defendant on the witness stand admitted that this execution was carried out by one of his detachments, but declared that the execution was legal because the executees had sabotaged farm

machinery and crops. The defendant's explanation is in flat contradiction to the report which specifically states that the 94 Jews were killed as a countermeasure. The phrase "countermeasure" carries no implication of guilt on the part of the victims and killing such victims can only be a crime.

The defendant said he did not learn of the execution until after it had taken place, but admits that it was done by members of his Kommando. He admitted further the possibility that the Fuehrer Order figured in the decision of the sub-Kommando leader to perform the execution. He asserts that his sub-Kommando leader conducted investigations before shooting the Jews, but he made no independent inquiries to determine whether the executions were warranted. Taking him at his word, his acceptance without inquiry of the killing of 94 persons was a demonstration of criminal and wanton indifference which might well have induced his men to further illegal and unjustified executions.

The defendant spoke of a period when he was absent from the Kommando, but admitted that there were shootings under his authority even though he did not know the number.

"Then comes the period of time from the end of August until October where the command of the Kommando was taken over by somebody else, and I am not at all certain about the figure of those shot, and I am not sure how many were shot on my responsibility during that time."

The defendant explained that in January and February 1942 the severe weather prevented any activities on the part of his Kommando. It is a fact that Report No. 178 said—

"Kommando 12 had to limit its activities to the villages and closer vicinity of the branched-off sub-Kommando posts, because of extreme cold and snowstorms and unpassable streets." But it also said—

"From 16 to 28 February 1942, 1,515 persons were shot, 729 of these were Jews, 271 Communists, 74 partisans, 421 gypsies, as asocials and saboteurs."

While all these killings are not to be charged to Sonderkommando 12, it does refute the statement that Sonderkommando 12 was entirely immobilized during the period in question. Nor was it immobilized, according to Report No. 165, which, covering events in January 1942, said—

"Besides, 2 further Teilkommandos were established with the assistance of men of the Einsatzkommando 12 for the purpose of combing out the northern Crimea."

Then there was the episode of the Romanian Jews. The prosecution contended that the defendant was involved in a forced

migration of Jews from German-controlled territory into Romania, and that in the operation some of the Jews were shot. The defendant admitted that he had led some 6,000 to 7,000 Jews across the Dneestr River, but denied that in this movement any of the Jews were shot. In fact he endeavored to convey the impression that in this particular affair a great favor had been done the Jews in repatriating them. A witness, Harsch, called to testify on the subject stated that he witnessed the arrival of the Jews on the Romanian side of the river, and that once they had gained that point they evinced their gratitude to the German escort by crying "Heil Hitler". Although this contingent of Jews escaped the German firing squad by leaving German territory, it is not so certain what fate awaited them in Romania. The defendant Nosske, in this regard, testified, as stated before in the general opinion—

"I assume that the Romanians wanted to get rid of them and sent them into the German territory so that we would have to shoot them and we would have the trouble of shooting them. We didn't want to do the work for the Romanians."

The witness Harsch said that later he saw these same Jews within barbed wire enclosures on Romanian territory.

The defendant made frequent references in his testimony to shootings by his Kommando.

"From 21 June until 15 September certainly, because during the time from 10 to 25 or 23 (of August), the *shooting* in Babchinzy took place and then later on several *shootings* took place.

"This territory where the Kommando 12 moved was declared Romanian sovereign territory; certain *shootings* occurred but we didn't quite know. Our own and other people's reports mentioned this. I already said, after looking at the final records of the Kommando I read it. Of course, *shootings* were carried out, in particular in this whole territory, and *shootings* were reported about on the principle that not only our own *shootings* but also *shootings* by others were reported later on, including events which had been in other territories.

"In this connection many reports were made out by me about many *executions*, that is, our own *executions*, as well as foreign *executions*." [Emphasis supplied.]

In addition, he affirmed that Kommando 12 contributed to the total killings of the parent organizations, Einsatzgruppe D, but refused to name any figure or even an estimate of the number of persons his Kommando had executed. He said that in his entire period of service in Russia he had only seen two people killed and then, after vividly narrating the details of an incident which

resulted in numerous executions, he could not or would not state the number of people who had been killed. It is extraordinary that he should recall the alleged investigation of this incident but not recall what happened as a result of the investigation.

Despite his constant refusal to estimate the number of people executed by his Kommando, he did finally say that he knew it had killed at least 244. Taking his testimony as a whole, the Tribunal is convinced that the Kommando executed a number considerably larger than 244. Nor is it convinced that the rules of war and international law were observed in all these cases.

Report No. 95, dated 25 September 1941, covering the period from 19 August to 15 September 1941, speaks of various executions conducted by Einsatzgruppe D of which Sonderkommando 12 formed a part. In his summation, defense counsel says—

“Even if the report contains reports on shootings which were forwarded to the group by Einsatzkommando 12, nevertheless, this report does not provide any reason for believing that shootings reported in this way were carried out by virtue of the Fuehrer Order.”

But the report itself says—

“From 19 August until 15 September, 8,890 Jews and Communists were executed. Total number: 13,315. The Jewish question is at present being solved in Nikolaev and Kherson. About 5,000 Jews were rounded up in each town.”

While Nosske cannot be charged with any particular number of killings enumerated here, it is obvious that the shooting of the Jews, since no qualifying phrase limits the reference to the Jews, was done on the basis of the Fuehrer Order.

His statement heretofore quoted about refusing to kill Jews for the Romanians shows a familiarity with the Fuehrer Order which belies his general assertion that he was opposed to it. In that statement he practically asserted that he was against killing Jews for the Romanians, but that there was no objection to the same kind of a performance if it took place in the territory of his own organization.

In September 1944, the defendant having in the meantime returned to Germany, the Higher SS and Police Leader in the Duesseldorf area instructed him to round up all Jews and half-Jews in that area and shoot them. The defendant stated that he protested this order and that, eventually, it was revoked or at any rate not enforced. Nosske's protest against this order was undoubtedly due mostly to the fact that many of the intended victims, because of the conjugal relationship of the half-Jews, were considered Germans. Nonetheless, his action in refusing categorically to obey the order, demonstrated, contrary to the

argument advanced throughout the trial in behalf of the various defendants, that a member of the German Armed Forces could protest a superior order and not be shot in consequence. Though it is true the defendant suffered some inconveniences because of his unwillingness to shoot the people of Duesseldorf, he was not shot or even degraded.

From all the evidence in the case the Tribunal finds that the defendant is guilty under counts one and two of the indictment.

The Tribunal also finds the defendant was a member of the criminal organizations SS, SD, and Gestapo under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

ADOLF OTT

SS Lieutenant Adolf Ott began his career in an administrative office of the German workers front in Lindau. He joined the NSDAP in 1922 and became a member of the SS in 1931. In 1935 he entered the security service.

There are no complications about the case of Adolf Ott, except perhaps the meaning he intended to give to the word "execution". In his pre-trial affidavit he said that his Kommando carried out 80 to 100 executions. At the trial he stated that, by the word execution, he meant the death of but one person. The context of the affidavit would logically convey a contrary view because, immediately after speaking of the "80 to 100 executions", he says, "I remember *one* execution which took place in the vicinity of Bryansk", and he then proceeds to describe this execution which involved "*corpses*". The affidavit also says that the valuables collected from "*these people*" were sent to Einsatzgruppe B.

The whole purport and tenor of this affidavit are to the effect that the word "execution" is used in the sense of a multiple killing. However, for the purposes of the ascertainment of guilt or innocence it matters little whether, by "80 to 100 executions", Ott meant the killing of only 80 to 100 people or a multiple of 80 to 100, which multiple, in view of the evidence in this case, would increase the number of the slain to many hundreds at the very least.

According to his affidavit, Ott was assigned to Sonderkommando 7b on 15 February 1942 and, according to his testimony in Court, he arrived at the headquarters of the Kommando in Bryansk on 19 February. He asserted, however, at the trial that he did not actually take over the leadership of the unit until about the middle of March. It is the contention of the prosecution that Ott testifyingly delayed his chiefship of the Kommando until

15 March in order to avoid responsibility for the executions enumerated in Report No. 194.

“In the area of the Einsatzgruppe, during the period from 6 until 30 March 1942, the following were *specialy treated*:

* * * * *

through SK 7b: 82 persons, 19 among them for collaborating with partisans, 22 for engaging in Communist propaganda and for proved membership of the Communist Party, 14 for making incendiary remarks, 27 Jews.”

In view of the fact that Ott arrived in Bryansk on 19 February for the specific purpose of taking over control of Sonderkommando 7b, it is not clear why he should have waited until 15 March to assume leadership of the unit. But even if this unexplained delay in the technical assumption of command were a fact, this would not of itself exculpate Ott from responsibility for the operation involved. Under Control Council Law No. 10 one may be convicted for taking a “consenting part in the perpetration of crimes” and it would be difficult to maintain that Ott, while actually with the Kommando, did not (even though technically not its commanding officer) consent to these executions.

In addition, it is to be observed that the report declared that the 82 persons enumerated therein were killed between 6 March and 30 March. Thus, if arguendo Ott’s authority over the Kommando was delayed until 15 March, there is still the responsibility on his part for the executions which occurred between 15 March and 30 March.

However, so far as guilt is concerned, this speculation as to the number killed before 15 March and the number executed after 15 March is academic, because the evidence is conclusive that, during the at least ten-month period that Ott commanded Sonderkommando 7b, great numbers of people were killed in violation of international law.

The Tribunal has pointed out that it is not necessary, in the individual judgments, to enumerate and discuss all the executions charged against the defendants by the prosecution if it is once established that the defendant is guilty under counts one and two of the indictment. In this respect, Ott, himself, removed every possible scintilla of doubt when he said—

“I told my sub-Kommando leaders that Jews, after they are seized and do not belong to a partisan movement or sabotage organization, must be shot on the basis of the Fuehrer Order.” After this statement in Court, he was asked—

“Did I understand you, witness, to say that you instructed your sub-Kommando leaders that, if they found Jews, they were to seize them and shoot them in accordance with the

Fuehrer Order? Is that what you said?"

And his answer was, "Yes. That is correct."

He was questioned again as to whether a Jew would be shot, even if he did not belong to a partisan or sabotage organization. And he replied—

"Yes. He would have been shot, even * * * if he had not been a member of one of these organizations."

Since the defendant by his answers was admitting incontrovertible guilt, more questions were put to him on this subject, so that there could be no possible misunderstanding.

The further interrogation follows:

"Q. If he had not belonged to an organization he would have been shot anyway?"

"A. He would have been shot if he had not been one of the perpetrators, but if, for some reason, he had merely been hiding with the group because he had to be seized, in accordance with the Fuehrer Order.

* * * * *

"Q. * * * so that whether he belonged to an illegal organization, that is, partisan or saboteurs, or not, he was bound to be shot because, if he wasn't shot as a saboteur or an active partisan, he would be shot under the Fuehrer Order? That's correct, isn't it?"

"A. He was shot in accordance with the Fuehrer Order—yes. I would like to add * * * that, of course, an interrogation was carried out in this particular case to see 'is he a member of an organization or is he not'.

"Q. And in each case you found out he was a member of an organization, an illegal organization?"

"A. One of these three groups.

"Q. Yes, now if you had found out that he was not a member of one of these illegal organizations, saboteur, partisan, or a resistance movement, you would have shot him anyway because he was a Jew and fell under the Fuehrer Order, that's right, isn't it?"

"A. Yes, that is correct.

"Q. What was the necessity of the investigation if the result was that he always would be shot? What was the reason for wasting all this time on a man you were going to shoot anyway?"

"A. Interrogations were carried out to find out whether he was a member of an organization. If such was the case he was carefully questioned concerning all liaison members, number of members of this particular organization, and their activities. That was the purpose of the interrogation."

The defendant explained that some of the interrogatees refused to speak.

“Q. Some of them refused to talk?

“A. That is so.

“Q. And they were shot just the same?

“A. They had to be shot if they were Jews.”

Still determined to exclude every single possibility of equivocation and error, the defendant was questioned further, and he answered as follows:

“Q. Well, then you did shoot some Jews because they were Jews?

“A. I have already said, * * * every Jew who was apprehended had to be shot. Never mind whether he was a perpetrator or not.

“Q. How many Jews did you shoot just because they were Jews?

“A. I estimate there must have been about 20, at least.”

This specific out-and-out admission by Ott in Court that he shot 20 Jews just because they were Jews conclusively establishes his guilt, and it is unnecessary to consider the other items of accusation advanced by the prosecution.

There is but one further observation to be made on this subject, and that is the undeviating fidelity of the defendant to the virtue of consistency. Consistency, which has always been regarded as a jewel, did not lose any of its sparkle or gleam in the hands of Adolf Ott. When asked why he did not release some of the Jews when he had the opportunity to do so, he replied—

“I believe in such matters there is only one thing, namely consistency. Either I must shoot them all whom I capture or I have to release them all.”

One more item in Ott's case is worthy of comment. In his pre-trial affidavit he said—

“In June 1942, without having received an order to do so, I opened an internment camp in Orel. In my opinion people ought not to be shot right away for comparatively small misdeeds. For this reason I put them in this internment camp, in which the people had to work. I determined the length of time that these people should remain in the camp on the basis of examination and investigation of the individual cases which were made by my Kommando. It happened too that people were released. The highest number of inmates that I had in this camp was 120 persons.”

The magnanimity of the affiant in this statement is not in the declaration that it was his opinion that “people ought not to be shot right away for comparatively small misdeeds”, but his

assertion that it "happened too" that is, it *even* happened, that people were released.

From all the evidence in the case the Tribunal finds the defendant guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

EDUARD STRAUCH

SS Lieutenant Colonel Eduard Strauch is a graduate lawyer. He joined the Allgemeine SS on 1 December 1931. In 1934 he joined the SD.

The prosecution contends that Eduard Strauch became commander of Einsatzkommando 2 on 4 November 1941. This is denied by the defendant who, in effect, claims he was never in charge of this Kommando. The defendant explains that when an area passed into the hands of the civilian administration from the military the Einsatz units ceased to exist and were replaced by (1) the chief commanders [Befehlshaber] of the Security Police and SD in the case of the Einsatzgruppen, and (2) the commandants [Kommandeure] of the Security Police and SD in the case of the Einsatzkommandos and the SD.

Defense counsel claims these offices had no connection with the military at all, yet in seeking to make this point he gave the illustration of the chief of offices [Befehlshaber] of the SIPO and SD, Ostland, with headquarters at Riga, the area of the civilian administration, maintaining his headquarters as chief of Einsatzgruppe A in Krasnowlisk, within the army area. By this very illustration, which was supposed to show the contrary, it is very clear how one could act in a civilian administrative capacity and be head of an Einsatz unit at the same time.

An analysis of the records shows that Eduard Strauch took over the command of Einsatzkommando 2, Latvia, on 4 November 1941, and that in February 1942 he became commander of the Security Police and SD in White Ruthenia, situated at Minsk. From some time in July 1943 until he left Russia, he served as intelligence officer in an antiguerrilla warfare unit.

Strauch's guilt has been established by numerous documents. Strauch seeks to deny that he cooperated with Jeckeln, Higher SS and Police Leader in the Jewish operation of 30 November 1941, because he only had 20 men under him. But it is an extraordinary coincidence indeed that one officer and exactly 20 men of Einsatzkommando 2 participated in that operation which resulted in the death of 10,600 Jews in Riga.

Report No. 186, dated 27 March 1946, shows Strauch was commander of the Security Police and the SS for White Ruthenia during this period. The report chronicled the death of 15,000 Jews in Cherven.

Report No. 183, dated 20 March 1942, states—

“In the period from 5 to 28 February the main field office Vileika shot 29 Jews, 4 Communists, 5 partisans, 5 public enemies, and 4 persons for sabotage. Another 16 persons were arrested.”

This operation was conducted by Hoffmann who was Strauch's deputy, and who kept Strauch informed of his operations, as Strauch admitted on the witness stand.

The commissioner general for White Ruthenia reported on 31 July 1942 to the Reich Commissioner in Riga as follows:

“During detailed consultations with the SS Brigadefuehrer Zenner and the extremely capable Chief of the SD, SS Obersturmbannfuehrer Dr. jur. Strauch, we found that we had liquidated approximately 55,000 Jews in White Ruthenia during the last 10 weeks. In the Minsk-Land area, the Jewry was completely exterminated, without endangering the allocation of labor in any way.”

Strauch first attempted to deny the authenticity of this letter and then abandoned that position, claiming that Kube exaggerated the figures. The Tribunal is convinced that the letter is authentic, and that the statements contained therein represent the truth even if not accepting the absolute accuracy of the figures down to the last digit.

By his own words Strauch was an unrelenting and merciless oppressor of the Jews and displayed considerable indignation when anyone sought to defend them. In a letter dated 25 July 1943, he related a plan whereby 5,000 Jews of the Minsk Ghetto were to be “resettled”. The Jews, however, learned that the resettlement meant execution and Strauch bitterly attacked those responsible for this “treachery”. He said, “We had no choice but to herd the Jews together by force.”

On 20 July 1943 he wrote a letter narrating how he had subjected 70 Jews to special treatment and expressing his resentment because complaint had arisen from the fact that he had had the gold fillings removed from the mouths of these Jews before they were killed.

Adolf Ruebe, a master sergeant in the SS, submitted an affidavit on Strauch which further emphasizes Strauch's guilt which is complete.

“About the middle of February 1943 the Kommando of the KdS Minsk went to Slutsk, under the leadership of Obersturm-

bannfuehrer Eduard Strauch. At about 6 o'clock in the morning the Kommando was called together. A Hauptsturmfuehrer made a speech in which he told us that the Jewish ghetto in Slutsk would be liquidated this day and that he expected the highest discipline from every member of the Kommando. A certain number of the men were assigned to carry out the shootings. Another group got the order to guard those who were supposed to be shot. The older people, including me, were supposed to be available at the entrance of the ghetto. A man in the uniform of a political leader made a speech addressed to the Jews, informing them that they would be resettled. The Jews were then put on the trucks. As a rule the individual trucks were given different destinations, such as OT (Organization Todt), Reichsbahn, etc. But, as a matter of fact, all the trucks headed straight towards the execution place which was some kilometers outside of Slutsk. There the mass graves had already been prepared. In the same vicinity there were mass graves which originated from a shooting of Jews in summer 1942. The Jews were taken into the ditches where they were murdered by separate shots from behind. At approximately 3 o'clock in the afternoon the executions were completed. Obersturmbannfuehrer Strauch and Brigadefuehrer von Gottberg were present at the executions."

In response to a question regarding the Jewish problem in White Ruthenia, Strauch replied that the Fuehrer Order was valid in White Ruthenia, as everywhere else. He testified that he had a conference with Kube and that Kube told him Jews were needed and he could not do without these Jews, since they should be used in bringing in the harvest, working in an armament factory, and doing other jobs. The defendant thereupon talked to Heydrich and was directed to postpone the execution of the Fuehrer Order until the harvest was brought in.

The defendant testified that, in February-May 1942, 7,000 Jews had been killed. When Strauch arrived, Kube asked him not to continue this system, and the defendant said that he could not begin to shoot Jews on the first day of his arrival.

Responding to a question as to the number of Jews executed during the defendant's time of service he replied—

"You mean my time? Oh yes, well, if I count those Jews who were later killed by Gottberg, when I was G-2, when I count them along with the others, then I would say 17,000."

He admitted that, to his own knowledge, a Jew had to be killed just because he was a Jew.

The defendant admitted that he saw probably 60 to 90 executions. Regarding the affair of Slutsk, he testified that the number

executed there was about 1,200 and not 2,000 as mentioned in the Kube letter. He stated that he was present during part of the execution and witnessed about 200 being killed. He also saw about 200 women and children lining up to be shot.

From all the evidence in the case, the Tribunal finds the defendant guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

Physical and Mental Condition of Defendant

On the day of the arraignment, 15 September 1947, Eduard Strauch had an epileptic seizure which necessitated his being taken from the courtroom. He soon recovered from this seizure and apparently enjoyed normal health, although he remained in the prison hospital for observation and rest.

On 11 December 1947, a medical board made up of three physicians conducted an examination of the defendant and declared that it was their opinion that "the defendant's mental condition is such that he is aware of the charges brought against him in the indictment". It was their opinion, further, that "the defendant is, at most times, physically and mentally able to understand questions put to him and to reply thereto with the full use of his mental faculties".

There is every indication that, up until a short time prior to the time Eduard Strauch was scheduled to appear in Court, his mental behavior was normal. However, in the latter part of December 1947, it appears that he would give irrelevant answers to questions put to him by his attorney when he was consulted in the preparation of his case.

On 13 January 1948, he came into Court as a voluntary witness, but, once on the stand, proceeded to answer in a manner which, to the Tribunal, represented a conscious and deliberate intention to avoid direct and intelligent responses to the questions put to him.

On 17 January 1948, a medical board of two physicians examined him and concluded:

"That the defendant, Eduard Strauch, except for brief periods preceding, during, and succeeding epileptic seizures is capable of understanding the proceedings against him and of taking adequate part in the direction and presentation of his own defense."

The defendant then again came into Court and, on 19 and 20

January, testified in an intelligent fashion, giving conclusive evidence of a thorough awareness of the proceedings.

Lieutenant William Bedwill, medical officer and trained psychiatrist was present in Court and reported to the Tribunal as follows:

"It is my opinion that the defendant Herr Eduard Strauch, during the periods when I have observed him, including the Court sessions on the afternoon of 19 January 1948 and the morning of 20 January 1948, has been mentally competent and so free from mental defect, derangement or disease as to be able to participate adequately in his own defense."

On 2 February 1948, Lieutenant Bedwill was asked on the witness stand—

"Lieutenant, do you think that, at any time when his answers were obviously irrelevant, the answers could be consonant with a conscious desire on the part of the defendant to appear to be, or make himself appear mentally incompetent?"

And he answered—"I believe that they could be consonant with that desire."

After cross-examination by defense counsel, the following question was put to the psychiatrist:

"Do we understand from your statement, Doctor, that if the witness was not simulating, that then he was suffering from a disease that medical science up to this time has not yet discovered or recorded, so far as your cognizance of medical science is concerned?"

And his answer was—"That is true."

Another observation on Strauch's mental competency is the fact that counsel for Sandberger in his final plea to the Tribunal quoted from Strauch's testimony in confirmation of an objection supposed to have been made by Sandberger to the Fuehrer Order.

It is to be noted further that, on 9 February 1948, Dr. Gick made the announcement in Court that his client Strauch had no objection to his wife's being called for examination and cross-examination which fact would indicate that, even after he had testified in Court, Strauch was still in full possession of his mental faculties.

From the complete history of the defendant's case the Tribunal concludes that any odd behavior demonstrated by the defendant in or out of Court was consciously adopted.

The Tribunal further finds from the medical evidence and its own observation of the defendant in Court that he was mentally competent to answer to the charges in the indictment.

WALDEMAR KLINGELHOEFER

SS Major Waldemar Klingelhoefer attended school in Kassel, served in the army from June to December 1918 and after the war studied music and voice. He gave concerts throughout Germany and later received a State's Certificate as voice teacher. In 1935 he became an opera singer. In 1937 he took over Department Culture, SD III-C in Kassel. In 1941 he was assigned to Einsatzgruppe B as an interpreter. This Einsatzgruppe, already by November 1941, according to Report No. 133, had killed 45,467 persons. This score was considerably increased later.

It is not contended by the prosecution nor does the evidence at all indicate that Klingelhoefer could be charged with all these executions simply because he belonged to Einsatzgruppe B, which, of course, consisted of several Kommandos. The reference to the larger unit is made only because the defendant has told of various transfers within the Einsatzgruppe. He said that he was in Sonderkommando 7b from 22 June 1941 to 10 July 1941, and then entered Vorkommando Moscow. In October he took over an independent command of this unit and held it until he went on leave. On his return to Russia on 20 December 1941 he entered the group staff of Einsatzgruppe B where he remained until December 1943. There are scores of reports covering the activity of these various units and it is unnecessary to trace Klingelhoefer in and out of these individual units specifying the exact number of persons killed by the units during the time he was with that particular organization.

Report No. 92 shows that Vorkommando Moscow killed over 100 persons as of 13 September 1941 and Klingelhoefer admits he was in charge of that unit during August and September 1941.

Report No. 108 declares that by 28 September 1941 the Vorkommando Moscow and the group staff of Einsatzgruppe B had killed 2,029 persons. Between 20 August and 28 September 1941 the Vorkommando and the group staff executed 1,885 people. Klingelhoefer admitted that he was in charge of Vorkommando Moscow during that time.

By 26 October, Vorkommando Moscow and the group staff had executed 2,457 persons and, whereas Klingelhoefer cannot be charged with the entire number of 572 persons killed between 28 September and 26 October 1941, he cannot escape responsibility for some of these killings since in this period he commanded part of Vorkommando Moscow.

Klingelhoefer has not only described in detail executions he witnessed showing thereby the greatest familiarity with the macabre techniques involved but in his pre-trial affidavit he re-

lated how he shot 30 Jews because they had left the ghetto without permission. He did this, he said, under orders from the chief of the Einsatzgruppe, Nebe, who ordered him "to establish an example". At the trial he gave a different explanation of this episode which, however, establishes even a clearer case of guilt. He said that three women had contacted some partisans and, returning to the town, had talked to the thirty Jews in their homes. This, according to the defendant, made them guilty of partisan action and he had them shot. He, of course, also shot the three women. He did, however, accord them a special consideration. He had them blindfolded for the execution and then ordered that they be given a separate grave.

Klingelhoefler has stated that his function in the Einsatzgruppe operation was only that of interpreter. Even if this were true it would not exonerate him from guilt because in locating, evaluating and turning over lists of Communist party functionaries to the executive department of his organization he was aware that the people listed would be executed when found. In this function, therefore, he served as an accessory to the crime.

"Q. I asked you, Witness, didn't you know that when you were giving him these lists of Communist party functionaries that he was going to exterminate all those he could? You either knew it or you didn't know it.

"A. Of course, I did."

But the evidence is clear that Klingelhoefler was no mere interpreter in the grim business of the Einsatzgruppe. He was an active leader and commander. He knew what the Einsatz units were doing to the Jews.

"Q. You told us you knew that if he stayed in the ghetto he was killed. Now, if he left the ghetto, was he then set free?

"A. If he left the ghetto, he violated the directives which were given.

"Q. So that he was killed anyway?

"A. Then he had to be executed, yes."

In his own affidavit the defendant stated:

"While I was assigned by Nebe to the leadership of the Vorkommando Moscow, Nebe ordered me to go from Smolensk to Tatarsk and Mstislavl to get furs for the German troops and to liquidate part of the Jews there. The Jews had already been arrested by order of Hauptsturmfuehrer Egon Noack. The executions proper were carried out by Noack *under my supervision.*" [Emphasis supplied.]

Although the defendant stated several times during his interrogation on the witness stand that he was morally opposed

to the Fuehrer Order, it is evident from all the testimony in the case that he went along quite willingly with it.

Before leaving the witness stand he stated that he would have been happy for Hitler to win the war even at the expense of its present condition with two million Germans killed, the nation in utter ruins, and all of Europe devastated. This statement has no bearing, of course, on the question of his guilt under counts one and two, but it is helpful in determining the state of mind as to whether he obeyed the so-called superior orders with a full heart or not.

The Tribunal finds from all the evidence that the defendant accepted the Fuehrer Order without reservation and that he executed it without truce. The Tribunal finds the defendant guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under conditions defined by the Judgment of the International Military Tribunal and is therefore guilty under count three of the indictment.

LOTHAR FENDLER

SS Major Fendler studied dentistry from 1932 to 1934 and served in the Wehrmacht from 1934 to 1936. He then joined the SD.

Fendler served in Sonderkommando 4b, Einsatzgruppe C, from May 1941 to 2 October 1941. During this time, the Sonderkommando was engaged, as all other Kommandos of the Einsatzgruppe, in the execution of the Fuehrer Order. The reports show that, during the time that Fendler was with the unit in question, many executions occurred, Report No. 24-IIA-81, NO-2938, Report No. 19-IIC-49, NO-2934, and Report No. 111-IIA-44, NO-3155.

Fendler denies participation in these executions, but he goes further and asserts complete ignorance of them. In fact, according to his story, he did not learn of the Fuehrer execution order until after he had severed all connections with the Sonderkommando.

Fendler submits that his work with the Kommando was restricted to department III and that he was concerned only with the gathering of information. Defendant after defendant has asserted that, in doing department III work, he was utterly ignorant of the functions performed by the other departments, but one cannot help but observe that department III did not operate within the confines of a high stone wall separating it from the rest of the Kommando. An Einsatzkommando in the

field usually consisted of from 80 to 100 men and 7 to 10 officers. Sonderkommando 4b had a staff of 7 officers. Fendler lived, ate, and associated with these officers. He was department III, some other officer was department IV, and still another officer was department V or VI, and so on. It is absurd to assume that Fendler could not know what these other officers were doing, especially in view of the fact that Fendler was the second senior officer in the Kommando.

It is not contended by the prosecution, nor does the evidence show that Fendler, himself, ever conducted an execution, but it is maintained that he was part of an organization committed to an extermination program. Fendler asserts that department IV alone conducted the executions and, therefore, within the watertight compartment of his own department III, he did not know what was happening in department IV.

The International Military Tribunal, in considering the relationship between the SD (which is department III) and the Gestapo (which is department IV), said—

“One of the principal functions of the local SD units was to serve as the intelligence agency for the local Gestapo units. In the occupied territories, the formal relationship between local units of the Gestapo, Criminal Police and SD was slightly closer.”

Fendler asserted over and over that he only learned by accident of executions and that, generally, he did not know what was taking place. Fendler's assertion runs counter to normal every day experience because it is simply incredible that a high-ranking officer in a unit would not know of the principal occupation of that unit.

The defendant stated that he learned of the extermination order only after he had left the Kommando and was at Kiev on his way home. He was asked—

“So that you had to travel five hundred kilometers and two days' distance from the very heart of this execution district before you learned that executions were being performed upon Jews because they were Jews, is that right?”

And his answer was “yes”.

The defendant explained that one of his principal occupations in the Kommando was making out morale reports on the population. He was asked whether, when he learned of the program which had occurred in Tarnopol, where about 600 people were murdered, he included this fact in his report. He replied in the negative. He was asked why he would not include so momentous an event as the murdering of 600 people in the streets in a

report which he was compiling on the morale of the population, and he replied he did not have a chance.

“Q. Well, how much time would it take in an SD report which you were compelled to make and which it was your job to make, to say that there were excesses in Tarnopol to the extent that 600 Jews were murdered,—or if you didn’t want to say murdered—were killed by the population. How much time would it take to include that, with your fingers on the typewriter, into a report? How much time would it take to say that?”

“A. Two seconds.

“Q. Well, then, why didn’t you have the two seconds to write that?”

“A. Because I made no report.

“Q. Why didn’t you make a report?”

“A. Because I was given the order by the Kommando leader to evaluate this material.”

Fendler denies that he ever functioned as deputy to the Kommando leader and stated that, when he acted as an advance Kommando leader, he occupied himself only with the obtaining of intelligence files left behind by the Bolsheviks. But, in evaluating these reports, it is inevitable that he would need to tell someone what he found. In fact, he did admit that this information usually was “utilized for individual reports”. The army was also informed “in a written form or orally”.

In order to prove that the work of every officer was specialized and thus one would not know what the others were doing, the defendant stated that his unit never divided its forces. Thus, one officer would not need to do the job of others. However, since this would establish that, by sheer proximity, the officers could not help but know each other’s business, the defendant later stated that the unit was not always together because of the distance it had to travel.

The defendant knew that executions were taking place. He admitted that the procedure which determined the so-called guilt of a person which resulted in his being condemned to death was “too summary”. But, there is no evidence that he ever did anything about it. As the second highest ranking officer in the Kommando, his views could have been heard in complaint or protest against what he now says was a too summary procedure, but he chose to let the injustice go uncorrected.

He was asked—

“Do I understand you correctly that you were of the opinion that there was an insufficient safeguard for the suspected person, as there was no trial, that his rights as a defendant were

not sufficiently safeguarded? Is that what you want to say, that that was your opinion; was that your opinion?"

And he replied, "That was my theoretical opinion, Mr. Prosecutor."

The defendant is presumed to be innocent until proved guilty, and the Tribunal is not prepared to say that the evidence in this case rises to that degree of certainty which could conclusively establish that the defendant was guilty of planning the killing of people or ordering their death. It does, however, show that the defendant took a consenting part in the criminal activities in the sense intended in Control Council Law No. 10, although there are some mitigating circumstances. From the evidence in the case the Tribunal finds the defendant guilty under counts one and two of the indictment.

The Tribunal finds the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

WALDEMAR VON RADEZKY

Von Radetzky was born in Moscow, attended school at Riga and joined the Latvian army in 1932. After discharge in 1933 he worked with an import firm until November 1939 and then moved to German-occupied Posen, being employed from November 1939 until January 1940 at the advisory office for immigrants and from January 1940 until May 1941 at the office of repatriation of ethnic Germans. In May 1941 he was assigned for emergency service with the RSHA and then transferred to Pretzsch as an interpreter to the newly formed Sonderkommando 4a. He traveled with the Sonderkommando to Hrubieszow and from there to Lutsk where he was assigned to a Teilkommando of the same organization. In December 1941 he took leave and reported back to Sonderkommando 4a in Kharkov in March 1942. He remained with this unit until December 1942 and, at the same time, acted as liaison officer between the Einsatzkommando and German and Hungarian army units. In January 1943, the area under the jurisdiction of the 2d Army was subordinated to the area of the Einsatzgruppe and the defendant's reports and activities were controlled by Einsatzgruppe B. In the winter of 1943, he returned to Berlin.

The defendant stated in his pretrial affidavit that, during the time he served with Sonderkommando 4a, he was officially informed that the Kommando participated in a number of executions in the areas assigned.

The documentation in this case amply substantiates the statement that such executions did occur. At the trial the defendant claimed that executions were entirely beyond his sphere of activities, and his job was simply to make reports. One could well believe, if one were to accept as fact the statements of the various defendants who functioned in the so-called department III that these Kommandos were engaged in a scientific expedition studying the flora and fauna of the land through which they traveled, obtaining data on agriculture and economy, but in some way or other avoiding all contact with the grim enterprise to which the units were committed. It is not known what blinders these defendants wore that they could be in the very midst of the carnage caused by their own associates and yet remain entirely unaffected thereby. Again we come to the question of credibility. The witness was asked whether, in making a report on the economy of the country he would indicate that the labor supply had been affected because of the execution of Jews. He replied in the negative and the following ensued:

“Q. Making a report on the economy you would naturally have to talk about labor and, if a great number of those constituting the labor element were executed, that would affect seriously the economy of the country on which you were reporting, and you would need to include that in your reports, would you not?

“A. The situation which we found was that the entire economy had been ruined and had to be built up. There was no shop in which you could buy anything.

“Q. The economy wasn't helped by shooting off further labor supply, was it?

“A. No.

“Q. Did you report this in your reports?

“A. I may say the following.

“Q. Did you make this statement in your reports, that, because Jews were being killed and thereby the labor market being affected adversely, that the economy was made worse? Did you report that?

“A. As far as I remember I reported about the fact that the Jews in the Ukraine constituted an essential part of trade.

“Q. And did you report that Jews were being decimated?

“A. No.

“Q. You didn't put in any report that Jews were being killed and this affected the economy of the Ukraine?

“A. No. In this shape I did not report about it. I only reported about the fact that the Jews were an important economic potential, but I did not report to the effect as you mention it.

"Q. * * * You say that you did include in your report the statement that the Jews constituted an important economic potential. Did you then add that this important economic potential was rapidly disappearing because of the executions?

"A. No. I did not report that.

"Q. And yet you want to tell the Tribunal seriously that you made a report on the economy of the Ukraine?

"A. Yes."

In his pretrial affidavit the defendant stated that he had been employed as an interpreter. He amplified later that he was drafted into the Einsatz organization because of his ability in languages. His witness Kraege confirmed this. Yet, at the trial, von Radetzky denied acting in the job for which apparently he was best adapted. It can only be assumed that he made this denial because, by admitting the translating functions, he would be admitting that he knew of executions which followed certain investigations. Asked how it was that he was able to side-step his job of interpreter he replied that his work day was filled up with his job of expert in the SD Department.

"Q. Well, how did you become an expert in department III? You had not had SD training?

"A. No. I did not have that, I said—

"Q. Well, then, how did you become an expert so quickly?

"A. I was appointed for this because of my training in economics and my knowledge of languages.

"Q. Well now, we come back to languages again. If you were appointed because of your linguistic accomplishments, and your commanding officer needed an interpreter why wouldn't he naturally turn to you who was already known to be a good translator and interpreter?

"A. There were other interpreters in the Kommando, and the commander used these interpreters.

"Q. Then you were not used as an interpreter?

"A. I was never used as an interpreter by the commander. I was never used in interrogations as interpreter, either."

Von Radetzky could have had also other reasons for denying he was an interpreter. Report No. 156, commenting on the activities of a Teilkommando of Sonderkommando 4a at Lubny, stated that—

"On 18 October 1941 the Teilkommando of SK 4a at Lubny took over the evaluation of the NKVD files."

and thus,

" * * * it was possible, with the aid of the files acquired to arrest a considerable number of NKVD agents and several leading Communists. 34 agents and Communists and 73 Jews were shot." Report No. 37 states—

“In Zhitomir itself, Gruppenstab [group staff] and Vorauskommando (Advance Kommando) 4a in cooperation have, up to date, shot all in all, approximately 400 Jews, Communists and informants for the NKVD.”

Since the proof that certain individuals had been informers of the NKVD could only be established through the medium of the interpreter the documents would point to von Radetzky as that interpreter since he admitted being with this advance Kommando. Hence the possible motive for denying the interpreter's position.

Other reports also show the need for an interpreter, Report No. 24-IIA-81, NO-2938, Report No. 187-IIIC-34, NO-3237, and Report No. 111-IIA-45, NO-3155.

Report No. III would indicate still another reason why von Radetzky would deny his interpreter's role.

“On 26 September, the security police took up its activities in Kiev. That day, 7 interrogation-Kommandos of Einsatzkommando 4a started their work in the civilian prisoner camp, *in the prisoner of war camp, in the Jewish camp, and in the city itself.* Thus, among other things in the *camp for civilian prisoners and prisoners of war, 10 political commissars were found and interrogated in detail.* Conforming to the old Communist tactics these guys denied all political activity. Only when confronted with trustworthy witnesses, *five commissars yielded and confessed, i.e. they admitted the position they had held, but did not make any statements beyond this. They were shot on 27 September.*” [Emphasis supplied.]

The defendant testified that, in his capacity as liaison officer, he obtained supplies for the Kommando. When asked what supplies were involved he replied, “Food and fuel”. He was then asked about ammunition. He replied that he did not remember. It was then put to him,

“Witness, you either remember or you don't remember. If you remember food and fuel, you can remember whether you ordered ammunition or not. Did you order ammunition?” and he now replied with a definite “No”. He was then asked why it was that he at first said he could not remember if he had ever obtained ammunition for his Kommando.

“Q. Do you remember now very definitely that you did not order ammunition?”

“A. Yes.

“Q. Do you say now definitely that you did not order ammunition?”

“A. I am certain that I would remember if ever I had obtained ammunition for the Kommando.”

The defendant Blobel, commander of Sonderkommando 4a, said

in his pretrial affidavit, that, during his absence, von Radetzky took over. Blobel repudiated this statement on the witness stand, but he also denied that von Radetzky could ever have been even a Teilkommando or Vorkommando leader. But the documentary evidence clearly establishes that von Radetzky was active as a sub-Kommando leader.

In fact, von Radetzky explained that all those who had officer rank in his Kommando could qualify as leaders and, to that extent, he also was "a leader of the Kommando."

On 10 September 1941, a plan was reached between the officers of Sonderkommando 4a and rear army Hq "to liquidate the Jews of Zhitomir completely and radically."

Questioned about this meeting, the defendant testified that he was not present at it but that he had been ordered to negotiate with the field command about the furnishing of vehicles. He stated that he was of the impression that the Jews were to be resettled in Rovno. It is difficult to believe that the defendant did not know what "resettlement" meant in Einsatzgruppen circles.

The prosecution contends that von Radetzky was in charge of Sonderkommando 4a during Blobel's absence. Although there is evidence that Blobel was often absent because of illness, the Tribunal cannot find beyond a reasonable doubt that, during those absences, von Radetzky took over the Kommando.

Report No. 14 tells of a reprisal operation carried out at Lutsk by a subunit of Sonderkommando 4a. Gustav Kraege stated in an affidavit that von Radetzky was one of the officers of this subunit. Von Radetzky stated he was present in Lutsk during the time of this execution but denied having been commander of this unit, although he stated he was the highest ranking officer in the sub-Kommando. When Kraege appeared in Court as a witness he sought to repudiate his statement about ascribing the chiefship of the sub-Kommando to von Radetzky but he did admit that, at the time he was actually in Lutsk, he believed that von Radetzky was commanding, since Radetzky gave him his direct orders.

Although von Radetzky endeavored throughout the trial to deny knowledge of the extermination of Jews he finally admitted this knowledge.

The Tribunal finds that it is established beyond a reasonable doubt that the defendant knew that Jews were executed by Sonderkommando 4a because they were Jews, and it finds further that von Radetzky took a consenting part in these executions.

The Tribunal further finds, in contradistinction to the defendant's statement, that he did at times command a sub-Kommando.

The defendant maintained that he entered the Einsatz service involuntarily and remained in it against his will, submitting that

on eleven different occasions he endeavored to be relieved from this service. It must be remarked, however, that whether he became a member of the Einsatz forces voluntarily or involuntarily, he did his work zestfully. It can be said in mitigation that, according to his testimony, he did on occasion endeavor to assist potential victims of the Fuehrer Order and in one particular instance issued passes which allowed some persons to escape from the camp in which they were being held. Nonetheless, the Tribunal is convinced that the evidence establishes beyond a reasonable doubt that von Radetzky took a consenting part in war crimes and crimes against humanity and, therefore, finds him guilty under counts one and two of the indictment.

Insofar as count three is concerned, much evidence was introduced on behalf of the defendant to show that he did not enter the SS or SD organizations voluntarily, but was drafted. It is not sufficient however, in order to absolve oneself from the charge of membership in a criminal organization to show that one entered its ranks involuntarily. Attention is directed to that part of the International Military Tribunal decision which says that it charges with criminal membership in the SS those persons who became or remained members of the organization with knowledge that it was being used for criminal purposes, "or who were personally implicated as members of the organization in the commission of such crimes." The decision excludes those who were drafted into membership by the State in such a way as to give them no choice in the matter but adds that this exception does not apply to those who committed the acts declared criminal by Article 6 of the Charter. Thus, the question whether von Radetzky entered the SS voluntarily or involuntarily becomes moot in view of the finding of the Tribunal that he is guilty under counts one and two of the indictment, thereby proving conclusively his personal implication in the acts established as criminal by the Charter. The same finding holds true with regard to the defendant's membership in the SD.

The Tribunal finds, from all the evidence in this case, that the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

FELIX RUEHL

SS Captain Felix Ruehl worked as a commercial clerk at Luckenwalde from 1926 until 1929. He then went to England for one year. In February 1931 until September 1933 he worked in the Luckenwalde court and in September 1933 joined the Gestapo. In

May 1941 while attending the Leadership School in Berlin he was summoned to Pretzsch, assigned to Sonderkommando 10b of Einsatzgruppe D, left for the field on June 27 or 28 and arrived in Romanian territory about 30 July. On 1 October 1941, having been called back to Berlin to continue his studies, he left the Kommando.

The prosecution introduced in evidence the affidavit of one Robert Barth, supposedly a former enlisted man in the Kommando in which he stated that during the "temporary duty trips" of the Kommando leader which usually took two or three days, the unit was commanded by Ruehl. If it were established that Ruehl really served as commander of the unit even for brief periods during such times as the Kommando was engaged in liquidating operations, guilt under counts one and two would be conclusive. The prosecution maintains that it has proved that very thing. But if this proposition is to be upheld it must rest on the one pedestal of Barth's affidavit. Ruehl could not come into the leadership automatically as the result of rank or seniority because they were such as to place him only in the fourth position. Thus the proof of leadership must rest on the Barth column which, probatively speaking, is a rather shaky one. While the rules of procedure permit the introduction of affidavits and indeed this innovation in trial routine has accomplished much good in the saving of time, an affidavit can never take the place of a flesh and blood witness in court when the affiant is available and the issue raised by the affidavit is a vital one. Had Barth appeared in court, not only would defense counsel have had the opportunity to cross-examine him, but the Tribunal itself could have appraised with more discernment than it can now his otherwise unsupported statement of Ruehl's supposed leadership. The pedestal of Barth's assertion with regard to upholding the hypothesis of Ruehl's leadership must withstand the successive hammer blows of, first, the unexplained absence of the affiant, second, Ruehl's low rank in the hierarchy of the unit and, third, the fact that normally an administrative officer would not have executive functions. Under a multiple attack of that character the Tribunal cannot ascribe to this lone piece of evidence the strength needed to sustain so momentous a weight as the leadership of a Kommando with its concomitant responsibility for executions.

And then there is also the direct testimony of Schubert, given from the witness stand, that Ruehl never functioned as a deputy commander of Sonderkommando 10b.

The prosecution submits document NOKW-587 as evidence against Ruehl. Ruehl denies that the action reported therein took

place and then adds that he arrived after the date of the alleged executions. The communication in question, however, states—

“Kommando 10b reached Chernovitsy on Sunday, 6 July 1941, at 18:15 hours *after an advance division* had established the first communications with Romanian posts in town the day before *and had provided quarters.*” [Emphasis supplied.]

Since the defendant admits that he was responsible for the procurement of quarters it is not to be excluded that he led the “advance division” which established communications with the Romanians and provided quarters. This, however, in itself would not make him a participant in the executive actions which followed nor would his contact with the Romanians in itself establish that he was aware that executions were impending. A presumption cannot be built upon another presumption in an issue as serious as the one involved in this particular transaction.

The prosecution has also introduced Report No. 19, dated 11 July 1941 which plainly involves the Kommando, but again there is no indication that Ruehl was in charge of the Kommando or had any authority over it. Report No. 50, dated 1 August 1941, speaks of an operation in Khotin or Hotin. Ruehl denies all knowledge of the executions mentioned therein. That Ruehl may not have taken part in these executions is admissible but that he was ignorant of their happening is contrary to human observation. That he may not have done anything to prevent them is within the realm of believability but to assert that as a member of a unit made up of only seven officers and 85 men he could not know that killings were taking place is to enter into a fairyland which was quite the antithesis of the demon's land in which they were operating.

But there is no need to resort to the machinery of logic and deduction to produce the conclusion of cognizance. It is ready made in Ruehl's own pretrial sworn statement in which he tells of having received official notice of the killings by the Kommando of 12 to 15 people declared to have participated in a surprise attack against Romanian troops. He also tells of the Sonderkommando which killed 30 Jews declared to have participated in the murder of two German air pilots. At the trial he denied having actual knowledge of these events and stated that what he acquired in the way of information came to him only through hearsay.

Although it is evident that Ruehl had knowledge of some of the illegal operations of Sonderkommando 10b, it has not been established beyond a reasonable doubt that he was in a position to control, prevent, or modify the severity of its program.

The prosecution also charges that Ruehl was criminally involved in the matter of the migration of a large group of Jews from the German controlled territory into Romania. Although this episode

was dwelt on at length during the trial, no evidence was adduced to show that Ruehl acted in any capacity other than courier between the Chief of the Einsatzgruppe and the escorting Romanian officers of the so-called transport. There is no evidence that Ruehl in any way maltreated these Jews, and certainly he did not participate in the execution of any of them.

Ruehl remained with the Einsatz organization for no more than three months and during the entire period took part in no executive operation nor did his low rank place him automatically into a position where his lack of objection in any way contributed to the success of any executive operation.

The Tribunal concludes from the evidence that the defendant is not guilty under count one of the indictment and not guilty under count two of the indictment.

The Tribunal however finds that the defendant was a member of the criminal organizations SS and Gestapo under the conditions defined by the Judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

HEINZ HERMANN SCHUBERT

SS First Lieutenant Heinz Schubert joined the NSDAP on 1 May 1934, having previously served in the Hitler Youth Organization. In October 1934 he joined the SS. From October 1941 to June 1942 he served as adjutant to Ohlendorf, Chief of Einsatzgruppe D. At the trial he testified that his duties consisted mostly of attending to the personal affairs of his chief, the receiving and filing of correspondence, the making of appointments, receiving visitors, and so on. It would appear, however, that he was more than an office boy with shoulder straps.

Schubert's own affidavit answers the question as to whether he is guilty under counts one and two of the indictment. The pertinent parts of this affidavit read as follows:

"In December 1941—I do not remember the exact date—I was assigned by Ohlendorf or Seibert to supervise and inspect the shooting of about 700 to 800 people, which was to take place in the close vicinity of Simferopol. The shooting was undertaken by the special command 11b, one of the formations of the Einsatzgruppe D. My task in connection with the shooting consisted of three parts—

(a) to see that the location of the shooting be remote enough, so that there could be no witnesses to the shooting;

(b) to supervise that the collection of money, jewels, and other valuables of the persons who were to be shot, be completed without the use of force; and that the persons designated

for this by the Special Command 11b, hand over the collected items to the administration leaders and their deputies in order to have them passed on to Einsatzgruppe D;

(c) to supervise that the execution be completed in the most humane and military manner possible, exactly according to Ohlendorf's orders.

"After the execution I had to report personally to Ohlendorf that the execution had been carried out exactly according to his orders.

"As commissioner of Ohlendorf I followed his orders. I went to the gypsy quarter of Simferopol and supervised the loading of the persons who were to be shot, into a truck. I took care that the loading was completed as quickly as possible and that there were no disturbances and unrest by the native population. Furthermore, I took care that the condemned persons were not beaten while the loading was going on. Since it was my task to supervise the whole execution, I could only stay a short time at each phase of it.

"The place which was designated for the shooting of these Russians and Jews was several kilometers outside of Simferopol and about 500 meters off the road in an antitank ditch. Among other things I ascertained that the traffic in that region was stopped by persons designated for this and was detoured on side roads. When the condemned persons arrived at the place of execution, they were ordered to leave their money, their valuables and papers at a place designated for this. I watched that none of the deposited items were kept by the SS and Orpo men who were designated for the collection. The depositing of this property by the condemned persons was finished without the use of force. I supervised this phase carefully, in order that all the valuables could be handed over to the Einsatzgruppe D, for subsequent remittance to Berlin.

"For a short time, when the people who were to be shot were already standing in their positions in the tank ditch, I supervised the actual shooting which was carried out in strictest conformity with Ohlendorf's orders—in a military and humane manner, as far as possible. The people were shot with submachine guns and rifles. I know that it was of the greatest importance to Ohlendorf to have the persons who were to be shot killed in the most humane and military manner possible because otherwise—in other methods of killing—the moral strain [seelische Belastung] would have been too great for the execution squad.

"I have read this statement, consisting of three pages in the German language and declare that it is the whole truth to the best of my knowledge and belief. I had the opportunity to make

changes and corrections in the above statement. I made this statement of my own free will without any promise of reward, and I was not subjected to any threat or duress whatsoever.

“Nuernberg, Germany, 24 February 1947

[Signature] Heinz Hermann Schubert”

That the execution described by Schubert actually took place is established conclusively not only by reports but by the testimony of other witnesses as well. In fact, Schubert himself said—

“This was the execution which has been discussed here repeatedly. It was the execution for which the 11th Army had given orders to the Einsatzgruppe to carry it out before a certain time. This deadline, as far as I know, was Christmas or the end of the year 1941.”

At the trial the defendant endeavored to dilute the force of his affidavit by saying that the word “supervise”, which is frequently used in his narrative, does not correctly report the functions he performed at the execution; he did not supervise but merely inspected. The affidavit consisted of three pages, he made a correction on page one and initialed the correction, placed his abbreviated name at the bottom of the first two pages and signed his full name at the bottom of the last page.

However, even if the affidavit were to be disregarded, his account on the witness stand of the part he played in the execution of defenseless and innocent people would clearly take him within the purview of Control Council Law No. 10.

When asked why these 700 to 800 people were shot, he replied—

“I did not know why the individuals were being executed. It is possible that there were persons among them who, because of some special examination, were being executed. As for me, in general, however, I was certain of one thing, that this was an execution based on the Fuehrer Order.”

When asked what he had done in the early stages of this operation he emphasized that he did not select the place for the execution. It was then pointed out to him that his affidavit did not so indicate.

“This does not say that you selected it. It says that you went there to make certain that the place selected for the shooting was so located that it would fall within the regulations, namely, that there would not be any unnecessary witnesses to the shooting.”

He affirmed this version. With regard to the taking of the valuables he also confirmed in Court.

“I convinced myself that the collection of money and valuables of people to be shot was not done by force, etc.”

The defendant tried to convey the impression that he merely looked on, more or less, as a spectator, but he admitted that he would have interfered if the execution had been laid in the wrong place, if weapons not prescribed by the chief of the Einsatzgruppe were used, and in general he would have intervened if things were not going "well".

Schubert's criminal involvement in the Christmas massacre of Simferopol is complete and presents no mitigating circumstances.

His general participation in the venture of Einsatzgruppe D while he was its adjutant is not to be doubted. The defendant Ohlendorf declared in an affidavit—

"The only people whom I generally assigned to inspections were, except for Schubert, Willy Seibert and Hans Gabel."

Schubert sought to minimize the implications of this statement and denied that he had been "generally assigned to inspections". He did, however, state that he knew "definitely" that Gabel "carried out such inspections". It would be strange, indeed, that Ohlendorf should mention three names, and it developed that the only one who performed the duties he assigned to them should be *that one person* who did not appear in this trial as a defendant.

It is also clear that the defendant was thoroughly aware of the instructions generally given by the chief of the Einsatzgruppe with regard to the "manner of carrying out executions". It is furthermore evident that, as adjutant, Schubert was current on the assignments given to various members of the staff, and therefore, had full knowledge of the main purpose of the Einsatzgruppe.

From all the evidence in the case the Tribunal finds the defendant guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under the conditions defined in the Judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

MATHIAS GRAF

Mathias Graf was never a commander of an Einsatz unit nor during the whole time he served in Russia was he an officer. When first attached to Einsatzkommando 6 he held the rank of Unterscharfuehrer (corporal). After one year he was promoted to Scharfuehrer (sergeant) and when he left Russia in October 1942 he held the rank of Oberscharfuehrer (master sergeant) that is to say he remained in a noncommissioned officers' status throughout the entire period of his service with the Kommando.

At the very outset he was made assistant to one Grimminger who served as SD expert. Upon Grimminger's death in July 1941

Graf took over his position. Although Graf was statistically with Einsatzkommando 6 for thirteen months he served also for a short period with the commander of the Security Police and the SD in Stalino. For five weeks he was detailed to the liaison office of AOK 17; he was on furlough for five weeks and was ill and on sick leave for about three months. Thus about five months of thirteen months' incumbency with the Einsatzkommando were spent away from the unit. During the eight months he actually served with the organization, Graf never once acted as commander of it or any of its subdivisions.

In September 1942 Graf was assigned the command of a sub-Kommando, but he refused to accept the assignment. Because of this refusal he was arrested and placed in custody for disciplinary action. Eventually the disciplinary proceedings were dropped and he was sent back to Germany.

The defendant, like every other defendant in Court, is presumed to be innocent until proved guilty. The prosecution has introduced reports showing that Einsatzkommando 6 engaged in various executive operations. It is not questioned that the Kommando did participate in liquidating operations and, despite the defendant's denial, it is not to be doubted that he knew of at least some of these executions. However, more than mere knowledge of illegality or crime is required in order to establish guilt under counts one and two of the indictment. Furthermore, in view of his various absences from the Kommando it cannot be assumed that his membership in the organization of itself proves his presence at and knowledge of any particular executive operation, without there being proof of that fact.

In view of Graf's noncommissioned officer's status in an organization where rank was of vital importance, it is not to be assumed that the commander of the organization would take Graf into his confidence in planning an operation. As a noncommissioned officer he would not participate in officers' conferences. Since there is no evidence in the record that Graf was at any time in a position to protest against the illegal actions of others, he cannot be found guilty as an accessory under counts one and two of the indictment. Since there is no proof that he personally participated in any of the executions or their planning, he may not be held as a principal.

Insofar as counts one and two against the defendant are concerned the Tribunal concludes that the evidence does not rise to that degree of proof required by the principles of justice and the concomitant guarantees of correct procedure to warrant a finding of guilt beyond a reasonable doubt, and thus finds him not guilty.

The defendant joined the SS in 1933 and in 1936 was expelled because of lack of attendance and general indifference to the or-

ganization. It would appear that at no time was Graf a fanatical adherent of National Socialism. In 1932 he intended to go to South America but was prevented from doing so because of restriction on foreign currency. He tried to migrate in 1940 but could not do so because of the war. His primary interest was not politics but business. His Work Book, a document required under the Law of 26 February 1935 (published in Reich Law Gazette 311) lists him as an independent business man from the period of 1 October 1935, to 1 February 1940, and as a civil servant from 1 March 1940.

In January 1940, he was drafted under the Emergency Service Regulations for service with the Landrat in Kempten and then entered the SD Aussenstelle in Kempten on a war supplementary basis.

In that same year, 1940, he endeavored to be released from the SD so that he might join the army. He took an interpreter's examination in order to qualify for linguistic services in the army but he did not succeed in his attempt. On 18 April 1941 he wrote a letter, seeking to be released from the SD so that he might be enrolled in the army. A copy of this letter was introduced as a document.

In considering the subject of membership in a criminal organization, as defined by the International Military Tribunal decision, 1 September 1939 is accepted as a crucial date. On that date Graf was not a member of any criminal organization. When, in 1940, he was drafted by the Emergency Service Regulations he applied to rejoin the SS. He explained that this application was purely a perfunctory function because he would automatically have fallen into this organization on account of his then being a member of the SD.

"The personnel departmental chief could see from my documents that I used to be a member of the SS, so he said, 'Of course, in that case you have to rejoin the SS'. Therefore, I made out the application, but, if I had not been deferred to the SD, I would never have rejoined the SS. After all, I had left the SS and also I did not rejoin the General SS, but I was transferred to the special formation, the SD. After all, this was on the war emergency status. In my opinion then, it was merely a formal matter to regain my former SS number."

In substantiation of his claim that he rejoined the SS because of the insistency of his departmental chief the defendant pointed out, that although drafted into war service on 1 January 1940, he did not make his application for the SS until 28 July. Had he had a sincere desire to rejoin the SS, he would not have waited 7 months to make the application. He, therefore, submits that the filing of the application was a mere form.

The Tribunal finds that the defendant's leaving the SS in 1936 showed a clear intention to disassociate himself from that organization and accepts the defendant's explanation that he would not have rejoined the SS in July 1940 had he not been drafted by the Emergency Service Regulations and deferred to the SD. The Tribunal therefore finds him not guilty of membership in the SS under the conditions declared criminal by the International Military Tribunal.

With regard to membership in the SD, reference is made to the IMT decision which declares that the Security Police and SD was a voluntary organization and that membership therein was voluntary. The Tribunal therefore finds the defendant guilty of membership in the SD. It further finds as a mitigating circumstance, however, that his membership in the SD was not without compulsion and constraint. It therefore adjudges that the period of the defendant's imprisonment from the date of his arrest, following the termination of the war, to the present date, shall constitute the sentence of the Tribunal based upon such conviction. In view of the fact that the defendant has thus already served his term of imprisonment just imposed, it is now ordered that he be permanently discharged from custody under the indictment upon adjournment of the Tribunal this day.

Nuernberg, Germany, 8 and 9 April 1948

[Signed] MICHAEL A. MUSMANNO,
Presiding Judge
JOHN J. SPEIGHT,
Judge
RICHARD D. DIXON,
Judge

SENTENCES

PRESIDING JUDGE MUSMANNO: The Tribunal has the following order to promulgate with regard to sentences where the term of an imprisonment is indicated. The defendant involved will receive credit for the time already served by him in confinement from the first date of arrest following the termination of the war.

"Defendant OTTO OHLENDORF, on the counts of the indictment on which you have been convicted the Tribunal sentences you to death by hanging.

"Defendant HEINZ JOST, on the counts of the indictment on which you have been convicted the Tribunal sentences you to imprisonment for life.

"Defendant ERICH NAUMANN, on the counts of the indictment

on which you have been convicted the Tribunal sentences you to death by hanging.

“Defendant ERWIN SCHULZ, on the counts of the indictment on which you have been convicted the Tribunal sentences you to twenty years’ imprisonment.

“Defendant FRANZ SIX, on the counts of the indictment on which you have been convicted the Tribunal sentences you to twenty years’ imprisonment.

“Defendant PAUL BLOBEL, on the counts of the indictment on which you have been convicted the Tribunal sentences you to death by hanging.

“Defendant WALTER BLUME, on the counts of the indictment on which you have been convicted the Tribunal sentences you to death by hanging.

“Defendant MARTIN SANDBERGER, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

“Defendant WILLY SEIBERT, on the counts of the indictment upon which which you have been convicted, the Tribunal sentences you to death by hanging.

“Defendant EUGEN STEIMLE, on the counts of the indictment upon which you have been convicted, the Tribunal sentences you to death by hanging.

“Defendant ERNST BIBERSTEIN, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

“Defendant WERNER BRAUNE, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

“Defendant WALTER HAENSCH, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

“Defendant GUSTAV NOSSKE, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for life.

“Defendant ADOLF OTT, on the counts of the indictment upon which you have been convicted, the Tribunal sentences you to death by hanging.

“Defendant WALDEMAR KLINGELHOEFER, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

“Defendant LOTHAR FENDLER, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to ten years’ imprisonment.

“Defendant WALDEMAR VON RADEZKY, on the counts of the

indictment on which you have been convicted, the Tribunal sentences you to twenty years' imprisonment.

"Defendant FELIX RUEHL, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to ten years' imprisonment.

"Defendant HEINZ SCHUBERT, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

"Defendant EDUARD STRAUCH, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

XII. AFFIRMATION OF SENTENCES BY THE MILITARY GOVERNOR OF THE UNITED STATES ZONE OF OCCUPATION

A. INTRODUCTION

Under Article XV of Ordinance No. 7, the sentences imposed by the Tribunal are subject to review. Article XVII provides that "the record of each case shall be forwarded to the Military Governor who shall have the power to mitigate, reduce or otherwise alter the sentence imposed by the tribunal, but may not increase the severity thereof." Article XVIII provides that "No sentence of death shall be carried into execution unless and until confirmed in writing by the Military Governor."

The sentences of death by hanging in Case No. 9 were confirmed by the Military Governor on 4 March 1949 with respect to the defendants Biberstein, Blobel, Blume, Braune, Haensch, Klingelhoef, Naumann, Ohlendorf, Ott, Sandberger, Seibert, Steimle and Strauch, and on 25 March 1949 with respect to the defendant Schubert. On 4 March 1949, the Military Governor also confirmed the sentences of the defendants Fendler, Jost, von Radetzky, Ruehl, Schulz, and Six, who were sentenced either to imprisonment for life or for a term of years.

No petition for a review of sentence was made on behalf of the defendant Nosske, who was sentenced to life imprisonment. The sentence as to the defendant Graf states that his "imprisonment from the date of his arrest, following the termination of the war to the present date, shall constitute the sentence of the Tribunal." In the absence of a petition for review of sentence in the cases of the defendants Nosske and Graf, the Military Governor did not review their sentences.

In subsection 2, below, appear the orders of the Military Governor with respect to the sentence of the defendant Ohlendorf, sentenced to death by hanging, and the sentence of the defendant Jost, sentenced to life imprisonment.

All petitions to the Supreme Court of the United States were denied, 2 May 1949.

B. ORDERS OF THE MILITARY GOVERNOR WITH RESPECT
TO THE SENTENCES OF THE DEFENDANTS OHLENDORF
AND JOST

HEADQUARTERS, EUROPEAN COMMAND
Office of the Commander-in-Chief
APO 742

Berlin, Germany

4 March 1949

In the Case of The United States of America

vs

Otto Ohlendorf, et al.

Military Tribunal II
Case No. 9

Order with Respect to Sentence of Otto Ohlendorf

In the case of the United States of America against Otto Ohlendorf, et al., tried by United States Military Tribunal II, Case No. 9, Nuernberg, Germany, the defendant Otto Ohlendorf, on 10 April 1948, was sentenced by the Tribunal to death by hanging. A petition to modify the sentence, filed on behalf of the defendant by his defense counsel, has been referred to me pursuant to the provisions of Military Government Ordinance No. 7. I have duly considered the petition and the record of the trial and in accordance with Article XVII of said Ordinance it is hereby ordered:

a. that the sentence imposed by Military Tribunal II upon Otto Ohlendorf be, and hereby is, in all respects, confirmed;

b. that pending action on petitions filed by the defendant with authorities other than the Office of Military Government for Germany (U. S.), the execution of the death sentence be stayed until further order by me.*

c. that the defendant be confined until further order in War Criminal Prison No. 1, Landsberg, Bavaria, Germany.

LUCIUS D. CLAY,
General, U. S. Army
Military Governor
and

Commander-in-Chief, European Command

* A similar provision was contained in all of the orders confirming death sentences.

HEADQUARTERS, EUROPEAN COMMAND
Office of the Commander-in-Chief
APO 742

Berlin, Germany

4 March 1949

In the Case of The United States of America

vs

Otto Ohlendorf, et al.

Military Tribunal II
Case No. 9

Order with Respect to Sentence of Heinz Jost

In the case of the United States of America against Otto Ohlendorf, et al., tried by United States Military Tribunal II, Case No. 9, Nuernberg, Germany, the defendant Heinz Jost, on 10 April 1948, was sentenced by the Tribunal to life imprisonment. A petition to modify the sentence, filed on behalf of the defendant by his defense counsel, has been referred to me pursuant to the provisions of Military Government Ordinance No. 7. I have duly considered the petition and the record of the trial and in accordance with Article XVII of said Ordinance it is hereby ordered:

- a.* that the sentence imposed by Military Tribunal II on Heinz Jost be, and hereby is, in all respects confirmed;
- b.* that the defendant be confined in War Criminal Prison No. 1, Landsberg, Bavaria, Germany.

LUCIUS D. CLAY
General, U. S. Army
Military Governor
and

Commander-in-Chief, European Command

APPENDIX

List of Witnesses in Case 9

[Note.—All witnesses in this case appeared before the Tribunal. Tribunal witnesses are designated by the letter "T", defense witnesses by the letter "D", and the only prosecution witness by the letter "P". The names not preceded by any designation represent defendants testifying in their own behalf. Extracts from testimony in this case are listed in the index of documents and testimony.]

	Names	Date of testimony	Pages (mimeographed transcript)
D	ALANDER, Ursula	22 Jan 48.....	5440-5456
P	BAYLE, Francois	11 Feb 48.....	6407-6419
T	BEDWILL, Lieut., William L.	2 Feb 48.....	5571-5588
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"The RuSHA Case"

MILITARY TRIBUNAL NO. 1

CASE 8

THE UNITED STATES OF AMERICA

—against—

ULRICH GREIFELT, RUDOLF CREUTZ, KONRAD MEYER-HETLING,
OTTO SCHWARZENBERGER, HERBERT HUEBNER, WERNER LORENZ,
HEINZ BRUECKNER, OTTO HOFMANN, RICHARD HILDEBRANDT,
FRITZ SCHWALM, MAX SOLLMANN, GREGOR EBNER, GUENTHER
TESCH, and INGE VIERMETZ, *Defendants*