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OF
WAR CRIMINALS
BEFORE THE
NUERNBERG MILITARY
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VOLUME II

"THE MEDICAL CASE"

"THE MILCH CASE"

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*Germany (Territory under Allied Occupation,
1945 - U.S. Zone) Military Tribunals*

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



VOLUME II

NUERNBERG
OCTOBER 1946-APRIL 1949

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The Medical Case

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VIII. EVIDENCE AND ARGUMENTS ON IMPORTANT ASPECTS OF THE CASE — Continued

F. Necessity

a. Introduction

The defense generally argued that the medical experiments took place because of military necessity or the national emergency presented by war. The defendant Sievers argued that his participation in various experiments was a necessary part of his participation in a resistance movement in Germany. The defendant Hoven argued that the concentration camp inmates, who were killed by him or with his approval and knowledge, were selected by the camp leadership which had been formed by the political inmates themselves. Hoven also argued that the inmates killed were all dangerous criminals who collaborated voluntarily with the SS, and if they would not have been removed, the political inmates would have been exterminated by these criminals and by the SS. He concluded that it was therefore necessary, in order to prevent greater harm, either to kill these "stool pigeons" personally or to give his approval for their extermination.

On the argument of military necessity and national emergency, extracts from the final plea for the defendant Gebhardt are included on pages 5 to 12. On the general question of necessity, extracts are included from the examination of the defendant Karl Brandt by Judge Sebring on pages 29 to 30, and from the cross-examination of the prosecution's expert witness, Dr. Andrew C. Ivy on pages 42 to 44. The prosecution discussed the general question of necessity in its opening statement.

The argument of the defendant Sievers that his participation was necessary in connection with resistance to the Nazi leadership appears in his final plea, an extract from which is given on pages 13 to 25. From the evidence supporting the claim of Sievers, extracts from the testimony of defense witness Dr. Friedrich Hielscher are included on pages 30 to 41. The prosecution's reply to Sievers' special defense was made, in part, in the prosecution's closing statement, an extract of which appears on pages 4 to 5. The argument of the defendant Hoven that the killing of concentration camp inmates, of which he was accused, was justifiable homicide appears in his final plea, an extract of which is set forth on pages 25 to 28. The prosecution's reply to this special defense is set forth in the closing brief against the defendant Hoven, an extract of which will be found on pages 2 to 4.

b. Selections from the Argumentation of the Prosecution

EXTRACT FROM THE CLOSING BRIEF AGAINST DEFENDANT HOVEN

* * * * *

(Hoven) tried to justify the killings [of concentration camp inmates] by stating that these inmates were informers, spies, and stool pigeons of the SS and therefore had to be exterminated. He said that if they had been permitted to carry on with their activities, the illegal camp management would have been wiped out and the criminal inmates in the camp would have gained the upper hand. Hoven's attempt at justification for the killing of inmates of concentration camps is, of course, no defense. It may well be true that Hoven sympathized and even collaborated with the illegal camp management. It may also be true that some of his victims may have been killed by him on the basis of suggestions put forward by this illegal camp management. But it goes without saying that these political prisoners, who instigated the murder of their opponents, were in no position to judge whether it was really necessary to kill them for the sake of the camp community. They only judged this emergency from their own point of view, i.e., from the point of view of the benefit of themselves. Hoven himself had no judgment at all in this respect and simply made himself the willing and bought tool of a small clique in the camp, who undoubtedly often tried to eliminate not only persons whose activities were considered detrimental to the well-being of their fellow inmates, but also personal opponents and enemies. That Hoven was corrupted by the inmates and paid for his murders is proved by the testimony of several witnesses.

Kogon testified:

"I can only conclude that both motives, the political motive and the motive of corruption, were active in the case of Dr. Hoven. *If Dr. Hoven expressed any desire—and he expressed many desires—then these wishes were always filled.*" (Tr. p. 1213.)

"*He himself expressed many wishes constantly and all possible advantages were given him by such people whom he had saved.*" (Tr. p. 1214.)

Kirchheimer testified to the same effect. (Tr. p. 1346.) The defense witness Pieck painted pictures for Hoven and his family, and the defense witness Horn in his affidavit stated that Hoven was very corrupt. The prisoners knew it and they corrupted him

in every possible manner and made him gifts of furniture, underwear, and food. There were periods in which complete workshops were erected for Hoven in which thirty or more inmates were working.

Pieter Schalker testified before the Dutch Bureau for the Investigation of War Crimes in Amsterdam that Hoven played an exceptionally evil role and had innumerable deaths on his conscience owing to completely inadequate medical attention. In later years, when it became obvious that Germany would be defeated, he changed his attitude towards the inmates. (*NO-1063, Pros. Ex. 328.*) When Schalker was interrogated by the commissioner of the Tribunal on the motion of defense counsel, he amplified his statement by saying that Hoven stole the food which was furnished for the experimental subjects in Block 46 and also obtained other items such as shoes, toys, and women's clothing.

The testimony of the affiant Ackermann, who was an inmate in the pathological department under Hoven, proves that Hoven participated in the customary brutal crimes in concentration camps. He said—

“Dr. Hoven stood once together with me at the window of the pathological section and pointed to a prisoner, not known to me, who crossed the place where the roll calls were held. Dr. Hoven said to me: ‘I want to see the skull of this prisoner on my writing desk by tomorrow evening.’ The prisoner was ordered to report to the medical section, after the physician had noted down the number of the prisoner. The corpse was delivered on the same day to the dissection room. The post-mortem examination showed that the prisoner had been killed by injections. The skull was prepared as ordered and delivered to Dr. Hoven.” (*NO-2631, Pros. Ex. 522.*)

Hoven also approved the beating of concentration camp inmates. (*NO-2313, Pros. Ex. 523; NO-2312, Pros. Ex. 524.*) One of these inmates died.

On 20 August 1942, Hoven suggested to the camp commander of Buchenwald that the reporting of deaths of Russian political prisoners be discontinued in order to save paper. He said—

“It is requested that the question should be examined whether it is necessary to issue reports of the death of political Russians. According to a direction issued last week, an issue of only one form was required. This may effect a saving of paper, but as political Russians are for the greatest number among the dead prisoners at the present time, more time and paper

could be saved if these death reports were dropped. Notifications of death could be made as before, as for the Russian prisoners of war." (NO-2148, Pros. Ex. 570.)

The proof has shown that beside the sixty inmates who were admittedly killed by him, Hoven participated in the killing of many other inmates of the Buchenwald concentration camp who suffered from malnutrition and exhaustion. He selected the victims for the transports who were later killed in the Bernburg Euthanasia Station. His defense that all his activities were done only for the benefit of the political inmates in the concentration camp is clearly ridiculous and without foundation.

It is interesting to note that Hoven's defense that he killed for idealistic motives is the same he used in the proceedings against him in 1944, only then his alleged idealistic motive was "to prevent a scandal in the interest of the SS and the Wehrmacht." (NO-2380, Pros. Ex. 527; see also, NO-2366, Pros. Ex. 526.)

* * * * *

*EXTRACT FROM THE CLOSING STATEMENT OF THE PROSECUTION **

* * * * *

In Sievers we have an unresisting member of a so-called resistance movement. He asks the Tribunal to free him from guilt for his bloody crimes on the ground that he was really working as an anti-Nazi resistance agent. Nor was he a latecomer to the resistance movement; according to him, he has been resisting since 1933. Yet in those 14 years, yes to this very day, he has not performed one overt act against the men who ran the system he now professes to have always detested. He joined the Nazi Party as early as 1929 and the SS in 1935. He stayed with Himmler's gang until the last days of the collapse. He came to Nuernberg in 1946, not to give evidence of the horrible crimes of which he had first-hand knowledge, but to testify in defense of the SS. During his testimony before the International Military Tribunal, he consistently denied any knowledge of, or connection with, crimes committed by the Ahnenerbe of the SS. It was left to the cross-examination of Mr. Elwyn Jones to prove him the murderer and perjurer that he is. Nor did he show any signs of resistance in this trial except to the manifold crimes

* Closing statement is recorded in mimeographed transcript, 14 July 1947, pp. 10718-10796.

with which he is charged. Not one new fact did he reveal to this Tribunal, although specifically asked to tell all he knew. If asked today, he will assure one and all that there is not a guilty man in the dock, and least of all himself. But, for purposes of argument, let us concede the truth of his many lies. It does not harm our case. It is not the law that a resistance worker can commit no crime and, least of all, against the people he is supposed to be protecting. It is not the law that an undercover agent, even an FBI agent, can join a gang of murderers, lay the plans with them, execute the killings, share the loot, and go his merry way. Many are the policemen who have been convicted for taking part in crimes they were entrusted to prevent. No, the sad thing is that this collector of living Jews for transformation into skeletons has only one life with which to pay for his many crimes.

* * * * *

c. Selections from the Argumentation of the Defense

*EXTRACTS FROM THE FINAL PLEA FOR DEFENDANT GEBHARDT **

* * * * *

The State Emergency and War Emergency as Legal Excuse

The evidence proved furthermore that the experiments to test the effectiveness of sulfanilamide were necessary to clarify a question which was not only of decisive importance for the individual soldier and the troops at the front but above and beyond this care for the individual, it was of vital importance for the fighting power of the army, and thus for the whole fighting nation. All efforts to clarify this question by studying the effect of casual wounds failed. Although drugs of the sulfanilamide series—the number of which amounts to approximately 3,000—had been tested for more than 10 years, it was impossible to form an even approximately correct idea of the most valuable remedies. It was impossible to clarify this question in peacetime by the observation of many thousands of people with casual wounds and by circularized inquiries. Nor could a clear answer be found to this question of vital importance to many hundreds of thousands of soldiers by observation of the wounded in field hospitals during the war. In this argumentation it is impossible and also unnecessary to examine details of the problem of wound infection and its control in modern warfare. I may assume that the importance of this question is known to the Tribunal and needs

* Final plea is recorded in mimeographed transcript, 15 July 1947, pp. 10874-10911.

no further proof since this question not only played a part in the German Army but was a matter of special research and measures in the armies all over the world.

In 1942 the conditions in the German Army and in the Medical Services of the Wehrmacht became intensified only insofar as with the beginning of the campaign against the Soviet Union new difficulties presented themselves in this sphere, too. In the campaigns against Poland and France it had been possible to master the wound infections by the usual surgical means, but the difficulties in the war against the USSR increased beyond all measures. It is unnecessary to examine the reasons for this more closely here. It is clear that they resulted from the great distances and poor traffic conditions, but they were also caused by climatic conditions prevailing there.

The fighting power of the German Army was so affected by the heavy casualties that it was impossible to allocate a correspondingly large number of experienced surgeons to the main dressing stations in order to control bacterial wound infection with surgical measures.

During the presentation of evidence the difficult situation in which the German armies found themselves in the winter of 1941-42 on the Moscow front and in the south around Rostov was repeatedly stressed. Here it was demonstrated clearly that the German Wehrmacht, and with it the German people, were involved in a life and death struggle.

The leaders of the German Wehrmacht would have neglected their duty if confronted with these facts, had they not attempted to solve, at any price, the problem as to which chemical preparations were capable of preventing bacterial wound infection and, above all, gas gangrene, and also whether effective means could be found at all. Whatever the answer to this question was, it had to be found as soon as possible in order to avert an imminent danger and to throw light on a question which was important to the individual wounded soldier as well as to the striking power of the whole army. After the failure of all attempts to solve the problem through clinical observation of incidental wounds and other methods, and, in view of the particularly difficult situation and especially of the time factor, there was nothing left but to decide the question through an experiment on human beings. The responsible leaders of the German Wehrmacht did not hesitate to draw the conclusions resulting from this situation, and the head of the German Reich, who was at the same time Commander in Chief of the German Wehrmacht, gave orders for a final solution of this problem by way of large scale experimentation.

Let us examine the legal conclusions to be drawn from this situation as it existed in 1942 for the German Wehrmacht and therefore for the German state—in particular regarding the assumption of an existing national emergency.

The problem of emergency and the specific case of self-defense has been regulated in almost all criminal codes in a way applicable only to individual cases. The individual is granted impunity under certain conditions when “acting in an individual emergency arising for himself or others”. The administration of justice and legal literature, however, recognize that even the commonwealth, the “state,” can find itself in an emergency, and that acts which are meant to and actually do contribute to overcome this emergency may be exempt from punishment.

1. First of all, the question has been raised whether the conception of self-defense, conceived to cover individual cases, can be extended to include a state self-defense, meaning a self-defense for the benefit of the state and the commonwealth. The answer to this question was a unanimous affirmative.

2. The same reasoning, however, as applied to self-defense is also applicable to the conception of an emergency, as embodied, for example, in Section 54 of the German Penal Code and in almost all modern systems of penal law. These provisions, too, were originally conceived to cover individual cases. But, using them as a starting point, legal literature and the administration of justice arrive at a recognition in principle of a national emergency with a corresponding effect. With regard to the definition of the concept of an emergency generally given in the penal laws, the application of these provisions to the state, while justified in itself, can only be effected in principle.

When the idea of an emergency is applied to the state and when the individual is authorized to commit acts for the purpose of eliminating such a national emergency, here, as in the case of the ordinary emergency determined by individual conditions, the objective values must be estimated. The necessary consequences of conceding such actions on the part of the individual must be that not only is he absolved from guilt, but moreover his acts are “justified”. In other words, the so-called national emergency, even though it is recognized only as an analogous application of the ordinary concept of emergency in criminal law, is a legal excuse. But what does “application” in principle to the cases of national emergency mean? Whether a national emergency is “unprovoked” or not, whether, for example, the war waged is a “war of aggression” can obviously be of no importance in this connection. The existence of the emergency only is decisive. The vital interests of the commonwealth and the state are substituted

for the limitation of individual interests. Summarizing, we can define the so-called national emergency as an emergency involving the vital interests of the state and the general public which cannot be eliminated in any other way. As far as such emergency authorizes action, not only may a legal excuse be assumed but a true ground for justification exists.

I shall examine later how far an erroneously assumed national emergency, a so-called putative emergency, is possible and is to be considered as a legal excuse. What consequences arise from this legal position in the case of the defendant Karl Gebhardt?

1. As proved by the evidence the general situation in the various theaters of war in the year 1942 was such that it brought about an "actual", that is, an immediately imminent danger to the vital interests of the state as the belligerent power and to the individuals affected by the war. The conditions on the eastern front in the winter of 1941-42 as they have been repeatedly described during the submission of evidence created a situation which endangered the existence of the state, through the danger of wound infection and the threat to the survival of the wounded and the fighting strength of the troops arising therefrom.

It must be added that the past World War was fought not only with man and material but also with propaganda. In this connection I refer to the statements of the defendant Gebhardt in the witness stand as far as they concern information given to him by the Chief of Office V of the Reich Security Main Office, SS Gruppenfuehrer Nebe. This information shows that at that particular time the enemy tried to undermine the fighting spirit of the German troops with pamphlets describing the organization and material of the German Wehrmacht Medical Service as backward, while on the other hand praising certain remedies of the Allied Forces, for instance penicillin, as "secret miracle weapons".

2. The assumption of a state of national emergency presupposes that the action forming the subject of the indictment was taken in order to remove the danger. By this is meant the objective purpose of the action, not just the subjective purpose of the individual committing the action. The question, therefore, is whether the sulfanilamide experiments were an objectively adequate means of averting the danger. This, however, does not mean that the preparations really were an adequate means of expertly combatting the danger. According to the evidence there can be no doubt that these assumptions really did exist.

3. Finally, there must not be "any different way" of eliminating the national emergency. One must not misunderstand this requirement. Not every different way, which could be pursued only by corresponding violations, excludes an appeal to national

emergency. The requirement mentioned does not mean that the way of salvation pursued must necessarily be the only one possible. Of course, if the different possibilities of salvation constitute evils of different degrees, the lesser one is to be chosen. It must also be assumed that a certain proportion should be kept between the violation and the evil inherent in the danger. In view of the fact, however, that in the present case many tens of thousands of wounded persons were in danger of death, this viewpoint does not present any difficulty here.

According to the evidence there can be no doubt that a better way could not have been chosen. On the contrary, it has been shown that in peacetime as well as in wartime everything was tried without success to clarify the problem of the efficacy of sulfanilamides. And the fact, too, that prisoners were chosen as experimental subjects who had been sentenced to death and were destined for execution, and to whom the prospect of pardon was held out and actually granted cannot be judged in a negative sense. This fact cannot be used as an argument when examining the legal viewpoint, because participation in these experiments meant the only chance for the prisoners to escape imminent execution. In this connection I refer to the explanations I have already given in connection with the so-called probable consent.

Excuse

In addition to the general national emergency discussed, the literature of international law recognizes also a special war emergency. According to this, "in a state of self-defense and emergency, even such actions are permitted which violate the laws of warfare and therefore international law." But in the sense of international law the "military necessity of war" which by itself never justifies the violation of the laws of warfare differs from self-defense and emergency. Emergency and necessity of war, however, are different concepts. The emergency due to which the self-preservation and the self-development of the threatened nation are at stake justifies, according to general principles recognized by the national laws of all civilized countries, the violation of every international standard and thus also of the legal principles of the laws of warfare. When applying the concepts of self-defense and emergency as recognized by criminal and international law, the illegality of violations committed is excluded if the nation found itself in a situation which could not be relieved by any other means.

In this connection the following must be pointed out:

I have already explained that the experimental subjects, on whom the sulfanilamide experiments forming the subject of this

case were performed, came under German jurisdiction, even if one holds the opinion that Poland's case was not one of genuine "debellatio" but only of "ocupatio bellica".* However, whatever opinion one might hold with regard to this question, there can be no doubt that assuming an emergency according to international law, the performance of the experiments would have been justified even if at the time the experimental subjects had still been citizens of an enemy nation. Decisive for the regulation of the conditions of such persons according to international law are the "Regulations Respecting the Laws and Customs of War on Land" annexed to the Hague Convention, dated 18 October 1907. According to the above statements, however, even a violation of such special conventions, as contained for instance in the special prohibitions of Article 23, is justified during a genuine war emergency. The fact that the special conditions characterizing a real war emergency are existent invalidates the objection that citizens of another country should not have been used for the experiments.

*The Evaluation of Conflicting Rights and
Interests as Legal Excuse*

According to well-considered opinions, we must start from the premise that the defendants, both in principle and in procedure, are to be tried according to German criminal law. They lived under it during the period in question and were subject thereto. For this reason I wish to approach one more viewpoint which should be considered independently, and in addition to the legal excuses already mentioned, when judging the conduct of the defendants.

For many years the legal provisions for emergency cases have proved inadequate. For a long time an endeavor was made to fill the gaps with theoretical explanations of a general nature, and finally the Reich Supreme Court handed down basic decisions expressly recognizing an "extra legal emergency". The considerations on which they were based are known as the "objective principle of the evaluation of conflicting rights and interests." In the legal administration of the Reich Supreme Court and in further discussions this principle, to be sure, is combined with subjective considerations of courses of action taken by the perpetrator in the line of duty. Therefore it is necessary to discuss both considerations, that of evaluating conflicting rights and interests and that of compulsion by duty together, even if we must and shall keep them distinctly separated for the time being.

¹ See section on Status of Occupied Poland under International Law, vol. I, pp. 974-979.

The consideration of an evaluation of conflicting rights and interests as legal excuse is generally formulated as follows:

“Whoever violates or jeopardizes a legally protected right or interest of lesser value in order to save thereby a legally protected right or interest of greater value does not act in violation of the law.”

The lesser value must yield to the greater one. The act, when regarded from this point of view, is justified, its unlawfulness—and not merely the guilt or the perpetrator—is cancelled out.

This so-called principle of evaluating conflicting rights and interests is first of all a formal principle which establishes the precedence of the more valuable right or interest as such. This formal evaluation principle requires on its part a further material evaluation of the rights or interests comparatively considered. This evaluation again requires the adoption of the law and its purport to the general attitude of a civilization and, finally, to the conception of law itself.

Let us examine the conclusions to be drawn from this legal situation in our case: Agreement and so-called likely agreement, just as well as a national emergency and a war emergency, constitute special legal justifications, the recognition of which allows us to dispense with a recourse to the general principle of evaluating conflicting rights and interests. The latter retains its subsidiary importance. Furthermore, those two special legal justifications refer in their purport to a fair and equitable way of thinking as well as to the proportional importance of various types of evils; thus they themselves include the conception of evaluating conflicting rights and values. For this reason, among others, the following must be explained in detail at this point:

A national emergency and a war emergency were unmistakably in existence in 1942. Every day the lives of thousands of wounded were endangered unless the threatening wound infection could be checked by the application of proper remedies and the elimination of inadequate remedies. The danger was “actual”. Immediate help had to be provided. The “public interest” demanded the experimental clarification of this question. The evidence has shown that the question could not be clarified by experiments on animals or by the observation of incidental wounds.

The last word on this question, however, is not said merely by reference to the public interest. Opposed to the public interest are the individual interests. The saying “necessity knows no law” cannot claim unlimited validity. But just as little can the infringement on individual interests in order to save others be

considered as "contrary to good morals". The evidence has shown that the members of the resistance movement of Camp Ravensbrueck who were condemned to death could only escape imminent execution if they submitted to the experiments which form the subject of this indictment. There is no need to examine here and now whether the experimental subjects did give their consent or whether they presumably would have consented, if, from their personal point of view and in the full knowledge of the situation, they could have made a decision within the meaning of an objective judicial opinion based on probability. What really matters is the question of whether after a just and fair evaluation of the interests of the general public and the real interests of the experimental subjects, the defendant could conclude that, all circumstances considered, the execution of the experiments was justifiable. Without doubt this question can be answered in the affirmative. Quite apart from the interest of the state in the execution of the experiments, participation in the experiments was in the real and well-considered interest of the experimental subjects themselves, since this participation offered the only possibility of saving their lives through an act of mercy.

* * * * *

*The Defendant's Erroneous Assumption of an Emergency
(Putative Emergency)*

I have already mentioned the circumstances which justify the assumption of a national emergency and a war emergency caused by the special conditions prevailing in 1942. If these conditions actually prevailed, the illegality of the act and not only the guilt of the perpetrator would be excluded for reasons previously enumerated. If the defendant had erroneously assumed circumstances which if they really had existed would have justified a national emergency and a war emergency, then, according to the general principles already mentioned, the intent of the defendant and thus his guilt would also be eliminated in this respect. The evidence, especially the defendant's own statements on the witness stand, leaves no doubt that, when the experiments began in 1942, he had assumed the existence of such circumstances which were indeed the starting point and motive for ordering and carrying out these experiments.

* * * * *

*EXTRACT FROM THE FINAL PLEA FOR DEFENDANT
SIEVERS **

* * * * *

May I remind you of the exciting part of my case in chief which dealt with Sievers' participation in the resistance against the National Socialist government and administration. By putting forward his activity in a resistance movement, the defendant Sievers does not endeavor to obtain a mitigation of an eventual condemnation. In my opinion, this activity must under all circumstances result in his acquittal, even though, contrary to expectation the High Tribunal should tend towards the opinion that Sievers had participated in the accused crimes.

In the first place it is my intention to discuss a series of legal questions that have at all times been acknowledged in the criminal law of all civilized nations. It is not by any means the task of the High Tribunal to apply any special article of law, but, from general legal and legal-philosophical principles, to lay down a rule finding and creating a new law to meet a new situation. It need hardly be said that first and foremost I am supporting my own client. But in your verdict, you, your Honors, are not judging only this defendant. Beyond this particular case your verdict has a far more extensive, general, nay, world-wide importance. For it is the first time that a tribunal of such importance is to decide upon the actions of a member of a resistance movement. Consequently, your judgment is a fundamental one and a signpost for our time for many, many other defendants and accused men in this connection who have stood before this Tribunal or will be brought before other courts. Your decision for all time extends to cover thousands and thousands of men who, at some time, may be put in the position of opposing some criminal system of government by similar means as Sievers did. On this our globe there are still autocracies and totalitarian dictatorships and it requires only little foresight to realize that other dictatorships may involve other international entanglements and wars of the most horrible nature. Furthermore, in the future, mankind will again and again be in sore need of courageous men who for the sake of their nation and for the welfare of mankind oppose themselves to such dangerous doings. It is for such champions and for such groups of champions that your verdict will be a criterion and a signpost. You are deciding in advance the future possibilities and the sphere of action of future resistance movements against criminal governments and their chiefs. You are

* Final plea is recorded in mimeographed transcript, 16 July 1947, pp. 11020-11048.

offered the opportunity of checking such movements by your verdict. But you are also able to give them the safety necessary for their dangerous enterprise and the success of their proceedings. How and where would such helpers be found in future if, apart from the immediate peril, they have to reckon with the additional danger of being called to account by the very people for whom they risked their lives? And therefore, your Honors, with your verdict in the Sievers case you take upon you a responsibility before the whole world and for all time to come, a responsibility as is seldom placed upon a tribunal. But on the other hand you can also say with pride that with this judgment you render an immeasurable service to the world in its struggle for peace and justice.

Therefore the reasons for your verdict in the Sievers case are so immensely important, far more important than the trifling Sievers case can be in the universal history of all times. I am forced to detail the particulars of these problems.

It goes without saying that the member of a resistance movement can only refer to his resistance, if this resistance is lawful. This will not always be the case; for, political crime and similar actions committed for political motives are crimes and will remain such. He who removes a political adversary only to take his position or to open the way for his partisans acts unlawfully and is liable to punishment. The situation, however, becomes different if not only a political discussion is interrupted by murder, but where a tyrant whose government is inscribed with bloody letters in the annals of mankind is at last felled to the ground. In this case the perpetrator is supported by an acknowledged excuse. This excuse is self-defense.

According to the German Penal Code, Article 53, an action is not punishable if it is committed in self-defense. And self-defense is such defense as is necessary to ward off from oneself or another person an imminent unlawful attack.

These principles are, however, not only German legal stipulations. They are legal values of all nations and all times. To a large extent they tally with human sentiments and are termed "the great law of defense." They are already found in Roman law in the formulation "*vim vi expellere [repellere] licet*"—force may be driven out by force—and have been enthusiastically taken over by English common law and by American law, as stated by Wharton, "Criminal Law", paragraph 613. They authorize every individual to ward off injury from himself or another person with all necessary means at his command. From this point of view too the struggle against a criminal government threatening the peace of the world, preparing aggressive wars, ready without

any purpose or need to plunge the whole world into immeasurable misery from sheer striving for power, from presumption and conceit; struggle and resistance against such a government and such guidance are lawful and permissible, no matter by what means they may be carried on. Since the end of the war even, the opinion has been maintained more and more that such a struggle is not only lawful and permissible but is even the duty of every individual. Is not the collective guilt of the whole German nation substantiated by the charge that it witnessed the doings of the Nazi government without interfering at least with a secretly clenched fist in its pocket? Murder and manslaughter, bodily injury and restriction of liberty inflicted upon the potentates and responsible men of such a system are acts of self-defense for the benefit of peace and mankind. They are lawful and exempt from punishment; they are a duty if there is no help possible in any other way.

From times immemorial this question concerning the lawfulness and duty of committing political murder has engaged not only lawyers but also a large number of poets and philosophers. Friedrich von Schiller justified the murder committed on Gessler as the last desperate attempt to escape slavery. Thus the juridical vindication of murdering a criminal tyrant is paralleled by its high moral estimation.

But it may happen that not only the real assailants come to grief. He who has to ward off an attack may be forced to implicate a third person hitherto not involved. This case too is provided for in the German Penal Code and is termed "necessity". The regulation of Article 54 runs as follows: "No punishable act has been committed when the act—self-defense apart—was committed in an emergency, which could be met in no other way, to escape a present danger to the life or body of the perpetrator or a relative of his."

The legal codes of all nations and all ages have been compelled to face the problem of the conflict between two legal values which can only be solved by hurting or even annihilating one of the two. Justice cannot insist with utter consistency upon the individual respecting foreign rights and sacrificing his own at all costs and under any circumstances. A Frenchman says to this question: "Cette théorie est admirable pour des saints et pour des héros, mais elle n'est point faite pour la vulgaire humanité"—"This theory is admirable for saints and heroes, but it is not for common humanity"—[Pradier—Fodéré, vol. I, page 367, *Traité du droit international public européen et américain.*] "Quod non est licitum in lege, necessitas facit licitum"—"What is not permitted by law, necessity makes permissible"—[says

the Roman law], and the French lawyer Rossi says: "L'acte ne peut être excusable lorsque l'agent cède à l'instinct de sa propre conservation, lorsqu'il se trouve en présence d'un peril imminent, lorsqu'il s'agit de la vie."—"The act can be excused only when the perpetrator yields to the instinct of self preservation, when he finds himself faced with imminent danger, when life itself is at stake."—An old German legal proverb runs: "Necessity knows no law." Last but not least, American law deals with this problem under the name "necessity" (*Wharton, "Criminal Law," par. 642*), a literal translation of the German expression "Not". So by virtue of necessity a shipwrecked sailor may push his fellow-sufferer from the board which is too small to save both of them. If applied to resistance movements against criminal governments, these principles mean that third persons hitherto unconcerned may also be involved, if there is no other alternative, if "Not", "necessitas", "necessity" requires it peremptorily and unavoidably.

You, your Honors, are called upon to bring the principles of "self-defense" and of "necessity", "this great law of defense" to their common denominator, to apply them to the Sievers case and thus insert them into the unwritten rules of the international relations of public and political law. The Anglo-Saxon legal way of thinking and the principles of natural law will give you valuable support in forming the verdict.

Now I can turn to the specific case of Sievers.

In order to judge his actions the following questions are of a decisive importance: Was there a German resistance movement at all? Did the Hielscher group belong to this resistance movement? Was this group to be taken seriously and what were its aims? Was Sievers a member of this group and what were his tasks? What was his attitude in performing these tasks? Were there also other possibilities for him? It has frequently been maintained that there was no German resistance movement. But *the German resistance existed.*

I must, however, confess that the question "Where was this resistance?" readily suggests itself to such people as are not acquainted with the internal conditions of Germany, above all during the war. I must also grant the fact that scarcely more than Stauffenberg's plot with its staggering consequences came before the public.

He who puts such a question completely misjudges the conditions under which the whole resistance movement had to work against the Nazi Government. He forgets that up to the fatal date of 20 July 1944, he had also no idea of the group round Stauffenberg. I am therefore all the more forced to give a concise

exposition of the situation which in the Third Reich everybody opposing the Nazi Government had to face.

From the very beginning it was the aim of the authoritarian government to get hold of every German man, every German woman, all children, and old men in order to bring them up in the spirit of the new method of government. The totalitarian striving for power did not stop short at personal freedom. It removed professional and economic organizations, cultural and social institutions, some of which were reestablished in another form, subject to the control of the Nazi Government.

It was against this state of things that the struggle set in from the very beginning. Nothing would be more wrong than to believe that this struggle could be waged in the open street with large quantities of propaganda material, display of physical force, with fire arms, bombs, war, and rumors of war. Even in the trade unions, the most consistent and resolute adversaries of the new government in 1933, such a method was not possible. This government kept a tight rein over the whole public apparatus controlling in an increasing degree the private spheres through the organizations of the SD, Gestapo, etc. The ambiguous stipulations of the law against malicious acts or insults to the state and party (Heimtueckegesetz) made possible the imprisonment of people even for accidental deprecatory remarks. Political discrimination and the constant danger of being sent to a concentration camp were the effects of many innocent remarks. No newspaper could have been found to agitate against the oppressors. But if handbills were secretly distributed the contents of which defamed the Nazi government, the whole apparatus of the police, Gestapo, SD, etc., was set in motion. The possession of weapons was considered circumstantial evidence of treasonable enterprises and meant capital punishment for the imprudent. It must be added that there was a widely extended spy system sticking to everybody's heels. One had even to guard oneself against one's nearest relations and children.

These few words concerning the internal situation of Germany were necessary as an answer to the absurd question put in Stockholm to the witness Hielscher: "Why did you not speak in the open market place [publicly]?" (*Tr. p. 5935.*)

The most obvious kind of opposition was offered by the two great Christian churches. How much and how often were the antichrist and his false prophets not preached against, how many clergymen of all confessions were sent to prisons, penitentiaries, concentration camps, nay, to death? It is true, the churches could venture forth more openly than other people. For they did not intend to participate in a *forcible* removal of the system, in the

killing of its leaders and representatives, in the fight with arms. But the nonecclesiastical resistance groups had realized that the Nazi dictatorship could not be overthrown without violence; they were not subject to the political-philosophical impediments and restrictions of the churches, they could not throw off the mask until the day of action had dawned. Up to that time they were condemned to be silent, they had to camouflage, acting on the old principle of all conspirators: "Never speak of your aim, but always think of it!" If they had forgotten this principle, sooner or later unquestioningly they would have been betrayed by a spy and liquidated by the Gestapo. They would never have got as far as action. Did not the group round Stauffenberg act in this way too? Who knew of its existence before the bomb burst in Hitler's headquarters on 20 July 1944? The same was the case with all the other resistance groups which unfortunately no longer had the possibility of acting and some of which were traced and secretly killed in spite of this.

The fact that all of them existed is proved, however, by the small number of publications: the pamphlets of Emil Henk, of Franklin L. Ford and other authors, and Neuhaeusler's book, "Cross and Swastika".

But downright classical witnesses are the numerous bloody victims whom the People's Court of Justice [Volksgerichtshof] and the Gestapo had sent to the concentration camps and to death.

One of these groups was the group around Hielscher, a member of which was the defendant Sievers.

There was a Hielscher group, it existed, it acted. Hielscher himself is an unimpeachable witness of this. In connection with 20 July 1944, he was imprisoned for three months and was to be hanged. Hielscher's illegal activity is sworn to by many other no less trustworthy witnesses. As the first of them I mention the political emigrant Dr. Borkenau, who had been working against National Socialism at least since 1928. He had known Hielscher since 1928. He speaks of his hostility to National Socialism, of a "sharp attitude". At that time he frequently negotiated and conspired with Hielscher, who set forth the methods of his fight. During his emigration, Dr. Borkenau watched Hielscher's activity from abroad and again and again he heard: "Hielscher keeps on fighting". If we are told so by an emigrant, we may well believe it. Another witness who never lost connection with Hielscher was Dr. Topf, who himself was an active member of the resistance movement. He too described Hielscher as a violent antagonist of National Socialism, working and struggling unswervingly. I refer to the many affidavits which I presented in this connection.

It does not speak against Hielscher's oppositional activity that

he did not stand out more in public. For him too, camouflaging up to the moment of decision was an imperative requirement, and Dr. Borkenau calls it a downright masterpiece that he so eminently succeeded in doing so.

Sievers was a member of the Hielscher group

There cannot be the least doubt of this fact. Apart from all the testimony, the whole personality of my client excluded any Nazi attitude. His nature and his development necessarily made him a decisive adversary of Hitler's system of oppression, terror, and murder. Both his origin and the interests of his youth brought him into contact with people who kept aloof as much as possible from the Nazi way of thinking. He was the son of a director of ecclesiastical music; he pursued historical and religious studies. His nature led him to the Boy Scouts, in short to such interests as National Socialism calumniated with all its powers of ridicule and combated violently with stubborn dislike. All those persons who either testified or in affidavits gave evidence about his character describe him as follows: an upright man with lofty ideals of deeply rooted humanity and a strong sense of law and justice. If you combine this picture of Sievers painted by notorious anti-fascists with all the authenticated aid that Sievers bestowed on victims of Nazism, it is only a small step to the conviction that Sievers was also a member of a resistance movement.

Perhaps the prosecution may say: "I do not believe all these stories, for both Hielscher and Sievers did not achieve anything."

That would wrong Sievers to a high degree, your Honors! Other resistance groups too had the misfortune that they had not more opportunity to act. The witness Hielscher exposed very clearly the reasons why a standstill was inevitable after the failure of the plot on 20 July 1944. As Hielscher and his associates could no longer depend upon the army, they were compelled to start again from the very beginning.

What were the intentions and the mission of the defendant Sievers within the Hielscher group? Hielscher himself answers that. Sievers' tasks were of two kinds: (1) Gathering news from the immediate proximity of Himmler as basis for the disposal of the resistance forces with regard to place, time, and kind of action. (2) Sievers was not only a spy and a scout; at the moment of action he was destined and ready to do away with Himmler. These two tasks require a double legal examination: Were they in themselves permissible, lawful, or even a duty? The answer to this question is to be found in the principles which I evolved in the idea of self-defense in the sphere of political struggle. What measures was he allowed to take? To what extent could he venture

to advance into the domain of criminality? To what extent could he involve uninitiated third persons in his plans, even actual victims of Nazism? The rules of "necessity" lead the way for judging and solving this problem.

In taking up the first question I can be relatively brief. After all we know today, it is an irrefutable fact that Hitler and his accomplices terrorized the German Nation and the whole world in a criminal way and with criminal means, that from the beginning they were an immediate peril to peace and all civilization and that finally the worst apprehensions turned to ghastly reality. Therefore the first prerequisite for the defense of "necessity" is beyond all doubt a present illegal attack on the highest goods of mankind. To put it in the words of the German Penal Code that was the "necessity" ("not") which was to be warded off.

But we also know that this defense was not to be accomplished with the normal means of a democratic parliamentary system. I described the truly diabolical organization by which it had been rendered impossible to make use of these means. Thence follows that the removal of Hitler and his accomplices was the only possible expedient to break and smash this system. Less hard and violent means were not available.

As a matter of course it follows that Hielscher's plan to do away with Himmler had become legal and compulsory for those in the position to execute it. After the evidence of Hielscher and other trustworthy witnesses, it cannot be denied that Sievers had been charged with this task.

If it was justified to do away with Himmler, the accompanying and preparing scouting-activity was justified too.

Before answering the question to what extent Sievers could involve third persons, I have to sketch in a few lines the tactics of Hielscher and the position of Sievers.

It was not in vain that Hielscher himself gave full particulars on this question. We also heard other witnesses, Dr. Borkenau, Dr. Topf. Sievers clearly outlined his tasks. All this evidence is in such unanimous agreement that no doubt of its truth could arise.

Hielscher was one of the first and few people who realized that the way to take measures against the system could be only from within the ranks of the party itself. He had gained the firm conviction that a prospect of success could be seen only by doing away with the heads of the Nazi Government and assuming the government from the top and that nothing, nothing at all, was to be anticipated from a revolution of the people from below. A revolution of such a kind would have been of no avail, as it would very quickly have been stifled in torrents of blood.

The knowledge of these facts required four groups of measures to be taken, the particulars of which Hielscher detailed on 15 April:

Preparation of the undertaking by a well-camouflaged organization of trusted men and spies within the ranks of the NSDAP, i.e., the Trojan Horse policy.

Placing suitable courageous men in positions as near as possible to leading personages of Nazism, the most dangerous of whom was Himmler.

Doing away with Himmler and other leaders of the Nazi Government upon a given cue.

Taking over the government by an organization prepared in advance.

In spite of all liberty of action granted to the "activists" of his group, Hielscher had realized that success could only be expected if everybody, in strict discipline, obeyed his orders only. This was the only way for him to hold the reins and to give the cue the right moment. Here I must emphasize that within the scope of this indispensable discipline, Sievers in all details acted in complete unison with Hielscher, that in all important moments he described the real state of affairs and asked for his instructions. In this way Hielscher obtained ample information of everything enacted around Sievers and of what Sievers did himself. Sievers was nothing but the tool in the hands of the leader of the movement. Therefore, your Honors, your verdict affects Sievers' commissioner, Hielscher, in just the same way as Sievers himself. Hielscher is condemned together with Sievers, as he is acquitted with Sievers. With the same courage of responsibility with which he placed Sievers and other accomplices in most dangerous positions, Hielscher could declare at the end of his evidence that he not only took but also *claimed* the whole responsibility for all the deeds with which his follower Sievers would be charged as a result in this trial.

Hielscher sketches the task of Sievers as follows: In the belly of the Trojan horse, i.e., under the color of eager and enthusiastic cooperation his duty would be (a) to scout and to spy, (b) profiting by his influence, to place other persons in similar positions for the same purposes, or in places where they would be given the possibility of working undisturbed, (c) to back endangered members of the resistance movement and if possible to rescue them, and finally (d) to do away with Himmler at the moment of action.

This last item was the essential point of the task of my client. All the other tasks were inferior to this aim and assignment, they

only served to prepare and support it. It is from this point of view that his whole conduct must be understood and all his acts judged.

What did Sievers achieve in the sphere of this task?

I cannot reiterate all the details that I set forth in the first part of my plea. I came to the conclusion that Sievers did not make himself guilty of complicity or assistance in the facts charged in the indictment. If, however, you suppose with the prosecution that Sievers is to be found guilty of some of the counts of the indictment, it is my task to justify this conduct before the forum of a concept of justice transcending codified law, and to expound it to the Tribunal.

How did it come about that in 1942 Sievers remained in his position when the Ahnenerbe came into contact with medical experiments which possibly might assume a criminal character? We must not forget that Sievers was assigned the removal of Himmler and that in the Hielscher group he was the only person who could have been entrusted with such a task. Properly speaking, in Hielscher's group he had the key position; the success or failure of the whole enterprise depended on him alone. For Himmler was the most dangerous personality in the Nazi system, because in his quality of Chief of the Police and Commander of the Reserve Army all the internal political armed forces were concentrated in his hand. Consequently he had the power of nipping in the bud every rebellion. Himmler was able to rule without Hitler, whereas Hitler could not rule without Himmler. The latter was to be done away with first. Should Himmler be overlooked or should he somehow succeed in escaping, the whole enterprise would be endangered. Himmler's importance is therefore the measure of the importance of Sievers, who had to be ready for the decisive blow in Himmler's immediate proximity. To ask if this post could be abandoned is to answer it in the negative.

As Sievers was fully conscious of the importance of such a decision, he became involved in the greatest internal conflict of his life. Of two evils, the worse had to be avoided and the smaller to be endured, or both of them to be shunned.

To do the latter would certainly have been the most convenient solution. That Sievers got into this conflict amply demonstrates his consciousness of responsibility, his love of justice and humanity. As to the struggle with his soul, he certainly did not succeed in getting the better of himself. Too many questions depended on his decision, not only for himself but above all for the resistance movement as a whole. We must try to look into the soul of a man, who, on the one hand, was exposed to the pressure of an enormous aversion to the approaching threatening events and, on the other hand, knew only too well that in his

position he could no longer fulfill his task if he obeyed his personal impulses. Perhaps it would have been possible for Sievers to leave his office without creating a great sensation and without considerable disadvantage for himself. Could he not have retired to cooperate in some innocuous scientific research? But in doing so Sievers would have been a runaway, a deserter. In his agony of soul, Sievers applied to Hielscher who after mature consideration and deliberation came to the decision: *Sievers will stay!*

For the post in Himmler's proximity could not be renounced. If Sievers abandoned it, Hielscher would be under the necessity of entrusting him with another position near Himmler or of replacing him by another member of the movement with the same task. Was this possible? Would he, remaining near Himmler, have not time and again come into the same dilemma? Was it possible to wait and see? Could it be expected that another man would be more successful? Would not Sievers, in spite of all circumspection, have raised suspicion in substantiating his withdrawal? For to do so openly and with protest would have been downright madness. Imagine only the danger he would have conjured up for himself and his associates! What could his withdrawal have availed? One more question: if Sievers' withdrawal could have prevented the human experiments at all, that would have been only a partial success. For as to the aim in its totality, the removal of Himmler and the Nazi Government, nothing would have been gained but a further delay of the decision or the impossibility of achieving it because of the loss of the key position. As still more victims of the Nazi Government would have been the result, a partial success had to be sacrificed in favor of the great aim.

If you try to answer these questions there cannot be the least doubt that the decision Hielscher arrived at was the only possibility.

That brings me to the last, to the most important point of my defense, to the question:

"How was Sievers to act in his position?"

Without any doubt, he was compelled to make certain concessions. He was forced to camouflage, i.e., to accommodate himself outwardly to his surroundings which he was going to spy on and to remove. Every spy has to camouflage and I do not betray a secret in mentioning that in wartime many a man donned the uniform of the enemy. It is generally known that in 1942 the French General Giraud performed his escape from German captivity in the uniform of a German general.

When Sievers was a member of the party from 1929 to 1931, when later on he joined the NSDAP and the SS again, when he

filled higher positions in these organizations, when he held the position of Reich Manager of the Ahnenerbe and suffered himself to be promoted to a higher rank in the SS, without any doubt at all that was part of the camouflage measures which Hielscher, Dr. Borkenau, Dr. Topf, and other witnesses call the indispensable prerequisite, the compulsory mask for the tasks of the defendant Sievers.

Nobody will pretend that these camouflages which were to render possible a legally approved, nay, desirable aim, are in themselves punishable and illegal. Sievers' outward membership in the SS is therefore excused by its camouflage purpose. And it is equally unobjectionable that occasionally he played the part of a good Nazi. The duty of doing so had expressly been urged upon him by Hielscher. The career of the organizer or an active member of a German underground movement would have found a sudden end if he had not behaved like a Nazi.

All the more seriously must I turn to the question of Sievers' consent to and further participation in the human experiments and the establishment of the collection of skeletons, in which third persons suffered bodily injury.

Here the question is raised where are the bounds of necessity if it involves actions which in themselves are punishable facts. The answer to this question is the essential point of the Sievers case.

The legal orders of the world set up the principle: "*The legal values damaged by the action committed under necessity, must not be of a disproportionately greater value than the protected and rescued legal value.*" That is the principle of proportion concerning which Wharton ["Criminal Law"], paragraph 642, says, "Sacrifice of another's life, excusable when necessary to save one's own."

What were the competing legal values in the Sievers case?

On the one hand, there was the civilization of the world, the peace of the earth, humanity, the lives and existence of millions of men threatened and hurt by Hitler's criminal government. Such actions are called crimes against peace and humanity by the new international law which threatens them with the severest punishments. The Allied Nations considered these legal values worthy of their soldiers enthusiastically going to war and death for them.

On the other hand, you will find the lives of individuals, their bodily safety, the respect and esteem of their personality, their liberty and the free expression of their will, certainly legal values of no less high value. There may have been hundreds of victims. But it was a meager number in comparison with the multitudes

that Hitler, Himmler, and their accomplices had already murdered and continued murdering.

My question runs: Which of the two contending legal values is more valuable from the point of view of proportion?

I am far from excusing the ghastly crimes that happened in the concentration camps or even minimizing them, but with all my abhorrence for them I cannot help answering: The protection of civilization and humanity deserves preference over the life and health of individuals, deplorable as the inevitable sacrifices may be. So finally it was necessary, absolutely requisite, to put up with the violation of the less valuable legal values and to rescue the more precious, the whole. Sievers' remaining at his post in the Ahnenerbe was absolutely necessary for the removal of Himmler.

Of course it would not be difficult to state *post festum* that Sievers could have acted differently, that he ought not have advanced thus far. But up to now nobody has been able to tell us *how* he should have acted. Even the public prosecutor did not try to make a concrete proposal.

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EXTRACT FROM THE FINAL PLEA FOR DEFENDANT
HOVEN *

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In two further parts of my closing brief I dealt with the killings which Dr. Hoven either undertook himself or which were undertaken with his knowledge.

In part (b) of the closing brief, I stated that these killings had no connection with the euthanasia plan.

I further stated that it can be considered proved that Dr. Hoven killed only two prisoners himself, and that about 50 or 60 prisoners were killed by order of those responsible for the German and foreign political prisoners with the knowledge of Dr. Hoven.

I have set forth a legal evaluation of these killings in a further paragraph under (e) of the closing brief.

The legal arguments as set forth in the closing brief are taken from the work of the well known American criminologist Wharton, *Criminal Law*. The first part of this argument contains, under (e), the literal quotations from this book.

According to common law, the killing of a man can be either murder, manslaughter, excusable homicide, or justifiable homicide. Excusable homicide and justifiable homicide are not punishable.

The present American law does not differentiate between justi-

* Final plea is recorded in mimeographed transcript, 18 July 1947, pp. 11266-11288.

fiable homicide and excusable homicide. I refer to my closing brief, particularly to the statements of Wharton in his book *Criminal Law*, 12th edition, volume I, 1932, pages 826 to 879. According to Wharton, excuse and justification for a homicide are either repulsion of felonious assault, or prevention of felony.

The right of self-defense, i.e., repulsion of felonious assault, is restricted to a narrowly defined number of persons.

On the other hand, everybody is entitled to prevent a crime. I refer to the details contained in my legal arguments of my closing brief.

Killing a man to prevent a felonious crime requires the following conditions which are set forth in my closing brief:

(1) The perpetrator must have the bona fide belief that the commission of a felonious crime is immediately impending. It is not a condition that such a crime would actually have been committed. The bona fide belief of the accused is quite sufficient. In this connection I refer to the legal arguments of the closing brief.

(2) This belief of the accused must not be negligently adopted.

(3) There must not be any other possibility of preventing a crime than the killing of a person. In other words—the killing must be the only means available to prevent the crime.

The prosecution's assertion in its final plea, "One must not kill five to save five hundred", therefore, cannot be considered generally valid either from the point of view of German or American law.

On the basis of the statements of the prosecution, I have not been able to see clearly whether that sentence had reference only to the justification of experiments on human beings or else to the killings which were carried out by Dr. Hoven or with his knowledge.

The justification of the killings is materially distinguished from that of the experiments. Those spies, stool-pigeons, and traitors, for whose killing Dr. Hoven accepted responsibility when in the witness stand, had planned to commit serious crimes against their fellow prisoners. Therefore, if the three prerequisites which I mentioned are given, we are concerned with cases of justifiable or excusable homicide.

In my closing brief, I elaborately explained that these conditions existed in the case of all the killings for which Dr. Hoven accepted the responsibility.

The defendant Dr. Hoven had the conviction and good faith that the spies and traitors, who were killed by him or with his knowledge, were about to commit serious crimes, resulting in the

death of numerous inmates of the Buchenwald concentration camp. During his examination on the witness stand, Dr. Hoven gave a thorough description of this.

The decision on these killings was not reached by Dr. Hoven alone. Dr. Hoven had no cause for that. It was not his life that was endangered by those spies or traitors. It was, on the contrary, the committee of political German and foreign prisoners, many of whom are today holding high office in their countries. Those persons guaranteed to Dr. Hoven that only such individuals would be killed who already had been active and would continue to be active as spies and as traitors. These statements by Dr. Hoven were expressly confirmed by a number of witnesses who were heard on this subject. These observations may be found in the affidavits I submitted. Above all it has been proven that only such people of whom Dr. Hoven held that conviction were done away with. Dr. Hoven testified to that effect and it has been reaffirmed by the witnesses Dorn, Dr. Kogon, Seegers, and Hummel.

In his interrogation of 23 October 1946, Dr. Hoven stated expressly that he killed or knew only of the killings of such persons of whom he was certain that their deaths were necessary to save the lives of a multitude of political prisoners from the various countries. At that early date he expressly emphasized that he refused to carry out any of the killing orders of the Camp Commander Koch; the prisoners who were covered by these orders were put into the hospital or hidden in some other way by Dr. Hoven.

Dr. Hoven had not negligently adopted the conviction that their killing was essential for the salvation of huge numbers of prisoners.

This is proved first of all by the testimony of the witness Dorn, who gave many details as to the means and methods employed by Dr. Hoven and the illegal camp administration in becoming convinced of the necessity for the killings. Dr. Hoven supplemented those statements. Furthermore, they were corroborated by the testimony of the witnesses Hummel, Dr. Kogon, Seegers, Philipp Dirk, Baron von Pallandt, and van Eerde through their affidavits.

Actually, the prevention of the planned crimes, i.e., the mass murder of a multitude of German and foreign political prisoners, could be accomplished only through the killing of the spies and traitors. There was no other means. What should Dr. Hoven have done to prevent the crimes planned by the spies and traitors? Those spies collaborated with the SS camp commanders to carry out Himmler's program to destroy the political prisoners. To whom should Dr. Hoven have turned? Perhaps to the SS camp commanders who worked with the spies and traitors? Or perhaps

to the Gestapo or to the police who worked under Himmler's orders?

There was no other way but the one which Dr. Hoven chose in order to prevent crimes. I showed that with details in my closing brief. There I assembled the testimony of the witnesses for the prosecution and defense who were heard on this point.

Here, I merely wish to stress the following statements by witnesses:

In this courtroom, Dr. Kogon, a convinced Christian and a deeply religious man, said: "There was really no other possibility for the men of the illegal camp administration. I, as a convinced Christian, do not deny those men the right to have killed people in an emergency who in collaboration with the SS endangered the lives of individuals or of many."

The witness Pieck stated: "It may be that the liquidation of many political prisoners and of SS spies employed in the camp may make Dr. Hoven a murderer in the eyes of many; yet, for me and others who understood the real situation he was a soldier fighting on our side and risking a great deal."

Pieck expressed the same opinion also in a letter to the Dutch Ministry of Justice, a letter that was co-signed by the City Council of Amsterdam and Mr. Droering, head of a department of the State Institute for War Documentation in The Hague.

Pieck is one of the few who is best equipped to answer these questions, for he belonged to the committee of German and foreign political prisoners which formed itself at Buchenwald.

Father Katjetan, presently Supreme Abbot of one of the largest religious orders in Czechoslovakia, a former prisoner of the concentration camp Buchenwald, declared, in the presence of witness Dr. Horn, that those killings were an inevitable necessity for the preservation of the inmates who had been abandoned by justice in the camp.

Even the prosecution witness Roemhild had to admit on the stand that it would have been impossible to save 20,000 prisoners if those spies or traitors whom Dr. Hoven killed or of whose killing he knew had remained alive.

Let me ask in this connection: What would have happened if a man of Kushnir Kushnarev's caliber had not been killed, and if the murder of the Russian prisoners of war in the Buchenwald camp had been continued? Would Dr. Hoven not stand before this Tribunal even then? Then, would not the same charge be made against Dr. Hoven as the one levelled against the Japanese Governor of the Philippines who was tried before an American Military Court for not having prevented atrocities and abuses?

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d. Evidence

Testimony

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EXTRACT FROM THE TESTIMONY OF DEFENDANT KARL BRANDT *

EXAMINATION

* * * * *

JUDGE SEBRING: Witness, this question of the necessity for an experiment, is it your view that it is for the state to determine the extreme necessity for such an experiment and that thereafter those who serve the state are to be bound by that procedure? I think you can answer that "yes" or "no".

DEFENDANT KARL BRANDT: This trial shows that it will be the task of the state under all circumstances basically to clarify this question for the future.

Q. Witness, as I understood your statements a moment ago, they were that the physician, having once become the soldier, thereafter must subordinate such medical-ethical views as he may have when they are in conflict with a military order from higher authority, is that true?

A. I didn't want to express it in that form. I did not mean to say that the physician, the moment he becomes a medical officer, should change his basic attitude as a physician. Such an order can in the very same way be addressed to a physician who is not a soldier. I was referring to the entire situation as it prevailed with us in Germany during the time of an authoritarian leadership. This authoritarian leadership interfered with the personality and the personal feelings of the human being. The moment an individuality is absorbed into the concept of a collective body, every demand which is put to that individuality has to be absorbed into the concept of a collective system. Therefore, the demands of society are placed above every individual human being as an entity, and this entity, the human being, is completely used in the interests of that society.

* Complete testimony is recorded in mimeographed transcript, 3, 4, 5, 6, 7 Feb. 47, pp. 2301-2661.

The difficult thing, and something which is hard to understand basically, is that during our entire period, and Dr. Leibbrandt referred to that, everything was done in the interests of humanity so that the individual person had no meaning whatsoever, and the farther the war progressed, the stronger did this principal thought appear. This was designated in the end as "total war," and in accordance with that, the leaders of the state gave orders quite generally and demanded that orders be carried out. It was very tragic for a number of persons, not only within the framework of these experiments, but also in other situations that they had to work under such orders. Without considering the entire situation as it prevailed in Germany, one cannot understand the question of these particular experiments at all.

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EXTRACTS FROM THE TESTIMONY OF DEFENSE WITNESS
DR. FRIEDRICH HIELSCHER *

DIRECT EXAMINATION

DR. WEISGERBER: Witness, your name is Friedrich Hielscher?

WITNESS HIELSCHER: Friedrich Hielscher.

Q. You were born on 31 May 1902 in Plauen, and you are now living in Marburg, that is right?

A. Yes.

Q. What is your profession?

A. I am a scholar.

Q. And since when have you taken an active part in politics?

A. Since 1927.

Q. Did you belong to a definite political ideology?

A. No. I had a group of students to whom I expounded my historical and philosophical theories and ideas.

Q. How did it happen that you became an opponent of the NSDAP so early?

A. From the information available to me I knew the personal inferiority of the National Socialist leaders. I could observe that they were constantly lying and that what they really wanted was undesirable.

Q. Did you believe, as early as 1928, that the NSDAP would come to power?

A. No, not in 1928. In 1930, after the first election battle at which the Party was victorious, I considered it possible. In 1931 I considered it probable. In 1932 I felt that it was certain.

* Complete testimony is recorded in mimeographed transcript, 15, 16 Apr. 1947, pp. 5926-5994.

Q. Did you join any definite political party with the intention of combating the NSDAP?

A. No. I considered it impossible for any of the 33 German parties, with their bureaucratic methods, to be able to prevent a fascist dictatorship, or if it had come into existence, to overthrow it.

Q. What methods did you think were the right ones?

A. The fascist dictatorship is a mass machine in a technical age. Therefore it seemed to us to be out of the question, when confronting such a mass body, to act openly. It seemed impossible to carry out propaganda publicly. We were convinced that the only thing possible was to form very small cadres which would not be recognizable to an outsider and which at the proper time could be employed for a coup d'etat.

Q. Then that was more or less the method of the Trojan Horse?

A. Yes.

Q. Were you, in your ideas and in your efforts to combat this movement alone or did you have associates?

A. First, a selected group of my students were willing to collaborate in this illegal work; second, I knew quite a number of personages of various political backgrounds with whom I agreed that this regime would not last.

Q. That was before 1933?

A. That was around 1933—1932-33.

Q. Now came the 30th of January 1933, the so-called seizure of power, and now your real work began. How and when did you apply your method of the Trojan Horse?

A. This group of my students, who were willing to collaborate, I made into an illegal organization, with dues, secrecy, and other necessary conditions, and I appointed people who were willing and suitable to get into important Party positions.

Q. When and how did you meet the defendant Wolfram Sievers?

A. As far as I can recall, I met Sievers about 1929, on one of my historical-philosophical lecture trips. He was a Boy Scout at that time. He spoke up during the discussion and we took a liking to each other.

Q. Did Sievers show at that time that he was opposed to the NSDAP?

A. That was a matter of course with the people with whom I had anything to do at all.

Q. And did you consider him suitable to work in your circle?

A. Yes.

Q. In 1929 Sievers joined the NSDAP. Was that done with your knowledge?

A. Yes.

Q. Did you advise him to do so or how did it come about? There had to be some special reason, since you were both opponents of this political party.

A. That was the first time, aside from 1923, when the NSDAP was talked about, and it was useful to know what was going on in this growing machine—were there any people of good will within the machine, what were the leaders doing, what plans were being made, what organization was being set up.

Q. Then first of all you wanted to find out what intentions the NSDAP had?

A. Yes, and specifically in the youth work, because that had to be the most important in the long run.

Q. Now, in 1931 Sievers resigned from the NSDAP again; did he do that with your knowledge?

A. Yes.

Q. On your orders?

A. Yes, one might say that. We discussed it, and I considered it the thing to do.

Q. Now, why should he suddenly leave the Party since he had been sent into the Party with the definite purpose of getting information?

A. He had found out what he was to find out, the nature and the make-up, especially of the youth organization. It was just as inferior as we had thought, and even at that time it was so corrupt that without any further plan—and we had no plan at the time—without any further plan it was not necessary to have him continue.

Q. Now, in the year 1933, Sievers, as the Tribunal has already been told, again joined the NSDAP; was this also done on your behalf?

A. Yes. At that time we were already a thoroughly organized organization. We were already asking for volunteers, who were willing and who were capable of working up in the sense of the Trojan Horse. Sievers seemed suitable, and he was willing.

Q. Were you able to get him any position within the Party?

A. No. I was not able to help him to obtain any position, and in the second place I had no intention of telling the individual persons whom I trusted, in detail, what they were to do.

Q. Then it was up to the skill of the individual to get into a position from which he would be able to carry out the assignment which you gave him?

A. Yes.

Q. And how did Sievers obtain this position?

A. He got into this with Hermann Wirth in the Ahnenerbe.

Q. Who was Hermann Wirth?

A. Hermann Wirth was a rather crazy student of pre-history, who had excellent material and terrible concepts.

Q. Was Wirth already in contact with the Ahnenerbe at that time?

A. As far as I know he was one of the founders.

Q. Then, as you say, Sievers got in contact with Wirth, and through Wirth he got into the Ahnenerbe?

A. Yes. He was there from 1935 on as Reich Business Manager.

Q. Now, did you give Sievers any specific assignment in the spirit of your movement?

A. As soon as it was clear that there was a possibility of exploiting Himmler's racial romancing and half-education, the assignment developed to gain Himmler's confidence with the aid of the Ahnenerbe and to get as close to him as possible. We, that is my group, were among the people who very early recognized the special personal danger of Himmler, and in the second place from the beginning we had been determined that one day we would have to overthrow the Party regime by force, and for that purpose one has to get as close as possible to the most dangerous man.

Q. And what were the duties which Sievers had this time? When he first belonged to the NSDAP, you said he was to get information about the intentions of the youth movement of the NSDAP.

A. This time, of course, he had to get as many details as he could from the office of the Reich Leader SS, and transmit them to us. We had to protect people. We had to build up camouflage positions. We had to help the other people and in turn to remain unrecognized.

Q. And how did Sievers carry out these duties?

A. Well, it will be best if I begin with myself. I myself was known and considered undesirable by the Party leadership.

Q. You mean the NSDAP?

A. Well, yes, of course. The Party leaders knew me and considered me undesirable. I had already been under arrest and had had my house searched. I was watched by the Gestapo, and in order to build up my organization I needed to be able to travel anywhere without arousing suspicion. Consequently, Sievers gave me a fake research assignment, which was to study Indo-Germanic culture, customs of the annual festivals.

Q. Sievers said during direct examination that he himself could not issue any research assignments; you said that you received a fake research assignment from him; wasn't this research assignment actually issued by the curator, Professor Wuest?

A. Yes. If things were going well, and Wuest was in a good mood, or had been drinking with Sievers, it was possible to persuade him to do something, and so he succeeded in persuading Wuest that I was efficient for this research assignment, and so I was given this assignment. And what concerned Indo-Germanic customs could be found anywhere. I was given a false pass as a section chief, though I was not a section chief, and was not a member of the SS nor the Ahnenerbe.

Q. And with this pass you were able easily to get visas to go abroad?

A. Not necessarily. I needed a little more for that purpose, but it was easier.

Q. Then the actual purpose of this fake research assignment was that you, who were a suspect, might appear in a more harmless light and would be able to move rather freely and without supervision?

A. Yes.

* * * * *

Q. What did Sievers do in order to further the activities of your organization?

A. For instance, he took care of supplying all information which was of importance. He told us what troops of the Waffen SS were in Germany during the war. He gave us fake official trips and he worked out a plan for an assassination, which was to be carried through by our group in case the generals' plan did not come off. We all thought it was not safe to rely on the generals. In March 1944, Werner Haften told me by order of Stauffenberg that one would have to take into account the fact that the generals would have to be moved into action by a certain assassination and everyone was to make his own preparations, in case he had any, in such a manner as if he was the only one active. That was the situation in March 1944. We worked out a substantial plan to remove, if possible, Himmler and Hitler simultaneously, but in case of doubt Himmler himself. We were of a completely different opinion there than the other groups.

Q. What concrete preliminary work was done for the assassination in your group?

A. Sievers was the only one in our group who came into question regarding that assassination because he was the only one so close to Himmler. He was therefore assigned this task and we worked out this matter as far as the detailed plan was concerned; all that was necessary now was to press the button.

Q. And for what period of time was this assassination intended?

A. We started our preparations in the year 1943, and we could have started at the earliest at the end of 1943. Then we finally thought of the middle of 1944 because Schulenburg and Luening told me that the generals would be ready around that time.

Q. Well, an assassination is a matter for quick decision. Is it not true, therefore, that all these long preparations that you are telling us about are rather surprising?

A. The following would have to be taken into consideration: Around Himmler and Hitler there was a strong guard, a strong ring of guards, through which none could get unless he was carefully searched and checked. Secondly, and that I already emphasized, one did not have to be quite sure that the generals would carry out that assassination, but one had to be sure that a sufficient number of generals were ready to remove the National Socialist system immediately after the assassination, for the elimination of just these two people would have no political purpose whatsoever. We did not intend to carry out a Putsch but we intended to remove a political system, a political order, and for that reason we had to wait until the situation became right and the generals were ready.

Q. Now, the question crops up whether these plans for the assassination of Hitler and Himmler were only in your fantasy, or the fantasy of your collaborators, or was there any real basis or concrete preparation for such assassination?

A. I already said that the preparations had been worked out in the detailed technical points insofar as the location, the shooting, etc., were concerned.

Q. And who would have assassinated Himmler and Hitler?

A. Sievers was to do that and a few young men belonging to my organization.

Q. And why was it in effect not carried out?

A. After the Stauffenberg assassination had failed, the Wehrmacht circles that came into question were eliminated by Himmler and therefore it was no longer possible to remove that system. The only consequence of any attempted assassination would have been—since the foreign political situation would not have changed—that the people would have said again, “This is the stab in the back for the victorious front line.”

Q. What did Sievers do to further your activity in addition to what you have already said?

A. He, for instance, supported my representative, Arnold Deutelmoser, when he was put on the list of those who were to be removed under the pretext of the assassination which took place in Munich at the Buergerbraeu. He also protected Bomas who was working in the Netherlands. He protected Dr. Schuet-

telkopf whom we had sent into the RSHA and it was possible for him in turn to send me to Sweden. He saved Niels Bor, Professor Seyb of Oslo University, and he saved a number of Norwegian students, etc.

Q. Do you know that Sievers informed you about Himmler's double play in the case of the minister Popitz, and that as a consequence he saved that entire group against measures by Himmler?

A. Yes. The following thing happened. One day Sievers approached me and said that he had just heard Himmler ridicule in a close circle an attempt on the part of Popitz. He said that Minister Popitz with the mediation of the lawyer Lampe had approached Himmler and tried to persuade him to bring about a change of the National Socialist system, perhaps by removing Hitler. He said Himmler thought it was very funny that these men had so little sense as to think of him in that connection. Thank God one could enter negotiations with them because certainly nobody in the country was behind these people, but it did seem that these gentlemen had many foreign political relationships and it would be advisable to find out what in effect was behind it all and to enter into negotiations with them. We were quite surprised about the naive attitude shown by Himmler, and I sent Deutelmoser to Reichwein whom I knew had connections with Popitz. In that way Popitz was warned. Reichwein was so surprised and hardly wanted to believe the situation.

I was asked to participate in a conference, and Reichwein after having convinced himself that all of this was true promised to warn all of the gentlemen concerned in Berlin and then asked Deutelmoser, who was to go to Norway shortly thereafter to notify Reichwein's friend, Stelzer, the present Minister President of Schleswig-Holstein, in order to see that he, too, took the necessary precautionary measures. In this way we hoped that a number of these people had actually been saved. Popitz, however, himself was careless and was captured.

Q. This conspiracy could not have been carried out unless you had the necessary financial means at your disposal. How did you get these means?

A. Everyone of our people, be it man or woman, had agreed to give up ten percent of their monthly income for that illegal work. Many gave a substantially larger sum.

Q. How about Sievers?

A. Sievers gave more than he had to.

Q. Do you know the case of the three hundred Norwegian students who on the basis of Sievers' intervention were released from the concentration camp Buchenwald?

A. Yes. Terboven, or some other official in Norway, disliked some demonstration which occurred there, and as a result arrested three hundred students. Through some dark channels they were brought into the concentration camp at Buchenwald. Sievers found out about that, and if I remember correctly, he was in a position to see to it that these students were released from the concentration camp, making use of Himmler's Nordic ideas to this end.

Q. In that case you think that Sievers' activity was substantially important for your resistance movement?

A. Yes. That was true of my organization, for he protected and covered me as its chief, and, secondly, as far as I know, he was the only man belonging to any resistance movement who was as close as he to the Reich Leader SS. If any other group had brought any such information as he did, I would have noticed that it could have only come from the same source.

Q. Witness, I shall have a document handed to you which was submitted by the prosecution. This is Document NO-975, Prosecution Exhibit 479. It is a letter sent by Sievers to Dr. Hirt. Would you please look at that letter?

A. Yes.

Q. This letter contains a tone of voice which seems to indicate that he tried to cover Dr. Hirt's activity. Dr. Hirt was working in the Anatomical Institute of the Strasbourg University. I assume, for reasons which we shall mention later, that you know Hirt's name. How do you explain that tone in this letter?

A. I think that this is very proper and praiseworthy. I would have thought it very foolish of Sievers if he adopted any other tone in any of his official correspondence. It was his task to say "yes" but act in a negative way. There couldn't have appeared any pretense of any disapproval on his part. The more active one had to be in an anti-National Socialist way, the more one had to speak in favor of National Socialism.

Q. I shall now turn to another complex of questions. Sievers is indicted in this trial as having participated in a number of crimes. Did Sievers at any time tell you about the so-called research assignments of Dr. Rascher and Dr. Hirt who was just mentioned? These were experiments carried out in the concentration camps.

A. Sievers, as far as I remember, came to me in the year 1942 and told me very excitedly that Himmler in his desire to extend the Ahnenerbe Society had embarked on the thought of including experiments on human beings in the work of the Ahnenerbe Society. He said that he did not succeed in frustrating that. He said that he had no desire whatsoever to participate in these

horrible acts and asked me what to do. At that time we considered this horrible situation very thoroughly and thought of what we could do. It was quite clear to us what the SS intended here, and it was questionable whether responsibility could be assumed for any such acts, whether it would be advisable to be the instrument of Himmler if he embarked on any such acts, measures where human beings were degraded to the level of insects.

The following considerations proved to be decisive for us: If Sievers left, not one person, not one subject in these experiments would be saved. If Sievers stayed there as a technical secretary, he could throw sand into that machinery and would, perhaps, be in a position to save somebody. In addition, the entire plan and the entire overthrow of the Party stood or fell with Sievers staying at his post. The experiments on human beings were only part of this horrible Party system, and one had to concentrate on the decisive points in order finally to remove everything, and, as I have said before, there was no other way into the staff of the Reich Leader SS. We therefore concluded that if Sievers resigned because of that, it was sure that he would be eliminated and probably all the people he had ever entrusted with a research assignment, and everything that we had done so far would be lost if he left, and if anyone was to be saved at all, he could only be saved by Sievers remaining at his post.

Q. If I have understood you correctly, Sievers at first wanted to resign from his position as Reich Business Manager of the Ahnenerbe?

A. Yes. That is correct.

Q. Did Sievers approve of these arguments which you and your friends put forward in favor of his staying with the Reich Leader SS as the Reich Business Manager of the Ahnenerbe? Did he do it immediately or only after trying to persuade him for some time?

A. This took a number of days, because Sievers, according to his nature, was softer than many of us and did not want to agree with us. We finally had to appeal to his sense of duty and persuade him that he had to do it and that it was the only way.

Q. Among other matters, it was considered that by Sievers remaining at his post, there would be a possibility of mitigating these horrible experiments?

A. The chance wasn't very great but we were convinced that this would be the only way possible, if at all. Then it could only be done in that manner. If I may say so, this was such a horrible situation that we always had to come back to it and we

were very lucky at least to have the hope of saving a number of people. Other opponents of the SS system have told me about similar dilemmas which were just as difficult, and where the alternative was yet more horrible, and where persons, according to my belief and knowledge, acted correctly. If the Tribunal would permit me I could relate a few almost incredible situations which were even worse.

PRESIDING JUDGE BEALS: In what connection are these narrations, Witness?

WITNESS HIELSCHER: In connection with the question as to whether it was morally justifiable to enable Sievers to remain at his post.

PRESIDING JUDGE BEALS: Such matters as that would not be material in this inquiry.

* * * * *

CROSS-EXAMINATION

* * * * *

MR. HARDY: Now, what did Sievers ever tell you about the Sievers-Hirt skeleton collection? Did he ever tell you about that?

WITNESS HIELSCHER: Yes. He told me that Himmler had ordered—as far as I know, it was in connection with Jewish commissars who were under this terrible execution order which was valid in the East—that some of them were to be selected and used for the skeleton collection. The order was from Himmler, as Sievers reported to me.

Q. And did you know what they were going to do with these people?

A. Yes. It was the same as in the experiments. There a danger of death was a possibility; here it was certain.

Q. You knew, of course, that they were going to stand these people up, pick them out, select them according to size, take their anatomical measurements, then ship them to Natzweiler and at Natzweiler kill them, then deflesh them, then send the skeletons to the Strasbourg University for collection? And you knew that?

A. Yes.

Q. A fine thing for a resistance man to be involved in, isn't it?

A. The situation, as I have said repeatedly, was as follows: We made no distinction in the real evaluation of the skeleton collection and other experiments in which there was this so-called "volunteering" and in which the result was the same—in our eyes, they were the same thing. I should like to emphasize

one more thing. Does one have the moral right to tolerate a lesser evil in order to prevent a greater evil?

Q. Just a moment. Now in connection with the skeleton collection, do you further know that they dispensed with the idea of taking Jewish commissars but selected Jewish inmates of concentration camps?

A. Yes. What particular persons were selected I do not know, of course, but I knew that a number of Jews were to be gassed and were selected for this anthropological collection. That was the same case as in the Ghetto of Lodz. The Jewish commander of the Ghetto—that was Lieutenant Rosenblatt—after he had gained confidence in me because I had gone in with a false pass, said personally to me: “I was picked out by the SS. When a new group of Jews comes into this Ghetto of Lodz and crowds the Ghetto, I have to select exactly the same number of Jews and I know that they will be gassed. That is, I was selected by the SS to determine who is to be gassed. Now, I ask you in the name of God, Mr. Hielscher, you are a Christian, what am I to do? I had nothing to do with that. I have asked the Rabbis. I have asked the old people themselves, and we have come to the conclusion that I must stay in this office. At least I can determine the persons—I can at least select the oldest people who can’t stand life in a ghetto and perhaps, in this way, perhaps I will be able to save the life of one person. These two old people that I am telling you about were about seventy years old. There were five Christians among the Jews. At least I was able to see that these two old people were gassed together. They asked me to tell their daughter that we were able to achieve at least that. Tell me, did I do right or not?” That is still more horrible because the man could not even reduce the number. I was ashamed that the people who were in charge of this camp were called Germans. But I said: “You have acted right and you are justified in the eyes of God.”

Q. Now, Dr. Hielscher, I assume that the defense counsel has shown you all the documents concerning the skeleton collection. Is that right?

A. Yes.

Q. There won’t be any need for me to go over them. You have stated in connection with the one document that was presented to you today on the stand that this was a very praiseworthy act on the part of Sievers in a negative way. Since you are familiar with all the skeleton collection documents—I had intended to go into each one but I will just go into that one. That is Document NO-088, Prosecution Exhibit 182. This is a document which was written by Sievers. You will see that his signature appears thereon. Do you recognize the signature at the bottom of the letter?

A. Yes.

Q. Well, Sievers here is proposing a way in which they can destroy the skeleton collection so that it will not be known to any one—that is, to the Allies when they overrun Strasbourg. And you will notice, two-thirds of the way through, the one paragraph that states: “The viscera could be declared as remnants of corpses apparently left in the anatomical institute by the French.” You see that?

A. Yes.

Q. “In order to be cremated.” Now this is an idea of one Wolfram Sievers, wherein he is suggesting that these, or the results of these criminal activities be left so that they may, by the Allies, be blamed on to the French, and bearing in mind, of course that the French, as well as the United States, Great Britain, and other Allies were equally as interested as the resistance movements in defeating the Nazi regime, were they not?

A. I have already said that it was Sievers’ duty to say “yes” and to act negatively, but, of course, I did not praise this action, but I praised the vocabulary, the formulation. He spoke like a Nazi. The concrete question in such a case was simply as follows: Can anyone be saved here or not? If no one can be saved, what can I do to keep up the appearance of a Nazi since I know that Obersturmbannfuehrer Neuhaus suspects that I have some contact with the resistance movement? Sievers, since the 20th of July, or rather since my arrest, was constantly seeing to it that his actions looked like Nazi actions, insofar as no one was actually killed; that was part of his duty, part of the mask without which the organization could not operate.

Q. Yes. But from this letter does it not suggest that he was willing to allow an innocent Frenchman to answer for the crimes which flowed out of this skeleton collection activity?

A. If you show me—

Q. I have asked you—does it not appear from this letter, this letter signed by Sievers, that he was willing to allow a Frenchman to suffer for the crimes committed during the course of the collection of these skeletons?

A. Yes. The letter quite deliberately, I believe, creates this impression. That was the purpose of it, like all such letters.

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EXTRACT FROM THE TESTIMONY OF PROSECUTION EXPERT WITNESS
DR. ANDREW C. IVY *

CROSS-EXAMINATION

* * * * *

DR. SERVATIUS: Witness, take the following case. You are in a city in which the plague is raging. You, as a doctor, have a drug that you could use to combat the plague. However, you must test it on somebody. The commander, or let us say the mayor of the city, comes to you and says, "Here is a criminal condemned to death. Save us by carrying out the experiment on this man." Would you refuse to do so, or would you do it?

WITNESS DR. IVY: I would refuse to do so, because I do not believe that duress of that sort warrants the breaking of ethical and moral principles. That is why the Hague Convention and Geneva Convention were formulated, to make war, a barbaric enterprise, a little more humane.

Q. Do you believe that the population of a city would have any understanding for your action?

A. They have understanding for the importance of the maintenance of the principles of medical ethics which apply over a long period of years, rather than a short period of years. Physicians and medical scientists should do nothing with the idea of temporarily doing good which, when carried out repeatedly over a period of time, would debase and jeopardize a method for doing good. If a medical scientist breaks the code of medical ethics and says, "Kill the person," in order to do what he thinks may be good, in the course of time that will grow and will cause a loss of faith of the public in the medical profession, and hence destroy the capacity of the medical profession to do its good for society. The reason that we must be very careful in the use of human beings as subjects in medical experiments is in order not to debase and jeopardize this method for doing great good by causing the public to react against it.

Q. Witness, do you not believe that your ideal attitude here is more or less that of a single person standing against the body of public opinion?

A. No I do not. That is why I read out the principles of medical ethics yesterday, and that is why the American Medical Association has agreed essentially to those principles. That is why the principles, the ethical principles for the use of human beings in medical experiments, have been quite uniform throughout the world in the past.

* Complete testimony is recorded in mimeographed transcript, 12, 13, 14 June 1947, pp. 9029-9324.

Q. Then you do not believe that the urgency, the necessity of this city would make a revision of this attitude necessary?

A. No, not if they were in danger of killing people in the course of testing out the new drug or remedy. There is no justification in killing five people in order to save the lives of five hundred.

Q. Then you are of the opinion that the life of the one prisoner must be preserved even if the whole city perishes?

A. In order to maintain intact the method of doing good, yes.

Q. From the point of view of the politician, do you consider it good if he allows the city to perish in the interests of preserving this principle and preserving the life of the one prisoner?

A. The politician, unless he knows medicine and medical ethics, has no reason to make a decision on that point.

Q. But as a politician he must make a decision about what is to happen. Shall he coerce the doctor to carry out the experiment, or shall he protect the doctor from the rage of the multitude?

A. You can't answer that question. I should say this, that there is no state or no politician under the sun that could force me to perform a medical experiment which I thought was morally unjustified.

Q. You then, despite the order, would not carry out the order, and would prefer to be executed as a martyr?

A. That is correct, and I know there are thousands of people in the United States who would have to do likewise.

Q. And do you not also believe that in thousands of cities the population would kill the doctor who found himself in that position?

A. I do not believe so because they would not know. How would they know whether the doctor had a drug that would or would not relieve? The doctor would not know himself, because he would have to experiment first.

Q. Witness, I put a hypothetical case to you. If we are to turn to reality other questions would arise. I simply want to hear now your general attitude to this problem. You are then of the opinion that a doctor should not carry out the order. Are you also of the opinion that the politician should not give such an order?

A. Yes. I believe he should not give such an order.

Q. Is this not a purely political decision which must be left at the discretion of the political leader?

A. Not necessarily. He should seek the best advice that he can obtain.

Q. If he is informed that this one experiment on this one prisoner would save the whole city, he may give the order despite the fact that the doctor does not wish to carry it out, is that what you think?

A. He could then give the order, but if the doctor still believed that it was contrary to his moral responsibilities, then the doctor should not carry out the order.

Q. That is another question, whether or not he carries it out, but in such cases you consider it is permissible to give that order, is that what I understood you to say?

A. After he has obtained the best advice on the subject which he can obtain.

Q. Then he can give the order. Yes or no?

A. Yes.

* * * * *

G. Subjection to Medical Experimentation as Substitute for Penalties

a. Introduction

Several of the defendants argued that medical experiments, alleged as criminal, upon concentration camp inmates were justified because they were a substitute for penalty or punishment previously imposed on the experimental subjects. Counsel for the defendant Gebhardt argued that the experimentation amounted to a complete pardon as sentences of death had been imposed and hence that the experimentation, not always deadly, saved human lives. The prosecution's argument on this point is illustrated by an extract from the closing statement, set forth on pages 44 to 49. On this general question, selections have been taken from the closing brief for the defendant Karl Brandt and from the final plea of the defendant Gebhardt. These appear below on pages 49 to 56. The following selections from the evidence appear in pages 56 to 61: extract from the direct examination of the defendant Mrugowsky; cross-examination of the prosecution's expert witness, Dr. Andrew C. Ivy.

b. Selection from the Argumentation of the Prosecution

*EXTRACT FROM THE CLOSING STATEMENT OF THE PROSECUTION **

* * * * *

Another of the rather common defenses urged by the defendants is that the experimental subjects were criminals condemned to death who, provided they survived the experiment, were re-

* Closing statement is recorded in mimeographed transcript, 14 July 47, pp. 10718-10796.

warded by commutation of their sentence to life imprisonment in a concentration camp. For one who has even the slightest knowledge of the conditions in concentration camps and the life expectancy of an average inmate, this alleged defense assumes the aspect of a ghastly joke. We need only recall the remark made by one of the women used by Rascher to reward his frozen victims in Dachau, who when asked by him why she had volunteered for the camp brothel, replied: "rather half a year in a brothel than half a year in a concentration camp." But the defects in this spurious defense run much deeper. Concentration camps were not ordinary penal institutions, such as are known in other countries, for the commitment of persons convicted of crimes by courts. The very purpose of concentration camps was the oppression and persecution of persons who were considered undesirable by the Nazi regime on racial, political, and religious grounds. Hundreds of thousands of victims were confined to concentration camps because they were simply Jews, Slavs, or gypsies, Free Masons, Social Democrats, or Communists. They were not tried for any offense and sentenced by a court, not even a Nazi court. They were imprisoned on the basis of "protective custody orders" issued by the RSHA. Tens of thousands were condemned to death on the single order of Himmler, who, as Gebhardt put it so well, "had the power to execute thousands of people by a stroke of his pen." (*Tr. p. 4025.*) There were, indeed, a relatively small group of inmates who might be classed as ordinary criminals. These were men who had served out their sentences in an ordinary prison and then were committed to concentration camps for still further detention. A memorandum of 18 September 1942 by Thierack, the Minister of Justice, concerning a conversation with Himmler, tells us the fate of those unfortunates:

"The delivery of anti-social elements from the execution of their sentence to the Reich Leader SS to be worked to death. Persons under protective arrest, Jews, gypsies, Russians and Ukrainians, Poles with more than 3-year sentences, Czechs and Germans with more than 8-year sentences, according to the decision of the Reich Minister for Justice." (*654-PS, Pros. Ex. 562.*)

The proof in this case has demonstrated beyond all doubt that so-called criminals sentenced to death were very rarely used in any of the experiments. True it is that Himmler said prisoners condemned to death should be used in those high-altitude experiments where the long-continued activity of the heart after death was observed by the experimenters. He was generous enough to say that if such persons could be brought back to life, then they were to be "pardoned" to concentration camp for life. But even

this unique amnesty had no application to Russians and Poles, who were used exclusively in those experiments.

But, assuming for the moment, that this alleged defense might have a mitigating effect under some circumstances, it certainly has no application to this case. Be it noted that this is an affirmative defense by way of avoidance or mitigation. There has been no proof whatever that criminals sentenced to death by an ordinary court could possibly be executed in a concentration camp. Such matters were within the jurisdiction of the Ministry of Justice, not Himmler and the SS. The experimental subjects we are dealing with are those that Himmler could condemn by a "stroke of his pen." If the inmate used in the experiments was condemned for merely being a Jew, Pole, or Russian, or, for example, having had sexual intercourse with a Jew, it does not answer the criminal charge to say that the victim was doomed to die. Experimentation on such a person is to compound the crime of his initial unlawful detention as well as to commit the additional crime of murder or torture. As has been said by another tribunal, "Exculpation from the charge of criminal homicide can possibly be based only upon bona fide proof that the subject had committed murder or any other legally recognized capital offense; and, not even then, unless the sentencing tribunal with authority granted by the state in the constitution of the court declared that the execution would be accomplished by means of a low-pressure chamber." *

In this connection, it might be noted that German law recognized only three methods of execution, namely, by decapitation, hanging, and shooting. (*German Penal Code, Part I, Section 13; Reichsgesetzblatt [Reich Law Gazette], 1933, Part I, p. 151; Reichsgesetzblatt 1939, Part I, p. 1457.*) Moreover, there is no proof that any of the experimental subjects had their death sentence commuted to any lesser degree of punishment. Indeed, in the sulfanilamide crimes it was the experiment *plus* later execution for at least six of the subjects.

Since the defendants Gebhardt, Fischer, and Oberheuser have put particular stress on this alleged defense, I should like to make a few remarks in that connection, but it should be remembered that they apply with equal force to most of the other defendants. Gebhardt, speaking for his co-defendants Fischer and Oberheuser, took the position that the Polish women who had been used in the sulfanilamide experiments had been condemned to death for participation in a resistance movement and that by undergoing the experiments voluntarily or otherwise, they were to have their

* United States vs. Erhard Milch. Concurring Opinion of Judge Musmanno, vol. II, sec. VII, B.

death sentences commuted to some lesser degree of punishment, provided they survived the experiments. This was no bargain reached with the experimental subjects; their wishes were not consulted in the matter. It was, according to Gebhardt, left to the good faith of someone unnamed to see to it that the death sentences were not carried out on the survivors of the experiments. Certainly Gebhardt, Fischer, and Oberheuser assumed no responsibility or even interest in that regard.

It should be pointed out that the proof shows that the experimental subjects who testified before this Tribunal were never so much as afforded trial; they had no opportunity to defend themselves against whatever crimes they were said to have committed. They were simply arrested and interrogated by the Gestapo in Poland and sent to the concentration camp. They had never so much as been informed that they had been *marked for*, not sentenced to, death. Article 30 of the Regulations Respecting the Laws and Customs of War on Land, annexed to the Hague Convention, specifically provides that even a spy "shall not be punished without previous trial".

Gebhardt would have the Tribunal believe that *but for* the experiments all these Polish girls would be dead; that he preserved the evidence which was used against him. Nothing could be further from the truth. There is no proof in the record that these women would have been executed if they had not undergone the experiments. The witness Maczka is living proof of the contrary. She was arrested for resistance activities on 11 September 1941 and shipped to Ravensbrueck on 13 September. She was not an experimental subject yet she lives today. Substantially all of the Polish experimental subjects arrived in Ravensbrueck in September 1941. These girls had not been executed by August 1942 when the experiments began. There were some 700 Polish girls in that transport. There is no evidence that a substantial number were ever executed even though most of them were not experimented on.

The proof submitted by the prosecution has shown beyond controversy that these Polish women *could not have been legally executed*. The right to grant pardons in cases of death sentences was exclusively vested in Hitler by a decree of 1 February 1935. On 2 May 1935, Hitler delegated the right to make negative decisions on pardon applications to the Reich Minister of Justice. On 30 January 1940, Hitler delegated to the Governor General for the occupied Polish territories the authority to grant and deny pardons for the occupied Polish territories. By edict dated 8 March 1940, the Governor General of occupied Poland ordered that—

"The execution of a death sentence promulgated by a regular

court, a special court, or a police court martial, shall take place only when my decision has been issued not to make use of my right to pardon." (NO-3073, Pros. Ex. 534.)

Thus, even though we assume *arguendo*, that the experimental subjects had all committed substantial crimes, that they were all properly tried by a duly constituted court of law, and that they were legally sentenced to death, it is still clear from these decrees that these women could not have been legally executed until such time as the Governor General of occupied Poland had decided in each case not to make use of his pardon right. There has been no proof that the Governor General ever acted with respect to pardoning the Polish women used in the experiments, or, for that matter, any substantial number of those not used in the experiments. The only reason these 700 Polish women were transported from Warsaw and Lublin to Ravensbrueck, in the first place, was because the Governor General had not approved their execution. Otherwise they would have been immediately executed in Poland. At the very least, these women were entitled to remain unmolested so long as the Governor General took no action. He may never have acted or, when he did, he may have acted favorably on the pardon. Who is to say that the majority of these 700 women did not live through the war even though they did not undergo the experiments? Certainly it was incumbent on the defense to prove the contrary by a preponderance of the evidence. This it did not do by any evidence.

The defendants Gebhardt, Fischer, and Oberheuser certainly cannot claim that they believed in good faith that the Polish women could have been legally executed. Even the camp doctor, Schiedlausky, knew that the Governor General had to approve each execution. Moreover, the large number of 700 women being sentenced to death at this early stage of the war was enough to put any reasonable person on notice that something was wrong.

Additionally, the uncontroverted evidence proves that survival of the experiments was no guarantee whatever of avoiding execution in any event. At least six of the experimental subjects were proved to have been executed after having survived the experiments. It was not a question of the experiment *or* execution but rather the experiments *and* execution. Indeed, in February 1945, an effort was made to execute all of the experimental subjects but, because of confusion in the camp due to the war situation, the experimental subjects were able to obtain different identification numbers and so avoid detection.

But even if one takes the case of the defense at its face value, the Tribunal is in effect asked to rule that it is legal for military

doctors of a nation at war to experiment on political prisoners of an occupied country who are condemned to death, to experiment on them in such a way that they may suffer death, excruciating pain, mutilation, and permanent disability, all this without their consent and in direct aid of the military potential of their enemy. There would, of course, be no valid reason for limiting such a decision to civilian prisoners; the experiments would certainly have been no worse had they been performed on Polish or American prisoners of war. It is impossible to consider seriously this ghoulish ruling being sought for by the defense.

c. Selections from the Argumentation of the Defense

EXTRACT FROM THE CLOSING BRIEF FOR DEFENDANT KARL BRANDT

* * * * *

*The Medical Experiments as Substitute for Penalty **

The indictment embraces certain medical experiments, which are called war crimes and crimes against humanity. According to paragraphs 10 and 15 of the indictment, these experiments are designated as crimes, as a violation of the general principles of criminal law as evolved from the penal law of all civilized nations, as well as violations of the national penal laws of the countries in which such crimes were committed. An indication of their punishable character was seen in the fact that the experiments were carried out *without the consent of the persons experimented upon*.

We must examine whether this *consent* of the person subjected to experiments is always necessary or whether it can be replaced *by an order of the state* through the penal administration, and further, if the same law applies to the execution of sentences on foreigners. If consent to the human experiment by the person experimented on can be replaced by an order of the state, then the person responsible for the experiment cannot be punished in cases where the experiments were carried out through the *official penal administration in accordance with the order*.

No *legal regulations* regarding the question of admissibility of medical experiments in civilized countries are *known*. However, it is a fact that such experiments have been carried out to a greater or lesser extent within the memory of man in all countries and up till now have remained unopposed. But with the

* See also excerpts from the closing brief for the defendant Karl Brandt (Section VIII E, vol. I, pp. 983-990).



development of medical knowledge and modern methods of research, experiments on human beings have increased considerably. Today, when research, to solve its problems and meet its challenges, has advanced into the most widely differentiated spheres, they are considered absolutely necessary. Accordingly, human experiments will continue to increase with the progress of science and the *problem* that this trial has raised will always be *urgent*.

Moreover, reference is made to the opinion of the Washington anatomist, E. V. Cowdry, on the necessity of human experiments in cancer research (*Karl Brandt 50, Karl Brandt Ex. 56*), and the order for human experiments on the part of the British Military Government for Professor McCance in Wuppertal. The knowledge of such experiments on human beings was, as literature shows, at first limited to medical specialist circles and the official authorities concerned. Only in recent times has *the public* been cautiously informed. (*Becker-Freyseng 60, Becker-Freyseng Ex. 58.*) Complete instruction of the public is only necessary so that, in case of an eventual discussion, sound judgment of the actions of the researcher may be possible.

Reference is also made to the remarkable publication on the malaria experiment on 800 prisoners in the United States, published in the widely circulated periodical "Life" (*Karl Brandt 1, Karl Brandt Ex. 1*). The number of the imprisoned persons to be experimented upon was even more than 2,000, according to the radio account submitted.

Repeated reports on such experiments have so far been *received without opposition* by specialist circles, the authorities, and also the general public. From that can be gathered what in principle is considered permissible and right by competent authorities and the public. The experiments actually carried out are a mirror of the existing laws and one can by way of *legal sociological investigation find the norms of law* that have validity. This is done where the law is not codified. In the same manner, the International Military Tribunal has derived the existing international law on the basis of its phenomena and the same procedure leads to the determination of the common law. Inasmuch as positive regulations exist in the United States which are contradictory to the law derived from the phenomena, these legal regulations must be produced or else the *conclusions* that can be drawn from the experiments must be regarded *in favor of the defendant* as valid law and an expression of fundamental principles of punishment.

The defense has in the present situation only very limited literature at its disposal for the comprehension and explanation of these legally important facts of the case. However, the little

that is available is already so revealing that one must come to the conclusion that medical experiments on human beings are not only admissible on principle, but in addition, that it also does *not* violate the *basic principles of criminal law* of civilized nations to carry out *experiments on convicts*.

The *question* today is not whether experiments on human beings may be carried out but only under what circumstances and *how* these experiments may be undertaken. Moreover, the prosecution itself has declared that human experiments are admissible on principle.

It is not intended here to go into the experiments which were made on the healthy and the sick and *corpus vile* at the *time* when modern research was in *its infancy* and without participation of government authorities. Insight into those times can be obtained from the book by the Russian physician *Wressajew* "Confession of a Physician" (*Karl Brandt 48, Karl Brandt Ex. 55*), published about 1900. The book reveals some of the experiments that were then known to medical experts and it follows that the governments did not interfere but in the interest of medical progress permitted such experiments without trying to protect the individual as the person experimented upon. The states then either *considered* such experiments *compatible with criminal law*, or they acquiesced in the camouflaging of the "voluntariness" of the person experimented upon which was customary in consideration of the law. No governmental intervention as the result of such medical experiments is known.

With the development of health administrations, *governmental supervision* has been increasingly instituted in all countries and one can consider all that was admitted in medical experiments with the consent of the administration and without opposition as the *sediment of the existing law*. This is true particularly of recent times where governmental direction is on the increase.

Particular attention must be given here to the experiments in state institutes on convicts and those sentenced to death.

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EXTRACTS FROM THE FINAL PLEA FOR
DEFENDANT GEBHARDT *

* * * * *
The Agreement by the Experimental Persons as Legal Justification

I shall now deal with the individual reasons for the exclusion of injustice and guilt, which according to the result of the evidence preclude the culpability of the defendant's behavior. I am hereby taking into consideration that the assumption of only one of the reasons for the exclusion of punishment which we shall now deal with suffices to justify the defendant's behavior and to exonerate him of the offense in the sense of a personal culpability because of his commission or omission. The individual reasons for the exclusion of culpability are discussed without taking into consideration whether the examination of any further similar reasons is superfluous, since the assumption of another reason for the exclusion of culpability suffices to secure the intended success. Evidence has proved that the experiments for testing sulfanilamides were carried out, to begin with, on fifteen professional male criminals who had been sentenced to death. Had they survived the experiments, they would have been granted a pardon therefor. Considering that this part of the experiment is not a subject of the indictment, I need not go into detail about it.

To the second and third group (the sulfanilamide experiments) belonged as experimental subjects members of the Polish Resistance Movement, who, in view of their activity in this illegal movement, had been sentenced to death by German courts martial.

It is a principle of German criminal law that in any case the consent of the offender precludes the illegality of the action. This principle is not only found in German law but is an established part of practically all legal systems. Consequently, we have to examine the question whether the experimental subjects gave their consent to the experiments. When examining the question whether legally effective consent had been given, it will not matter so much whether the experimental subjects expressly declared their consent. However, if generally acknowledged principles are applied, one may presume that they expressed their consent in some obvious manner. It is clear that consent could also have been given tacitly and by conclusive action.

However, it is true that all the female witnesses examined in court testified that they did not give their consent to the experiments. The Tribunal, in evaluating these facts, will have to take into consideration that these witnesses were in a special position

* Final plea is recorded in mimeographed transcript, 15 July 47, pp. 10874-10911.

at that time, as they also are today. It stands to reason that under these circumstances many things may appear different to them today from the way they actually happened five years ago. It might be true that the experimental subjects did not give their actual consent to these experiments. It might even be true that they were not asked before the experiments whether they consented to the experiments. Nevertheless this would not exclude the possibility that, considering their position at that time and being certain that they could not escape execution in any other way, they nevertheless did consent to the experiments, however tacitly. This supposition would coincide with the fact that, for instance, none of the experimental subjects had ever made any complaint or mentioned to the defendant Fischer, who had regularly changed the dressings, that they did not consent to the experiments.

*The Presumed Consent of the Experimental Subjects as
Legal Justification*

The illegality of an action is excluded not only if the injured person agreed either actually or tacitly, but if there could have been a possible consent. These are the cases where the consent of the injured person could be expected normally, but where for some reason or another such a consent was actually not given. Numerous attempts have been made in legal literature and also in judicial decisions to do justice to this situation which so often occurs in practice. Not all of these theories need to be discussed since the decisive points of view have by now been clarified. At first an attempt was made to settle this question by applying the law referring to unauthorized acting for and on behalf of another person. Serious objections were raised against this transfer of concepts of civil law to criminal law. The criminal idea of consent is to be extended instead to include so-called supposed consent. I understand this as an objective judicial judgment based on probabilities, namely, that the person concerned would have given his consent to the action from his personal point of view if he had fully known and realized the situation. Wherever such a judgment could be applied, it should have the same effect as the judicial finding of an actual consent.

However, other courts and scientists base their reason for justification upon "action for the benefit of the injured person". If correctly viewed, no actual contradiction to an assumed comment could be seen therein. On the contrary one may say perhaps that this could be considered as an independent argument for justification.

In modern literature and judicial practice, the tendency prevails to combine the two last mentioned viewpoints by demanding them cumulatively. It is not comprehensible, however, why such simultaneous existence of two arguments for justification should be required when each argument in itself is decisive.

A well-known teacher of criminal law in Germany stated the following conception of this idea: "Should the injured person not consent, the action in his behalf and for his benefit is to be considered lawful if his consent could have been expected according to an objective judgment. The primary justifying argument here is not that the injured person has waived his right of decision, but that a positive action was performed for his benefit."

The practical result, in spite of the theoretical objections raised against such a combination, could hardly be different. For the "objective judicial sentence based on probabilities," here applied for, which is decisive and upon which the so-called supposed consent would have to be based, will regularly result from an action that under given circumstances is performed for the "benefit of the injured person."

Applying these general principles to the sulfanilamide experiments, there can hardly be any doubt that the experimental subjects would have agreed if they had been fully aware of their position. The experimental subjects had already been sentenced to death and their participation in these experiments was the only possibility for them to avoid execution. If the Tribunal now tries to assess the probability that the experimental subjects would have agreed to submit to those experiments if they had had full knowledge of the position and the certainty of their eventual execution, there can in my opinion be very little doubt as to the result of this examination.

Nor can there be two opinions regarding the question whether, under circumstances prevailing at that time, the utilization of the prisoners for these experiments was "in the interest of the wounded".

The evidence has shown that the other members of the Polish Resistance Movement, who were sentenced to death by court martial and who were in the concentration camp at Ravensbrueck awaiting the confirmation of the verdict which was given by the Governor General of the occupied Polish territory, were really shot only after a complicated and protracted procedure. Their participation in these medical experiments was the only chance for them as condemned persons to save their lives. Their participation in these experiments was not only in their interest but it also seems to be inconceivable that the prisoners, if they had been fully aware of their position and had known of the forth-

coming execution, would not have given their consent for the experiments.

* * * * *

The Defendant's Erroneous Assumption of an Agreement by the Experimental Subjects

The evidence has shown that the experimental subjects in Camp Ravensbrueck were not selected by the defendant Karl Gebhardt nor by any of the other defendants, but that the selection was made by the competent agency within the Reich Security Main Office in Berlin or the political department of the Ravensbrueck concentration camp. During the conference at the beginning of July 1942, in which the conditions for the experiments were agreed upon, it was expressly assured that the experimental subjects were persons sentenced to death who were to be pardoned if they survived the experiments.

In view of the fact that the defendant Gebhardt did not himself select the experimental subjects and that, on the other hand, no complaints of any kind on the part of the experimental subjects were ever reported to him,—the defendant Fischer was not in a position to make any personal observations along these lines either—we now must examine the question of the legal position of the defendant Gebhardt if he erroneously assumed the consent of the experimental subjects.

In criminal law it is a generally recognized principle that there can be no question of intentional action if there existed an erroneous assumption of justificatory facts. This principle can also be found in Article 59 of the German Penal Code.* But beyond that, this legal principle may be considered one of the principles which is generally valid and which is derived from the general principles of the criminal law of all civilized nations, thus representing an inherent part of our modern conception of criminal law. In application of this principle—and even if the Court does not consider the consent of the experimental subjects as proved and, therefore, does not provide the prerequisites for a legal excuse for objective reasons—we still cannot assume an intentional act on the part of the defendant Gebhardt if he acted under the “erroneous assumption of consent by the experimental subjects.”

* Art. 59 of the German Penal Code reads:

“If a person in committing an offense did not know of the existence of circumstances [Tatumstaende] constituting the factual elements of the offense as determined by statute [gesetzlicher Tatbestand] or increasing the punishment, then these circumstances may not be charged against him.

“In punishing an offense committed through negligence, this provision applies only insofar as the lack of knowledge does not in itself constitute negligence for which the offender is responsible.”

The Erroneous Assumption of Probable Agreement

The same applies if the defendant Gebhardt erroneously assumed a probable consent of the experimental subjects. We do not mean here an erroneous assumption with regard to the legal suppositions of such a one, but the erroneous assumption of such facts, which, had they existed, would have induced the Tribunal to recognize the "probable consent." I am referring here to my argumentation for the legal excuse represented by the "probable consent," which I understand as "an objective opinion concerning the law, based on probability and according to which the person concerned would have consented to the act from his own personal standpoint, if he had been fully aware of the circumstances." Provided that the defendant Dr. Gebhardt assumed the existence of such circumstances which seems certain according to the evidence, and even if he did so erroneously, the intent and thus the crime in this case would also be excluded according to the generally acknowledged principle.

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d. Evidence

Testimony

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EXTRACT FROM THE TESTIMONY OF DEFENDANT MRUGOWSKY *

DIRECT EXAMINATION

* * * * *

DR. FLEMMING: You know that General Taylor, in his opening speech, said that this experiment with aconitine had not been conducted in order to find an antidote to aconitine but in order to ascertain how long it takes to kill a human being in this manner. Please tell the Tribunal whether this concerned an experiment.

DEFENDANT MRUGOWSKY: This was not an experiment in the actual sense of the word. It was the legal execution of five thieves, and some special facts were to be ascertained during this execution. The details were as follows: One day the chemist of the

* Complete testimony is recorded in mimeographed transcript, 26, 27, 28, 31 March, 1, 2, 3 Apr. 47, pp. 5000-5244, 5334-5464.

Reich Criminal Police Office, Dr. Wittmann, came to me. He asked me to attend an execution as the official doctor. As the reason for this request he added that in the General Government in Poland a high official had been injured when he was attacked with a revolver; that the bullet had inflicted only a harmless flesh wound, but nevertheless the person had died after a few hours with symptoms of poisoning. The person who had attacked him had been arrested, and the rest of the ammunition was a hollow ball which contained a crystallized poison. The Chemical Institute of the Reich Criminal Police Office tested this and found that it was aconitine. The ammunition was of Russian origin. There is no aconitine in Germany; it is imported. The question was whether this was the first case of the beginning of poison warfare against Germany. We had been expecting such a method of warfare for some time. For that reason there was not only criminal interest in clearing up this case but a general interest of the greatest importance. This ammunition was to be tested on five thieves who were to be executed anyhow, and it was to be seen whether this crystallized poison contained another poison which had not been found in the chemical tests. The remainder of the original Russian ammunition was to be used, and also German ammunition which had been made in imitation of the Russian. At the same time—and this was the main purpose of the experiment—it was to be discovered how much time would elapse between the injury and the appearance of the symptoms of poisoning, in order, if necessary, to be able to use an antidote. This question was of such great importance because an antidote to aconitine is hardly known, and if this had actually been the beginning of poison warfare, then efforts would have to be made immediately to find an antidote. Therefore, the head of the Reich Criminal Police Office asked me, and the Chief of the Criminal Technical Office also asked me, to participate in the execution myself, although that was not actually my work; but Dr. Wittmann said he did not know of any toxicologist except one in Berlin; they had all been drafted, and as a bacteriologist I had a certain amount of experience in symptoms of poisoning connected with bacteria and, therefore, he asked me to take over this job. I was rather unwilling to do so. I pointed out to Dr. Wittmann that the regular police in Vienna had a pharmacologist who was very experienced and I suggested that he should be called upon; but this was not done because of the poor communications resulting from the air warfare. Since, on the other hand, this question was doubtless of great significance and should not be postponed, I finally declared myself willing to fulfill this request. In accordance with the purpose of this job, I made not only the usual report, but a rather more

detailed report on the symptoms of poisoning. There is the report which we have here in this prosecution document.

Q. You have said that this ammunition which was captured was of Russian production. How can that be proved?

A. The prosecution itself proved that. To this Document NO-201, Prosecution Exhibit 290, some files were attached which were not included in my report. There are three drawings of cross-sections of these bullets which were made and handed in to the Institute. The heading is "Poison bullet from a Russian pistol, calibre 7.65" and details about the construction of this bullet.

Q. You say that this photostatic copy of the drawings of the bullet was not part of your report. How is that shown? Will you compare the stamps in the diary?

A. The report which I handed in is dated 12 September 1944, and then the next day it was received by the Criminal Technical Office, and the receipt stamp carried the number "Secret 53". The drawings, however, have a different secret journal number, that is, 15-1944. If the number G-53 was in September then, if the distribution of letters received is assumed to be even throughout the year, I should assume that the Reich Criminal Police Office received these drawings in March of the same year. At that time I did not know anything about this attack, and the experiment had not been started yet. Nor did I know any details about the possibility of such poison warfare.

Q. Who was present at the execution?

A. Dr. Ding, who happened to be in Berlin and whom I took with me in order to support my observations; it was he who conducted the actual medical examination. I, myself, merely ascertained the occurrence of death. Also Dr. Wittmann, representing the Criminal Technical Institute; also a representative of the camp commandant, I believe the adjutant; and an Untersturmfuehrer who performed the execution, that is, actually shot the people. It is possible that there were others whom I do not remember and whose names I do not know.

Q. Did you investigate in any way who these people were who were executed, and by what court they had been condemned to death?

A. I talked with the people; they understood German; they were apparently Germans. I considered them ethnic Germans [Volksdeutsche] of whom we had large numbers in Germany at that time. On the other hand, I knew that in concentration camps executions were carried out, and I had been told that this was an official matter and that there had to be an official representative of the camp commandant present. The fact that such a representative was present at this execution was sufficient for me

to assume that the matter actually was official and, on the other hand, I had no opportunity to be informed of the sentence or anything like that.

Q. Then you did not see the death sentence order before it was carried out?

A. No. I did not have the opportunity because the doctor is merely called in to an execution to ascertain when death occurs, but I am convinced that it was not my duty to examine the sentence order, for I had nothing to do with the actual execution. The order was given by the representative of the camp commandant; someone who was attached to the commandant's office actually shot the people, and I was merely there to ascertain when death occurred and to note the symptoms of poisoning, but Dr. Ding did the latter for me. The official information from a high authority was sufficient proof to me for the legality of the execution.

Q. In the case of two of the five thieves, the poison had no effect. You saw the suffering of the other three from the poison; why did you not shorten this suffering?

A. The sight of this execution was one of the most horrible experiences of my life. On the other hand, I could not shorten the symptoms for in the first place there was no antidote against aconitine available. If it is in the circulation, then there is no possibility of removing it. In the second place, it was the express purpose to find out how long the symptoms of poisoning last in order in later cases to be able to use an antidote, which it was hoped would soon be discovered.

Q. Did you know that executions in Germany can only be carried out by shooting, by hanging, or by beheading, and did you not have any misgivings when this execution was carried out in a different way?

A. I am not a jurist; I do not know the methods of execution. On the other hand, I have already said that in my opinion the state itself has the right to determine the method of death for its citizens in wartime and doubtless has the right to determine the method of an execution. Here the suspicion had arisen that poison war was beginning against Germany. This seemed to be supported by the finding of poison Russian ammunition. Since the investigations were carried out by the highest authorities in the Reich, I had no doubt about the juridical admissibility upon which I, as a doctor, had no influence.

PRESIDING JUDGE BEALS: Witness, were each of these men struck by more than one bullet or only by one bullet each?

DEFENDANT MRUGOWSKY: Each one was shot only once in the thigh; two of these five persons were immediately killed by

another shot, because the first shot of the poison ammunition had hit the artery in the thigh and their suffering was immediately stopped; but the others had only flesh wounds and after a certain period of time, symptoms of poisoning appeared; that was three people.

DR. FLEMMING: Did you have anything else to do with the previous history of this execution?

MRUGOWSKY: No.

* * * * *
EXTRACT FROM THE TESTIMONY OF PROSECUTION EXPERT WITNESS
DR. ANDREW C. IVY *

CROSS-EXAMINATION

* * * * *

DR. SERVATIUS: Mr. President, I should like to ask your permission to put to the witness a small newspaper notice from the newspaper "The People" of 3 March 1946. This is an English newspaper. Regarding the defendants before the IMT, the following was stated: "The opinion of some people is that they should be condemned very soon." Then it says: "Others believe that they should be made to expiate their crimes by helping to cure cancer, leprosy, and tuberculosis as experimental subjects."

Is the thought of atonement contained therein?

WITNESS DR. IVY: Yes, but it is expressed in a hysterical manner.

Q. Yes. I agree with you.

Witness, do you believe that if a person does not volunteer for an experiment, the state can order such atonement?

A. No.

Q. Do you not believe that you can expect something of a prisoner that goes beyond his actual sentence if at the same time people outside prison are subject to such burdens?

A. No. Those ideas were given up many years ago in the science and study of penology. The primary objective of penology today is reformative, not punitive, not expiative.

Q. Witness, is that the recognized theory of penology throughout the whole world today?

A. It may not be the recognized theory throughout the whole world today, but it is the prevailing theory in the United States. There is one other aspect that is quite large and essential, and that is the protective aspect of imprisonment to protect society from a habitual criminal.

* Complete testimony is recorded in mimeographed transcript, 12, 13, 14, 16 June 47, pp. 9029-9324.

Q. Witness, if a soldier at the front is exposed to an epidemic and can be almost certain that he will catch typhus and deserts and hides behind the protecting walls of a prison, would you not consider it justifiable if he is persuaded to volunteer for an experiment that concerns itself with typhus?

A. Will you read the question again?

Q. If a soldier deserts from the front where typhus is raging for fear that he too will contract typhus and prefers to be imprisoned in order thus to save himself, do you think it is right for him to be persuaded while he is serving his sentence to subject himself to a typhus experiment?

A. As a volunteer? Yes.

Q. I see. And would you not take a step further, if this prisoner says, "No, I refuse, because if I do this there wouldn't have been any point in my deserting; I deserted in order to save myself. My buddies may die but I would just prefer not to."

A. The answer to that question is no.

Q. Don't you admit that one can hold a different view in this matter?

A. Yes, but I don't believe it could be justified.

* * * * *

H. Usefulness of the Experiments

a. Introduction

Both by testimony and argument the defense claimed that the medical experiments had generally been useful in furthering medical science, that in some cases the experiments alleged as criminal had increased the speed of the progress of medical science, and that in some cases there was no other alternative for the development of medical science except to conduct experiments on human beings. The prosecution, in addition to arguing that voluntary participation by the subject of experimentation was a prerequisite of legal experiments, argued that the experiments turned out to be entirely useless for medical science and human progress, and that in some cases it was doubtful if considerations of medical science played any controlling role in the decision to conduct the experiments.

Selections from the defense argumentation have been made from the final pleas for the defendants Becker-Freyseng and Beiglboeck. Extracts from these final pleas appear below on pages 62 to 64. A part of the opening statement of the prosecution (vol. I, p. 37 ff.) was devoted to this topic. Defense evi-

dence on the usefulness of the experiments has been selected from the direct examination of the defendants Mrugowsky and Rose. Extracts from their testimony appear below on pages 66 to 70.

b. Selections from the Argumentation of the Defense

*EXTRACT FROM THE FINAL PLEA FOR
DEFENDANT BECKER-FREYSENG **

* * * * *

At the moment I consider one factor above all to be material. It is the following question: Was everything done, when the sea-water experiments were being planned, to furnish all data required for establishing the necessity of the experiments? And I think I can definitely answer this question in the affirmative.

The defense has proved the high sense of responsibility applied to the inquiry on the necessity of the sea-water experiments. Scientists of international reputation, like Professor Dr. Eppinger and Professor Heubner, were consulted, and they definitely answered this question in the affirmative. More cannot be expected or demanded in the way of a sense of responsibility. In my opinion, the mere fact that these scientists were asked their opinion on the issue in question shows that everything was done on the part of the Chief of the Medical Service of the Luftwaffe and his office to reach the right decision in this question.

With regard to the purely objective judgment of the sea-water experiments and their necessity, I should like to refer to the statements made in my closing brief for Dr. Becker-Freyseng.

At this point, I should, however, like to add the following: The prosecution has tried to make out that it was the purpose of these sea-water experiments to decide whether Berkatit removes the salt from sea water. This contention of the prosecution has in no way been proved. I must stress here again, most emphatically, that this was never the purpose of the sea-water experiments.

All people concerned realized that Berkatit does not remove the salt from sea water. The question which was to be clarified and which necessitated the experiments was rather the following: Under the action of the vitamins contained in Berkatit, will the kidneys be capable of producing a urine with a higher sodium chloride concentration than is normally the case? Dr. Eppinger answered this question neither in the affirmative nor in the

* Final plea is recorded in mimeographed transcript, 18 July 47, pp. 11289-11309.

negative; he stated that this question could be decided only by experiment.

In addition there was another question to be decided, as to whether in case of shipwreck it would be more desirable to endure thirst, or whether marooned fliers should be advised to drink small quantities of salt water. In 1942-1944 this question was also raised in the United States and England and there, too, human experiments were carried out. But all these individual questions were only part of the great issue of how shipwrecked persons could be helped to escape the agony and danger of dying from thirst. These issues were the basis for the experiments conducted in 1944. In my opinion it is not admissible to construe arbitrarily another issue today and to contend on the basis of such issue, which never existed, that these experiments were not necessary. These medical issues alone necessitated the experiments. There were other issues too, to which I want to make short reference.

Until 1944 the world lacked an agent to make sea water drinkable. Such an agent was an absolute necessity. Nobody denied even then that Wofatit, developed by the defendant Schaefer, would have been an ideal agent for this purpose. It was, however, equally clear that this agent could only be manufactured by withdrawing the necessary raw material, namely silver, from other war-essential uses.

Furthermore, it was not denied that Berkatit did not require critical raw materials in the same measure. Another circumstance to be considered was that Berkatit could have been produced in existing plants, whereas it would have been necessary to erect new plants for the production of Wofatit. Accordingly, these technical reasons favored the introduction of Berkatit. It can hardly be denied that it was necessary for a medical officer conscious of his responsibilities in war to consider these reasons when reaching a decision. Incidentally, the expert of the prosecution, Professor Ivy, also stated that these reasons were definitely worthy of consideration.

Accordingly it had to be clarified, whether Berkatit could not, after all, be introduced for distribution to persons facing the risk of shipwreck, and the inquiry into this question was all the more necessary as, according to the opinion of Professor Eppinger and Professor Heubner, Berkatit apparently contained vitamins which eliminated the risks incurred by human beings when drinking sea water. Whether the opinion of the experts, Heubner and Eppinger, was right or not, could, at that time as today, only be established by experiment.

Hence if the defendant Dr. Becker-Freyseng, who examined

all these factors and applied all precautions possible, became convinced in 1944 that the experiments could not be avoided, and if, from this viewpoint, in his official capacity as a consultant (Referent) he reported to his highest authority at that time, Professor Dr. Schroeder, that he considered the experiments necessary, then, in my opinion, he can in no way be charged under criminal law on that account.

Therefore, in my opinion, it has been proved that Dr. Becker-Freyseng considered these experiments necessary and that he was entitled to consider them necessary. And this question alone can be made the basis for an inquiry into his guilt under criminal law.

With regard to this point, I would like in conclusion to refer to the testimony of Professor Dr. Vollhardt. This world-famous physician, this research scientist, recognized as such in international circles, upon whom, only a few weeks ago, on the occasion of his 75th birthday, the highest German decoration of science was bestowed, namely the Goethe Medal for Art and Science, a ceremony in which nearly all European countries, also America, joined, stated before this high Tribunal, and I quote:

“I regarded it as sign of a sense of responsibility that in view of the increasing number of flying accidents, the sea-emergency question was taken up and these experiments were launched.”

Insofar, I consider it proved that the planning of these experiments was in no way objectionable.

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*EXTRACT FROM THE FINAL PLEA FOR
DEFENDANT BEIGLBOECK **

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Even medical science on both sides had to assist warfare. I have before me the index of the best known scientific English periodicals from the war period, “The Lancet” and “Nature”. Now, after the war, General T. J. Betts of the United States War Department and Professor W. T. Sinsteat of the British Supply Office declared that the captured German scientific results accomplished during the war were of the greatest use for the economic progress of British and American industry. Even the terrible freezing experiments of Dr. Rascher proved to be of greatest use for America in the war against Japan. (*Becker-Freyseng 31, Becker-Freyseng Ex. 18.*)

* Final plea is recorded in mimeographed transcript, 17 July 47, pp. 11128-11152.

c. Evidence

Defense Documents

Doc. No.	Def. Ex. No.	Description of Document	Page
Becker-Freyseng 31	Becker-Freyseng Ex. 18	Extracts from Harper's Magazine entitled "Secrets by the Thousand" by C. Lester Walker.	65

Testimony

Extract from the testimony of defendant Mrugowsky.....	66
Extracts from the testimony of defendant Rose.....	69

BECKER-FREYSENG DOCUMENT 31 BECKER-FREYSENG DEFENSE EXHIBIT 18

EXTRACTS FROM HARPER'S MAGAZINE ENTITLED "SECRETS BY THE THOUSAND" BY C. LESTER WALKER

Someone wrote to Wright Field recently saying he understood this country had got together quite a collection of enemy war secrets, that many were now on public sale, and could he, please, be sent everything on German jet engines. The Air Documents Division of the Army Air Force answered: "Sorry—but that would be fifty tons."

Moreover, that fifty tons was just a small portion of what is today undoubtedly the biggest collection of captured enemy war secrets ever assembled. If you always thought of war secrets—as who hasn't—as coming in sixes and sevens, as a few items of information readily handed on to the properly interested authorities, it may interest you to learn that the war secrets in this collection run into the thousands, that the mass of documents is mountainous, and that there has never before been anything quite comparable to it.

* * * * *

One Washington official has called it "the greatest single source of this type of material in the world—the first orderly exploitation of an entire country's brainpower".

How the collection came to be goes back, for beginnings, to one day in 1944 when the Allied Combined Chiefs of Staff set in motion a colossal search for war secrets in occupied German territory. They created a group of military-civilian teams, termed the Joint Intelligence Objectives Committee, which was to follow the invading armies into Germany and uncover all her military,

scientific, and industrial secrets for early use against Japan. These teams worked against time to get the most vital information before it was destroyed, and in getting it performed prodigies of ingenuity and tenacity.

* * * * *

III

In matters of food, medicine, and branches of the military art, the finds of the search teams were no less impressive. And in aeronautics and guided missiles they proved to be downright alarming.

* * * * *

“As for medical secrets in this collection”, one Army surgeon has remarked, “some of them will save American medicine years of research; some of them are revolutionary—like, for instance, the German technique of treatment after prolonged and usually fatal exposure to cold.”

This discovery—revealed to us by Major Alexander’s search already mentioned—reversed everything medical science thought about the subject. In every one of the dread experiments the subjects were most successfully revived, both temporarily and permanently, by immediate immersion in hot water. In two cases of complete standstill of heart and cessation of respiration, a hot bath at 122° brought both subjects back to life. Before our war with Japan ended, this method was adopted as the treatment for use by all American Air-Sea Rescue Services, and it is generally accepted by medicine today.

EXTRACT FROM THE TESTIMONY OF DEFENDANT MRUGOWSKY *

DIRECT EXAMINATION

* * * * *

DR. FLEMMING: I further submit an excerpt from the testimony of Generalarzt Dr. Schreiber which he made on 26 August 1946 before the International Military Tribunal. This can be found in the transcript of the International Military Tribunal for that date. This is Mrugowsky Document 27. I offer it as Mrugowsky Exhibit 45. Answering the question, “What scientific value did the experiments [typhus experiments in Buchenwald] of the specialist Ding have”? Generalarzt Dr. Schreiber answered, “In my opinion they had no scientific value at all because during the

* Complete testimony is recorded in mimeographed transcript, 26, 27, 28, 31 March. 1, 2, 3 Apr. 47, pp. 5000-5244, 5334-5464.

war we had already gained much experience and collected a great deal of data in this field. We were thoroughly acquainted with the composition and qualities of our vaccine and no such tests were required any longer. Many of the vaccines examined by Ding were not used any more at all and were rejected.”

Would you define your position to that statement?

DEFENDANT MRUGOWSKY: I do not know how Schreiber could have expressed that opinion, nor do I know whether he is in possession of full knowledge of the results of this work. I never discussed this question with him and I therefore cannot examine it. This much is clear, however, that Schreiber is speaking of a later period of time, for the vaccines that were no longer produced were not produced because the experiments of Ding had proved their inferiority. The epidemiological examination of the various vaccines during the war only originates from a later period, in particular the years 1943 and 1944. The exploitation of these experiences only originates from the last years of the war and it is, therefore, my opinion that this testimony of Schreiber is incorrect.

Q. I am interrupting you and I shall have Handloser Exhibit 14 shown to you. We are here concerned with an excerpt of a scientific thesis by Geheimrat Otto. Do you know Geheimrat Otto?

A. Yes, I know Geheimrat Otto. He is probably the best typhus expert not only in Germany but in Europe, who has dealt with typhus all his life.

Q. From this excerpt you will see that Geheimrat Otto says, still in 1943:

“While the efficacy of lice vaccines has already been tested on a large scale in Poland, Ethiopia, and China, and the vaccine has proved its value, it is still necessary to gather large-scale practical experiences with lung and vitelline membrane vaccines. In animal experiments they have proved of equal value with the former.”

Would you say something on that?

A. Professor Otto says here that even in the year 1943 the vitelline membrane vaccine and the vaccines from lungs of animals were not sufficiently known. That confirms what I have just testified and that is in answer to Dr. Schreiber’s statement.

Q. The witness Bernhard Schmidt, who was interrogated here, stated that human experiments were superfluous for the purpose of testing vaccines and that the value of the individual typhus vaccines could have been ascertained in an epidemiological way. What is your opinion in that connection?

A. This is my opinion also. It is my opinion that these tests

could have been carried out in an epidemiological manner. I represented that point of view before Grawitz and Himmler from the very beginning.

Q. You stated yesterday that to test this matter in an epidemiological way, a large number of persons would have had to be vaccinated and compared with a large number of persons who were not vaccinated. Would such a long experiment have been possible considering the circumstances prevailing during the war?

A. Such a test would have been possible. It was actually introduced by me within the framework of the ministry. It is a matter of course, however, that the results can only be collected at a very late date and can only be exploited at a much later date. In the case of the entire experiment we were concerned with bridging over this space of time.

Q. In carrying out this examination one could have found that one vaccine has only a very small effectiveness, as was actually found out in the case of the Behring vaccine. In that case would you say that the mortality of persons vaccinated with the inferior vaccine would have been much greater than the entire amount of fatalities as they occurred in Buchenwald? You know that the statement regarding the fatality figures fluctuated between 100 and 120.

A. That could be assumed to be the case with certainty. A comparison is the manner in which all tests are carried out in this field. I shall give you a few examples for that. When Emil von Behring in the year 1890 discovered the diphtheria serum, it was at first used by a physician of the Berlin Charité in the case of diphtheria-infected children. He treated about 1,200 children suffering from diphtheria with that serum. He registered a mortality rate in the case of these children, in spite of the treatment, of approximately 22 percent. Just as many children did not receive the serum but were treated in a different manner. In this group the mortality rate was double, approximately 44 percent. These 240 or 250 children who died, and who were in that control group could certainly have been saved if they had been given the blessing of that diphtheria serum. But that was in reality the purpose of that test and one had to take into account that a larger ratio of fatalities would result in the group to be compared and that then the value of the serum would be recognized.

Q. I think that this example will suffice. In that case you are really admitting that an objection against experiments in Buchenwald could not be justified?

A. During the war I did not work on any disease as ardently as on typhus. I treated thousands of patients who fell ill with typhus

and examined them. I believe that in the case of such an experience one gains some knowledge of the disease. I often considered that question and I hold the opinion that my objection at the time was perhaps not justified by events. On the other hand, it is my opinion that in the case of every task one has to keep the question in mind whether one is in a position to execute that task. I must admit even today that in spite of the success of the experiments, which cannot be denied, I would act similarly in yet another position and would assume the same attitude as I assumed at that time. Even today I would not be prepared to carry out any such experiments personally or have them carried out upon my responsibility, although success undoubtedly would come about.

EXTRACTS FROM THE TESTIMONY OF DEFENDANT ROSE*

DIRECT EXAMINATION

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DR. FRITZ: What do you know about the reasons for this protest (against experiments) being ignored and the typhus experiments being carried out in spite of it?

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DEFENDANT ROSE: The Buchenwald experiments (with typhus vaccine) had four main results. First of all, they showed that belief in the protective effect of Weigl vaccine was a mistake, although this belief seemed to be based on long observation. Secondly, they showed that the useful vaccines did not protect against infection, but almost certainly prevented death, under the conditions of the Buchenwald experiments. Thirdly, they showed that the objections of the biological experts to the vitelline membrane vaccines and to the lice vaccines were unjustified, and that vitelline membrane, rabbit lungs, and lice intestines were of equal value. We learned this only through the Buchenwald experiments. This left the way open to mass production of typhus vaccines.

The Buchenwald experiments showed in time that several vaccines were useless. First, the process according to Otto and Wohlrab, the process according to Cox, the process of Rickettsia Prowazeki and Rickettsia murina, that is, vaccine from egg cultures; secondly, the vaccines of the Behring works which were produced according to the Otto process, but with other concen-

* Complete testimony is recorded in mimeographed transcript, 18, 21, 22, 23, 24, 25 April 47, pp. 6081-6484.

trations; finally the Ipsen vaccines from mouse liver. The vaccines of the Behring works were in actual use at that time in thousands of doses. They always represented a danger to health. Without these experiments the vaccines, which were recognized as useless, would have been produced in large quantities because they all had one thing in common: their technical production was much simpler and cheaper than that of the useful vaccines. In any case, one thing is certain, that the victims of this Buchenwald typhus test did not suffer in vain and did not die in vain. There was only one choice, the sacrifice of human lives, of persons determined for that purpose, or to let things run their course, to endanger the lives of innumerable human beings who would be selected not by the Reich Criminal Police Office but by blind fate.

How many people were sacrificed we cannot figure out today; how many people were saved by these experiments we, of course, cannot prove. The individual who owes his life to these experiments does not know it, and he perhaps is one of the accusers of the doctors who assumed this difficult task.

I. Medical Ethics

I. GENERAL PRINCIPLES

a. Introduction

In a case involving the charge that human beings were subjected to medical experiments of many kinds under varying circumstances, it was inevitable that questions of medical ethics became a part of the proof and the argumentation.

The prosecution's rejoinder to the statement of the defendant Rose appears on page 71. As illustrations of the defense position on medical ethics, extracts have been taken from the final pleas for the defendants Gebhardt and Beiglboeck. These appear on pages 71 to 77. Considerable testimony was given on this question by defendants and by expert witnesses, and appears on pages 77 to 86. Selections from this testimony have been taken from the direct examination of the defendant Rose, the cross-examination of the prosecution witness Professor Werner Leibbrandt, and from the direct examination of the prosecution witness Dr. Andrew C. Ivy.

The judgment of the Tribunal deals at some length with the medical ethics applicable to experimentation on human beings (p. 181 ff.).

b. Selection from the Argumentation of the Prosecution

*EXTRACT FROM THE CLOSING STATEMENT OF THE PROSECUTION*¹

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In view of the clear and unequivocal proof of the defendant Rose's participation in the typhus murders of Buchenwald he can only plead that he didn't enjoy doing what he did, that he objected to the experiments at the Third Meeting of the Consulting Physicians of the Wehrmacht in May 1943. But this is his condemnation, not his salvation. In March 1942 he was in Buchenwald and saw what was being done. In May of the same year he asked Mrugowsky to test a vaccine for him in those experiments. Four inmates were killed as a result. In May 1943, he objected to the experiments in what he describes as strong terms. But in December, he was again instigating still another experiment which resulted in the murder of six men. He is a living example of a man who could have abstained from participating in these crimes without threat of harm to his person or position by any agency of the Nazi Government. He was not arrested and tried by the SS because of his objection. He was not committed to a concentration camp. In spite of that, he voluntarily participated in these same crimes to which he said he objected. With his knowledge, prestige, and position, he is even more culpable than the miserable and inexperienced Ding who actually performed the experiments in the murder wards of Buchenwald.

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c. Selections from the Argumentation of the Defense

*EXTRACT FROM THE FINAL PLEA FOR DEFENDANT GEBHARDT*²

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The Principles of Medical Ethics and the Applicable Law

During the hearing of evidence, views were repeatedly given on the question of which principles of medical ethics are to be considered when performing experiments on human beings. In my opening statement before the evidence was submitted I pointed out that in the case of these defendants there is no reason to

¹ Closing statement is recorded in mimeographed transcript, 14 July 1947, pp. 10718-10796.

² Final plea is recorded in mimeographed transcript, 15 July 47, pp. 10874-10911.

examine fundamental questions of medical ethics in these proceedings. Law and ethics are measured by different standards which sometimes contradict each other. The same applies to the principles of general ethics as well as to those of a particular profession. A deed offending the recognized principles of medical ethics does not necessarily constitute a crime. Only the cogent precepts of the law can be used as the basis for a verdict, and not the unwritten regulations and convictions existing inside a profession.

However, it cannot be concluded from this that the principles of medical ethics and their practical application were of no importance at all in these proceedings. These principles cannot, of course, be applied directly. At the same time there is no doubt that the principles of medical ethics and above all their practical application in recent decades can play an indirect part insofar as they have to be taken into consideration when interpreting the law. However, evidence has now proved that in recent decades and even earlier, numerous experiments were carried out on human beings, and, moreover, on persons who did not volunteer for such purpose. In this respect I refer to the statements of the expert Professor Dr. Leibbrandt, witness for the prosecution. I furthermore refer to the extensive evidence submitted by the prosecution on this question from which it appears that in numerous cases experiments were carried out on human beings, of the nature and degree of danger of which they could not have been aware and to which they would never have agreed voluntarily. The only conclusion which can be drawn from these facts is that during recent decades views on this question have changed in the same way as the relations between the individual and the community in general have changed. In this connection I need not give the detailed reasons which led to this development. It is a fact that, at least in Europe, the state and the community have taken a different attitude toward the individual. However differently one may write about the change in these relations in detail, one thing is certain, namely, that the state has more and more taken possession of the individual and limited his personal freedom. This is evidently one of the accompanying facts of technics and the modern mass-state. It must be added that the development of medicine in the course of the last decades has led to discriminating formulations of questions which can no longer be solved by means of the laboratory and animal experiments.

The evidence has shown that not only in Germany and perhaps not even primarily in this country, the reorganization of the relationship between community and individual has resulted in

new methods in the sphere of medical science. In nearly all countries experiments have been performed on human beings under conditions which entirely exclude volunteering in a legal sense.

Immediate consequences arise for the interpretation of the law from this change of medical views and above all from the change in medical practice, since the essence of the law is universal and abstract and naturally does not state the limits and the conditions under which experiments on human beings are permissible and the borderline of the criminality of such an experiment. The real practice regarding this question is all the more important for the interpretation of the law since almost every law, including Control Council Law No. 10, contains standard rudiments of case facts, which means that determination in a particular case can only be the outcome of a judicial judgment. No special proof is needed to show that the question when and within what limits medical experiments are admissible calls for a judicial judgment, and that this cannot be established without taking practical experience into consideration, not only in Germany but also outside Germany. The standard rudiments of case facts are part of the legal facts and deal with illegality as characteristic of the punishable act. Actual medical practice inside and outside Germany, however, has not only to be considered when examining the question as to whether the actions constituting the subject of the indictment are illegal, but above all it is fundamentally important when answering the further question as to whether the actions constituting the subject of this procedure constitute a criminal offense. In view of the fact that a criminal offense is not likely to be a permanent psychological fact but a standard computed fact in the sense of a personal reproach, the Court for this reason also will not overlook the fact that particularly during the last years, even outside Germany, medical experiments were performed on human beings who undoubtedly did not volunteer for these experiments. The unity of law and the indivisibility of its basic idea exclude judging one and the same fact simultaneously according to different legal principles and standards.

I shall comment later on the question of whether the defendants in the performance of the experiments which constitute the indictment acted primarily in their capacity as physicians, or whether their conduct—if a just decision is to be rendered—must no longer be regarded from the viewpoint of war service as medically trained research scientists.

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*EXTRACT FROM THE FINAL PLEA FOR
DEFENDANT BEIGLBOECK **

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If one confronts the doctor with that type of scientist who, with the test tube in his laboratory, with the syringe or the surgical knife in his hand, steps on animal and human corpses, in order so fanatically to satisfy his scientific instinct, then we very decidedly object to such a scientist. We have found this type in the documents of this trial in the person of Dr. Rascher, whose name casts a dark shadow over the proceedings. Dr. Leibbrandt, the protector of medical ethics, would therefore have rendered a good service to German science if, in his capacity as a psychiatrist, we had pointed out that Rascher, this sadist and psychopathist, had nothing whatsoever to do with real science.

It is my duty as a defense counsel to emphasize energetically that it is not permissible to construct from local coincidences any connection between my client and Rascher and his system.

The scientific research worker sees his task in the discovery of the unknown in order to equip the doctor with new weapons in his fight for human life. I briefly want to demonstrate with two examples why the modern medical profession cannot renounce the scientific research work that was impossible without great efforts and sacrifices (1) giving a brief description of the development of modern surgery; (2) mentioning the school to which the defendant Beiglboeck belonged as a pupil and a teacher. I do not give this second example in order to glorify my country, but because the particular influence of its teachers is decisive for the spiritual standard of the personality.

At the beginning of modern surgery stands that mighty figure of English surgery, Joseph Lister, whose great idea it was that the surgeon should not fight the inflammation of the wound but should prevent its cause, i.e., germs entering externally.

Thanks to bacteriology, anti-sepsis was changed into asepsis.

Over the entrance gate of the General Hospital in Vienna we read the words "Saluti et solatio aegrorum—Dedicated to the health and consolation of the sick." These words not only demand the highest accomplishment of the doctor's duties but are the motive for the most successful work in the large field of medical research. Theory and practice joined together in order to become a piece of living humanity. I would go beyond the limits of my task if I mentioned all the names that spread the glory of Vienna University throughout the world. But their penetration into the

* Final plea is recorded in mimeographed transcript, 17 July 47, pp. 11128-11152.

world of the unknown was always a hazardous enterprise which demanded courage and sacrifice.

I want to quote the words of one of the great doctors, Professor Wagner-Jauregg, who says in his book "Fever and Infection Therapy",

"The vaccination against malaria was certainly a risk, the outcome of which could not be foreseen. It was dangerous for the patient himself and this to a much higher degree than the treatment with tuberculin and other vaccines, and it also was a danger for the surroundings and even for the community."

And, on page 136, it states "Three patients died after having been vaccinated with blood infected with malaria tropica and not with malaria tertiana"; and "The tragic outcome of this experiment was discouraging, and only a year later could the author decide to proceed with the malaria vaccinations * * *."

Nobody talks of these victims today, but Wagner-Jauregg's revolutionary discovery is known and adopted throughout the world and has become the common property of all peoples for the benefit of suffering mankind.

These doctors who knew that the fight against disease and death was a thorny path were all more than ready to sacrifice their own lives.

The real scientist and the real doctor, therefore, do not oppose each other. However, the scientist must not forget that nature is the expression of the divine will and that only this cognition can save him from the "hybris", the boundlessness which for the Greek tragedians was the greatest vice of mankind.

Above all, the words of the greatest German physician, Theophrastus Bombastus von Hohenheim, called Paracelsus, must be applied to both scientist and doctor "The doctor grows with his heart, he comes from God and is enlightened by Nature—the best of all drugs is Love."

My learned colleagues have compiled a long list of documents on human experiments especially from the Western democracies. It would be unjust, however, to conceal the enormous benefit of the human experiment. The fact that Paul Ehrlich dared to release his drug "Salvarsan" before it had been sufficiently tested saved thousands from the dangerous consequences of one of the worst epidemics. The fact that Strong took the responsibility upon himself to perform the probably very dangerous experiment with plague bacilli made it possible to vaccinate thousands of persons and to save them from almost certain death. The fact that Strong was in a position to prove that Beriberi was a disease

caused by a deficiency, and that Goldberger proved the same for pellagra, made it possible to fight this deficiency and to liberate entire countries from one of their worst diseases.

With regard to the criminal law, however, and the judgment of crimes against humanity, it is the decisive result that in other countries, too, under their own generally prevailing medical and ethical convictions, doctors carried out similar or the same experiments for the benefit of scientific research or in consideration of a crisis in their country.

When I said that the surroundings had an influence on the doctor's attitude, I did not mean the second determining factor of our individuality, the material influence on the organism which might modify or mitigate the influence of the actual conditions at the time upon the decisions of a physician.

Concentration camp, militarism, and peoples' court—three important pillars of the Third Reich—they have collapsed. They are not to be forgotten, however, when examining the guilt of the individual. Every German had to fear them in one form or another. And then came the war. War was once called "the steel bath of the peoples". Heraklit called it "the father of all things". I can only repeat the judgment of the IMT that "war is the evil itself." This is true to the highest degree for the last war. It was a total, a terrible war. Even medical science on both sides had to assist warfare. I have before me the index of the best known scientific English periodicals from the war period, "Lancet" and "Nature". Now, after the war, General T. J. Betts of the United States War Department and Professor W. T. Sinsteat of the British Supply Office have declared that the captured German scientific accomplishments during the war were of the greatest use for the economic progress of British and American industry. Even the terrible freezing experiments of Dr. Rascher proved to be of the greatest use for America in the war against Japan. (*Becker-Freyseng 31, Becker-Freyseng Ex. 18.*) And what about us soldiers? We stood in the air-raid shelters, the Socialist beside the Party member. We did not complain. We saw villages go up in flames, innocent women and children become the victims of air raids. We saw our country, the Fatherland, in distress, and, even if we hated Hitler and his followers like the plague, we believed that we had to fulfill our duty to our country to the bitter end. One cannot explain these things, they have to be experienced. In such times a doctor is placed unwillingly between Scylla and Charybdis, between his concept of his profession and his duty as a soldier. It is easy today to say with pathos from an academic chair "*numquam nocere!*" A man does not say now, "I was a member of the resistance. Day in and day out I was trying to

help persons who were racially and politically persecuted." He says, "Then, like everyone else, I merely did my duty."

Abraham Lincoln, one of the greatest Americans, said in a speech before the American Congress in 1862, "The dogmas of the quiet past are inadequate to the stormy present. * * * In the face of new events we must think and act in a new way."

With this I intend to conclude my statements about medical ethics and to repeat the words which Liek wrote at the end of his book, "The Doctor and His Mission", "If we want to abolish undesirable conditions in medicine, we must follow our conscience—to help and to heal, that is, today as always, the mission of the doctor."

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d. Evidence

Testimony

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EXTRACTS FROM THE TESTIMONY OF DEFENDANT ROSE *

DIRECT EXAMINATION

* * * * *

DR. FRITZ: You heard the lecture which Dr. Ding gave on his experiments at the Third Conference of Consulting Physicians in the Section for Hygiene and Tropical Hygiene?

DEFENDANT ROSE: Yes. That was the time when I protested openly against this whole method.

Q. Well, what happened?

A. Dr. Ding gave his lecture in a camouflaged form as in his article for the Journal of Hygiene and Infectious Diseases. Therefore, the unsuspecting listener could not tell that it was about experiments on human beings.

When the discussion began, I commented on the results of these experiments. That part of my statement is contained in the

* Complete testimony is recorded in mimeographed transcript, 18, 21, 22, 23, 24, 25 April 1947, pp. 6081-6484.

record of the conference. It is Document Rose 38, which has already been submitted. (*Rose 38, Rose Ex. 10.*) I do not intend to read these remarks, I simply want to point out that one can find there what I said about the technical aspect of the experiments and about the results.

Then I spoke of the ethical side of the whole thing and this part of my statement has been stricken from the record. I cannot, of course, reproduce today the exact wording but only the sense of what I said. I said more or less as follows: As important and as basic as the results may have been, they were nevertheless achieved at the cost of a number of human lives. We as hygienists should object against a life and death experiment being performed as the prerequisite for the introduction of a vaccine. So far, the customary procedure had been the testing with animal beings and epidemiological exploitation. This procedure had proved its value. We had to stick to it and we couldn't let other political and state authorities force us to conduct human experiments. I spoke much longer at the time. I spoke for at least ten minutes. Ding replied that he could pacify my conscience. The experimental subjects had been criminals condemned to death. My answer was: I knew that myself. I was not interested in the individuals concerned but in the principle of human experiments in testing vaccines. At this comment Professor Schreiber interrupted the discussion. He said he protested against my criticism and if we wanted to discuss basic ethical questions we could do that during the recess. He would have this part of the discussion stricken from the record and that was done. After the meeting various participants came to me and we discussed the whole matter. Some agreed with me; others were convinced that in such an important question human experiments were justified. Of course, those people who believed Ding's assurance that the subjects were criminals condemned to death. I no longer remember the individual men with whom I talked during the recess and I don't know who was in favor and who was against it. The only one I remember is Professor Mrugowsky because he spoke as an SS member and the experiments had been conducted by an SS doctor, and because I thought that Mrugowsky was Ding's superior in every way. Of course, I remember that Mrugowsky of all people came and said that, in principle, he agreed with me, and that he had expressed similar misgivings to Grawitz and that Grawitz had rejected his misgivings. Then I also learned from Mrugowsky that Himmler was behind all these experiments.

* * * * *

DR. FRITZ: Did you later discuss the matter of experiments on human beings before a large group of people?

DEFENDANT ROSE: Yes. That happened once again before a large number of people, but it was not about typhus experiments. It must have been about October 1944. The question at hand then was grippe. There was a meeting, a rather large meeting at which grippe vaccine was discussed. A number of people reported on the vaccines which they had developed in the laboratory. Among others, Professor Herzberg reported on a vaccine made from dead grippe virus, and Professor Haagen on a vaccine made from living avirulent grippe virus, which he had already tested on personnel at the Strasbourg clinic. Someone in the meeting, I don't remember who, suggested that the Haagen tests had been insufficient, and that this vaccine should be tested on a larger number of persons. There was no mention of concentration camps then but of student companies. I had considerable misgivings about such experimental vaccination and expressed them. I said that I considered the experimental basis inadequate for these vaccines to be used on human beings. I was not convinced that the virus had been sufficiently attenuated. There was a danger that the vaccine would lead to infection, and one could not take that responsibility on one's self. It was first of all intended to observe the effectiveness of the protection by determining whether people fell ill of grippe in natural ways after being vaccinated. Then someone else made the suggestion that this would take too long, and we did not know whether there would be an influenza epidemic during that time, and that therefore after the vaccines the subject should be infected with a virulent virus. Since I had already expressed objections to the vaccination, I opposed this proposal even more strongly, and the result of this discussion was that infections were not carried out, but it was decided to carry out the vaccination. Whether these vaccinations were carried out or not, I do not know. At any rate I read no order to the effect that anyone should perform the vaccinations nor did I ever read a report that the vaccinations were carried out. Only later on in imprisonment did I hear that similar experiments, such as were then discussed, and of which I disapproved, were carried out by the British Medical Service on German PW's. Genzken probably participated personally in this, but I had heard about this before in the internment hospital Karlsruhe where there were people who had experienced these vaccinations.

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EXTRACTS FROM THE TESTIMONY OF PROSECUTION WITNESS
PROFESSOR WERNER LEIBBRANDT *

* * * * *

CROSS-EXAMINATION

DR. SERVATIUS: Witness, you stated that the performance of experiments on human beings, as is the subject of the indictment here, can be ascribed to biological thought. What do you mean by biological thought?

WITNESS LEIBBRANDT: By biological thought I mean the attitude of a physician who does not take the subject into consideration at all, but for whom the patient has become a mere object, so that the human relationship no longer exists, and a man becomes a mere object like a mail package.

Q. You spoke of thinking as a biologist. Do I understand that you see therein an action belonging to biological thought?

A. An exaggeration of the purely mechanical or biological point of view, because the physician is not merely a biologist, he is also a biologist. Primarily, however, a physician is a man who assists the human being and not a scientific judge of biological events.

Q. Could there not be other causes for the experiments, such as a collective state thinking?

A. Yes.

Q. Witness, you used the expression "demonic order". What do you mean by that?

A. By demonic order I mean the following: If I define as a basis for medical activity merely the maintenance and safeguarding of the substance of the nation according to blood, the result is that everything which falls outside this pretense has to be cleared away. That is a mild expression of what actually happened, namely, extermination.

Q. Then your demonic order only refers to the blood aspect. Could it not be applied to the purely state collective aspect as well?

A. Could you give an example so that I can understand it better?

Q. I mean that experiments were undertaken and that the voluntary act of the individual is replaced by the act of the state, namely, by the voluntary approval given by the state.

* Professor of History of Medicine at Erlangen University.

Complete testimony is recorded in mimeographed transcript, 27 Jan. 1947, pp. 1961-2028.

A. Between the collective idea and the state order on the one hand and the medical individual on the other, there stands something rather important—the human conscience.

* * * * *

Q. Professor, if all these experiments were actually conducted, and also as you said this morning and as Moll's book shows, Moll alone published approximately six hundred works about thousands of such experiments (on human beings), must one not say that wide circles of medical men judge the question of experiments on human beings under certain conditions differently from you—from an ethical point of view?

A. That I cannot say, because even Moll writes at the end of this work that it is part of a physician's morals to restrain his urge for natural research in favor of the basic medical attitude as laid down in the oath of Hippocrates, namely, to cause no arbitrary harm to his patient.

Q. But in your opinion, Professor, how should a doctor work in the interest of suffering humanity in cases where, as you have just said, there is no possibility of experiments on animals?

A. The concept of humanity is a very dangerous concept. It is most dangerous of all for the physician. For the physician, the individual stands above all humanity and the individual unfortunately has sunk very low in these last few years.

Q. I believe that you have not quite answered my question. I asked: How do you think the doctor should solve certain questions even in the interest of the individual—questions which cannot be tested with animal experiments and test tubes, as is the case with malaria for instance. This is a problem which must be cleared up if he is to help his suffering patients.

A. That is naturally a very difficult question. But in the end the main thing will always be that a risk must have certain limits.

Q. Thank you. Now I come to another point. This morning, Professor, you expressed disapproval about a book which the defendant Mrugowsky wrote on medical ethics. May I ask, have you read this book?

A. Yes.

Q. Do you know Mrugowsky personally?

A. No.

Q. Then you do not know his ethical point of view?

A. I said that it was quite an ironical joke of world history for someone to quote the high medical ethics of Hufeland in the form of excerpts from his writings, as far as I remember, with a few connecting words and to combine these quotations in a modest

little volume, while on the other hand we now know how it was entangled organizationally with the deeds under discussion here. I am only speaking about the entanglement and not about the objective guilt which has not yet been proved.

Q. And from where else do you infer Mrugowsky's entanglement with the facts under discussion here, apart from the fact that he is one of the defendants indicted?

A. After all, he was the Chief of the SS Hygienic System, and the medical principles of an ethical nature personified by the SS have become clear to me during the last few years. There seems to me to be a large gap between these two things, between these deeds of SS medical ethics and the ethics of Hufeland. I might perhaps understand how a man like Mr. Haubhold could be enthusiastic about a one-sided interpretation of political medicine by Josef Peter Frank in the 18th century. But I cannot understand how the SS ethics can be connected up with the honest ethics of Christian Hufeland.

Q. Professor, you just told us you do not know Mrugowsky at all?

A. No.

Q. Then how can you express a judgment on his personal ethical attitude? You are merely judging from the fact that he belonged to the SS. Before you express such an opinion as you are doing, before you talk about a joke of world history, must you not first know the personal attitude of the person you are criticizing, and is it not quite possible that his personal attitude was such as is expressed in this book?

A. I don't believe that one can hold a leading position in the SS and then talk about such personal ethics, unless, of course, in ethical questions one does what is called double bookkeeping.

Q. But you admit that all your criticism is pure assumption, in no way based on personal knowledge of the person criticized?

A. I do not know Mr. Mrugowsky.

Q. Thank you. I have no more questions.

EXTRACTS FROM THE TESTIMONY OF PROSECUTION EXPERT WITNESS DR. ANDREW C. IVY *

DIRECT EXAMINATION

* * * * *

MR. HARDY: Now, Professor Ivy, before adjournment you were beginning to discuss medical ethics in the United States.

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* Complete testimony is recorded in mimeographed transcript, 12, 13, 14 June 1947, pp. 9029-9324.

Do you have there also the principles and rules as set forth by the American Medical Association to be followed?

WITNESS DR. IVY: Yes.

Q. What was the basis on which the American Medical Association adopted those rules?

A. I submitted to them a report of certain experiments which had been performed on human subjects along with my conclusions as to what the principles of ethics should be for use of human beings as subjects in medical experiments. I asked the association to give me a statement regarding the principles of medical ethics and what the American Medical Association had to say regarding the use of human beings as subjects in medical experiments.

Q. Would you kindly pass up to me that ruling of the principles put out by the American Medical Association? This apparently isn't what I am referring to, Doctor. Do you have a publication which is published by the American Medical Association entitled "Principles of Ethics Concerning Experimentation on Human Beings"?

A. Not with me here.

Q. Well now, you have, first of all, a basic requirement for experimentation on human beings, "(1) the voluntary consent of the individual upon whom the experiment is to be performed must be obtained."

A. Yes.

Q. "(2) The danger of each experiment must be previously investigated by animal experimentation," and "(3) the experiment must be performed under proper medical protection and management."

Now, does that purport to be the principles upon which all physicians and scientists guide themselves before they resort to medical experimentation on human beings in the United States?

A. Yes. They represent the basic principles approved by the American Medical Association for the use of human beings as subjects in medical experiments.

JUDGE SEBRING: How do the principles which you have just enunciated comport with the principles of the medical profession over the civilized world generally?

A. They are identical, according to my information. It was with that idea in mind that I cited the principles which were mentioned in this circular letter from the Reich Minister of the Interior dated 28 February 1931 to indicate that the ethical principles for the use of human beings as subjects in medical experiments in Germany in 1931 were similar to those which I have enunciated and which have been approved by the House of Delegates of the American Medical Association.

MR. HARDY: Is it possible that in some field of scientific research investigation by animal experimentation would be inadequate?

A. Will you repeat that question? I did not get it.

Q. Is it possible in some fields of medical research that experimentation or investigation on animals would be inadequate?

A. Yes. The experiment on trench fever is a very good example.

Q. How would you investigate the danger of the experiment prior to resorting to the use of human beings?

A. The hazard would have to be determined by a careful study of the natural history of the disease.

Q. Does malaria also fall into that category?

A. We can use animals to some extent in malarial studies, canaries and ducks, for example, develop malaria; and in research designed to discover a better drug for the treatment of malaria we can use Avian Malaria as a sort of screen method to detect which compounds might be employed with some assurance and might be effective in human malaria. In that way we decrease the random and unnecessary experimentation on man.

Q. To your knowledge have any experiments been conducted in the United States wherein these requirements which you set forth were not met?

A. Not to my knowledge.

MR. HARDY: Your Honor, I have no further questions concerning medical ethics to put to Dr. Ivy; however, I do have one question concerning the high-altitude experiments which I wish to go back to at the conclusion of that complex, in high altitude, and I will have completed my direct examination.

PRESIDING JUDGE BEALS: The Tribunal has no questions of the witness. Do I understand that you have completed your examination of the witness?

MR. HARDY: No. I have not; I have a further question to put to him, but I was going to leave the case of medical ethics.

PRESIDING JUDGE BEALS: We have no questions on that subject; you may proceed.

MR. HARDY: Dr. Ivy, in medical science and research is the use of human subjects necessary?

WITNESS DR. IVY: Yes, in a number of instances.

Q. Is it frequently necessary and does it perform great good to humanity?

A. Yes. That is right.

Q. Do you have an opinion that the state, for instance, the United States of America, could assume the responsibility of a physician to his patient or experimental subject, or is that responsibility solely the moral responsibility of the physician or scientist?

A. I do not believe the state can assume the moral responsibility that a physician has for his patient or experimental subject.

DR. SEIDL: I object to this question in that it is a purely legal question which the Court has to answer.

DR. SAUTER (for the defendants Ruff and Romberg): If I am not mistaken, a document was read this morning which said that the state assumes the responsibility. I believe that I am not mistaken in this. I also want to point out something else, gentlemen, in order to supplement what Dr. Seidl just said.

The question asked here is always what the opinion of the medical profession in America is. For us in this trial, in the evaluation of German defendants, that is not decisive. In my opinion the decisive question is for example, in 1942, when the altitude experiments were undertaken at Dachau, what the attitude of the medical profession in Germany was. From my point of view as a defense counsel I do not object if the prosecution asks Professor Ivy what the attitude or opinion of the medical profession in Germany was in 1942. If he can answer that question, all right, let him answer it, but we are not interested in finding out what the ethical attitude of the medical profession in the United States was. In my opinion a German physician who in Germany performed experiments on Germans cannot be judged exclusively according to an American medical opinion, which moreover dates from the year 1945 and was coded in the years 1945 and 1946 for future use; it can also have no retroactive force.

PRESIDING JUDGE BEALS: The first objection imposed by Dr. Seidl might be pertinent if the question of legality was concerned, a legal responsibility, that would be a question for a court. The question of moral responsibility is a proper subject to inquire of the witness.

As to Dr. Sauter's objection, the opinion of the witness as to medical sentiment in America may be received. The counsel's objection goes to its weight rather than to admissibility. The witness could be asked if he is aware of the sentiment in America in 1942 and whether it is different from this of the present day or whether it does not differ. The witness may also be asked whether he is aware of the opinion as to medical ethics in other countries or throughout the civilized world. But the objections are both overruled.

MR. HARDY: It is your opinion, then, that the state cannot assume the moral responsibility of a physician to his patient or experimental subject?

WITNESS DR. IVY: That is my opinion.

Q. On what do you base your opinion? What is the reason for that opinion?

A. I base that opinion on the principles of ethics and morals contained in the oath of Hippocrates. I think it should be obvious that a state cannot follow a physician around in his daily administration to see that the moral responsibility inherent therein is properly carried out. This moral responsibility that controls or should control the conduct of a physician should be inculcated into the minds of physicians just as moral responsibility of other sorts, and those principles are clearly depicted or enunciated in the oath of Hippocrates with which every physician should be acquainted.

Q. Is the oath of Hippocrates the Golden Rule in the United States and to your knowledge throughout the world?

A. According to my knowledge it represents the Golden Rule of the medical profession. It states how one doctor would like to be treated by another doctor in case he were ill. And in that way how a doctor should treat his patient or experimental subjects. He should treat them as though he were serving as a subject.

Q. Several of the defendants have pointed out in this case that the oath of Hippocrates is obsolete today. Do you follow that opinion?

A. I do not. The moral imperative of the oath of Hippocrates I believe is necessary for the survival of the scientific and technical philosophy of medicine.

* * * * *

2. GERMAN MEDICAL PROFESSION

a. Introduction

The position of the German medical profession under the Hitler regime was the subject of argument by both prosecution and defense. The prosecution discussed the matter in the early part of its opening statement (vol. I, p. 29 ff.). Selections from the argumentation of the defense on this point have been taken from the final plea for the defendant Blome and from the closing brief for the defendant Rostock. These appear on pages 86 to 90.

b. Selections from the Argumentation of the Defense *EXTRACT FROM THE FINAL PLEA FOR DEFENDANT BLOME **

* * * * *

Furthermore, I have another matter at heart, especially in my capacity as defense counsel for this defendant: Blome was Deputy

* Final plea is recorded in mimeographed transcript, 16 July 47, pp. 10972-10994.

Reich Physicians' Leader; he will, therefore, to a certain degree, easily be regarded as the representative of the German medical profession during the Hitler regime. Now, there is great danger that the entire German medical profession will be identified with its former leader, Dr. Conti, and with the crimes he was charged with during this trial; the German medical profession fears that those crimes which, *in fact*, were committed by *individual* doctors, who may have been rightly charged, are to be taken as typical of the entire medical profession. Indeed, during the last months we could hear in the press and on the radio that the entire medical profession was here in the prisoners' dock; unfortunately, by thus generalizing, the matter was presented as though the entire medical profession was corrupt and that the majority of German physicians had committed such crimes or at least approved them, as stated here in the indictment at the trial. This conception is wrong and unjust. The German medical profession numbered about 80,000 members and if we add the Wehrmacht physicians and the official physicians, one arrives at about 100,000 physicians. Now let us compare with this total number the small number of physicians and researchers here in the dock. There are altogether 20 men. Of what importance is such an insignificant number for the judging of the entire profession? If out of 5,000 German physicians one single person committed a crime, it is impossible to draw a conclusion from these few exceptions regarding the behavior and morals of the whole class. And even if we suppose that perhaps another few hundred physicians and researchers not here in the dock had taken part in the "experiments on human beings" and in the "euthanasia action", the number of guilty persons in comparison with the total number of the entire profession is still too small to entitle one to consider the entire profession as criminal, and morally inferior because some individuals committed a wrong.

There is yet another point of view. It stands to reason that not all experiments on human beings can be excused and justified, not even during a time of total warfare and under a dictatorship, and no decent person would ever think of excusing the way and manner in which the Hitler State carried out the "Euthanasia Program." However, it is an incontestable fact that large-scale experiments on human beings cannot altogether be avoided and are, in fact, carried out throughout the whole world, and that there are different viewpoints concerning the problem of euthanasia, even to a limited extent in the circles of conscientious physicians when this is carried out on a proper legal basis, and when, in addition, full precautions are taken to prevent abuses. It must not be overlooked that the deterioration of the medical

profession claimed in connection with this trial is connected exclusively with the problem of experiments on human beings and with euthanasia, but that no accusations are made against the professional practice of the German physicians in any other respects; there are especially no accusations referring to the relationship between the sick patient and the physician whom he had chosen as a helper and confidant to restore his health. This confidence in the attending physician felt by the patient has remained completely untouched by this trial.

We Germans have our own opinion about our physicians, we know their conscientiousness and willingness to render help; especially during the war we have been able to observe and appreciate their readiness to sacrifice themselves; we know that the good qualities that made the German physicians and researchers a model in former decades were not lost during Hitler's time, and it would be a pity if the abuses, which have been revealed and proved by this trial, should serve to undermine the confidence of the German people in their physicians and expose them to the contempt of all civilized nations.

Individual researchers, who out of ambition or a passion for research did not value a human being's life more than that of a rabbit, should not be considered representative of the German physicians' profession, nor should those physicians of the concentration camps, who for lack of a conscience or for some other wicked reason gave fatal injections to prisoners or tortured them to death, be regarded as representative of the German medical profession. No. Representative of a model German physician during Hitler's time, too, is the non-political, practicing physician, who, even if he did perhaps formally belong to the Party, strongly opposed from the bottom of his heart all kinds of violence and intolerance, who is closely bound to his nation and its needs, the practicing physician who cared for his patients in the most devoted manner day after day and night after night during the time of total war and fearful bombardments, which is especially hard for a physician; or who as military physician served at the front far from home, from his practice, from his family, fairly sharing all the hardships, dangers, and privations with his soldiers. And the surgeon who, as director of his clinic, operated and cured and helped from morning till night wherever he could help without having time to breathe, let alone to take part in political activity, he also is representative of the model German physician during Hitler's time too.

I do not know what verdict you will arrive at respecting one or the other of these defendants; but, as defense counsel of the former Deputy Reich Physicians' Leader, I beg you to make

it clear by your verdict that in judging the defendant, if you must condemn him, you do not condemn and defame the entire German medical profession, but that the abuses which were committed were individual acts such as, perhaps, happened in all professions during Hitler's time without necessitating a condemnation of the entire profession. These were individual acts arising perhaps partly from personal criminal tendencies of individual fanatics, partly from being connected with the excesses of a total war in a dictatorship of unscrupulous violence.

If beside the 23 defendants there is a 24th sitting in the dock, invisible to our eye, he is not of the German medical profession but the SS spirit of Himmler and of a dozen other murderers of millions of people. This spirit might have led a fanatic to forget his professional ethics and to commit crimes. But the entire medical profession remained sound and conscious of its duty.

May your verdict not completely rob the German people of their confidence in their physicians but restore it to them, and I have no doubt that after the present crisis has been overcome and in more normal circumstances, the German medical profession will prove to its people that as a body it never forgot nor will ever forget the professional ethical commandments of the Hippocratic oath.

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*EXTRACT FROM THE CLOSING BRIEF FOR
DEFENDANT ROSTOCK*

Introduction

Mr. President, your Honors:

The great English historian and sociologist, Thomas Carlyle, once said, "Your life, and were you the humblest of human beings, is not a wild dream but a lofty fact." I do not want to speak to you in this courtroom without first recalling this saying and thereby seeing before my eyes the picture of the great number of our fellow human beings whose lives have really become a wild dream. The fact on which this trial is based, that defenseless human beings were used by doctors of my country for experiments and in part died after suffering tortures, cannot be denied. I, myself, would doubt the clarity of my judgment as a German jurist if I did not realize that general human rights, such as the fundamental standards anchored in all civilized nations, have been violated thereby. Medical science should bring help and healing to suffering humanity. I am proud to state that it was German doctors who, in the last century, saved millions of human beings from

the most serious and fatal diseases by their research. Let me remind you only of names such as Robert Koch, Emil von Behring, Paul Ehrlich, Theodor Billroth, and August Bier, or medicines such as Germanin, atabrine, Salvarsan, diphtheria serum, tetanus serum, and many others. If it were possible to achieve such decisive results in any other way, this would only confirm the actual truth, that no one, no matter how highly placed and no matter how important his aims, has the right to lower other human beings to the level of guinea pigs by force. How could a man venture to dispose in that way of the life and health of his fellow men, be they ever so humble? It seems to me that this involves a fundamental contradiction to the duty of the doctor, a violation of the dignity of the individual, and a presumption which cannot remain without horrible results. There may be doubtful cases, there may be borderline cases, but the solution of these questions can be based on only one principle, which is that all creatures in human form have an equal right to life and health. Humanity would be in a sad state if again and again there were not volunteers from the ranks of physicians and laymen who made themselves available for experiments, conscious of their contribution toward saving and healing other human beings. But how can a man dare simply to designate others to suffer and die, when they, too, like to live and be free from want and fear, just like he himself? * * *

3. MEDICAL EXPERIMENTS IN OTHER COUNTRIES

a. Introduction

The practice of medical experimentation upon human beings in other countries was brought out by the defense in an effort to show that the medical experimentation in which these defendants engaged was not criminal. Extracts from the argumentation of the defense have been selected from the closing briefs for the defendants Karl Brandt and Ruff. These appear below on pages 90 to 93. From the evidence on this question, the following appear below on pages 95 to 121: Selections from defense documents, followed by extracts from the cross-examination of one of the prosecution's expert witnesses Dr. Andrew C. Ivy and an extract from the cross-examination of the defendant Rose.

b. Selections from the Argumentation of the Defense

EXTRACT FROM THE CLOSING BRIEF FOR DEFENDANT KARL BRANDT

* * * * *

Reference has furthermore been made to the *extraordinarily large number of persons available for experiments*. With regard

to the experiments made and on the basis of the evidence of this trial, experiments on a large scale have been made only in rare cases, and these may be compared in size with experiments on a large scale outside of Germany, as they were made even in peacetime; reference is made once more to the malaria experiment. (*Karl Brandt 1, Karl Brandt Ex. 1.*)

If one considers the *number of persons sentenced to death* who were subjected to experiments, the number is comparable to those eleven condemned persons for the poison experiment in Manila. (*Becker-Freyseng 60a, Becker-Freyseng Ex. 59.*)

One should compare, among others, the plague experiments by Strong in 1912 on 900 convicts, including an experiment on 42 persons some of whom were persons sentenced to death, and the typhus experiments by Hamdi on 153 persons. (*Becker-Freyseng 60a, Becker-Freyseng Ex. 59.*)

If the number of condemned persons used for experiments in these proceedings appears high, it should be taken into consideration that the number of persons sentenced to death under the laws of war is also unusually high. For the protection of the country, criminal laws are, during wartime, applied more rigorously in all countries in order to guarantee safety at home during the absence of the male population at the front. The number of ordinary criminals who have been punished on account of acts committed by taking advantage of war conditions, and especially of the blackout, is already unusually high; it is, therefore, not even necessary to include herein the persons sentenced for political crimes.

In this connection the viewpoint of the *English scholar Mellenby* of the London School of Hygiene and Tropical Medicine deserves special consideration. (*Becker-Freyseng 60, Becker-Freyseng Ex. 58.*) In the well-known medical journal "The Lancet" of 1 December 1946, this doctor quotes particularly the *political conditions* in Germany as decisive and as an excuse for the accused persons. One may not, therefore, subsequently refer to the general conditions in Germany during the war years in order to judge the *acts committed during this time* more severely.

The number of human guinea pigs used in the experiments alleged by the prosecution is about 2,000. The number of human guinea pigs known to the defense from published data amounts to more than 11,000 persons. If among those, minor experiments are also to be found, it may be supposed that the experiments published contain only the material fit to be known to the public. Publications show the results but not the sacrifices and undesirable incidents. That which the defense can present is not the result of an exhausting criminal investigation.

Looking at only these experiments which were considered fit for publication, one cannot possibly come to the conclusion that they were made only with volunteers. I refer in this connection to the compilation of experiments in Document Karl Brandt 117, Karl Brandt Exhibit 103, namely 32 experiments on at least 1,580 persons: they are experiments on persons sentenced to death, prisoners and soldiers, women and girls; the experiments are often carried out in such a way that it cannot be presumed the subjects volunteered.

Voluntary service of the human guinea pigs has not been claimed either; only in two cases has it specifically been pointed out. The volunteers in one of these experiments were medical students. Outstanding in this document are 13 experiments with at least 223 children. One cannot assume that the parents had given their consent. In this connection reference is made to Document Karl Brandt 93, Karl Brandt Exhibit 29, regarding the experiments of Professor McCance.

*EXTRACT FROM THE CLOSING BRIEF FOR
DEFENDANT RUFF*

* * * * *

Experiments which time and again have been described in international literature without meeting any opposition do not constitute a crime from the medical point of view. For nowhere did a plaintiff arise from the side of the responsible professional organization, or from that of the administration of justice, to denounce as criminal the experiments described in literature. On the contrary, the authors of those reports on their human experiments gained general recognition and fame; they were awarded the highest honors; they gained historical importance. And in spite of all this, are they supposed to have been criminals? No! In view of the complete lack of *written* legal norms, the physician, who generally knows only little about the law, has to rely on and refer to the admissibility of what is generally recognized to be admissible all over the world.

The defense is convinced that the Tribunal, when deciding this problem without prejudice, will first study the many experiments performed all over the world on healthy and sick persons, on prisoners and free people, on criminals and on the poor, even on children and mentally ill persons, in order to see how the medical profession in its international totality answers the question of the admissibility of human experiments, not only in theory but also in practice.

It is psychologically understandable that German research

workers today will, if possible, have nothing to do with human experiments and will try to avoid them, or would like to describe them as inadmissible even if before 1933 they were perhaps of the opposite opinion. However, experiments performed in 1905-1912 by a highly respected American in Asia for the fight against the plague, which made him famous all over the world, cannot and ought not to be labelled as criminal because a Blome is supposed to have performed the same experiments during the Hitler period (which, in fact, however, were not performed at all); and experiments for which, before 1933, a foreign research worker, the Englishman Ross, was awarded the Nobel prize for his malaria experiments, do not deserve to be condemned only because a German physician performed similar experiments during the Hitler regime. One should not say that experiments, where different diseases or different drugs from those referred to in this trial were dealt with, have no connection with the charges of this indictment because of this difference and that, therefore, they are of no importance as evidence. In the foreground there stands the basic question as to the conditions under which such experiments are permissible; whether they refer to plague or typhus, to tuberculosis or jaundice, is a secondary question which concerns the medical expert more than the jurist.

Decisive for this trial is the question whether the conditions under which experiments were performed by the defendants were those internationally recognized as for the experiments which were performed by foreign research workers with the approval of all civilized humanity.

If one wants to arrive at a just and satisfactory decision, one must disregard the fact that here German research workers are accused. On the contrary, one has to strive toward obtaining an international basis to represent the present international opinion on human experiments, one which for decades, if not for centuries, will form the criterion for the permissibility of human experiments. We, as jurists, can only render a service to the development of medical science and therewith to humanity if we endeavor to establish an incontrovertibly clear view of today's international opinion on human experiments, whether these experiments were performed by Germans or by foreigners.

c. Evidence

Defense Documents

Doc. No.	Def. Ex. No.	Description of Document	Page
Karl Brandt 1	Karl Brandt Ex. 1	Extract from "Life" Magazine concerning malaria experiments on convicts in U. S. penitentiaries.	95
Becker-Freyseng 60	Becker-Freyseng Ex. 58	Statement of Professor Dr. Hans Luxenburger and Dr. Hans Halbach concerning the report on experiments on human beings in world literature (Becker-Freyseng 60a, Becker-Freyseng Ex. 59).	95
Becker-Freyseng 60a	Becker-Freyseng Ex. 59	Extracts from report on experiments on human beings in world literature; excerpts from various newspapers and medical weeklies.	96
Karl Brandt 117	Karl Brandt Ex. 103	Excerpts from the dissertation "Infection Experiments on Human Beings" by Alfred Heilbrunn of the Hygiene Institute of the Wuerzburg University, 1937, concerning experiments on human beings in other countries.	103

Testimony

Extracts from the testimony of prosecution expert witness Dr. Andrew C. Ivy.	110
Extract from the testimony of defendant Rose.....	118

PARTIAL TRANSLATION OF DOCUMENT KARL BRANDT I
KARL BRANDT DEFENSE EXHIBIT I

EXTRACT FROM "LIFE" MAGAZINE CONCERNING MALARIA EXPERI-
MENTS ON CONVICTS IN UNITED STATES PENITENTIARIES

Extract from "Life", Vol. 18, Nr. 23 of June 4, 1945

Prison Malaria

Convicts expose themselves to disease so doctors can study it.

In three United States penitentiaries men who have been imprisoned as enemies of society are now helping science fight another enemy of society. At the United States Penitentiary in Atlanta, the Illinois State Penitentiary, and New Jersey State Reformatory some 800 convicts volunteered to be infected with malaria so medical men can study the disease. The experimenters, who are directed by the Office of Scientific Research and Development, have found prison life ideal for controlled laboratory work with humans. Their subjects all eat the same food, sleep the same hours, and are never far away. The prisoners are not pardoned or paroled for submitting to infection.

Prison malaria experiments underline the fact that malaria is still a very serious medical problem. In the United States there are 1,000,000 cases a year. The existing drugs (mainly quinine and atabrine) control malaria but cannot keep it from recurring long after the original infection. The goal of malaria research is to find a new drug which will cure the disease permanently.

PARTIAL TRANSLATION OF DOCUMENT BECKER-FREYSENG 60
BECKER-FREYSENG DEFENSE EXHIBIT 58

STATEMENT OF PROFESSOR DR. HANS LUXENBURGER AND DR. HANS
HALBACH CONCERNING THE REPORT ON EXPERIMENTS ON
HUMAN BEINGS IN WORLD LITERATURE (SEE ALSO
BECKER-FREYSENG 60a, BECKER-FREYSENG EX. 59)

Experiments on Human Beings as Viewed in World Literature

I, Professor Dr. med. Hans Luxenburger, specialist in nervous diseases, resident at 35, Liebigstrasse, Munich, and I, Dr. ing. and Dr. med. Erich Hans Halbach, physician, of Prien-Chiemsee, have first been advised that we shall render ourselves liable to punishment if we give a false affidavit. We declare under oath that we have ascertained the correctness of the enclosed excerpts

of scientific works and books, that is to say, with respect to the excerpts bearing the following numbers: 1, 5, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 44, 46, 47, 48, 54 * * * by comparison with the original; with respect to the numbers 2, 3, 4, 6, 7, 9, 19, 41, 43, 45, 49, 50, 51, 52, 53 by certified photostatic copies, copies, translations or excerpts submitted to us by attorney at law Dr. Edmund Tipp.

We made the report "Experiments on Human Beings as Viewed in World Literature" to the best of our knowledge for presentation as evidence before the American Military Tribunal I in the Palace of Justice, Nuernberg, Germany.

Munich, 14 April 1947

[Signed] Prof. Dr. Hans Luxenburger
Dr. Hans Halbach

PARTIAL TRANSLATION OF DOCUMENT BECKER-FREYSENG 60a
BECKER-FREYSENG DEFENSE EXHIBIT 59

EXTRACTS FROM REPORT ON EXPERIMENTS ON HUMAN BEINGS
IN WORLD LITERATURE; EXCERPTS FROM VARIOUS
NEWSPAPERS AND MEDICAL WEEKLIES

Excerpt from the Certified Translation

Author: Ladell, W.S.S. (Med. Research Committee).

Title: Effects after Taking Small Quantities of Sea Water. An experimental study. (From the research staff, National Hospital, Queen Square).

Quotation: The Lancet No. 6267 (October 1943) page 441.

Purpose: Contribution to the physiology of persons who received the same food and drinking water as shipwrecked persons in lifeboats. Studies regarding the effect of the drinking of sea water on the chloride balance, urea excretion, urine amount, and loss of body weight of shipwrecked persons.

Procedure:

1. Three experimental persons, after one day without water, drank 240 cc. fresh water and 180 cc. sodium chloride 3.5 percent solution daily for 4½ days.

2. Ten experimental persons, after one day without water, drank 540 cc. fresh water and 180 cc. sea water daily for 5 days; the following 4 days, 5 of these experimental persons drank 60 cc. fresh water daily, the following 4 days the other 5 experimental persons drank 60 cc. fresh water and

180 cc. sea water daily.

3. Eleven experimental persons, after one day without water, drank 540 cc. fresh water daily for 5 days; 6 of these experimental persons received 60 cc. water and 180 cc. sea water daily for the following 4 days.

4. Two experimental persons, after one day without water, drank 370 cc. fresh water each for 2 days, for the following 3 days daily 240 cc. fresh water each, plus 400 cc. sea water, the next 36 hours only 600 cc. sea water.

All experimental persons moreover took only sea-rescue emergency rations in limited quantities, with 1 gr. sodium chloride at the most.

Experimental persons: 17 experimental persons from a naval hospital submitted "voluntarily to the severe experimental conditions", without physical injury.

Excerpt from Certified Report 19

Author: Cameron and Karunaratne.

Quotation: Journal of Pathology and Bacteriology 42, 13 (1936).

Purpose: Studies of the poisonous effect of carbontetrachloride on human beings (report).

Experiment: Carbontetrachloride is administered to healthy criminals before their execution. The effect of the poison on the liver is determined by way of an autopsy. (Therapeutical normal dosis 3.0 cc.: maximum dose 5.0 cc.)

2 test persons receive twice 6 cc. (Nichols and Hampton)

3 test persons receive twice 4 cc. (Docherty and Nichols)

2 test persons receive twice 5 cc.* (Docherty and Burgess)

1 test person receive twice 5 and 3 cc.* (Docherty and Burgess)

3 test persons receive twice 10 cc. (Leach, Haughwout and Ash)

* with subsequent laxative

Result: In some cases changes in the liver, in others none.

Test persons: 11 criminals sentenced to death.

Excerpt from Original 20

Author: Lt. Col. Kendall, A.E., Lt. Col. Dickinson, S.P., Lt. Col. Forrester, J.S.

Title: The Treatment of Bacillary Dysentery in Chinese Soldiers with Sulfaguanidine and Sulfadiazine.

Quotation: American Journal of Medical Science 211,103 (January, 1946).

Purpose: Page 103: "The opportunity to make controlled observations of the efficacy of sulfaguanidine and sulfadiazine in the treatment of acute bacillary dysentery has recently presented itself to us. In an Army general hospital in northeastern India caring for Chinese and American troops, we have observed many hundreds of cases within the past year. It early became apparent that we were dealing with a relatively benign form of the disease with a uniformly favorable outcome. Under these circumstances, it seemed both justifiable and important to utilize the opportunity to determine to what extent sulfonamide therapy shortened the course of the disease or otherwise favorably influenced its course."

Experiment: "The present communication describes the results of such an investigation, carried out in the 7-month period from June through December 1943, in which the results of treatment were compared in 334 Chinese patients with bacillary dysentery, one-third received sulfaguanidine and one-third, sulfadiazine."

Results: Page 109: "Neither drug shortened the course of the disease, ameliorated the symptoms, nor altered the eventual outcome."

Test persons: 334 Chinese soldiers patients.

Excerpt from the Original Report No. 23

Author: See below.

Title: Trench Fever Report of Commission Medical Research Committee, American Red Cross, University Press 1918. Trench Fever, Bruce, Final Report of the War Trench Fever Investigation Committee, Journal of Hygiene 1921, page 258.

Quotation: Reference in Kolle-Kraus-Uhlenhut, Manual of Pathogenic Micro-organisms. VIII/1, 1302, (1930).

Purpose: "The American Commission (President: Strong, Members: Swift, Ople McNeal, Beetjew, Pappenheimer, Peacoc, Rapport) interpreted its task in a preponderantly practical way, trying to clarify the methods of transmission and to safeguard the troops from infection. The English Commission (President: Bruce. Members: Harvey, Bacot, Byam, Trench, Arkwright, Fletcher, Hird, Plimmer) set itself the task of investigating the disease completely and thoroughly, particularly also the causative agent."

Experiment: "The experiments of the English-American Commissions, those of transmitting Quintana with the entire blood were largely positive, and the intravenous injection showed better results than the intra-muscular and particularly the subcutaneous.

“Experiments for the transmission of lice were carried out by the English and American Commissions on the two bases: The bite of lice and the rubbing in of infected lice secretion.”

The first announcement of the American Commission on successful transmission of lice came on 14 February 1918; the first successful experiment on the transmission of lice of the English Commission on 9 March.

Transmission Experiments:

with Plasma	positive in 7 cases
with Serum	negative
with red blood corpuscles	positive 3 times in 4 experiments
with blood from skin which has been scratched	negative

Infection:

with secretion of lice	positive
with sputum and saliva	positive once in 4 experiments
with urine of patients rubbed into the skin	positive 5 times in 8 experiments
through the conjunctiva	positive
through the urethra	not successful
through the mouth	not successful
through food and drink	not successful

Experimental persons: Approximately at least 100.

Result: Clarification of the etiology and the methods of transmission.

Excerpts from the Original Report No. 25

Author: Hamdi.

Title: Results of Immunization Tests against Typhus.

Quotation: Journal for Hygiene 1916, 82. Quoted in Kolle-Kraus-Uhlenhut, Manual of Pathogenic Micro-organisms VIII/2, 1204 (1930).

Purpose: See title.

Experiment: “By means of virulent blood of patients, Hamdi was in a position to check on a large number of persons who had been treated before partly with the blood of patients (80), partly with the blood of reconvalescents (54), partly with a mixture of both blood types (19) * * *. Upon the infection with the blood of patients, none of the thrice protectively

vaccinated persons became ill, two out of seven persons who had been protectively vaccinated only twice became ill."

Experimental persons: "In the first place, these experiments concerned persons who had been sentenced to death for crimes,"

"* * * large number * * *."

Result: Effectiveness of protective vaccination was proved.

Excerpt from Original Report No. 26

Author: Doerr, R.

Title: Pappataci Fever and Dengue.

Quotation: Kolle-Kraus-Uhlenhut, Manual of Pathogenic Microorganisms VIII/1, 501 et seq. (1930).

Purpose: Research in Etiology and Transmission of Pappataci Fever.

Experiment: II. Pappataci Fever. Page 508: "The organism circulates in the blood of the patients during the first 24 hours after the beginning of the fever. Its presence is betrayed only from the pathogenicity (infectivity) of the blood for healthy and receptive (not immune) human beings. If such an individual were to be injected with the blood of a subcutaneously feverish person he would fall ill * * * of a fever attack typical in every respect. This experiment was at first successfully performed by Doerr (1908), later by Doerr and Russ in the Hercegovina, by Birt in Malta, by Tedeschi and Napolitani in Italy, by Lepine (Three Days Fever in Syria, Bull. Soc. path. exot. 20, 251, 1927) in Syria. The experiment was repeated by Kligler and Ashner in Palestine and furnished positive results in about 35 single experiments. In this connection it must be considered that, almost without exception, the inoculated persons lived in areas free from epidemics and phlebotomus so that an accidental natural infection was out of the question from the beginning."

Page 513: "But Whittingham and Rook brought infected phlebotomus from Malta to England. They succeeded in breeding imagines from the eggs of flies laid in England and infecting human beings by the bites of these flies, that is producing fever attacks. In this way, the question of where the virus of the Pappataci fever remains over the winter would apparently be answered."

Experimental persons: About 35.

Result: Determination and confirmation of the etiology and the method of transmission.

Report After the Original No. 33

Author: Goldberger, Joseph (USA Public Health Service 1914).

Quoted from: Bernhard Jaffe, Scientists in America, Overseas Edition Incorporated, New York 1944, page 401 et seq.

Purpose: Proof that pellagra is a deficiency disease.

Experiment: One-sided deficiency diet (restricted in quality) which caused 7 severe cases of pellagra.

Experimental persons: 12 voluntary prisoners of the Rankin-Prison-Farm to whom their freedom was promised after survival of the experiment, with the agreement of the governor of the state. All survived and were set free.

Excerpt from Original 44

Author: Fraenkel, E.

Title: Report on Infectious Colpitis Epidemica Observed in Children.

Quoted from: Arch. Path. Anath. a. Physiol. (Virchow) 99, 251 (1885).

Purpose: Page 263: Confirmation of the suspicion of an "infection of the conjunctiva caused by vaginal secretion." Animal tests showed negative results.

Experiment: Page 263: "By chance I had the possibility to inoculate the vaginal secretion (of sick women) into the conjunctiva of 3 children patients who were in the final stage of the disease (two were suffering from atrophica infantum, the third from cheesy pneumonia) * * *."

Page 264: "The two pus-producing patients had suffered for several weeks from their colpitis."

Result: 2 children died—1½ and 2 days after the inoculation without showing any reactions. The third child contracted conjunctivitis, which healed after treatment, and died on the 10th day.

Experimental subjects: 3 moribund children.

Excerpt from Original 48

Author: Current Comment. Summary of a study taken from Epidemiology Unit No. 50.

Title: Cholera Studies in Calcutta.

Quotation: Journal of the American Medical Association 130, 790 (1946).

Aim: Page 790: "* * * control experiment on the treatment of cholera * * *."

Experiment: Page 790: "* * * in a highly endemic or epidemic area of India, patients were taken in rotation as they were

admitted to the hospital and assigned to the following group according to the treatment given:

- A, sulfaguanidine;
- B, control;
- C, sulfadiazine;
- D, penicillin; and
- E, sulfadiazine and penicillin combined.

All patients received supportive treatment in the form of i.v. hypertonic and isotonic solution of sodium chloride and oral stimulants as indicated of offset dehydration, emaciation, and circulatory failure."

Result: Page 791:

1. Patient treated with plasma in addition to chemotherapy: death rate: zero.

2. Patients receiving chemo-therapy alone: death rate 1.1 percent.

3. Control group consisting of all patients who had not received treatment or who had insufficient treatment or only supportive treatment: death rate 38.3 percent.

"The dramatic effect of plasma is still more evident if the shock or collapse cases are segregated and tabulated. There were, in all, 78 severely ill patients in that group. The results in the group showed a mortality rate of 95.8 percent for the control group, 15.8 percent for the chemo-therapy, and no mortality in the group treated with plasma plus chemotherapy."

Experimental subjects:

No numbers given, presumably several hundred, nonvoluntary as clinical serial tests.

PARTIAL TRANSLATION OF DOCUMENT KARL BRANDT 117
KARL BRANDT DEFENSE EXHIBIT 103

EXCERPTS FROM THE DISSERTATION "INFECTION EXPERIMENTS ON
HUMAN BEINGS" BY ALFRED HEILBRUNN OF THE HYGIENE
INSTITUTE OF THE WUERZBURG UNIVERSITY, 1937,
CONCERNING EXPERIMENTS ON HUMAN BEINGS
IN OTHER COUNTRIES

Excerpt from "Infection Experiment on Human Beings"

Inaugural Dissertation for the Attainment of the Degree of a
Doctor of Medicine at the Friedrich-Wilhelm University of Ber-
lin;

submitted by: Alfred Heilbrunn,
Hofgeismar (Hesse Nassau) 1937

From the Hygiene Institute of Wuerzburg University. (Dean:
Professor M. Knorr)

Printed by: F. W. Gadow and Son, Hildburghausen.

(The pamphlet is in the library of the Erlangen University.)

* * * * *

MALARIA

Infection experiments with malaria take up much space in
literature. The desire to acquire an exact knowledge of this dis-
ease, so important to various countries, makes this fact appear
quite understandable. Therefore, numerous experiments on human
beings were carried out even before the discovery of the plas-
modium malariae and without knowledge of the transmission by
anopheles. In the following enumeration, these experiments will
be quoted chronologically, thus giving a picture of how the knowl-
edge of the etiology, the infectiousness and the transmission of
malaria, was discovered through infection experiments on human
beings.

1. (LV 7) * * * SALISBURY (quoted from Mannaberg:
Malaria Diseases, Vienna 1899. Nothnagel, Special Pathology and
Therapy II 2.) * * * Experiment: * * * Two * * * men * * *
after 12 and 14 days, fell ill with typical tertiana. The same experi-
ment in a second case again turned out a positive result.

2. (LV 8) * * * DOCHMANN (Dochmann: The Doctrine of
febris intermittens. St. Petersburg Medical Journal. No. 20, quoted
from Virchow-Hirsch 1880) * * *. His experiments * * *. 1st
experiment: He inoculated * * * a healthy 30-year-old man sub-
cutaneously with * * * feverish chills.

* * * * *

(LV—Index of Literature Page I-IX)

2d experiment: * * * Inoculation of three men * * *

1st man: * * * fever

2d man: Only passing indisposition.

3d man: Stayed completely well.

3d experiment: Inoculation of a woman * * *

* * * shivering fits, fever, * * *

3. (LV 9) * * * GERHARD (Gerhard: quoted from Olpp: Famous Tropical Physicians Publ. Quello, Tuebingen) * * * transmitted * * * malaria from a sick person to a healthy one through subcutaneous blood injections.

* * * * * * * * *

4. (LV 10) * * * MARCHIAFAVA and CELLI (Marchiafava and Celli: New Research on Malaria Infection, Progress of Medicine, 1885, 787, 795) * * * Five experiments were carried out on patients suffering from nervous disorders.

1. Experiment: Experimental subject a 17-year-old man with myelitis transversa * * *

* * * progress of fever

* * * spasm * * *

* * * swelling of the spleen * * *

An examination of the blood gave an excellent confirmation of the malaria nature of the fever attacks * * *

2. Experiment: Experimental subject a 68-year-old man with hemichorea.

* * * * * * * * *

Characteristic attack of malaria, * * * moderate spleen tumor.

3. Experiment: Experimental subject a 32-year-old man with multiple sclerosis.

* * * * * * * * *

* * * characteristic attacks, spleen tumor.

* * * * * * * * *

4. Experiment: Experimental subject a 47-year-old man with multiple sclerosis.

* * * * * * * * *

No pathological manifestations in the blood picture.

5. Experiment: Experimental subject a 23-year-old man with poliomyelit. ant.

* * * * *

* * * fever * * *

These experiments showed that—

(1) in the blood of malaria patients, corpuscles were often found in the interior of the red blood corpuscles in amoebic movement and susceptible to coloring with aniline.

(2) the disease is transmissible, and that the same amoebic formations were found in the blood of the experimental subjects as in the blood of the donors. The scientists carried on the work on the basis of these results and came to the conclusion that these amoebic corpuscles were the morbid agents of malaria. In order to be quite sure they made another inoculation experiment.

Experimental subject was a 43-year-old man with paralysis agitans.

* * * * *

* * * continual subnormal temperature accompanied by bad general condition . . .

* * * plasmodia moving in the blood * * *

5. (LV 11) The experiments of MARCHIAFAVA and CELLI are confirmed by a whole series of other Italian authors. I found the experiments in the book of MANNABERG (page 7) in the form of tables and reproduce them here in the same way. (vide pages 10–13) * * *

(LV 12) CELLI (Celli: quoted from Mannaberg (7) had several persons in the Roman hospital S. Spirito drink water from the Pontine Marshes and from the marshes near Rome and found that these persons did not contract malaria.

(LV. 13) BRANCALEONE (Brancaleone: quoted from Mannaberg (7) repeated the same experiment in Sicily with the same negative result.

(LV. 14) ZERI (Zeri: quoted from Mannaberg (7) had 9 persons, for a period of 5–20 days, drink 1.5– litres of water each (in toto 10–60 l) from a malaria district; he let 16 persons inhale the same water when sprayed. He administered it to 5 persons per rectum: none of the experimental persons got malaria. Also

SALOMONE MARIO (LV. 15: Mario quoted from Mannaberg (7) registered the same negative result.

* * * * *

No results were found in support of the water theory. It only remained to examine whether mosquitoes transmitted malaria through their sting.

6. (LV. 18) * * * BASTIANIELI (vide Mannaberg (7) * * * To imitate the sting of the mosquito he did nothing but insert the point of the Pravaz syringe, moistened with malaria blood, under the skin. That sufficed in some cases to produce a severe case of malaria.

* * * * *

7. (LV. 20) * * * 1895 ROSS (Ross, page 9) let 4 mosquitoes of the species anopheles suck themselves full on the Indian Abdul Radir who had numerous crescent-shaped formations in his blood, and on 25 May he let the twenty-year-old Lutschmann, who was stated never to have been sick before, be stung by them. On 5 June the latter contracted fever which lasted for 3 days.

* * * * *

8. (LV. 23) In 1917 WAGNER-JAUREGG (Wagner-Jauregg: Psych. neurol. weekly 1918) introduced artificial malaria infection to cure progressive paralysis. Following this, now experiments were initiated.

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9. (LV. 25) F. MUEHLENS and W. KIRSCHBAUM (Muehlens and Kirschbaum: Further Parasitological Observations on Artificial Malaria Infection of Paralytics. Archives for Ship and Tropical Hygiene 1924, Vol. 28, No. 4, page 131) in 1924 report on artificial malaria infection for the treatment of paralysis.

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DIPHThERIA

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Despite the Behring therapeutic serum and the protective vaccine developed by Behring, the field of diphtheria immunity has always interested various research experts. Their efforts were all directed toward developing safe, *active* immunity.

48. (LV. 137) As early as 1902 DZIERGOWSKY (Dziergowsky, quoted from Seeligmann and Happe: The Position of the Active Protective Vaccine against Diphtheria. Result of Hygiene 11, 1930) reported on several experiments to protect human beings against diphtheria by a number of subcutaneous injections with a gradually increasing dose of Diphtheria-Toxin.

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49. (LV. 138) BLUMENAU (Blumenau, page 137) worked on this principle in 1909. He soaked cotton wads in undiluted toxin and placed them alternately in the right and then in the left nostril of children from 3-12 years of age. He attained an antitoxin titer increase of up to 10 A.E. per ccm. of serum.

50. (LV. 139) BANDI and GAGNONI worked with killed bacteria (Bandi and Gagnoni, page 137). They injected measles convalescents with a 4-day-old crush of diphtheria bacilli cultures on agar which had been killed at 55° Centigrade * * *.

51. (LV. 141) BOEHME and RIEBOLD (Boehme and Riebold, One Way of Active Immunization against Diphtheria, Munich Medical Weekly 1924, 232) were the first to use living diphtheria bacilli for vaccination of human beings. After extensive experiments on guinea pigs, they proceeded to experiment on human beings. They used a diphtheria lymph, which they named Diphcutan, a mixture of living, highly toxic diphtheria bacilli cultures in N_aC1. Sixty-two persons were vaccinated with this lymph with 10-20 scratches each on the upper arm. Those vaccinated were—

- 22 children from 1½-5 years of age,
- 11 children from 6-10 years of age,
- 17 children from 10-15 years of age,
- 2 youths from 15-20 years of age, and
- 9 adults from 20-50 years of age.

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52. (LV. 142) EBERHARD (Eberhard, Contributions toward active Immunization against Diphtheria. Hygiene Journal 105, page 614) tested 4 different vaccines produced by the Marburger Behringwerke for their suitability for immunization of humans and for use in public vaccination stations.

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53. (LV. 143) BAYER used the lymph suggested by BOEHME and RIEBOLD (Bayer, On active Immunization against Diphtheria. Yearbook of Infant Therapeutics 1925, 273) and vaccinated 87 children with it * * *

54. (LV. 144) MUELLER and MEYER (Mueller and Meyer, Diagnosis and Immunization of children threatened with Diphtheria. Journal of Infant Therapeutics 39, 405, 1925). They also checked the experiments by BOEHME and RIEBOLD with the same methods, vaccinated 53 children who had shown a positive reaction to the SCHICK test.

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TYPHUS

55. (LV. 149) REITANO (Reitano, quoted from Rontal, Journal of Bacteriology 1933 III, page 112) vaccinated human beings with virus contained in dog ticks and produced typhus.

56. (LV. 150) One immunization experiment dating from the World War cost the lives of 50 Turkish soldiers. In the year 1915 immunization experiments against typhus were to be carried out in the hospitals of the 3d Turkish Army with inactivated blood from a diseased person. The doctor concerned took the blood from typhus convalescents and injected it, as HAMDI (Hamdi, On the Results of Immunization Experiments against Typhus-Exanthem. Hygiene Journal, 1916, 235) reports without having inactivated it, into 120 soldiers. Each received 5 ccm. subcutaneously. One soldier died after 14 days, others contracted typhus which, however, progressed in a satisfactory manner. After this the doctor vaccinated another 310 soldiers in the same way. Of these, 174 became ill and 49 died. On the average the incubation period was 12 days.

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PLAGUE

62. (LV. 165) * * * BULARD (A. F. Bulard, De Moru, The Oriental Plague, Paris 1839) * * *

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Experiments continued to be carried out on condemned persons. On 17 August at 8 o'clock in the morning, 18-year-old Ibrahim Hassan, who had been condemned to death, was dressed in the shirt, underwear, and jacket of a person seriously ill with the plague. Immediately after this he was placed in the bed of one of the patients which was still warm from the patient's fever. Until 21 August there was no sign that even the slightest infection had taken place. No symptoms of the disease had developed. On the evening of the same day, however, he complained of a slight headache, loss of energy started, the blood circulation accelerated * * *

A Plague Bubo developed in the left groin * * * 25 August: Further vomiting of dark green matter. The tongue is dry and has a slightly brackish appearance. The pulse is light and quick. Respiration is jerky, the features are distorted. In the night death occurs.

On 7 August at 8 o'clock in the evening, Mohammed Ben Ali who has been condemned to death was dressed in the shirt, underwear, and jacket of a person seriously ill with the plague. Immediately thereafter he was placed in the patient's bed. Until the 22d no symptoms of disease. On the morning of the 23d severe outbreak of the disease. Tottering gait, then walking impossible. Extreme loss of energy, appearance of being seriously ill * * *

* * * * *

On 18 August we inoculated a person condemned to death with blood through 4 vaccinal cuts in the fold of the right arm. This blood was taken from a head vein of a plague patient who had been ill for 2 days * * *

On 22 and 30 August a second person, condemned to death, with a plethoric constitution and of strong build was inoculated with blood. The first time in a fold of the left arm and in the right groin area, the second time in the opposite positions. On the area of the vaccination only the natural reddening and infections caused by the vaccination instrument appeared, nothing else.

* * * * *

"A third person condemned to death was inoculated with the fluid taken from a Plague Bubo in the groin and in the shoulder. This same person had dressed in the clothes of a plague patient 20 days previously and had contracted the plague with all its severe symptoms. The skin and tissue of this experimental subject remained refractory towards any absorption of the poison. Even when the inoculation with blood was repeated 8 days later, no disease resulted."

* * * * *

SMALLPOX

In 1791, the teacher Plett of Holstein successfully vaccinated three of his landlord's children in Starkendorf near Kiel. Later on when an epidemic occurred they did not contract the disease, while their brothers and sisters which had not been vaccinated fell sick.

81. (LV. 220) JENNER started from these premises. (Jenner, quoted from Paschen, K.Kr.U., Manual on pathological microorganisms, T. VIII, 1, P821). In his first test, he inoculated with

variola 16 persons who had suffered from cowpox previously. They did not fall sick.

In 1796, a milkmaid who suffered from a finger injury contracted an infection when milking a cow sick with cowpox. She developed a case of cowpox. With the contents of one pustule, Jenner vaccinated a boy. The boy developed typical vaccine pustules at the vaccination area of his arm. Two weeks later, Jenner carefully inoculated the boy on both arms with new pustule matter. No sickness ensued, and a second inoculation also was negative. Thus, clear proof was furnished that cowpox transmitted to human beings possessed the same protective value as that produced in animals.

However, another epidemic was necessary before Jenner's success was recognized. In this instance he inoculated 6 children directly from the cow. They developed a slight infection, and a subsequent inoculation failed.

The success of Jenner's experimental infections on human beings have resulted in a blessing for all mankind inasmuch as his fundamental experiments on human beings have caused the extermination of variola in all countries that have compulsory vaccination.

EXTRACTS FROM THE TESTIMONY OF PROSECUTION EXPERT
WITNESS DR. ANDREW C. IVY *

* * * * *

CROSS-EXAMINATION

DR. SAUTER: Witness, you are an expert in the field of aviation medicine?

WITNESS DR. IVY: Yes.

Q. May I ask you what fields within aviation medicine you have worked on specifically, because my clients, who are recognized specialists in this field, attach importance to ascertaining precisely what fields you have worked in particularly?

A. I have worked particularly in the field of decompression or pressure drop sickness, and I have also worked in the field of anoxia or exposure to altitude repeatedly at a level of 18,000 feet to ascertain if that has any effect in the causation of pilots' fatigue.

Q. At what time did you specifically concern yourself with the fields you have just named? Was that before the Second World War, during the Second World War, or was it earlier than that?

A. My interest in these fields of aviation medicine, including free fall which I did not mention, started in 1939.

* Complete testimony is recorded in mimeographed transcript, 12, 13, 14, 16 June 47, pp. 9029-9324.

Q. Regarding your specific work in this field, Witness, you have also issued publications. I believe you spoke of two publications. Did I understand you correctly, or were there more?

A. There were two in the field of decompression sickness. There was one publication in the field of the effects of repeated exposure to a mild degree of oxygen lack. My other work has not yet been published but was submitted in the form of reports to the Committee on Aviation Medicine of the National Research Council of the United States.

Q. When were these two papers published of which you just told us; when, and were they printed by a publishing house? Did they appear in a journal or a periodical?

A. One appears in the Journal of Aviation Medicine either in September or October of 1946. The other appears in the Journal of the American Medical Association in either December or January 1946 or 1947. The publication on the effect of repeated exposure to mild degrees of oxygen lack at altitude appears in the quarterly bulletin of Northwestern University Medical School and part of the work, insofar as its effect on the elimination of the basis in the urine is concerned, appeared in the Journal of Biological Chemistry around 1944 or 1945, I am not sure of that date.

Q. Theretofore, Witness, you had thus made no publication in the field of aviation medicine before the papers of which you just gave the dates of publication?

A. The question is not clear.

Q. You just gave us the titles of the publications you have published and when; now I ask whether before the dates you just gave, you did not have any publications in the field of aviation medicine?

A. No. My first research started in 1939.

Q. You, yourself, have carried out experiments too; is that not so?

A. Yes.

Q. With human experimental subjects, of course?

A. Yes, and on myself.

Q. And with a low pressure chamber?

A. Yes.

Q. Were these frequent experiments, or were the experiments in which you, yourself, took part only infrequent in number?

A. The experiments in which I took part were infrequent in number compared to the total number of experiments which I performed.

Q. Did you take part in these experiments as the director of

the experiments, as the person responsible, or were you usually the experimental subject yourself?

A. I served in both capacities. For example, I have frequently gone to the altitude of 40,000 feet to study the symptoms of bends with an intermediate pressure device, which we produced in our laboratory. I have been to 47,500 feet on three or four occasions, on one occasion at 52,000 feet for half an hour. I have frequently been to 18,000 feet without supplemental oxygen in order to study the effect of the degree of oxygen lack present there for my ability to perform psycho-motor tests.

Q. Can you tell us approximately during what year you began these experiments of your own?

A. In 1939.

Q. 1939; did you at this time carry out explosive decompression experiments too? Witness, one moment please, the English for that is "explosive decompression." That is thus the experiment in which one ascends slowly to a certain height, let us say 8,000 meters, and then all at once suddenly one is brought up to a height of 15,000 meters; that is, first slowly up to 8,000 and then suddenly to, let us say, 15,000—that is what I understand under the term "explosive decompression" experiment, and my question is: whether you also carried out such experiments and if so when and to what extent?

A. I carried out over one hundred experiments on explosive decompression in various laboratories on animals, the rabbit, the dog, the pig, and the monkey. I did not serve as a subject myself in experiments on explosive decompression, but a student who was trained with me in physiology, Dr. J. J. Smith, did the first experiments on explosive decompression in which human subjects were used, at Wright Field. I am familiar with the work which Dr. Hitchcock did on this subject at Ohio State University in which he studied some one hundred students under conditions of explosive decompression.

Q. To what altitude, Witness; to what maximum altitude did you carry your own explosive decompression experiments?

A. In animals it was up to 50,000 feet; in the case of human subjects, the maximum was 47,500 with pressure breathing equipment.

Q. This altitude you reached in your own experiments. Now, Doctor, it would interest me to know to what maximum altitude have any experiments in explosive decompression been carried in America; what do you know about this maximum altitude?

A. I believe that 47,500 or slightly above is the maximum.

Q. Witness, do you know the German Physiologist Dr. Rein; Professor Rein, do you know his name; R-e-i-n from Goettingen?

A. Yes.

Q. At the moment he is the Ordinarius for Physiology at Goettingen, he is a rector at the university and a member of the Scientific Advisory Committee for the British Zone. On the basis of your own knowledge, do you consider Professor Rein an authoritative scientist in the field of physiology and aviation medicine?

A. I consider him an authoritative physiologist, I am not acquainted with his work in the field of aviation medicine.

Q. Mr. President, I previously put in evidence—I want to recall that now—an expert opinion from this Dr. Rein regarding Dr. Ruff. (*Ruff 5, Ruff Ex. 3.*) This expert testimony is from Professor Rein.

In your own experiments, Witness, you also used conscientious objectors, is that not so? Did I understand you correctly?

A. Yes, in some of the experiments.

Q. Will you tell us why you used conscientious objectors? Were they particularly adapted for these experiments; or what was the reason for you, as one conducting experiments, to use especially conscientious objectors?

A. It was their duty, their volunteer duty to render public service. They had nothing else to do but to render public service. In the experiments in which we used the conscientious objectors, they could devote their full attention to the experiments. Many of the subjects, which I have used, have been medical students or dental students, who besides serving as subjects had to attend their studies in schools. In the experiments we did on the conscientious objectors, they could not attend school at the same time and carry on or perform all the tests they were supposed to perform. For example, we used a group of conscientious objectors for repeated exposure to an altitude of 18,000 feet without the administration of supplemental oxygen. These tests involved the following of a strict diet, they involved the performance of work tests and psycho-motor tests, which required several hours every day to perform. Another group of conscientious objectors that I used were used for vitamin studies in relation to fatigue.

These conscientious objectors had to do a great deal of carefully measured work during the day as well as to perform psycho-motor tests so medical students or dental students could not be used. We had to have subjects who could spend their full time on the experiments.*

* * * * *

* To the question of conscientious objection in the United States, see Section VIII E—Voluntary Participation of Experimental Subjects, cross-examination of Dr. Ivy (vol. I, p. 944 ff.).

Q. Witness, from the answers that you have given so far, I am still not clear in my mind precisely why you hit upon conscientious objectors in particular as the experimental subjects. You said there were two groups of them: some were in prison and some had to perform public service. From the latter group you took your experimental subjects, but please give me a clear answer to the question: Why did you specifically use such conscientious objectors for your altitude experiments?

A. They could devote full time to the experimental requirements. They did not have to do any other work as was the case of medical students or dental students, the only other type of subjects that I had available to me.

Q. Doctor, these persons were obliged to perform public service. If these conscientious objectors had not been there or if they had been used for public service, then you would not have had any experimental subjects. There must be a specific reason why you specifically used conscientious objectors and I ask you, please, to tell me that reason.

A. Well, we could not have done the experiments unless the conscientious objectors had been available. That is the answer to your question.

Q. Could you not have used prisoners, even conscientious objectors who refused to do public service and were therefore in prison without doing any work? Could you not have used them?

A. Well, that would have meant that I and my assistants would have to go to the prison which was quite a distance away. The conscientious objectors could come to us at the university where they could live in the university dormitory or in the university hospital.

Q. Doctor, if your experiments were really important—perhaps important in view of the state of war—then it is difficult to understand why the experiments could not have been carried out in a prison, let us say. Other experiments have been carried out in prisons to a large extent, and on another occasion. Doctor, you told us that you simply had to get in touch with the prisoners; you simply wrote them a letter or you put up a notice on the bulletin board and then, to a certain extent, you had prisoners available. Can you give me no other information as to why you used specifically and only conscientious objectors?

A. No. If it had been convenient and necessary for me to use prisoners, I believe that we could have had prisoner volunteers for this work.

Q. Witness, were you ever in a penitentiary as a visitor?

A. Yes.

Q. Did you see there how the criminals condemned to death were housed?

A. Yes.

Q. Are they completely at liberty there or are the criminals condemned to death locked up in their cells?

A. They were locked up in their cells.

Q. Now, can you please tell us how a criminal condemned to death is to see the notice that you would put on the bulletin board? You told us today that it was very simple—you simply put a notice on the bulletin board—and for hours now I have been trying to figure out how a criminal condemned to death, who is locked up in his cell, is going to see that notice on the bulletin board.

A. While these prisoners are taken out for their meals, they can pass by a bulletin board, or a piece of paper with the statement on it which I read can be placed in their cells for reading or, as a large group in the dining room, the statement can be read to them.

Q. Are criminals condemned to death together at meals in America? So far as I know, there too the criminal condemned to death is given his food through an opening in the cell door; he cannot eat in a common mess hall.

A. Yes. But you must recall that I did not specify that the criminals which were used for malaria experiments were prisoners condemned to death; neither did I specify that if I were to go to a penitentiary to see if I could get volunteers for a nutrition experiment that I should select prisoners condemned to death.

Q. If you are speaking here of condemned criminals as experimental subjects, are you speaking of criminals condemned to death or just of criminals who have just received some sentence or other?

A. I have not used prisoners or criminals condemned to death. You have been using that statement. I have used prisoners.

Q. You spoke only of prisoners then?

A. That is correct.

Q. Are those prisoners in pre-trial imprisonment who have not yet been put on trial or are those prisoners who have already received some sentence?

A. Prisoners who have already received some sentence.

Q. In other words, prisoners who have been condemned or sentenced?

A. But not necessarily to death.

Q. Yes, other sentences, aside from the death sentence, included. Did you as a scientist interest yourself in the question

of why a person was sentenced, for what crimes he was sentenced?

A. No, I did not.

Q. Did you at least concern yourself with the question whether the man was condemned, was sentenced by a regular court or a court martial, or an extraordinary court?

A. None of these prisoners would have been sentenced by a court martial; they would have been sentenced by an ordinary civilian court.

Q. How do you know? Did you see the personal files of these prisoners or did you see the opinions and sentences on the basis of which the prisoner had been incarcerated?

A. Only on the basis of the type of prisoner that would be incarcerated in a certain penitentiary.

Q. How do you, as a doctor, know exactly what sort of prisoner is incarcerated in this penitentiary and what sort of prisoner is incarcerated in another prison? How do you know that?

A. That's a matter of common knowledge to one who reads the newspapers, the press, and who is generally informed on such matters. In a Federal penitentiary then you might have prisoners who have been incarcerated because of court martial.

Q. Are inmates of Federal penitentiaries used for experiments too, as far as you know?

A. Yes. They may be.

Q. In other words, political prisoners too, that is, prisoners who were condemned by a court martial or by another court?

A. We have no political prisoners in the United States.

Q. Are not prisoners condemned for high treason or treason and the like? Those are political crimes.

A. Not to my knowledge.

Q. For conspiring with the enemy during the war; such cases have not only arisen but they have also been punished, and you must know that from reading your newspaper, Professor; those are political prisoners. Do you not have those in America?

A. Not to my knowledge.

Q. Doctor, if I understood you correctly, you stated this morning that a medical experiment with fatal consequences is to be designated either as an execution or as a murder; is that what you said?

A. I did not say that.

Q. What did you say then?

A. It was more or less as I quoted it, as I remember, I said that under the circumstances which surrounded the first death in high altitude experiments at Dachau, which Dr. Romberg is alleged to have witnessed, Dr. Rascher killed the subject; that

the death could be viewed only as an execution or as a murder; and if the subject were a volunteer, then his death could not be viewed as an execution.

Q. Witness, in your opinion, is there a difference whether the experiments are to be traced back to the initiative of the experimenter himself, or whether they are ordered by some authoritative office of the state which also assumes the responsibility for them?

A. Yes. There is a difference, but that difference does not pertain, in my opinion, to the moral responsibilities of the investigator toward his experimental subject.

Q. I cannot understand that, Doctor. I can imagine that the state gives an experimenter the order, particularly during wartime, to carry out certain experiments, and that in peacetime, on his own initiative, the researcher would not carry out such experiments unless he was ordered to by the state. You must recognize this difference yourself.

A. That does not carry over to the moral responsibility of the individual to his experimental subject. I do not believe that the state can assume the responsibility of ordering a scientist to kill people in order to obtain knowledge.

Q. Witness, that is not the question. I am not interested in whether the state can order some one to murder; I am interested in the question whether, in your opinion, the state can order, let us say dangerous experiments, experiments in which perhaps fatalities may occur. In America, too, deaths occurred several times in experiments; what is your view on this?

A. The state, as far as I know, in the United States of America has never ordered scientists to perform any experiment where death is likely to occur.

Q. Doctor, I did not say where death was probable, I said where death is possible, and I ask you to answer the question I put to you. If deaths are probable, then you are correct, then it is murder. If deaths are possible, then I want to know what you say to that. And, let me remind you, Doctor, that even in the American Air Force deaths did occur; in other words, death was possible.

A. Yes, I agree that it is possible for deaths to occur accidentally in experiments which are hazardous. As I said in my testimony under such conditions when they do occur, their cause is investigated very thoroughly as well as the circumstances surrounding the death.

* * * * *

Q. Witness, you spoke yesterday of a number of experiments carried out in the United States and in other countries outside of

Germany. For example, pellagra, swamp fever, beri-beri, plague, etc. Now, I should like to have a very clear answer from you to the following question. In these experiments which you heard of partly from persons involved in them and partly from international literature, did deaths occur during the experiments and as a result of the experiments or not? Professor, I ask you this question because you said yesterday that you examined all international literature concerning this question and, therefore, have a certain specialized knowledge on this question.

A. I also said that when one reviews the literature, he cannot be sure that he has done a complete or perfect job.

So far as the reports I have read and presented yesterday are concerned, there were no deaths in trench fever. There were no deaths mentioned, to my knowledge, in the article on pellagra. There were no deaths mentioned, to my knowledge, in the article on beri-beri, and there were no deaths in the article, according to my knowledge, in Colonel Strong's article on plague. I would not testify that I have read all the articles in the medical literature involving the use of human beings as subjects in medical experiments.

Q. And, in the literature which you have read, Witness, there was not a single case where deaths occurred? Did I understand you correctly?

A. Yes. In the yellow fever experiments I indicated that Dr. Carroll and Dr. Lazare died.

Q. That is the only case you know of?

A. That's all that I know of.

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EXTRACT FROM THE TESTIMONY OF DEFENDANT ROSE *

CROSS-EXAMINATION

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MR. MCHANEY: Now, would the extreme necessity for the large scale production of typhus vaccines and the resultant experiments on human beings in concentration camps have arisen had not Germany been engaged in a war?

DEFENDANT ROSE: That question cannot simply be answered with "yes" or "no". It is, on the whole, not very probable that without the war, typhus would have broken out in the German camps, but it is not altogether beyond the bounds of possibility

* Complete testimony is recorded in mimeographed transcript, 18, 21, 22, 23, 24, 25 April 47, pp. 6081-6484.

because in times of peace too typhus has broken out in individual cases from time to time. The primary danger in the camps is the louse danger, and infection by lice also occurs in times of peace. If typhus breaks out in a camp that is infected with lice, a typhus epidemic can arise in peacetime too, of course.

Q. But Germany had never experienced any difficulty with typhus before the war. Isn't that right?

A. Not for many decades, no.

Q. You stated that nine hundred persons were used in Dr. Strong's plague experiments?

A. Yes, I know that number from the literature on the subject.

Q. What is the usual mortality in plague?

A. That depends on whether it is bubonic plague or lung pest. In one, namely, bubonic plague, the mortality can be as high as sixty or seventy percent. It also can be lower. In lung pest, the mortality is just about one hundred.

Q. How many people died in Dr. Strong's plague experiments?

A. According to what his reports say, none of them died, but this result could not have been anticipated because this was the first time that anyone had attempted to inoculate living plague virus into human beings, and Strong said in his first publication in 1905 that he himself was surprised that no unpleasant incidents occurred and that there was only severe fever reaction. That despite this unexpectedly favorable outcome of Strong's experiments the specialists had considerable misgivings about this procedure can be seen first of all from publications where that is explicitly stated; for example, two Englishmen say that, contrary to expectations, these experiments went off well but nevertheless this process cannot be used for general vaccination because there is always the danger that, through some unexpected event, this strain again becomes virulent. Moreover, from other works that Strong later published it can be seen that guinea pigs and monkeys that he vaccinated with this vaccine died not of the plague, but of the toxic affects of the vaccine. All these difficulties are the reason why this enormously important discovery which Koller and Otto made in 1903, and Strong in 1905, has only been generally applied, for all practical purposes, since 1926. That is an indication of the care and fear with which this whole matter was first approached, and Strong could not know ahead of time that his experiments would turn out well. I described here the enormous concern that Strong felt during all these months regarding the fact that that might happen which every specialist feared, viz., that the virus would become virulent again. That is an enormous responsibility.

Q. Be that as it may, nobody died. That is a fact, isn't it?

A. If anyone did die, the publications say nothing about it. There were deaths only among the monkeys and guinea pigs that are mentioned in the publication. If human beings died, there is no mention in the publication. It is generally known that if there are serious accidents in such experiments as this, they are only most reluctantly made public.

Q. Now, Professor, I have no wish to limit you but, as I understand it, you have explained these things in considerable detail during the four days in which you have already testified. If you can give a short answer to my question that is all I want. If I want any further explanation I'll ask you for it.

Now, what is the normal death rate in beri-beri?

A. That depends on the medical care given. If the care is good, the mortality is zero, and if they have no medical care at all, then a lot of them die.

Q. Sixty to eighty percent would probably die if they were not treated. Is that right?

A. Beri-beri lasts for many, many months before a person dies, and usually one does not die of beri-beri in sixty days—that would be a severe case.

Q. How many people did Strong use in his beri-beri experiments? Is twenty-nine all you know about?

A. So far as I know from the literature, the number was twenty-nine.

Q. Well, it says in the literature that he used only twenty-nine. Is that right?

A. So far as I know, yes.

Q. And one of those died?

A. According to what the literature says, one of them died.

Q. What is the mortality in typhus?

A. That varies enormously. It depends on the epidemic. In some epidemics the mortality is five percent. In general, you count on a mortality of twenty percent. In the Serb-Albanian epidemic in 1915, there was a mortality of seventy percent, but that mortality rate is so extraordinarily high that it is generally assumed that probably, in reality, there were more cases of typhus than were actually reported.

Q. Well, we could take roughly five to thirty percent as the mortality. Is that right?

A. Yes. That is what the textbooks generally say.

Q. What was the mortality in the Buchenwald experiments, Professor?

A. In the controlled cases in the experiments that I knew of, the mortality rate was thirty percent.

Q. Among the controls, you figured thirty percent?

A. Yes. There were ten control persons in the first group of experiments, and of them, three died.

Q. Three died? Well, but I assume that you have read through the Ding diary and let us assume for the moment that it is correct. Didn't you say that they also used control persons in the four or five other series of experiments?

A. In the controlled cases where they were testing the vaccine, the general mortality rate was thirty percent. But then there were these therapeutic experiments in which, according to the diary, blood infections were undertaken and, in this case, the diary does mention an unusually high mortality rate.

Q. Well, Professor, for your information, we have figured out five control series in the Ding diary, and I mean by controls those that were not treated with anything. The mortality ranges between fifty-four to one hundred percent and averaged eighty-one percent. Do you accept those figures as correct? I mean, do you think that's right?

Q. No. That does not correspond with the impression I got from the numbers in the diary, but I did not calculate it so precisely as all that. I looked at the individual experiments and it is true that, for instance, in these therapeutic experiments, Ding's work mentions a mortality of something like fifty to fifty-five percent, and then there is one series that deals with blood infection where of twenty people, I believe nineteen died.

Q. Let me put it to you, Professor, is it not a fact that they were not dealing with epidemic typhus in Buchenwald, but with a super-typhus, developed from man to man passage, which was much more virulent and much more deadly than any typhus you could expect in an epidemic?

A. That I cannot judge because I have no knowledge of the work done in Buchenwald and can only refer to what Ding's diary says, which I regard as unreliable.

Q. Well, if you regard it as reliable, Doctor, and if you figure out the deaths among the untreated control persons and find a mortality which averaged eighty-one percent, will you not, as a scientist and an expert on tropical diseases, concede that they had developed a highly virulent, something we might call a super-typhus, in Buchenwald? Isn't that right, Professor?

A. As a scientist, I am accustomed to state my opinion on the basis of reliable documentation and not on the basis of such falsifications which are produced for a special purpose.

Q. I can appreciate that you do not regard the document as reliable, Professor, but we will investigate that a little later.

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IX. RULING OF THE TRIBUNAL ON COUNT ONE OF THE INDICTMENT*

PRESIDING JUDGE BEALS: The Secretary General will note for the record the presence of all the defendants in Court.

The Tribunal will now announce its ruling on the motion of certain defendants against Count I in the indictment concerning the charge of conspiracy.

MILITARY TRIBUNAL I

Count I of the indictment in this case charges that the defendants, acting pursuant to a common design, unlawfully, willfully, and knowingly did conspire and agree together to commit war crimes and crimes against humanity as defined in Control Council Law No. 10, Article 2. It is charged that the alleged crime was committed between September 1939 and April 1945.

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

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

This ruling must not be construed as limiting the force or effect of Article 2, paragraph 2 of Control Council Law No. 10, or as denying to either prosecution or defense the right to offer in evidence any facts or circumstances, occurring either before or after September 1939, if such facts or circumstances tend to prove or to disprove the commission by any defendant of war crimes or crimes against humanity as defined in Control Council Law No. 10.

* Tr. pp. 10717-10718, 14 July 47.

X. FINAL PLEA FOR DEFENDANT KARL BRANDT' BY DR. SERVATIUS

Mr. President, your Honors:

I cannot comment on all the questions which the prosecution brought up this morning. I must limit myself to a few things and can refer to my closing brief where I have gone into considerable detail on all these questions.

This morning I heard the detailed legal arguments advanced by the prosecutor. I have commented particularly on these legal questions in my closing brief, and I will now merely make a few brief comments.

The prosecution assumes that Law No. 10 is an independent law. This is not correct, for it designates itself explicitly as a law for the execution of the London Charter and declares that Charter to be an integral part of the law.

Now, the sole purpose of the London Charter is to punish disturbances of international legal relations, and not what has happened or is happening somewhere within an individual state. Any other interpretation would put an end to the conception of sovereignty, and it would give right of intervention into the affairs of other states.

In the trial before Tribunal III, Case No. 3, against Flick et al.,² General Taylor referred to an alleged right of intervention, quoting a considerable amount of literature with regard to this right of intervention into the internal affairs of another country.

I have ventured to refer to the position taken concerning this by one of the four signatory powers of the London Charter, a signatory power which was itself the victim of intervention in the name of civilization, the Soviet Union. I have attached the said literature to part I of my closing brief.

The Soviet Union drew a clear inference from the intervention to which it had been exposed by the Entente at the end of the First World War and obtained an alteration in the text of the London Charter, under which intervention would have been possible, by insisting that the text, which was ambiguous in consequence of the punctuation, be altered by the insertion of a comma. This comma was so important that the representatives of the four signatory powers met on purpose to discuss it.

It results therefrom that the internal affairs of a country cannot be affected by the London Charter and, consequently,

¹ Final plea is recorded in mimeographed transcript, 14 July 47, pp. 10797-10817.

² United States vs. Friedrich Flick et al. See vol. VI.

by Law No. 10. Punishment by this Tribunal of acts committed by Germans against Germans is therefore inadmissible.

The prosecution further discussed at length this morning another question, that is the question of conspiracy. I have also commented on that in my closing brief. I will merely make a brief reply here to the prosecution.

The point of view of the defense, that a charge of conspiracy as an independent offense is inadmissible, was confirmed by the Tribunal's decision of today. In that way the leak in the dike, so to speak, was stopped, and one cannot let the ocean pour into the land from the other side by declaring the conception of conspiracy admissible under common law.

The conception of conspiracy is really only a technical expedient of the jurists. Its purpose is to effect, beyond the number of accomplices in the true sense of the word, other persons who are considered deserving of punishment, but who cannot be proved guilty of complicity.

This may be done where the law against conspiracy is common law. If, however, this law is introduced in Germany after the event and applied to facts which have occurred in the past, this would mean that by a detour of the law of procedure new conceptions of offense would be introduced into material law. This would amount to an *ex post facto* law and is, therefore, illegal according to legal principles generally recognized.

The purpose of enlarging the circle of participants cannot be attained under Law No. 10 by breaking up the conception of conspiracy into its component parts and introducing forms of complicity hitherto unknown in Germany.

Now, I shall read my statement proper:

In the closing statement against the defendant Karl Brandt the prosecution discussed very little the counter evidence brought forward by the defense in the course of the proceedings. They relied to a large extent on evidence already advanced in the indictment.

The affidavits of the defendants themselves play a special part in support of the prosecution. For the defendant Karl Brandt they are important with respect to his position and consequent knowledge of the event referred to in the indictment.

If these affidavits contain imputations they can only be used, according to the Tribunal's statement, against the affiants themselves. As far as they involve the defendant Karl Brandt, however, they have been clarified in respect to the decisive issues. But in spite of this correction the first statements may prejudice credibility unless good reasons justify such correction.

Here the result of interrogations made in the initial proceedings

is in contradiction to the evidence given before the Tribunal. On the basis of practical experience, German law considers as valid evidence only the result of an interrogation made by a judge. The reason is the lack of impartiality which may be found, quite naturally, in the case of an interrogating official who is to conduct the prosecution. The capacity of the interrogator to elicit the truth impartially depends on his character, his training, and his professional experience.

The qualification of the interrogators has been attacked here by the defense, but the prosecution has made no effort to substantiate it.

In order to form a judgment it is also important to know the general lines on which the prosecution carries out its interrogations. Under German law the prosecutor also has to ascertain and put forward exculpatory material when investigating a case personally or through assistants. As to American procedure, Justice Jackson clearly rejected this principle during the trial before the International Military Tribunal and said he could never serve two masters.

This critical view of the affidavits is confirmed by their contents, which frequently show the struggle between the interrogator and the interrogated person. He is no classical witness who says, "I believe," "I presume," "as far as I remember," and so on, for he shows thereby that he can give no positive information. And such testimony becomes completely worthless if conclusions are drawn in the form of, "It would have been impossible for him," "he might have known," "perhaps he was the highest authority," and so forth.

Not only individual words thus demonstrated that the testimony is composed of conclusions, but whole parts of the reports show the same character.

In view of all this, the defendants' contentions are to be believed, that they raised objections but succumbed to the weight of the prepared record presented to them and signed, trusting that they would have an opportunity later to clarify deficiencies and to state their true opinion.

This criticism of the defendants' affidavits is also called for in the case of the affidavits given by the witnesses for the prosecution. Facts are recorded therein which the witnesses did not know themselves, but which they had only heard about, and which they presumed after having been made to believe them by persuasion. The individual cases in which objections are to be raised on these lines have been dealt with in the closing brief.

The charges advanced against the defendant Karl Brandt include medical experiments on human beings and euthanasia. In

both cases the defendant is charged with having committed crimes against humanity.

The press comments on the proceedings, anticipating the sentence and publishing articles about base characters and depravity. Pamphlets with striking titles appear.

On the other hand the Tribunal will make itself acquainted with the literature collected by the defense as evidence. If one reads this literature one loses one's self-confidence and cannot conclude without admitting that these are problems which persons not considered criminals tried to solve before the defendants. These are problems of the community. The individual may make suggestions for their solution, but the decision is the task of the community and therefore of the state. The question is how great a sacrifice may the state demand in the interest of the community? This decision is for the state alone.

How the state decides depends on its free discretion, and finds its limit only in the rebellion of its citizens. In obeying the orders of his state, the defendant Karl Brandt did no wrong. If sentence is passed against him, it would be a political sentence against the state and the ideology it represents.

One can condemn the defendant Karl Brandt only by imposing on him the duty of rebellion and the duty of having a different ideology to his environment.

It is contended that the state finds its limits in the eternal basic elements of law, which are said to be so clear that anyone could discern their violation as a crime, and that loyalty to the state beyond these limits is therefore a crime. One forgets that eternal law, the law of nature, is but a guiding principle for the state and the legislator and not a counter-code of law which the subject might use as a support against the state. It is emphasized that no other state had made such decisions up to now. This is true only to a certain extent. It is no proof, however, that such decisions were not necessary and admissible now. There is no prohibition against daring to progress.

The progress of medical science opened up the problem of experiments on human beings already in the past century, and eventually made it ripe for decision. It is not the first time that a state has adopted a certain attitude with regard to euthanasia with a change of ideology.

Only the statesmen decide what is to be done in the interests of the community, and they have never hesitated to issue such a decision whenever they deemed it necessary in the interest of their people. Thereupon their rules and orders were carried through under the authority of the state, which is the basis of society.

Inquisition, witch trials, and revolutionary tribunals have existed in the name of the state and eternal justice, and the executive participants did not consider themselves criminals but servants of their community. They would have been killed if they had stood up against what was believed to be newly discovered eternal justice. What is the subject to do if the orders of the state exceed the customary limits which the individual himself took for inviolable according to tradition.

What did the airman think who dropped the first atomic bomb on Hiroshima? Did he consider himself a criminal? What did the statesmen think who ordered this atomic bomb to be used. We know from the history of this event that the motive was patriotism, based on the harsh necessity of sacrificing hundreds of thousands to save their own soldiers' lives. This motive was stronger than the prohibition of the Hague Convention, under which belligerents have no unlimited right in the choice of methods for inflicting damage on the enemy.

"My cause is just and my quarrel honorable," says the king. And Shakespeare's soldier answers him: "That's more than we know." Another soldier adds: "Ay, or more than we should seek after; for we know enough if we know we are the king's subjects; if his cause be wrong, our obedience to the king wipes the crime out of us."

It is the hard necessity of the state on which the defense for Karl Brandt is based against the charge of having performed criminal experiments on human beings.

Here also—in addition to the care for the population—the lives of soldiers were at stake, soldiers who had to be protected from death and epidemics. In Professor Bickenbach's experiment, the issue was the lives of women and children who without 45 million gas masks would have been as unprotected against the expected gas attack as the Japanese were against the atomic bomb. Biological warfare was imminent, even praised abroad as cheaper and more effective than the atomic bomb.

Is it really against the law and all political morals if the state in such a situation provides for the expected emergency and orders the necessary medical experiments to be performed on its own citizens? As applied to foreigners such procedure is limited in principle. In my closing brief I have discussed the exceptions.

What is to be done is decided not by the physician but by the political leader. Even the expert Dr. Ivy had to grant him the fundamental authority.

The question is why, with the legal position so clear, a man like Keitel refused to have such experiments carried out in the Wehrmacht, and why some of the defendants themselves try to

disprove any connection with the experiments. The answer is that a measure may be as unavoidable as war and yet be abhorred in the same way.

Unlike Professor Ivy, these men certainly considered these experiments an evil, and their desire was not to become involved in them personally, if possible, and not to allow troops to participate in them who should not be burdened with such questions and who had no insight into the necessity of the measures to be taken. In spite of everything, Germany was not yet so "communized" that all private feelings in the individual had disappeared.

The prosecution opposes to this necessity the condition of absolute voluntariness.

It was a surprise to hear from the expert Professor Ivy that in the penitentiaries many hundreds of volunteers were pressing for admission to experiments, and that more volunteered than could be used. I do not want to dispose of this phenomenon with irony and sarcasm. There may be people who realize that the community has the right to ask them for a sacrifice. Their feeling of justice may tell them that insistence on humanity has its limits. If humanity means the appeal to the strong not to forget the weak in the abundance of might and wealth, the weak should also make their contribution when all are in need.

But what if in the emergency of war the convicts, and those declared to be unworthy to serve in the armed forces, refuse to accept such a sacrifice voluntarily, and only prove an asocial burden to state and community and bring about the downfall of the community? Is not compulsion by the state then admissible as an additional expiation?

The prosecution says "No". According to this human rights demand the downfall of human beings.

But there is a mixture of voluntariness and compulsory expiation, "purchased voluntariness." Here the experimental subject does not make a sacrifice out of conviction for the good of the community but for his own good. The subject gives his consent because he is to receive money, cigarettes, a mitigation of punishment, etc. There may be isolated cases of this nature where the person is really a volunteer, but as a rule it is not so.

If one compares the actual risk with the advantage granted, one cannot admit the consent of these "voluntary prisoners" as legal, in spite of all the protective forms they have to sign, for these can only have been obtained by taking advantage of inexperience, imprudence, or distress.

Looking through medical literature, one cannot escape the growing conviction that the word "volunteer", where it appears at all, is used only as a word of protection and camouflage; it is

hardly ever missing since the struggle over this problem became acute.

I will touch only briefly on what I have explained in detail in my closing brief. No one will contend that human beings really allowed themselves to be infected voluntarily with venereal disease; this has nowhere been stated explicitly in literature. Cholera and plague are also not minor inconveniences one is likely to undergo voluntarily for a trifle in the interest of science. Above all, it is not customary to hand over children for experimental purposes, and I cannot believe that in the 13 experiments carried out on a total of 223 children, as stated in Document Karl Brandt 117, Karl Brandt Exhibit 103, the mothers gave their consent. Would not the mothers have deserved the praise of the scientist for the sacrifice they trustfully made in the interest of science, praise which is otherwise liberally granted to real volunteers in reports on experiments?

Is it not likely to have been similar to the experiments carried out by Professor McCance? (*Karl Brandt 93, Karl Brandt Ex. 29.*) The German authorities who condemn the defendants in a particularly violent form have no objection to raise here against the order to hand over weakling children to a research commission for experimental purposes. The questionnaires which the Tribunal approved for me in order to get further information about this matter have not been answered as the higher authorities did not give permission for such statements to be made. This silence says enough; it is proof of what is supposed to be legal today in the line of "voluntariness".

It is repeatedly shown that the experiments for which no consent was given were permitted with the full knowledge of the government authorities. It is further shown that these experiments were published in professional literature without meeting any objection, and that they were even accepted by the public without concern as a normal phenomenon when reports about them appeared in popular magazines.

This happens at a time when the same press is stigmatizing as crimes against humanity the German experiments which were necessary in the interests of the state. Voluntariness is a fiction; the emergency of the state hard reality.

In all countries experiments on human beings have been performed by doctors, certainly not because they took pleasure in killing or tormenting, but only at the instigation and under the protection of their state, and in accordance with their own conviction of the necessity for these experiments in the struggle for the existence of the people.

The German doctor who acted in conformity with the German

regulations can no more be punished than the American doctor who complied with the requests of his state in the way which is customary there.

Justice is indivisible.

To what extent is the defendant Karl Brandt implicated in the medical experiments?

The prosecution says he is implicated in almost all the experiments and refers to his position and his connections. They state that he was the highest Reich authority in the medical spheres; there, however, they are misled by an error in translation, for Karl Brandt only had the powers, regulated in a general way, of an "Oberste Reichsbehoerde" [Supreme Reich Authority], and the practice of those powers was restricted to special cases.

This is apparent from the three known decrees and from the explanation thereof given by witnesses. Moreover, Karl Brandt was not given these functions until 1944 when these experiments were practically finished, as is shown by the time schedule submitted to the Tribunal for comparison.

It has been proved that the defendant Karl Brandt himself, in a broadcast, publicly called his position as Reich Commissioner a "Differential". In fact, Karl Brandt's task was not to order but to adjust; it was a task designed to fit his character.

We have also learned from the presentation of evidence that the defendant Karl Brandt did not have the machinery at his disposal for issuing orders which was necessary for a supreme Reich authority; he lacked the staff and the means. No one who is acquainted with a government administration will think it possible that, under these circumstances, the defendant Karl Brandt might have been able to enforce his point of view against the resistance of the old agencies; no one will even think it probable that anything would have been done to facilitate such an attempt by the "new master".

Consequently, Karl Brandt's position was not such as to justify the conclusion drawn by the prosecution as to his general knowledge. There was no official channel by which everything was bound to come to his knowledge, for he was not the superior of other authorities.

It is true that the defendant Karl Brandt was supposed to be informed about fundamental matters, that he had the right to intervene, and so on. But these were only possibilities, not in conformity with conditions in practice. We have seen that Conti opposed him and that Himmler prohibited direct contact with Karl Brandt within his sphere.

Therefore Karl Brandt can be brought into connection only with the events in which he participated directly.

Here it is first of all striking that the defendant Karl Brandt, who is supposed to have been the highest authority, appears only very rarely.

There are three so-called troop experiments: the testing of drinking water, concentrated food, and an ointment for burns.

Further, three medical experiments are connected with the defendant Karl Brandt. The hepatitis experiments, which he is said to have suggested, were not carried out. While that research was continued during the following years, Karl Brandt, who is said to have sponsored it particularly, is mentioned by none of the numerous witnesses and experts, and his name is not mentioned in any document. Is it not, therefore, a plausible explanation that Grawitz confused the names?

The second case is the request to hand over 10 prisoners for two days for an experiment not named. This cannot refer to a real medical experiment, for such an experiment cannot be carried out in such a short time with the necessary tests and observations. The speedy return of the experimental subjects indicates that the experiment was not dangerous.

Finally, the defendant Karl Brandt is connected with the phosgene experiments by Bickenbach, which caused the death of four Germans sentenced to death. But precisely here Bickenbach's affidavit shows that the defendant Karl Brandt was outside the whole framework of the experiment in Himmler's sphere, and that he was merely approached to mediate. The order came from Himmler. The experiments must have seemed innocuous to the defendant Karl Brandt since Bickenbach wanted to carry them out on himself.

On the other hand, there was the state emergency and the enormous importance of the discovery that the taking of a few urotropin tablets might give the ardently desired protection to all against the expected gas attack and, as the result of the experiment shows, actually did so.

Now the prosecution endeavors to establish a connection of Karl Brandt with the other experiments via the Reich Research Council. It is true that one can establish such a connection theoretically on paper, but the links of the chain break when one examines them closely. Only the head of the specialized department decided on the so-called research assignments, and he only investigated whether the aim was necessary for war, not how the experiment was to be carried out. He could not inform others of matters about which he did not know himself.

The defendant Karl Brandt is further charged with not having protested in one case when he heard about deaths caused by experiments on persons sentenced to death in the well-known lecture

on sulfanilamide. I must point out that even if this experiment had been inadmissible, silence would not be a crime, for assent after the act is without importance in criminal law, and one can only be connected with plans and enterprises as long as they have not been concluded.

Now the prosecution has introduced in its closing brief a new charge holding the defendant Karl Brandt responsible for negligence. In this respect I should like to point out that no indictment for negligence has been brought in, and that the concept of crime against humanity committed by negligence cannot exist.

Therefore, it will be sufficient to emphasize that the alleged negligence depends on the existence of a duty of supervision and the right to give orders through other agencies. In every state the spheres of competence are separated, and it is not possible for everyone to interfere in everything on the basis that everyone is responsible for everything.

The prosecution says that the defendant Karl Brandt ought to have used his influence and availed himself of his intimate relations with Hitler to stop the experiments. Even presuming that he was aware of the facts as crimes, his guilt would not be of a legal, but only of a political or moral nature. Until now nobody has been held criminally responsible for the conduct of a superior or a friend; the question of criminal law, however, is the only one the Tribunal has to consider. As a matter of fact this close relationship did not exist. The defendant Karl Brandt was the surgeon who had to be in attendance on Hitler; Dr. Morell, the latter's personal physician, soon tried to undermine the confidence placed in Karl Brandt so that he was given commissions which removed him further and further from the sphere of his medical activity.

The alleged intimate relations were eventually crowned by the dictation of a death sentence against Karl Brandt without his having been granted even a hearing on the charges advanced against him.

If one sums up everything relating to the medical experiments and follows to a large extent the charges of the prosecution, it is an established fact that it is not shown that the defendant Karl Brandt participated in any way in experiments on prisoners of war and foreigners, or that he was cognizant of them. Therefore, no war crime or crime against humanity has been committed, and consequently punishment under Law No. 10 is excluded. I refer in this connection to the legal arguments in my closing brief.

The second problem is euthanasia.

The authorization of 1 September 1939 was issued before the

period of the medical experiments, at a time when the defendant Karl Brandt was still closely attached to the Fuehrer's headquarters and to Hitler as an accompanying physician.

In my closing brief I have explained in detail that the defendant Karl Brandt did not participate in the Action 14 f 13, with the "special treatment" of prisoners in concentration camps, occurrences which were given the name of euthanasia only here in the trial.

Neither did the defendant Karl Brandt take any part in the extermination of Jews in Auschwitz, which again has nothing in common with the idea of euthanasia.

I have further shown that the so-called "wild euthanasia", which was carried out simultaneously with and immediately after legal euthanasia, was not instigated by Karl Brandt. The stopping of euthanasia in August 1941 has been proved, and therefore that was the end of the defendant Karl Brandt's duties; for what would have been the meaning of this cessation if, after it, increased activity was to set in? The contacts of Karl Brandt after the cessation have been clarified as being the consequence of his activities connected with evacuation for air protection. Where the name of the defendant Karl Brandt is mentioned otherwise, it obviously serves only as means of information for uninformed people who never saw or heard anything of him themselves.

I shall deal here with euthanasia only to the extent that it is officially dealt with under the ordinance of 1 September 1939. Concerning the "Reich committee", I refer to my closing brief.

The presentation of evidence has established that the defendant Karl Brandt actually had no "administrative and medical office" from which the whole organization might have been administered. On the contrary, it is a fact that Bouhler declared himself solely responsible for the procedure; this is testified to by unequivocal documents.

Nor has any regulation or instruction become known which was issued by Karl Brandt. Not a single document was signed by him. He made no speeches and conducted no discussions.

But what did he do and what was his duty?

His duty was not to carry out euthanasia; he was only to be informed in special cases in order to be able to report to Hitler. This was in conformity with the existing conditions—his presence at and simultaneous attachment to the Fuehrer's headquarters, and to Hitler.

Only once was Karl Brandt seen active, and that is in the negotiations with Pastor von Bodelschwingh, which led to the result, amazing for us, that the defendant Karl Brandt won Bodelschwingh's sympathy, and after the collapse the latter said

in a radio interview that Brandt was an idealist but not a criminal.

But the defendant Karl Brandt took note of interrogation forms, he inspected a registrar's office, and he co-signed the authority for physicians to execute euthanasia.

What could the defendant Karl Brandt learn from the forms?

The prosecution thinks that Jews and foreigners were to be affected in the first instance. The affidavit by the director of the Jewish lunatic asylum, in which all the insane Jews of Germany were concentrated, proves that this was not the case.

The prosecution says that all persons unfit for work were to be killed as "useless eaters". But it is a fact that even work-houses were requested to give information only about cases of really grave insanity.

What did the defendant Karl Brandt know about the procedure?

He knew that the authorization which was issued was not an order given to the doctor, but only conferred on him the right to act on his own responsibility after the most careful consideration of the patient's condition. This was a clause inserted in the ordinance of 1 September 1939 on Karl Brandt's initiative.

The defendant Karl Brandt knew that the specialists, whom he did not know, were chosen by the Ministry of the Interior, and that the experts were eminent men in their special spheres.

The defendant Karl Brandt also knew that the authorities concerned saw no reason to object to the execution of the measure, and that even the chief jurists of the Reich declared the legal foundations to be irrefragable, after having been informed of the facts.

Within this framework the defendant Karl Brandt approved of official euthanasia and supported it.

But the prosecution even calls euthanasia a thousand-fold murder. In their opinion there was no formal law, and it is alleged that the expert Dr. Lammers confirmed this.

Yes, but he also stated that even an informal ordinance was valid. Even an order issued by the Fuehrer had the force of law, as can be clearly seen from the indisputable effects of such orders, in particular in relation to foreigners.

But for the defendant Karl Brandt it is of no importance whether the ordinance of 1 September 1939 was actually valid or not; the only important thing is that he had reason to believe it was valid and that he could rely on this opinion.

German courts have already dealt with cases of the practice of euthanasia; but these cases occurred after the official procedure had been stopped, as at Hadamar, or after persons had been killed who could never have come under the powers conferred

by the ordinance, or other crimes were committed.

It should be observed that these sentences always confirm the base motives of the offenders. On the other hand, these courts were concerned with the question of public law only to the extent that they confirm that no formal law was available. In one case the court restricted itself to information given by a member of the prosecution staff in the trial before the International Military Tribunal.

The real objections to euthanasia are not based on a formal point of view, but rather on the same reasons which are advanced against the admissibility of the medical experiments.

Even an insane person of the lowest grade may not be killed it is said. No human being may presume to kill another human being.

But the right to kill in war is accepted in international law, and public law allows the suppression of a revolt by violence.

What prevents the state from ordering killing in the sphere of euthanasia too?

The answer is that there is no motive which might justify an action of this kind.

The economic motive of eliminating "useless eaters" is certainly not sufficient for such measures. Such a motive was never upheld by the defendant Karl Brandt; it was apparently mentioned by others as an accompanying contingency and later taken up by counter propaganda.

The defendant Karl Brandt considered the motive of pity for the patient to be the decisive one. This motive is tacitly accepted for euthanasia on the deathbed, and doctors in all countries increasingly acknowledge it.

In former times the courts were repeatedly concerned with killings committed out of pity, and in sensational trials, juries found offenders not guilty who freed their nearest relatives from the torment of life.

Who would not have the desire to die while in good health rather than to be forced by all the resources of medical science to continue life degraded to an animal's existence! Only misguided civilization keeps such beings alive; in the normal struggle for existence Nature is more charitable.

But the legislator has hitherto refrained from giving authority to kill in such cases. But he can solve the problem if he wants to. The reasons for his restraint are exactly those which led in this case to the disguising of those measures and to the secrecy observed. There is the fear of base intrigues concerning inheritance, the mental burden of the relatives, and so on. The individual does not want to bear this burden, nor is he able to do so. It can

be taken over only by the state, which is independent of the desires of those concerned.

That such is the will of the great majority of those who really come into touch with these problems was shown by the result of the inquiry conducted by Professor Meltzer, which has been offered in evidence. It was carried out by him many years ago in order to obtain an argument against euthanasia and its principal supporters, Binding and Hoche. He obtained the reverse of what he had himself expected as an expert.

But I see a third motive which unconsciously plays an important part; it is the idea of sacrifice.

A lunatic may cause the mental and economic decay of a family and also ruin it morally.

If healthy human beings make great sacrifices for the community and lay down their lives by order of the state, the insane person, if he could arouse himself mentally and make a decision, would choose a similar sacrifice for himself.

Why should not the state be allowed to enact this sacrifice in his case and impose on him what he would want to do himself?

Is the state to be forbidden to carry out such euthanasia until the whole world is a hospital, while the creatures of nature keep unblemished through what is believed to be the brutality of Nature?

The decision as to whether such an order given by the state is admissible or not depends on the conception of the social life of mankind and is, therefore, a political decision.

Neither the defendant Karl Brandt nor anyone else who participated in legalized euthanasia would ever have killed a human being on his own authority, and in the German sentences passed the blameless former life of the persons stigmatized as mass-murderers is always emphasized.

This is a warning to be cautious. Did they really commit brutalities, or were they sentenced only because they were not in a position to swim against the tide of times and to oppose it with their own judgment?

A Christian believing in dogma will turn away in pity from this way of thinking. But if the order to use euthanasia to the desired limited extent was really in such contradiction to the commandment of God that everyone could realize it, then it is incomprehensible why Hitler, who never withdrew from the church, was not excommunicated.

This must remove the burden of guilt which one now wants to pile up. Then humanity would have clearly realized at the time that in this devilish struggle man cannot prevail for God stands for Justice.

If there are offenders there are many co-offenders, and one understands Pastor Niemoeller saying: "We are all guilty."

This is a moral or a political guilt, but cannot be shifted to a single person as criminal guilt.

I have thus shown the fundamental lines along which the actions of the defendant Karl Brandt have to be judged.

The primary consideration for the judgment of this Tribunal is that no prisoners of war or foreigners were submitted to euthanasia with the knowledge or the desire of the defendant Karl Brandt.

Thus the defendant Karl Brandt cannot be punished under Law No. 10 on this count either. What happened between Germans is not subject to the decision of this Tribunal.

Finally, the defendant Karl Brandt is also charged with having been a member of the SS, an organization which has been declared criminal. Evidence to show that the defendant Karl Brandt knew of a criminal aim of this organization and approved of it must be brought by the prosecution. A reference to the general assertions in these proceedings is not sufficient proof, for precisely here the prosecution cannot prevail with their assertions in regard to Karl Brandt.

As to the details, I refer to the statements made in my closing brief.

The fact that the defendant Karl Brandt was the only member of the SS who at the same time retained his position as a medical officer in the army shows that his honorary rank in the SS was really only a formality, and that he was no true member of this organization.

When the defendant Karl Brandt testified here that he wore the uniform of the SS with pride, this only shows that he, like the majority of the SS men, knew nothing about the criminal aims. In judging the organization of the SS, the International Military Tribunal was aware only of a small part of the whole, looking, so to speak, through a keyhole into a dark corner.

Nor could the defendant Karl Brandt have any personal knowledge of Himmler's secrets, for Himmler rejected him personally, as is shown by a number of affidavits. Since the defendant Karl Brandt could not obtain information even in his own sphere of medicine, how is he to have obtained knowledge of other matters?

I do not want to repeat the affidavits which give information about the basic attitude of the defendant Karl Brandt and show that he adopted an attitude which was incompatible with the mentality supposed to be typical of the SS. In this connection I merely refer to the statements made by Pastor Bodelschwingh,

Dr. Gerstenmaier, Meyer-Bockhoff, Philipp Prince of Hesse, and others.

If I, as the defense counsel, consider Karl Brandt's conduct as a whole and see the wounds he has received in the struggle of life, I must acknowledge that he is a man and not a criminal.

For the Tribunal's decision, however, the only conclusive fact is that the defendant Karl Brandt did not disturb the circle of international law, for he committed no war crimes and consequently no crimes against humanity. I, therefore, ask that defendant Karl Brandt be acquitted.

XI. FINAL STATEMENTS OF THE DEFENDANTS, 19 JULY 1947

A. Final Statement of Defendant Karl Brandt*

There is a word which seems so simple—order; and how colossal are its implications. How immeasurable are the conflicts which hide behind the word obey. Both affected me, obey and order, and both imply responsibility. I am a doctor and on my conscience lies the responsibility of being responsible for men and for life. Quite dispassionately the prosecution has brought the charge of crime and murder and they have raised the question of my guilt. It would have no weight if friends and patients were to shield me and speak well of me, saying I had helped and I had healed. There would be many examples of my actions during danger and my readiness to help. All that is now useless. As far as I am concerned I shall not evade these charges. But the attempt to vindicate myself as a man is my duty towards all who believe in me personally, who trusted in me and who relied upon me as a man as well as a doctor and a superior.

No matter how I was faced with the problem, I have never regarded human experiments as a matter of course, not even when no danger was entailed. But I affirm the necessity for them on grounds of reason. I know that opposition will arise. I know things that disturb the conscience of a medical man, and I know the inner distress that afflicts one when ethics of every form are decided by an order or obedience.

It is immaterial for the experiment whether it is done with or against the will of the person concerned. For the individual the event seems senseless, just as senseless as my actions as a doctor seem when isolated. The sense lies much deeper than that.

* Tr. pp. 11311-11314.

Can I, as an individual, detach myself from the community? Can I remain outside and do without it? Could I, as a part of this community, evade it by saying I want to live in this community, but I don't want to make any sacrifices for it, either of body or soul? I want to keep a clear conscience. Let them see how they can get along. And yet we, that community and I, are somehow identical.

Thus I must suffer these contradictions and bear the consequences, even if they remain incomprehensible. I must bear them as my lot in life, which allocates to me its tasks. The meaning is the motive—devotion to the community. If on its account I am guilty, then on its account I will be answerable.

There was war. In war, efforts are all alike. Its sacrifices affect us all. They were incumbent upon me. But are those sacrifices my crime? Did I tread on the precepts of humanity and despise them? Did I pass over human beings and their lives as if they were nothing? Men will point at me and cry "euthanasia", and falsely, "the useless", "the incapable", "the worthless". But what actually happened? Did not Pastor Bodelschwingh, in the middle of his work at Bethel last year, say that I was an idealist and not a criminal? How could he say that?

Here I am, subject of the most frightful charges, as if I had not only been a doctor, but also a man without heart or conscience. Do you think that it was a pleasure to me to receive the order to permit euthanasia? For 15 years I had toiled at the sickbed and every patient was to me like a brother. I worried about every sick child as if it had been my own. My personal lot was a heavy one. Is that guilt?

Was it not my first thought to limit the scope of euthanasia? Did I not, the moment I was included, try to find a limit and demand a most searching report on the incurables? Were not the appointed professors of the universities there? Who could there be who was better qualified? But I do not want to speak of these questions and of their execution. I am defending myself against the charge of inhuman conduct and base intentions. In the face of these charges I fight for my right to humane treatment! I know how complicated this problem is. With the utmost fervor I have tortured myself again and again, but no philosophy or other wisdom helped me here. There was the decree and on it there was my name. It is no good saying that I could have feigned sickness. I do not live this life of mine in order to evade fate if I meet it. And thus I assented to euthanasia. I fully realize the problem; it is as old as mankind, but it is not a crime against man nor against humanity. It is pity for the incurable, literally. Here I cannot believe like a clergyman or think as a jurist. I am

a doctor and I see the law of nature as being the law of reason. In my heart there is love of mankind, and so it is in my conscience. That is why I am a doctor!

When I talked at the time to Pastor Bodelschwingh, the only serious admonisher I knew personally, it seemed at first as if our thoughts were far apart; but the longer we talked and the more we came into the open, the closer and the greater became our mutual understanding. At that time we were not concerned with words. It was a struggle and a search far beyond the human sphere. When the old Pastor Bodelschwingh left me after many hours and we shook hands, his last words were: "That was the hardest struggle of my life." For him as well as for me that struggle remained; and the problem remained too.

If I were to say today that I wish this problem had never come upon me with its convulsive drama, that would be nothing but superficiality in order to make me feel more comfortable in myself. But I am living in these times and I see that they are full of antitheses. Somewhere we all must make a stand. I am fully conscious that when I said "Yes" to euthanasia I did so with the deepest conviction, just as it is my conviction today, that it was right. Death can mean deliverance. Death is life—just as much as birth. It was never meant to be murder. I bear a burden, but it is not the burden of crime. I bear this burden of mine, though with a heavy heart, as my responsibility. I stand before it, and before my conscience, as a man and as a doctor.

B. Final Statement of Defendant Handloser *

During my first interrogations here in Nuernberg, in August 1946, the interrogator declared to me:

First, you have been the Chief of the Army Medical Service. Whether or not you knew of inadmissible experiments does not matter here. As the Chief, you are responsible for everything.

Secondly, do not make the excuse that among other nations the same or similar things have happened. We are not concerned with that here. The Germans are under indictment, not the others.

Thirdly, do not appeal to your witnesses. They, of course, will testify in your favor. We have our witnesses, and we rely upon them.

Those were the guiding principles of the prosecution up to the last day of these proceedings. They have remained incompre-

* Tr. pp. 11315-11316.

hensible to me, because I always believed a criminal to be a man who did wrong, and because I was of the opinion that even the prosecution endeavored to be objective, at least after the end of the presentation of evidence. The final plea by the prosecution, however, has shown me that I made a mistake. The speech by the prosecution did not take into account the material submitted in evidence, but it was a summarized repetition of one-sided statements by the prosecution without taking into account that which was submitted in the course of the presentation of evidence in my case.

I am quite convinced that the high Tribunal has gained a true impression of my activity and of my attitude. Just as I have tried throughout my entire life to fulfill the tasks allotted to me by fate according to the best of my capacity and in the full knowledge of my responsibility, so have I also tried to stand this most serious task before this Court with the aid of the strongest weapon which I possess—that is the truth.

If there is anything which could console me for the mental suffering of the last months, it is the consciousness of knowing that before this Court, before the German people, and before the people of the world, it has been made clear that the serious general charges of the prosecution against the Medical Corps of the German Armed Forces have been proved to be without any foundation.

It can be seen how unjust these charges were by the fact that no charges have been raised or any proceedings initiated against a single leading doctor of the German Armed Forces in combat or at home. As the last Medical Inspector of the Army, and as Chief of the Medical Service of the Armed Forces of Germany, I think with pride of all the medical officers to whose untiring devotion countless wounded and sick patients of this dreadful war owe their lives and cure and their possibilities of existence. Never and nowhere were the losses of an army medical corps greater than those among the medical officers of the German Armed Forces in carrying out their duties.

More than 150 years ago, the motto and guiding principle created for German military doctors and their successors was "Scientiae, Humanitati, Patriae" (For Science, Humanity, and Fatherland). Like the medical officers in their entirety I also have remained true to that guiding principle in thought and in deed. Realizing the outcome of the events of these recent times, may the joint endeavors of all the nations succeed in avoiding in future the immeasurable misfortune of war, the dreadful side of which nobody knows better than the military doctor.

C. Final Statement of Defendant Rostock*

I have nothing to add to the pertinent statements by my defense counsel, Dr. Pribilla, regarding the individual points of the indictment in this trial; but with regard to the general position of German medical science during this war, there are a few words, which I would like to say from this dock.

During my direct examination I have already stated why I, as the Chief of the so-called "Science and Research" department undertook to work for medical science as late as 1943 and 1944. At that time the problem was to avoid, or at least to minimize, the great and acute danger of teaching and research, and with that Germany's universities, becoming completely destroyed. When this had been prevented at the very last moment, there arose the task and the duty of improving the means and the possibilities of basic research which had been more and more restricted in the course of the war, and through dwindling resources research in Germany would have come to a standstill. Due to the chaotic development of the last year of the war, success was comparatively small. There were, however, some results and there were a few things which were saved after the end of the war.

Today through the evidence produced in this trial, I know the reasons which paralyzed the work at the time. It was the striving for power on the part of certain organizations which used the effective support of certain executive departments of the Third Reich who held unrestricted power. It was the principle of totalitarianism which these organizations followed particularly in the case of what they called the "university science". It was there, however, that we had founded the tradition of German science recognized the world over. In contrast to that, their aim, as shown in some of the testimonies given in this trial and some of the documents submitted, was to found a "politically directed science" of their own. That was the reason why my personal efforts and those of the health and medical services, which I have referred to in this trial, did not achieve complete success. Today, at the end of this trial, that is now clear to me. At that time, in the year 1944, we did not know of this masterly camouflaged and, therefore, so very dangerous opponent to that branch of science with which I myself had grown up.

Throughout my life I have never worked for one form of a state or another, or for any political party in Germany, but simply and solely for my patients and for medical science.

* Tr. pp. 11316-11317.

D. Final Statement of Defendant Schroeder¹

It is very difficult for a defendant to find the right final words here. In methodical, detailed work throughout the last months, the defense has tried to rebut the charges of the prosecution.

When now the prosecution states in its final plea that details do not matter so much, but that the entire complex of questions has to be considered as a whole, that one has to look at matters as at a bundle of sticks, not as individual branches and twigs of the bundle. If, furthermore, the prosecution refers to a sentence pronounced in the Far East by an American Military Court, by which a Japanese general and military commander was sentenced only because, as a commander, he bore the responsibility for all the acts of his troops, regardless of whether he ordered them, knew of them, approved of them, or did not even know of them—if, gentlemen of the Tribunal, these principles are decisive for proceedings, then I have to ask, why bother at all to start proceedings of that kind, to prepare them, and to carry them out? Those decisions could be made much more quickly.

What can I, as a defendant, bring against these arguments? That can be said in a few words: myself, my work, my acts as a doctor and a soldier in 35 years of service. Not the craving for glory and honor was the purport of my life's work, but the firm intention to put my entire capacity, my full knowledge, into the service of my beloved Fatherland; to help the soldier, as a physician, to heal the wounds caused by wartime and peacetime service, both as a physician for the individual, as well as a medical officer for the mass of troops which were in my care.

That was the aim and object of my work. I do not believe that I have deviated from that path. My eyes always looked towards the final goal: to help and to heal.

E. Final Statement of Defendant Genzken²

During my testimony I stated before the Tribunal that I took no part in the types of experiments of which I am accused. I have nothing to add to what my defense counsel Dr. Merkel has said. I have striven to lead a decent life as a doctor and as a soldier. If my fatherly concern for my 2,500 doctors and 30,000 men of the Medical Service of the Waffen SS was mentioned here in this courtroom, it is nevertheless my duty to speak from this place on behalf of those men who, in the majority, were decent and brave doctors and medical attendants. I am proud to have been

¹ Tr. p. 11318.

² Tr. pp. 11318-11319.

their leader, a leader of those who sacrificed their lives and blood with unceasing fervor to help me in building up the organization of the Medical Service of the Waffen SS, and to overcome the tremendous losses among the ranks of our comrades at the front.

The soldiers of the Waffen SS have proved to history—in the focal points of uncounted battles during an uneven struggle—that they could rank among the finest troops on this earth as far as training, efficiency, readiness of sacrifice, soldierly valor, and contempt of death were concerned. Actions of modern warfare have presented to some extent a picture of murder and horror on both sides. Who dares to raise his head before God and gainsay that?

The men of the Waffen SS went as vanquished into captivity, out of unimaginable physical and mental war distress. That captivity was not free of bloodshed, ill-treatment and degradation of various kinds. To the men of the Waffen SS there was added to the weight of such captivity the frightful realization of the fact that their supreme commander, Himmler, had misused their cloak of honor and deceived them, that they had been cheated and then deserted by him. These decent men of the front Waffen SS certainly did not deserve that fate, the fate of being branded as members of a criminal organization.

My request and my wish is that our former opponents should realize the honest idealism of these victims, do justice to it, and give them back belief in justice.

F. Final Statement of Defendant Gebhardt*

I wish to thank the high Tribunal for having granted me an opportunity, in the witness box, to describe my personal position in 1942 in such detail.

The historical situation at that time placed me in a totalitarian state which, in turn, placed itself between the individual and the universe. Virtues in the service of the state were paramount virtues. Beyond that I do not know anywhere where the intellect was not debased as a tool for war. Everywhere, in some way values and solutions were put into the service of the war. And here again, in the intellectual field, the first step is the decisive one. I may be permitted to recall that in the war of nerves, it was propaganda with and for “medical preparations” which caused the first step, the order to examine the question of sulfanilamides.

In my final statement today may I be permitted to describe my

* Tr. pp. 11819-11824.

entire attitude. In doing so, I may perhaps utilize the most important of the four American freedoms, that is to say the freedom of speech, until the very end in such a way that I will refrain from any denunciation or from incriminating others.

Without exaggerating the importance of my own person, a physician can only be measured according to his conception of medical science. Basically, I was neither a cold technical specialist nor a pure scientist. I believe that I have always tried, for example when carrying out surgical experiments, to see every disease as a human condition of suffering. I did not look on my task as something to serve my own advantage, or as a cheap gesture of theoretical pity, but as a personal active support to the trembling existence of the suffering patient. My goal as a physician was not so much purely technical therapy for the individual patient, as therapeutical care for the particularly underprivileged group of the poor, the children, the cripples, the neurotics.

I am anxious that it should be believed that it was not due to moral baseness nor to the selfish arrogance of the scientist that I came into contact with experiments on human beings. On the contrary, during the entire period in question I had experiments in my field of research carried out on animals. It was only because I was the competent responsible surgical expert that I was informed about the imminent experiments on human beings in my field of surgery, which had been ordered by the state authorities. After the order had been given, it was no longer a question of stopping these experiments, but the problem was the method of their execution.

My problems as an expert consisted of the following: For one, the experiments that had been ordered had to be of practical scientific value, for the purpose of testing immunization to protect thousands of injured and sick. On the other hand, I considered humane safety measures for the experimental subjects most important. The main point for me was never the purpose and the object of the experiments, but the manner in which they were carried out. To realize that in a humane way I did not remain aloof and restrict myself to theoretical instruction in the field of surgery, but I myself took part, with my clinic and with all its safety measures.

I hope that this will show that in carrying out experiments I tried with the best of intentions to act primarily in the interest of the experimental subjects. We did not take advantage of the unlimited opportunities given us by Himmler, that is to say, the surgical experiments were not followed by others. I believe that as far as was possible at that chaotic period I fulfilled my duty as an expert, because these experiments did not increase in the

field of surgery in spite of the crescendo of the catastrophic policy. My desire was to help and not to give a bad example.

In seeing my responsibility in this way I, of course, made a decision for myself. I hope that hitherto I have always faced criticism, even from foreign countries, without any secrecy, but also without any feeling of guilt for my activities as an expert.

Through these activities, however, as a military physician, not through my own initiative, I was brought into contact with concentration camps. I can understand how heavily that deadly shadow must lie upon anyone who was ever active there. In the ghostly phenomenon of that sphere, which at that time was unknown to me as well, we can now in retrospect begin to realize the frightfulness of the negative ideology of extermination becoming combined secretly with the negative selection of the guards. Only from the documents of the international trial have we been able to see definitely that of the 35,000 guard troops, only 6,000 were SS men who were unfit for combat. The rest were scum, conscripts, foreigners, etc., who with the greatest injustice and to our bitter shame were given the same Waffen SS uniform as we wore at the front. As head of a well-known clinic, known for its measures of safety, in the interest of the experimental subjects, within the framework of my duty as an expert as I saw it, I got in touch with concentration camp doctors. As far as it was at all possible I tried to exclude that atmosphere from my sphere of work. That my counter-actions went beyond purely clinical safety measures for the experimental subjects may, I think, be seen from the following fact: Of the several thousand foreign inmates of this concentration camp—among whom, as we were told here, there were at least seven hundred Polish women—only 200 were turned over to the Red Cross at the end of the war. Of these two hundred, however, sixty were my experimental subjects, as was proved.

Just as I have tried to clarify my actions as a doctor and to explain my good intentions and possibilities for influence, so my final thought should be devoted to self-criticism, above all as regards on my moral obligation.

In a parody on the words of Heinrich Heine we see today that: "Just to have been an SS man is fate in itself". Although I believe and hope that in that terrible confusion between the decent Waffen SS and the executive organization, I did my duty as a specialist, an officer, and a human being, I still feel bound to make every form of reparation for this confusion. My possibilities for doing that of course are limited.

Without seeking sensation I offered to undergo an experiment on myself as proved, and that without any surgical safety meas-

ures, as soon as the first opportunity arose. My responsibility for the execution of the experiments carried out with good intention, and especially for those who were my subordinates, I have emphasized. I have a further criticism and responsibility, which I spoke of not only now in the dim light of my own defense but already in May 1945 on the day when Himmler released us from our oath and from our orders, and he himself left his post without reserve. It was my endeavor with others to prevent any illegal continuation of an SS conception, and for that purpose to take the burden off the shoulders of our credulous youth by making the SS generals responsible.

Today as a private individual I can only repeat what I am ready to do, at least as far as my former professional standing is concerned.

Where, in spite of my earnest endeavors, reproach and guilt seem to cloud the picture in the sphere for which I was responsible, may the consequences affect me in such a way that I may make the path easier for the younger men who, believing in me, also joined the SS as surgeons. I believe that this pile of rubble, Germany, with its wasted biological material, cannot afford to let these fine young doctors perish in camps and in other inactivity. Also I know every measure which would make the work easier for the old German universities and their respected teachers.

I have summarized my point of view in order to help avoid possible mistakes. From unwholesome social conditions it is a pathological and deceptive escape, then as well as today—here and everywhere, to unite and combine spiritual with economic and political concepts. It is a disastrous error to confuse the organized unanimity of voices with harmony. Destructive criticism only brings intolerant lack of cooperation, which interrupts all cohesion. The private as well as the public conscience cannot be subjugated to any official virtue, nor to any temporal moral principles. It can only find its place within a God-given order.

In the spirit of "earthly constructive pessimism", as I wrote before the war, in this alone consideration for the painful reality of this social catastrophe seems to be found.

My last sentence is to express our personal gratitude to Dr. Seidl who has stood by the side of my colleagues and myself so conscientiously and with such human kindness.

G. Final Statement of Defendant Blome *

I have testified quite openly before this high Tribunal that particularly up to the outbreak of war I was a confirmed National

* Tr. pp. 11325-11328.

Socialist and follower. I have also explained why I became a Party member in 1931, and that because political conditions in Germany at the time were moving with giant strides towards a final conflict between Communism and National Socialism, as a result of the economic chaos and the impotence of the German governments after 1919. I have said that I joined the National Socialist Party because I rejected the dictatorial form of the Communist system. In my book "The Doctor in the Struggle", which was put to me by the prosecution here in cross-examination, I also explained why I went over to National Socialism. This book, however, which was published in 1941, at the time of Germany's greatest victories, clearly shows my repudiation of the Second World War, to which I do not refer with a single word, not even a hint, although my experience in the First World War takes up considerable space in this book.

After the First World War, Germany was in great difficulties. The situation became progressively worse and more unbearable, when at the turn of the thirties the economic crisis spread throughout the world and even seized hold of the United States. At that time I realized that in such hard times a nation which is drifting toward despair seeks a leader and follows him in blind confidence as soon as he can show great successes.

That in the case of Hitler these were only sham successes or temporary successes the German people realized only gradually, only step by step, and only at a time when it was too late to shake off the dictatorship again by their own strength. For years the German people were deceived by the leaders as to the true situation. With deliberately lying propaganda, Hitler's governmental system until the last moment kept proclaiming final victory to the German people, even in the winter of 1944, and even in the spring of 1945, when the Reich cabinet and the Party leaders long knew that a terrible collapse was imminent. This governmental system thus irresponsibly imposed on the exhausted body of the German nation still further useless losses of life and property.

Since the collapse, particularly since the International War Crimes Trial at Nuernberg, we see clearly that this frivolous method of betrayal of their own people was a fitting part of the systematical murder of foreign peoples and races by the millions.

I believe that there is no other example in history of the boundless confidence of a people in their leader being so boundlessly misused and disappointed.

The German people were blinded in their faith in their Fuehrer, in a leader who constantly pretended to them and the world a love of peace, a humane character, a selfless care for the people. Thus the German people became the victim of a political gambler. His

unrestrained supreme power apparently knew only the choice between ruling and destroying. Hitler's ambition, as I know and judge it today, had only one aim: *At any price* to go down in history as a great man. Hitler achieved this goal 100 percent. He went down in history as one of the greatest tyrants of all time, tremendous in his mania for ruling, tremendous in his brutality in the achievement of his ends, not hesitating even at the murder of his best friends, his oldest followers, if they were in his way.

Relying upon the blind confidence of his deceived people, Hitler created a system in which all individualism, all sentiment of freedom, all personal opinion of the citizens was nipped in the bud and turned into slavery.

He succeeded in this with the aid of a very small circle of closest associates, who had fallen under his hypnotic influence, in part perhaps themselves deceived by this man, but who became willing tools in his hand for the enslavement of the German people and the decimation of whole nations.

Under the fatal influence of a clever, deliberately lying propaganda, against which even other countries were as good as powerless, the German people and the German doctor, too, believed that they were following an honorable leader and serving a good cause; they all considered it the highest moral duty not to desert the Fatherland in times of emergency and particularly in wartime, but to do their duty to the very extreme, especially since in this war the life or death of the nation was at issue.

During the times of total warfare, the times of air raids, hunger, and the danger of epidemics, working conditions for the German doctor were terribly hard; so difficult that today one can hardly imagine what German doctors accomplished in those days for friend and foe alike. Whether we twenty doctors here in this dock are accused justly or unjustly, it is a great injustice in any case to defame German doctors in general in public, as is constantly being done. As former Deputy Reich Physicians' Leader I know conditions in the German medical profession during the Hitler period, and I must say even today that in its *totality* the German medical profession was efficient, decent, industrious, and humane. Their willingness to work under the most difficult conditions that one can imagine, their unselfishness to the utmost, their courage and their helpfulness were exemplary. Beyond all praise were in particular the numerous old doctors who were already living in retirement and who, in spite of their great age, returned to the service of the sick, and those innumerable women doctors who, married, and often the mothers of many children, deserted their household duties for the difficult work of medical practice during wartime.

The whole German people knew this, in whose midst and under whose eyes the German medical professions spent the years of distress and fright, and who, therefore, will continue to place unlimited confidence in German doctors.

Of myself I can say that I have always, particularly during the Hitler period, devoted all my efforts to keeping the medical profession at a high scientific and ethical level and to developing it. And I found in this effort the full support of all German doctors, including the most famous scientists and chief physicians of medical institutions. Well-known scholars throughout the world supported this work, which was *above* [unintelligible] parties and enjoyed an international reputation.

But in the course of this trial it has become clearer to me day by day just how criminal the Hitler system was, to which I sacrificed in good faith many years of my life, and I am so deeply moved inside me that I must confess to myself: For years I held a responsible position in a system which today I must curse just as much as I curse all those who forced upon the German people such a tyranny of crime and debasement of man.

It was my mistake that I stayed in the post where fate had placed me and in which I had hoped to be able to do good for our people and my profession. It would often have been simpler to give up this post when I began to realize, step by step, the depravity of the Third Reich. If I did not do so, but stayed at my post until the bitter end, I did this because I considered it my duty, especially in the hard times of total war, and because again and again I succeeded either in protecting the medical profession from harm or in preventing crimes against humanity. Even today I would have to consider it cowardice if I had left my post in 1941 or 1942 only to bring myself to safety or to evade threatened responsibility.

I feel myself free of the guilt of ever having committed or furthered crimes against humanity.

H. Final Statement of Defendant Mrugowsky*

My attorney and I made every effort during my examination on the witness stand and by means of the considerable evidence which we submitted to refute the charges which have been raised against me, just as much as we tried to assist in ascertaining the truth.

The outcome of the trial and the evidence against me is in the hands of the Tribunal and the closing brief, and in the reply to

* Tr. pp. 11328-11329.

comprehensive documentation of the prosecution. I am firmly confident on the basis of this trial that this high Tribunal will examine the evidence objectively and carefully. Thus in my final speech I merely would like to draw your attention to the fact that my life in its entirety was solely devoted to my profession and my science. It was my aim, not by any means to represent some political ideology, but to go to the university and to reach the position of a free and independent doctor and scientist.

The prosecution has charged us, the defendants, with destructive tendencies which were supposed to have been the causes of our actions. I know that I am free of such tendencies. They never occurred to my collaborators and myself at any time. In the Waffen SS too, the troops of which were among the bravest divisions of the German Armed Forces, such tendencies never played a part.

As far as my own concepts of the ethical duties of the doctor are concerned, they are contained in my book regarding medical ethics, and I believe always to have acted according to the principles of that book and lived according to them. My life, my actions, and my aims were clean. That is why now that at the end of this trial I can declare myself free of personal guilt.

I. Final Statement of Rudolf Brandt*

Now, after this trial has reached its final stage, my conscience is confronted with the question of whether I consider myself guilty or innocent. My responsibility, in my opinion, is to be tested by a three-fold question:

First, did I participate in the experiments directly and actively?

Second, did I at least have any knowledge of the criminal character of the experiments on human beings?

Third, what, if I had known, could have been my attitude towards Himmler?

What my basic opinion is of crimes against humanity I did not only declare myself on the witness stand but this has also been testified to by a very competent foreign witness, a Swedish medical counsellor, Felix Koersten.

Before this Tribunal and in the full knowledge of what I say I confess that I abhor—and did abhor—any crime against humanity in the years past and during my activity as a so-called personal Referent of Himmler. But I also frankly declare that

* Tr. pp. 11330-11335.

perhaps during the course of these last years my way of thinking was not always in my conscious mind as it is today. But I never participated in a crime against humanity knowingly, intentionally, or with premeditation when passing on the letters, orders, etc., which Himmler issued to third persons, and the result of which was the commission of cruelties on human beings.

I am confident that from the evidence and from the content of the various defense affidavits the Tribunal will be convinced that in truth my real sphere of power did in no way correspond to the face value of my official position. My real sphere of power was extremely small. It did not exceed that of a well-paid stenographer in the office of an influential man in Germany. If the Tribunal were to start from this fact, it would approach reality much closer than the prosecution did in its indictment.

I got into contact with Himmler when I was a young, immature man who came from a family in modest circumstances. Nothing else but my ability as a stenographer, which I had obtained through my industry, was the reason for that, and this was my position until the last days of the German collapse, in spite of promotions in rank. At that time I was only too glad to get that job because it enabled me to support my parents financially.

When I started work with Himmler, I got, without intermediate stages, into an agency, the chief of which was to combine, among other functions, the highest executive powers in his hands a short time afterwards.

I am convinced that I would not sit here under a grave indictment if I had had the opportunity to continue my education, if I had made a start in a subordinate agency, and had risen little by little into a higher position. Unfortunately, I have always been a lone wolf as long as I lived, and I never was fortunate enough to have an older friend who could have corrected my political inexperience and my gullibility.

If, however, through all those years, I represented Himmler's ideology, I did so only because I did not know the criminal part of Himmler's character. Since I lived, so to speak, divorced from the world around me and was only devoted to my more than plentiful work, I only learned after the collapse what stupendous crimes are to be booked on Himmler's account.

The evidence has shown that I neither knew a concentration camp nor had anything to do with concentration camps in my official capacity; nor had any influence on the system of the concentration camps, their administration and management, nor on the treatment of prisoners. For this reason I didn't know the measure of the tragedies which were enacted there.

Those matters, into which I had sufficient insight during my

restless daily activities to permit me to distinguish between good and evil, were on a plane where they need not shun the light of sun.

I do not deny that some of the documents submitted here by the prosecution went through my hands, but I do deny—and I pray the Tribunal may believe me—that I knew the contents of the documents particularly the reports and therefore the essential core of the human experiments.

I know that appearances are against me. Only these external appearances led the prosecution to indict me in this trial and to pass their comment on me during their closing speech, without penetrating to the bottom of matters. This way they arrived at a completely wrong appraisal which does not correspond to the facts and overrates my position and my activities.

These appearances which speak against me will be dispelled as soon as my real position will be considered in which I found myself as [administrative officer] so-called personal Referent of Himmler for many years. On the witness stand I testified to the truth, which has been confirmed by witnesses who knew the real facts from their own experience.

It does not run counter to experience that among thousands of incoming and outgoing items of mail—that is, hundreds of thousands during the course of the years—there should be an insignificantly small number of documents which a personal Referent on the orders of his chief, passes on to third persons without knowing their contents more closely, the more so if they concern matters which have nothing to do with the normal duties of the personal Referent.

I believe that an American tribunal will know how to appraise the foregoing, though I am rather afraid that the situation as it existed in Germany during the years before the collapse and prevailed in high government agencies will never really be brought home to American judges.

Therefore, I refuse to discuss again my position at that time and the ignorance of criminal experiments on human beings which was the consequence thereof. In this respect I agree with my defense counsel. Neither need I fear Professor Ivy's statement who declared that even a layman must have been outraged by reading the reports of Rascher, because the fact that the layman should have read the passages of the reports wherefrom the obvious violation of human dignity is evident was, as a matter of fact, the natural prerequisite for Professor Ivy's opinion, and that prerequisite did not exist in my case.

In accordance with the truth I repeat what I have said in the witness stand, that I had a general knowledge of experiments on

human beings, I can no longer say when and on what particular opportunity I gained that knowledge. But this fact alone does not deserve death, because I never had the feeling that I had participated in such crimes by my activity in the personal Referat [administrative office].

Such a knowing participation demands that the personal Referent knows the contents and the import of Himmler's letters, orders, etc., and passes them on in spite of this knowledge of the contents and their import. I just said that appearances are against me, but I believe I did prove that I did not possess that knowledge. I pray the Tribunal to follow the line of this evidence and, I think, this is not asking too much since the experience of everyday life speaks in my favor.

The various affidavits which I have submitted and which were the subject of excited argument have found their explanation. In some points I have erred and I have tried to correct my errors. I did not want to speak an untruth knowingly which might be detrimental or unfavorable to a third person. I ask the Tribunal not to forget that I was in a very low general condition when I signed these affidavits. Only a few months previously I weighed only forty-four kilograms; consequently my mental power was reduced to a minimum.

During my activities which stretched over many years I exclusively acted on the express orders of Himmler without ever making a decision on my own initiative. I may take it that this fact has fully been proved.

The question what attitude I should have assumed had I known the details of inhuman experiments I can only answer in a hypothetical way. Had I had an approximate knowledge, as I have it today, I would have struggled against passing on such an order by virtue of my general view on questions of humanity. Since, however, I did not have that knowledge it could not come to any opposition on my part. I ask that consideration be given to the fact that during all those years, I regarded matters which were in my field from my own point of view, and tried to live up to my own ideals. I saw my duty in carrying out my task faithfully and in the conduct of a clean, personal life. I always strove not to cause any damage to any human being, but to understand the situation of any person in need of help, and then to help him as I myself would have wished to be helped or treated had I been in his position. I remind you of the statement of the witness Meiner, on 21 March 1947.

The fact that my signatures are on the documents which have been submitted by the prosecution has moved me deeply because my entire view of humanity and the principles of humanity is

quite opposed to that. What I understand by humanity, also begins to apply to the small details of life also for me.

In spite of my good intentions, and this I say in answer to a question put in the beginning—in spite of my good intentions I was drawn into a guilt, I see it as a guilt into which human beings can be involved by tragic circumstances without any intention on their part. But the recognition of this guilt was sufficient to shake severely my mental and moral balance.

J. Final Statement of Defendant Poppendick*

I joined the SS at a time not to commit crimes, but because a number of my friends whom I knew to be idealists were members of the SS. Their membership caused me to join. That I thereby became a member of a criminal organization was unimaginable for me at that time, just as it is incomprehensible for me today.

My activity in the Main Race and Settlement Office was devoted to the problem of the family, an activity which in view of the destructive tendencies during the period of the First World War seemed important to me. If my expectations as a physician were disappointed in more than one point, at least I considered myself justified to hope that in the end this activity would have positive results. The intentions were always toward a constructive policy for the good of the family. Never did I have anything to do with negative population policies, such as the sterilization program of the state. The assertion of the prosecution that positive and negative population policies belong together as the two sides of one and the same program, is erroneous.

Then there were purely organizational reasons which brought about my direct subordination under the office of that man whose name today has such an inhuman sound—I mean Grawitz. The impression which the prosecution has rendered of my activity and position in Grawitz' office is not in accordance with the facts, in spite of some features which seem to support the assertions made by the prosecution.

As for medical experiments on inmates—experiments on human beings were nothing surprising to me, nor anything new. I knew that experiments were carried out in clinics. I knew that the modern achievements of medical science had not been brought about without sacrifices. However, I do not recall that in experiments in clinics the voluntariness of the person to be experimented on was an absolute requirement, which now seems to be taken as a matter of fact, according to the discussions in this

* Tr. pp. 11335-11338.

trial. I knew furthermore, that some scientific problems can only be solved by experiments in series with conditions remaining constant, and that therefore soldiers and particularly soldiers in camps are used for experiments in all countries. Under these circumstances it did not appear surprising to me that during the war, scientists also carried out experiments in series in concentration camps. I did not have the least cause to assume that these scientists in the camps would go beyond the scope of that which otherwise everywhere in the world of science was customary. What I knew about medical experiments in the SS was, in my opinion, as little connected with criminal matters as those experiments of which I knew from my clinical experience before 1933.

In March of this year a young doctor, Dr. Mitscherlich, in a very one-sided way, published material for an indictment under the already prejudiced title, "The Dictates of Contempt for Human Life". Of the problematic there was little in this book. The basis for a judgment and a conviction were clearly given. During the very last days, however, the chief of Dr. Mitscherlich, a well-known Professor from Heidelberg, Weizsaecker, published a study on the fundamental questions belonging to this subject under the title "Euthanasia and Experiments on Human Beings", which he submitted to the defendants. But here now fortunately we find an entirely different language. The problem itself becomes obvious. If one reads this booklet then the extent of the problem with its complications becomes clear.

The oath of Hippocrates, according to Weizsaecker, has nothing to do with the problem. Weizsaecker applies entirely different ethical norms. Rightly, medicine of today as a whole is studied, not only the German medicine under Hitler. It shows that experts who consider themselves competent even today are only in the middle of their endeavor to clarify the problems at the basis, that being the first requirement for their solution.

Before this trial all of these matters were no problems for me. I did not know of any transgressions. Moreover, I was always convinced that anything which came to my knowledge about experiments on human beings in clinics of the state before 1933, and within the scope of the SS in later years, were conscientious efforts of serious scientists to the good of mankind.

The ethical foundation of these matters also seemed to be there until this trial. Therefore, after sincere examination of my conscience, I cannot find any feelings of guilt and expect with a clear and peaceful conscience the verdict of the Tribunal.

K. Final Statement of Defendant Sievers*

Your Honors, in his opening plea, my defense counsel already stated quite openly and frankly that all events were going to be presented with which I was in any way connected, and in this hour which is so important to me, I can state to the best of my conscience that when I furnished my defense counsel with information, and during my own examination on the witness stand, I always spoke the full truth.

I have, in fact, had the satisfaction to hear my testimony confirmed by a witness for the prosecution. During my examination as a witness on the stand, I said quite truthfully that the experimental subjects to whom I had talked in connection with the last experiment in Natzweiler had confirmed to me that they were voluntary subjects. Witness Nales, witness for the prosecution, confirmed my testimony during his examination on the 30th of June in this courtroom.

With regard to the charge of participation in the malaria experiments, I have stated that I had nothing to do with malaria experiments. Witness Vieweg, called by the prosecution, confirmed this testimony of mine, as also did witness Stoehr.

I testified that the two experimented subjects whom I met in connection with the altitude experiments, in reply to a question by me, confirmed specifically that they had volunteered. Witness Neff of the prosecution confirmed this voluntary status of the witnesses. Likewise Dr. Romberg during his direct examination stated on the strength of his own knowledge that my testimony was correct. The only experimental subject whom I met in connection with the typhus experiments upon my definite question regarding the voluntariness of his testimony, confirmed that this was so. My testimony was also confirmed through the affidavit of a former prisoner, and witness, Grunzenhuber, contained in my second document book.

The prosecution believed that they had to charge me with having placed myself at the disposal of the IMT on the behalf of the SS. This was rather a peculiar statement considering my own defense in this trial. I explained when I was on the stand that without my own initiative, in fact against my own will, the defense counsel for the SS called me in order to use me as a witness. Attorney Pelckmann, then defense counsel of the SS, has confirmed the correctness of my statements in an affidavit. According to that, I immediately informed Pelckmann at the time in writing regarding my former membership in the resistance movement against the National Socialist regime and told

* Tr. pp. 11338-11342.

him I was not a suitable witness. At the same time I presented attorney Pelckmann with a copy of my letter, in which I placed myself at the disposal of the International Military Tribunal as a witness as early as 20 December 1945, as the IMT record shows. I have stated my regrets on this same witness stand, that my preparedness to aid justice and to help in prosecuting past crimes was not accepted and that considerable evidence was thus destroyed.

As early as August last year, I furnished the prosecution with a report about my activities in the resistance movement, indicating again my willingness. This was passed over, however, when I stated that I was not prepared to sign affidavits which were not completely true. I openly and frankly stated at that point that I did not understand this action. I had to do this, and I could do it because I had been looking for truth and right at the risk of my life, undaunted, even during the time of tyranny. Was one now to be a collaborator in methods which I thought had passed with the National Socialist regime; and which, as remains my firm conviction, would never lead to a true pacification of this world such as we all desire? I am mentioning this with regret and only because I have always claimed that I myself, and my statements, in responsible situations, deserve to be believed. The prosecution did not only feel in a position to doubt my credibility, but they even consented to call me a liar during their argument, against their better knowledge and their better conscience. Consequently, I had to draw your attention to the testimony of various witnesses which confirmed, in full, my testimony on the stand in these complicated matters. I can truly be satisfied that it was not up to me, but to the prosecution's own witnesses, to contradict the incorrect statements made against me. History will honor such action, and judge the persistent attempt to stick to preconceived ideas. There is no blessing connected with it. I am only sorry for those who are misguided by false ideas. My firm conviction that this high Tribunal will fully believe my testimony during my defense is based on these facts.

In this connection, with reference to the experiences which I have just described, I am forced to say how on the other hand it calmed and strengthened me, and gave me confidence to see with what wisdom, calm, and patience this high Tribunal stood above matters and disclosed a conduct of trial in which one could feel sheltered; all my friends, who fought in the secret resistance movement with me and repeatedly attended this trial in the audience, share these sentiments with me.

I have explained to you, your Honors, for what reasons I was in immediate, direct contact with the NSDAP and the SS. I have

told you how I always tried to prevent the Ahnenerbe from becoming involved in medical research. This attempt failed, due to the ambitious attitude of Himmler. Only on the strength of my own feelings had I to find an attitude with regard to this new question of experiments on human beings. I did not approve of them, and I attempted to take the consequence, which could only be that I immediately resigned from my post as the Reich manager of the Ahnenerbe. I think the testimony of the witness Hielscher, in this stand, and the affidavits from witness Deutelmöser, witness Dellmann, witness Schmitz, and others prove beyond doubt that I had the true intention of resigning from the Ahnenerbe. And these witnesses have also clearly testified why I didn't do so, not because of personal ambition, not for reasons of comfort, or for what other low reasons might be attributed to me in this point. It was due to the persistent urging on the part of my political friends that I remained, in order to serve further the task which had taken me to the NSDAP and the SS. Inwardly I rejected contact with human experiments even as I refused to be a follower of the NSDAP and of the ideology they represented. Outwardly, I had to live up to the name of a National Socialist if I was to hold on to the political ideal to which I had devoted myself since 1929 and not endanger it. In his affidavit, witness Niebhausen, who was the most important member in the circle of the secret German resistance, and who has acted on behalf of Dr. Kempner too, and who is obviously a personality beyond reproach, says that his illegal activity which continued for five years would have been quite impossible without my assistance. I do not, indeed, know what the prosecution is prepared to recognize as being a resistance against the Nazi regime, if not even such activities as these. It is not necessary to relate again all the details which have been testified to in this courtroom.

That in true recognition of the consequences which might be daily expected for myself and my family I devoted myself to resistance, continued in it undaunted, and never abandoned it, is now the only reason why I find myself in this dock. For that reason, I look forward to the judgment of this Tribunal with confidence, due to my conviction that I have lived for a good cause and acted on it, on behalf of something which—then as today—filled me with true belief.

L. Final Statement of Defendant Rose *

Mr. President, may it please the Tribunal, the scientists who are among the defendants in this trial are confronted with a principal difficulty, the fact that purely scientific questions have been made political, ideological questions by the prosecution. In the opening speech by the Chief of Counsel, General Taylor, the political and ideological nature of the indictment has been expressed as clearly as possible.

A subject of the personal charges against myself is my attitude toward experiments on human beings ordered by the state and carried out by other German scientists in the field of typhus and malaria. Works of that nature have nothing to do with politics or with ideology, but they serve the good of humanity, and the same problems and necessities can be seen independently of any political ideology everywhere, where the same dangers of epidemics have to be combated.

Just as Claus Schilling, in his malaria research, had to make experiments with human beings, before him and after him malaria scientists of various nations had to carry out experiments on human beings. Just as Haagen, on his own initiative, but with the approval of competent authorities of the state, tested the value of a new, living typhus vaccine, before him that was done in the course of fighting plague by your great compatriot, Richard B. Strong, when he experimented on natives of the Philippines, who were not American citizens, with the approval of your government.

Just as Dr. Ding, on the instruction of the highest and decisive authorities of the German civilian health administration, tested the value of the typhus vaccine on humans in times of greatest typhus danger, others have done so before him in less pressing emergencies, sometimes in agreement with, sometimes upon the instruction of their governments.

From the witness stand I testified about the actual role which I played in regard to the charges of human experiments with malaria and typhus. And I have explained from the witness stand the legal evaluation of my actions, and they have been submitted to you by my defense counsel, Dr. Fritz. I need not add anything to it. But, as a matter of principle, I stated my attitude towards the experiments on human beings in medical research, not first of all in this courtroom, but also when the National Socialist German Government was at the height of its limitless power. At that time I was cut short by a man, Professor Schreiber, who

* Tr. pp. 11342-11347.

about a year ago in this very courtroom, claimed to be a defender of medical ethics.

The fact is undoubted that human experiments, which were exactly the same as those, the participation in which I am unjustly charged with, have been carried out in other countries, above all, in the United States which has indicted me. That has led the prosecution to place the center of gravity of its charges upon the outside conditions of the persons put at my disposal for experiments by the German authorities. In that connection the question of whether they were voluntary was put into the foreground. I shall not discuss the question as to what extent the doctor who is charged with the experiments is responsible for these external, formal questions, at least a doctor who was so far removed from the experiments themselves as I was. But in connection with the principal question of subjects being volunteers, I have to make a few statements. A trial of this kind presents probably the most unsuitable atmosphere to discuss questions of medical ethics. But since these questions have been raised here, they have to be answered. Everyone who, as a scientist, has an insight into the history of dangerous medical experiments, knows with certainty the following fact. Aside from the self-experiments of doctors, which represent a very small minority of such experiments, the extent to which subjects are volunteers is often deceptive. At the very best they amount to self-deceit on the part of the physician who conducts the experiment, but very frequently to a deliberate misleading of the public. In the majority of such cases, if we ethically examine facts, we find an exploitation of the ignorance, the frivolity, the economic distress, or other emergency on the part of the experimental subjects. I may only refer to the example which was presented to the Tribunal by Dr. Ivy when he presented the forms for the American malaria experiments.

You yourselves, gentlemen of the Tribunal, are in a position to examine whether, on the basis of the information contained in these forms, individuals of the average education of an inmate of a prison can form a sufficiently clear opinion of the risks of an experiment made with pernicious malaria. These facts will be confirmed by any sincere and decent scientist in a personal conversation, though he would not like to make such a statement in public. That I myself am, on principle, an opponent of the idea of dangerous experiments on human beings is known to you gentlemen of the Tribunal.

The state, however, or any human community which, in the interest of the well-being of the entire community, did not want to forego the experiments on human beings, only bases itself on

ethical principles as long as it openly assumes the full responsibility which arises therefrom, and imposes sacrifices on enemies of society to atone for their crimes and does not choose the method of apparent voluntary submission, which imposes the risk of the experiment on the experimental subjects, who are not in a position to foresee the possible consequences.

The prosecutor in his plea criticized the preponderance of affidavits during the presentation of evidence on the part of the defense. The difficulties which exist for a defendant in prison in the Germany of today to acquire other documents are almost prohibitive. In order to give a few examples: When the malaria experiments of Schilling were discussed, the prosecution, among other material, submitted to the Tribunal an excerpt from the well-known Dachau sentence concerning the statements contained therein about the number of victims in these experiments. I have stated in the witness box that I would rather sit here as a defendant than put my signature on the opinion which would confirm these statements. How right I was in making that statement can be seen from a letter by Professor Allenby of the University of London which, unfortunately, has only now been received by my defense counsel, in which he termed the statement that 300 experimental subjects had died, a grotesque untruth. My defense counsel in his final plea has quoted the passage of that letter.

The prosecution at that time when the excerpt of the Dachau sentence was submitted, promised that the entire files of the Dachau trial would be put at our disposal. Unfortunately, all my efforts to gain an insight in these files have been in vain.

When State Secretary Dr. Conti during the war was toying with the idea to commission Professor Schilling, who was at that time in Italy, with malaria research in Germany, I, at that time, Chief of the Tropical Medical Department of the Robert Koch Institute, was first of all assigned by the Reich Ministry of the Interior to give an opinion. In this opinion, for reasons which I have explained in the witness box, I rejected Schilling's plan. Had one followed my advice, the experiments by Schilling in Dachau would never have taken place. In the course of these proceedings I made all efforts to come into the possession of that opinion but in this case also I was unsuccessful, although that opinion in two copies is in the hands of the military government, possibly even in this building.

Also, in vain, I attempted to get the file note, so important for my defense, which I dictated to the witness Block about my conferences with State Secretary Conti and President Gildemeister, after I had gained knowledge about the conduct of the typhus experiments in Buchenwald. What little correspondence I had

with Professor Haagen is apparently entirely in the hands of the prosecution. In spite of that, it has been submitted only in part to you. That fact offered an opportunity to the prosecution to interpret passages taken out of the context incorrectly. Unfortunately, I have no opportunity to force anyone to submit the missing documents which would clarify matters in my favor.

To evaluate the work of Haagen, and my defense counsel has pointed that out already, the statement of an unbiased expert would have been of decisive importance. Therefore, I can only regret that the interrogation of the Frenchman Georges Blanc for whom I applied and who has the best knowledge in this field, did not take place, although he had volunteered to appear before this Tribunal as an expert.

Professor Lecrout, Director of the Institute Pasteur in Paris, was frequently in Nuernberg during this trial. After an interview, the prosecution refrained from calling him as an expert witness to clarify some difficult questions resulting from the work of Haagen. I ask the high Tribunal to draw its conclusions from these facts and to assure that the lack of these pieces of evidence should not result in a damage to my interests.

Prosecutor McHaney has explained in his plea that one still had to find that doctor among the defendants who would have subjected himself to such experiments as are covered by the indictment here. I do not feel that that concerns me. Not only from the statement which I have made here before you but also from my case history, which was available to the authorities of the prison long before indictment, it can be seen that not only did I repeatedly offer myself as an experimental subject to test vaccines but that frequently in my official capacity and in my research work I gave myself injections with cholera, typhus, malaria and hepatitis epidemica and that I am still suffering from the consequences.

Finally, Prosecutor McHaney has asserted in his plea that all of those indicted here are guilty of murder, and that includes me too. If the Tribunal were to look at the present problem from this point of view, I would regret having said a single word in my defense. However, if you believe me, that in all actions of mine which have been discussed here, I was only moved by sincere devotion to duty, then I put my fate with confidence into your hands.

M. Final Statement of Defendant Ruff*

May it please the Tribunal: As far as the written and oral statements of my defense counsel are concerned which deal with

* Tr. pp. 11347-11348.

the points of the indictment, and as far as my activities as a doctor and scientist are concerned, I have nothing or hardly anything to add. I can only repeat today what I said at the end of my examination when I was on the stand. After detailed inquiry into my conscience, I still today hold the belief that I never sinned against my duty as a man and as a doctor.

N. Final Statement of Defendant Brack*

Your Honor, I cannot be described as one of the earliest followers of Hitler. In 1929, I joined the NSDAP when more than six million German voters were already backing Hitler. His later successes during the years of peaceful reconstruction consolidated my conviction that he had forever liberated Germany from the misery in which it seemed to have fallen. For all those years I had no reason to have any misgivings with regard to Hitler's personality. Therefore I also believed in the legality of the euthanasia decree as it emanated directly from the head of the state. The state officials and doctors, competent for me at that time, told me that euthanasia had always been an endeavor of mankind and was morally as well as medically justified. Therefore, I never doubted the legal character of the euthanasia decree.

In this connection, however, I was assigned duties, the extent and importance of which I could not foresee. Neither my training nor my qualifications sufficed for this task. Nobody can deny, however, my good faith in its justification. I frankly admitted what I did in the framework of the euthanasia measures and tried to prove that my collaboration was merely of a subordinate nature and exclusively directed by human aspects. I cannot be made responsible for later actions carried out by other offices and without my knowledge. These were the measures which I deeply regretted, in which the prohibition of the inclusion of foreign nationals and Jews was infringed.

Through my activity in the Fuehrer's Chancellery, I early became acquainted with the Gestapo terror. The testimonies of my witnesses prove how I fought against them and the concentration camp system. I did so because I felt that I was obliged to help those who suffered from arbitrariness and oppression. I did not do it because I already recognized in it at that time symptoms of a leadership that always and only knew arbitrariness and oppression.

But this is particularly the reason why I was so shocked about the misuse of some of the euthanasia institutions for the Action 14 f 13; this action affected particularly those persons whose

* Tr. pp. 11848-11851.

detention I considered unjust, and which I therefore opposed. It was only in this courtroom, however, that I learned of this action.

That I did not hate the Jews has been proved by numerous documents. Without hatred of the Jews, however, participation in the extermination of Jews is unthinkable. The measures of suppression to which the Jews were subjected forced me to give them the same assistance within my competence as I accorded to the political persecutees. Thus during the course of the years I helped hundreds of thousands of persons by my activity. Thus only could the sterilization suggestions come into existence. They were nothing but an attempt to prevent the extermination of innumerable Jews.

In spite of all the efforts of my defense counsel, it was impossible to procure the witnesses who could testify to this effect. They preferred to evade their responsibility of serving the truth. I am utterly alone. I must leave it to this high Tribunal to ascertain on the basis of the presented expert scientific opinions that all my proposals were actually so formulated as to show my convictions of their harmlessness, and the impossibility of realizing them.

I must also leave it to the Tribunal to judge whether a man who intended the extermination of the Jews would apply for service with the army, just at the moment when the aim which he is alleged to have pursued was achieved, and the extermination measures had started. Or does it not appear paradoxical to assume that one and the same man should give his approval of the extermination of the Jews, and in fact aid such a program, and, at the same time, save Jews he has never known, such as Georgii, Passow, Meyer, Warburg, and others, from these measures?

I can only emphasize that particularly the sterilization suggestions to Himmler appeared to me to be the last possibility to take any action to save Jewry. Had I been indifferent to the Jewish fate, I would not be accused today. But I also tried in this respect, as was my habit, to give assistance and I am still convinced, that it had at least delaying, if not preventative effect. It is certain that many Jews were in this way saved from destruction. The realization that such proposals should never have been made by me on the strength of my medical knowledge, my capacities, or my position at the time, even to the best of my intention, is something I could not reach until this trial was in progress. My good intention, which was the basis of these proposals, and my good will to help by means of them cannot be denied by anybody, and can in no event be understood as my conscious cooperation in the extermination of the Jews.

O. Final Statement of Defendant Romberg¹

In the course of this trial, I have had full opportunity to speak in my defense. With special gratitude we realize the great opportunity offered to us, of which we took advantage, which was given by the possibility of individually questioning Professor Ivy in this trial. I have seen how the Tribunal itself, by a precise questioning, clarified the facts, and to the statements made by my defense counsel I have nothing to add, because they are the truth.

P. Final Statement of Defendant Becker-Freyseng²

Mr. President, Gentlemen of the Tribunal: I also was given opportunity to submit all the statements and the evidence required to refute the charges of the indictment. For that I have to thank the Tribunal and my defense counsel, Dr. Tipp. But I have nothing to add to it. For all the irrelevant, spiteful talk with which outside circles believed they had to twist around the objectivity of these proceedings like thorn bushes, the verdict of this Tribunal must be and will be the appropriate answer. I look forward to it with the firm conviction that I never failed in my duty to mankind as a physician and scientist, and as a soldier to my Fatherland.

Q. Final Statement of Defendant Weltz³

I have nothing to add to the statement made by my defense counsel. I thank Dr. Wille for his efforts made in my defense.

R. Final Statement of Defendant Schaefer⁴

May it please the Tribunal, since I consider myself entirely innocent, I have nothing more to add. I ask to be acquitted, if possible, even before the verdict.

S. Final Statement of Defendant Hoven⁵

I have nothing to add to Dr. Gawlik's plea of yesterday. I would at this point like to thank my defense counsel for the considerable help he has given me.

¹ Tr. p. 11351.

² Tr. p. 11352.

³ Tr. p. 11352.

⁴ Tr. p. 11352.

⁵ Tr. p. 11352.

T. Final Statement of Defendant Beiglboeck *

May it please the Tribunal, the experiments which I conducted, I did not carry out on my own initiative, neither according to the plans of my own, nor spontaneously. The medical part was played with the knowledge and approval of my clinical teacher, and civilian superior for more than ten years, I was a disciple of Eppinger. During those ten years I had come to know and respect his ways of thought and his superior knowledge. My relations to him were based on deep personal gratitude and awe-inspired devotion. If there was anything which he considered right and important, then for psychological reasons alone, it would have been difficult for me to believe the contrary.

The experiments were to solve the problem of saving human life and that had to be approved. It was a military order which compelled me to carry them out in the atmosphere of a concentration camp. I struggled against it, and was inwardly opposed to it, and tried to avoid the task, but I was not successful. So I had to carry it out.

May it please the Tribunal, in your evaluation of this fact, please do not fail to consider that this did not happen in times of peace, nor in a country which granted its citizens individual freedom of decision in all matters, personal and professional, but during the bitter days of a most horrible war. What I carried out, I did in accordance with a plan previously determined and specified. I did not overstep the limits of my task. I had to require of my experimental subjects to undergo hardships; they suffered from thirst with all of its unpleasant sensations, with its physical and mental characteristics. It was in the nature of the experiments, and this could not be avoided. I did not, however, do this without first informing myself by an experiment on my own system of what I expected them to undergo, nor did I expect it of anyone else, unless I was firmly convinced that he undertook it voluntarily. It is not true to say that I might have forced anybody to do it, neither psychologically, by reprisals, nor by threat, nor by force of arms. Many eyewitnesses have agreed that my conduct was never brutal or inhuman towards any of the experimental subjects under my care. Among these witnesses are even some who were brought here to testify against me.

At last, in the final stage of this trial, one experimental subject could be found who thought it appropriate to introduce a dramatic note in an atmosphere artificially created. You will decide how much credibility you will attribute to this witness. Based on a layman's misinterpretation of nondangerous, indeed harmless

* Tr. pp. 11352-11355.

medical procedures, combined with the uncertain recollection emotionally presented by more or less distorting and misconstruing my motives, the attempt was made to lend an impression to my experiments and to my own personality.

In contradiction to that, a few others who came from the concentration camp and who loved the truth have painted another picture which reveals that my behavior in the medical sense, as well as from the human point of view, was correct, to say the least. By my experiments, no human life was sacrificed, nor did they result in any lasting damage to their health. I also believe, I have proved that I intervened for the inmates, as far as that was within my power and that I did not consider my experimental subjects as individuals of an inferior type whom I could well afford to illtreat, for ideological reasons, as has been charged.

For over 15 years as a physician, I always felt the strongest responsibility for those entrusted to my care. Thousands who were my patients will confirm it. My assistants and colleagues have testified to it. I was never directed by any sentiment other than that of a human being and of a physician. The experiments as they were actually conducted never went beyond what can be justified by the physician. I consider myself free of guilt as a physician and as a human being.

U. Final Statement of Defendant Pokorny*

Your Honors, during this trial I have often asked myself what I should have done at the time in order to record my true motive for the letter I had written to Himmler. But I believe that at the time when I dispatched this letter, I could not do anything else but to talk to the people in whom I had confidence and who I knew would not betray me, and confide in them my true reasons.

If today, this letter, which is against me, may seem objective, then this is a fact with which I must bear, although to the end I must say in correspondence with the truth that selfish reasons were not the cause of my writing this letter, but that letter was written because at the time I had heard facts about Himmler's plans, and, because at that time in my position, standing lonely and slandered because of my family implications in a small town in Czechoslovakia, I felt that I was able to take the action described.

I retain the hope that you, my judges, will draw your conclusions from my conduct and the situation in which I found myself at the time, and will come to the conviction that the true motive

* Tr. pp. 11355-11356.

was a different one than that which is objectively shown by this letter, and that you will not sentence me but will believe me in what I have not only told you, my judges, but others previously during my interrogations and what I have told my friends, at a time when this present situation had not arisen, in order to clarify my motives as being true.

With this hope I am looking forward to your judgment, and in that connection I am thinking of my children who, for years now, have lived under the protection of an allied power, and who will not believe that their father, after everything that he has suffered, could possibly have acted as an enemy to human rights.

V. Final Statement of Defendant Oberheuser¹

I have nothing to add to the statements I have made from the witness box under oath. In administering therapeutical care, following established medical principles, as a woman in a difficult position, I did the best I could. Moreover, I fully agree with the statements made by my defense counsel and will refrain, at this late stage of the trial, from making any further statements.

W. Final Statement of Defendant Fischer²

Your Honors, when this war began I was a young doctor, 27 years of age. My attitude towards my people and my Fatherland took me to the front line as an army doctor. I there joined an armored division, where I remained until I was incapacitated due to the loss of an arm. For only a very brief period, during these years of war, I worked as a medical officer in a military hospital back home. There too, my conception of my duties was directed by the wish to serve my country. During this time of my work at home, I received the order, the execution of which made me a subject of the indictment of this trial.

The order for my participation in the experiments originated from my highest medical and military superior and was passed on to me, as the assistant and first lieutenant, through Professor Gebhardt. Professor Gebhardt was the famous surgeon and much honored creator of Hohenlychen. He was a scientific authority whom I looked up to with reverence and confidence. As a general of the Waffen SS he was my unconditional military superior. I believed him, that I had been earmarked by him to assist in the solution of an urgent medical problem which was to bring help and salvation to hundreds of thousands of wounded soldiers, and which was to be a cure for them; and I believed that this problem

¹ Tr. p. 11356.

² Tr. pp. 11356-11358.

would mean a question of life and death to my people who were fighting for their existence. I believed unconditionally that this order had come to me from the head of the state, and that its execution was a necessity for the state. I considered myself first as bound by this order, as were the thousands of soldiers whom I had seen walk to their deaths during my years at the front, following an order by the state. This moving impression from the front bound me doubly, particularly since I had had the privilege during that time of working in a hospital at home. I considered myself, particularly at home, doubly bound like every soldier at the front to obey the order of my Fatherland unconditionally.

What this order demanded from me had been introduced as a method of modern medicine in all civilized countries. I was only concerned in the clinical part of it, and that was taking place just as a course of treatment in the institute of Hohenlychen, or any other clinic. What I did was what was ordered, and I did nothing beyond that order. I believed that I, as a simple citizen, did not have the right to criticize the measures of the state, particularly not at a time in which my country was engaged in a struggle for life and death.

I hope that through my unconditional service at the front and through my two wounds, I have shown that I did not only expect others to make sacrifices at this time, but that I was prepared at any time to sacrifice myself with my life and my health. Within the scope of the order given to me I did what I could, in my limited position as an assistant doctor, for the life of the experimental subjects and for an exact and proper clinical development of the experiment. I never could expect and foresee that deaths would occur. When such fatalities did occur, contrary to all expectation, I was as shaken by that event as I was by the death of a patient in our clinic. After that, the experiments were immediately discontinued, and I went back to the front.

Together with Professor Gebhardt, I reported about these experiments to the German public. Like many other Germans, there are many things which, in retrospect, I see more clearly today and in another light than in the past years. In my young life I have tried to be a faithful son of my people, and that brought me into this present miserable position. I only wanted what was good. In my life I have never followed egotistical aims, and I was never motivated by base instincts. For that reason, I feel free of any guilt inside me. I have acted as a soldier, and as a soldier I am ready to bear the consequences. However, that I was born a German, that is something about which I do not want to complain.

XII. JUDGMENT

Military Tribunal I was established on 25 October 1946 under General Orders No. 68 issued by command of the United States Military Government for Germany. It was the first of several military tribunals constituted in the United States Zone of Occupation pursuant to Military Government Ordinance No. 7, for the trial of offenses recognized as crimes by Law No. 10 of the Control Council for Germany.

By the terms of the order which established the Tribunal and designated the undersigned as members thereof, Military Tribunal I was ordered to convene at Nuernberg, Germany, to hear such cases as might be filed by the Chief of Counsel for War Crimes or his duly designated representative.

On 25 October 1946 the Chief of Counsel for War Crimes lodged an indictment against the defendants named in the caption above in the Office of the Secretary General of Military Tribunal at the Palace of Justice, Nuernberg, Germany. A copy of the indictment in the German language was served on each defendant on 5 November 1946. Military Tribunal I arraigned the defendants on 21 November 1946, each defendant entering a plea of "not guilty" to all the charges preferred against him.

The presentation of evidence to sustain the charges contained in the indictment was begun by the prosecution on 9 December 1946. At the conclusion of the prosecution's case in chief the defendants began the presentation of their evidence. All evidence in the case was concluded on 3 July 1947. During the week beginning 14 July 1947 the Tribunal heard arguments by counsel for the prosecution and defense. The personal statements of the defendants were heard on 19 July 1947 on which date the case was finally concluded.

The trial was conducted in two languages—English and German. It consumed 139 trial days, including 6 days allocated for final arguments and the personal statements of the defendants. During the 133 trial days used for the presentation of evidence 32 witnesses gave oral evidence for the prosecution and 53 witnesses, including the 23 defendants, gave oral evidence for the defense. In addition, the prosecution put in evidence as exhibits a total of 570 affidavits, reports, and documents; the defense put in a total number of 901—making a grand total of 1,471 documents received in evidence.

Copies of all exhibits tendered by the prosecution in their case in chief were furnished in the German language to the defendants prior to the time of the reception of the exhibits in evidence.

Each defendant was represented at the arraignment and trial by counsel of his own selection.

Whenever possible, all applications by defense counsel for the procuring of the personal attendance of persons who made affidavits in behalf of the prosecution were granted and the persons brought to Nuernberg for interrogation or cross-examination by defense counsel. Throughout the trial great latitude in presenting evidence was allowed defense counsel, even to the point at times of receiving in evidence certain matters of but scant probative value.

All of these steps were taken by the Tribunal in order to allow each defendant to present his defense completely, in accordance with the spirit and intent of Military Government Ordinance No. 7 which provides that a defendant shall have the right to be represented by counsel, to cross-examine prosecution witnesses, and to offer in the case all evidence deemed to have probative value.

The evidence has now been submitted, final arguments of counsel have been concluded, and the Tribunal has heard personal statements from each of the defendants. All that remains to be accomplished in the case is the rendition of judgment and the imposition of sentence.

THE JURISDICTION OF THE TRIBUNAL

The jurisdiction and powers of this Tribunal are fixed and determined by Law No. 10 of the Control Council for Germany. The pertinent portions of the Law with which we are concerned provide as follows:

ARTICLE II

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

* * * * *

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

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

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

“2. Any person without regard to nationality or the capacity in which he acted is deemed to have committed a crime as defined in * * * this Article, if he (a) was a principal or (b) was an accessory to the commission of any such crime or ordered or abetted the same or (c) took a consenting part therein or (d) was connected with plans or enterprises involving its commission or (e) was a member of any organization or group connected with the commission of any such crime * * *.

* * * * *

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

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

The indictment in the case at bar is filed pursuant to these provisions.

THE CHARGE

The indictment is framed in four counts.

COUNT ONE—*The Common Design or Conspiracy*. The first count of the indictment charges that the defendants, acting pursuant to a common design, unlawfully, wilfully, and knowingly did conspire and agree together to commit war crimes and crimes against humanity, as defined in Control Council Law No. 10.

During the course of the trial the defendants challenged the first count of the indictment, alleging as grounds for their motion the fact that under the basic law the Tribunal did not have juris-

diction to try the crime of conspiracy considered as a separate substantive offense. The motion was set down for argument and duly argued by counsel for the prosecution and the defense. Thereafter, in one of its trial sessions the Tribunal granted the motion. That this judgment may be complete, the ruling made at that time is incorporated in this judgment. The order which was entered on the motion is as follows:

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

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

“This ruling must not be construed as limiting the force or effect of Article 2, paragraph 2 of Control Council Law No. 10, or as denying to either prosecution or defense the right to offer in evidence any facts or circumstances occurring either before or after September 1939, if such facts or circumstances tend to prove or to disprove the commission by any defendant of war crimes or crimes against humanity as defined in Control Council Law No. 10.”

COUNTS TWO AND THREE—*War Crimes and Crimes against Humanity*. The second and third counts of the indictment charge the commission of war crimes and crimes against humanity. The counts are identical in content, except for the fact that in count two the acts which are made the basis for the charges are alleged to have been committed on “civilians and members of the armed forces [of nations] then at war with the German Reich [* * *] in the exercise of belligerent control”, whereas in count three the criminal acts are alleged to have been committed against “German civilians and nationals of other countries.” With this distinction observed, both counts will be treated as one and discussed together.

Counts two and three allege, in substance, that between September 1939 and April 1945 all of the defendants "were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving medical experiments without the subjects' consent * * * in the course of which experiments the defendants committed murders, brutalities, cruelties, tortures, atrocities, and other inhuman acts." It is averred that "such experiments included, but were not limited to" the following:

"(A) *High-Altitude Experiments.* From about March 1942 to about August 1942 experiments were conducted at the Dachau concentration camp, for the benefit of the German Air Force, to investigate the limits of human endurance and existence at extremely high altitudes. The experiments were carried out in a low-pressure chamber in which the atmospheric conditions and pressures prevailing at high altitude (up to 68,000 feet) could be duplicated. The experimental subjects were placed in the low-pressure chamber and thereafter the simulated altitude therein was raised. Many victims died as a result of these experiments and others suffered grave injury, torture, and ill-treatment. The defendants Karl Brandt, Handloser, Schroeder, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Sievers, Ruff, Romberg, Becker-Freyseng, and Wertz are charged with special responsibility for and participation in these crimes.

"(B) *Freezing Experiments.* From about August 1942 to about May 1943 experiments were conducted at the Dachau concentration camp, primarily for the benefit of the German Air Force, to investigate the most effective means of treating persons who had been severely chilled or frozen. In one series of experiments the subjects were forced to remain in a tank of ice water for periods up to 3 hours. Extreme rigor developed in a short time. Numerous victims died in the course of these experiments. After the survivors were severely chilled, re-warming was attempted by various means. In another series of experiments, the subjects were kept naked outdoors for many hours at temperatures below freezing. * * * The defendants Karl Brandt, Handloser, Schroeder, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Sievers, Becker-Freyseng, and Wertz are charged with special responsibility for and participation in these crimes.

"(C) *Malaria Experiments.* From about February 1942 to about April 1945 experiments were conducted at the Dachau concentration camp in order to investigate immunization for and treatment of malaria. Healthy concentration camp inmates were infected by mosquitoes or by injections of extracts of the

mucous glands of mosquitoes. After having contracted malaria the subjects were treated with various drugs to test their relative efficacy. Over 1,000 involuntary subjects were used in these experiments. Many of the victims died and others suffered severe pain and permanent disability. The defendants Karl Brandt, Handloser, Rostock, Gebhardt, Blome, Rudolf Brandt, Mrugowsky, Poppendick, and Sievers are charged with special responsibility for and participation in these crimes.

“(D) *Lost (Mustard) Gas Experiments.* At various times between September 1939 and April 1945 experiments were conducted at Sachsenhausen, Natzweiler, and other concentration camps for the benefit of the German Armed Forces to investigate the most effective treatment of wounds caused by Lost gas. Lost is a poison gas which is commonly known as mustard gas. Wounds deliberately inflicted on the subjects were infected with Lost. Some of the subjects died as a result of these experiments and others suffered intense pain and injury. The defendants Karl Brandt, Handloser, Blome, Rostock, Gebhardt, Rudolf Brandt, and Sievers are charged with special responsibility for and participation in these crimes.

“(E) *Sulfanilamide Experiments.* From about July 1942 to about September 1943 experiments to investigate the effectiveness of sulfanilamide were conducted at the Ravensbrueck concentration camp for the benefit of the German Armed Forces. Wounds deliberately inflicted on the experimental subjects were infected with bacteria such as streptococcus, gas gangrene, and tetanus. Circulation of blood was interrupted by tying off blood vessels at both ends of the wound to create a condition similar to that of a battlefield wound. Infection was aggravated by forcing wood shavings and ground glass into the wounds. The infection was treated with sulfanilamide and other drugs to determine their effectiveness. Some subjects died as a result of these experiments and others suffered serious injury and intense agony. The defendants Karl Brandt, Handloser, Rostock, Schroeder, Genzken, Gebhardt, Blome, Rudolf Brandt, Mrugowsky, Poppendick, Becker-Freyseng, Oberheuser, and Fischer are charged with special responsibility for and participation in these crimes.

“(F) *Bone, Muscle, and Nerve Regeneration and Bone Transplantation Experiments.* From about September 1942 to about December 1943 experiments were conducted at the Ravensbrueck concentration camp, for the benefit of the German Armed Forces, to study bone, muscle, and nerve regeneration, and bone transplantation from one person to another. Sections of bones, muscles, and nerves were removed from the subjects. As a re-

sult of these operations, many victims suffered intense agony, mutilation, and permanent disability. The defendants Karl Brandt, Handloser, Rostock, Gebhardt, Rudolf Brandt, Oberheuser, and Fischer are charged with special responsibility for and participation in these crimes.

“(G) *Sea-Water Experiments*. From about July 1944 to about September 1944 experiments were conducted at the Dachau Concentration camp, for the benefit of the German Air Force and Navy, to study various methods of making sea water drinkable. The subjects were deprived of all food and given only chemically processed sea water. Such experiments caused great pain and suffering and resulted in serious bodily injury to the victims. The defendants Karl Brandt, Handloser, Rostock, Schroeder, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Sievers, Becker-Freyseng, Schaefer, and Beiglboeck are charged with special responsibility for and participation in these crimes.

“(H) *Epidemic Jaundice Experiments*. From about June 1943 to about January 1945 experiments were conducted at the Sachsenhausen and Natzweiler concentration camps, for the benefit of the German Armed Forces, to investigate the causes of, and inoculations against, epidemic jaundice. Experimental subjects were deliberately infected with epidemic jaundice, some of whom died as a result, and others were caused great pain and suffering. The defendants Karl Brandt, Handloser, Rostock, Schroeder, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Sievers, Rose, and Becker-Freyseng are charged with special responsibility for and participation in these crimes.

“(I) *Sterilization Experiments*. From about March 1941 to about January 1945 sterilization experiments were conducted at the Auschwitz and Ravensbrueck concentration camps, and other places. The purpose of these experiments was to develop a method of sterilization which would be suitable for sterilizing millions of people with a minimum of time and effort. These experiments were conducted by means of X-ray, surgery, and various drugs. Thousands of victims were sterilized and thereby suffered great mental and physical anguish. The defendants Karl Brandt, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Brack, Pokorny, and Oberheuser are charged with special responsibility for and participation in these crimes.

“(J) *Spotted Fever (Fleckfieber)* Experiments*. From about December 1941 to about February 1945 experiments were conducted at the Buchenwald and Natzweiler concentration camps, for the benefit of the German Armed Forces, to investigate the effectiveness of spotted fever and other vaccines. At Buchen-

* A more correct translation is typhus, see vol. I, p. 13.

wald, numerous healthy inmates were deliberately infected with spotted fever virus in order to keep the virus alive; over 90 percent of the victims died as a result. Other healthy inmates were used to determine the effectiveness of different spotted fever vaccines and of various chemical substances. In the course of these experiments 75 percent of the selected number of inmates were vaccinated with one of the vaccines or nourished with one of the chemical substances and, after a period of 3 to 4 weeks, were infected with spotted fever germs. The remaining 25 percent were infected without any previous protection in order to compare the effectiveness of the vaccines and the chemical substances. As a result, hundreds of the persons experimented upon died. Experiments with yellow fever, smallpox, typhus, paratyphus A and B, cholera, and diphtheria were also conducted. Similar experiments with like results were conducted at Natzweiler concentration camp. The defendants Karl Brandt, Handloser, Rostock, Schroeder, Genzken, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Sievers, Rose, Becker-Freyseng, and Hoven are charged with special responsibility for and participation in these crimes.

“(K) *Experiments with Poison.* In or about December 1943 and in or about October 1944 experiments were conducted at the Buchenwald concentration camp to investigate the effect of various poisons upon human beings. The poisons were secretly administered to experimental subjects in their food. The victims died as a result of the poison or were killed immediately in order to permit autopsies. In or about September 1944 experimental subjects were shot with poison bullets and suffered torture and death. The defendants Genzken, Gebhardt, Mrugowsky, and Poppendick are charged with special responsibility for and participation in these crimes.

“(L) *Incendiary Bomb Experiments.* From about November 1943 to about January 1944 experiments were conducted at the Buchenwald concentration camp to test the effect of various pharmaceutical preparations on phosphorus burns. These burns were inflicted on experimental subjects with phosphorus matter taken from incendiary bombs, and caused severe pain, suffering, and serious bodily injury. The defendants Genzken, Gebhardt, Mrugowsky, and Poppendick are charged with special responsibility for and participation in these crimes.”

In addition to the medical experiments, the nature and purpose of which have been outlined as alleged, certain of the defendants are charged with criminal activities involving murder, torture, and ill-treatment of non-German nationals as follows:

"7. Between June 1943 and September 1944 the defendants Rudolf Brandt and Sievers * * * were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving the murder of civilians and members of the armed forces of nations then at war with the German Reich and who were in the custody of the German Reich in exercise of belligerent control. One hundred twelve Jews were selected for the purpose of completing a skeleton collection for the Reich University of Strasbourg. Their photographs and anthropological measurements were taken. Then they were killed. Thereafter, comparison tests, anatomical research, studies regarding race, pathological features of the body, form and size of the brain, and other tests were made. The bodies were sent to Strasbourg and defleshed.

"8. Between May 1942 and January 1944 * the defendants Blome and Rudolf Brandt * * * were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving the murder and mistreatment of tens of thousands of Polish nationals who were civilians and members of the armed forces of a nation then at war with the German Reich and who were in the custody of the German Reich in exercise of belligerent control. These people were alleged to be infected with incurable tuberculosis. On the ground of insuring the health and welfare of Germans in Poland, many tubercular Poles were ruthlessly exterminated while others were isolated in death camps with inadequate medical facilities.

"9. Between September 1939 and April 1945 the defendants Karl Brandt, Blome, Brack, and Hoven * * * were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving the execution of the so-called 'euthanasia' program of the German Reich in the course of which the defendants herein murdered hundreds of thousands of human beings, including nationals of German-occupied countries. This program involved the systematic and secret execution of the aged, insane, incurably ill, of deformed children, and other persons, by gas, lethal injections, and divers other means in nursing homes, hospitals, and asylums. Such persons were regarded as 'useless eaters' and a burden to the German war machine. The relatives of these victims were informed that they died from natural causes, such as heart failure. German doctors involved in the 'euthanasia'

* Indictment originally read "January 1943" but was amended by a motion filed with the Secretary General. See Arraignment, vol. I, p. 22.

program were also sent to the eastern occupied countries to assist in the mass extermination of Jews.”

Counts two and three of the indictment conclude with the averment that the crimes and atrocities which have been delineated “constitute violations of international conventions * * *, the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all civilized nations, the internal penal laws of the countries in which such crimes were committed, and of Article II of Control Council Law No. 10.”

COUNT FOUR—*Membership in Criminal Organization*: The fourth count of the indictment alleges that the defendants Karl Brandt, Genzken, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Sievers, Brack, Hoven, and Fischer are guilty of membership in an organization declared to be criminal by the International Military Tribunal, in that each of these named defendants was a member of the SCHUTZSTAFFELN DER NATIONAL SOZIALISTISCHEN DEUTSCHEN ARBEITERPARTEI (commonly known as the SS) after 1 September 1939, in violation of paragraph 1 (d) Article II of Control Council Law No. 10.

Before turning our attention to the evidence in the case we shall state the law announced by the International Military Tribunal with reference to membership in an organization declared criminal by the Tribunal:

“In dealing with the SS the Tribunal includes all persons who had been officially accepted as members of the SS including the members of the Allgemeine SS, members of the Waffen SS, members of the SS Totenkopf Verbaende, and the members of any of the different police forces who were members of the SS. The Tribunal does not include the so-called riding units * * *.

“The Tribunal declares to be criminal within the meaning of the Charter the group composed of those persons who had been officially accepted as members of the SS as enumerated in the preceding paragraph who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes, excluding, however, those who were drafted into membership by the State in such a way as to give them no choice in the matter, and who had committed no such crimes. The basis of this finding is the participation of the organization in war crimes and crimes 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."

THE PROOF AS TO WAR CRIMES AND CRIMES AGAINST HUMANITY

Judged by any standard of proof the record clearly shows the commission of war crimes and crimes against humanity substantially as alleged in counts two and three of the indictment. Beginning with the outbreak of World War II criminal medical experiments on non-German nationals, both prisoners of war and civilians, including Jews and "asocial" persons, were carried out on a large scale in Germany and the occupied countries. These experiments were not the isolated and casual acts of individual doctors and scientists working solely on their own responsibility, but were the product of coordinated policy-making and planning at high governmental, military, and Nazi Party levels, conducted as an integral part of the total war effort. They were ordered, sanctioned, permitted, or approved by persons in positions of authority who under all principles of law were under the duty to know about these things and to take steps to terminate or prevent them.

PERMISSIBLE MEDICAL EXPERIMENTS

The great weight of the evidence before us is to the effect that certain types of medical experiments on human beings, when kept within reasonably well-defined bounds, conform to the ethics of the medical profession generally. The protagonists of the practice of human experimentation justify their views on the basis that such experiments yield results for the good of society that are unprocurable by other methods or means of study. All agree, however, that certain basic principles must be observed in order to satisfy moral, ethical and legal concepts:

1. The voluntary consent of the human subject is absolutely essential.

This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should

be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.

The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.

2. The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature.

3. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment.

4. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.

5. No experiment should be conducted where there is an *a priori* reason to believe that death or disabling injury will occur; except, perhaps, in those experiments where the experimental physicians also serve as subjects.

6. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.

7. Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.

8. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.

9. During the course of the experiment the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.

10. During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has probably cause to believe, in the exercise of the good faith, superior skill and careful judgment required of him that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.

Of the ten principles which have been enumerated our judicial concern, of course, is with those requirements which are purely

legal in nature—or which at least are so clearly related to matters legal that they assist us in determining criminal culpability and punishment. To go beyond that point would lead us into a field that would be beyond our sphere of competence. However, the point need not be labored. We find from the evidence that in the medical experiments which have been proved, these ten principles were much more frequently honored in their breach than in their observance. Many of the concentration camp inmates who were the victims of these atrocities were citizens of countries other than the German Reich. They were non-German nationals, including Jews and “asocial persons”, both prisoners of war and civilians, who had been imprisoned and forced to submit to these tortures and barbarities without so much as a semblance of trial. In every single instance appearing in the record, subjects were used who did not consent to the experiments; indeed, as to some of the experiments, it is not even contended by the defendants that the subjects occupied the status of volunteers. In no case was the experimental subject at liberty of his own free choice to withdraw from any experiment. In many cases experiments were performed by unqualified persons; were conducted at random for no adequate scientific reason, and under revolting physical conditions. All of the experiments were conducted with unnecessary suffering and injury and but very little, if any, precautions were taken to protect or safeguard the human subjects from the possibilities of injury, disability, or death. In every one of the experiments the subjects experienced extreme pain or torture, and in most of them they suffered permanent injury, mutilation, or death, either as a direct result of the experiments or because of lack of adequate follow-up care.

Obviously all of these experiments involving brutalities, tortures, disabling injury, and death were performed in complete disregard of international conventions, the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all civilized nations, and Control Council Law No. 10. Manifestly human experiments under such conditions are contrary to “the principles of the law of nations as they result from the usages established among civilized peoples, from the laws of humanity, and from the dictates of public conscience.”

Whether any of the defendants in the dock are guilty of these atrocities is, of course, another question.

Under the Anglo-Saxon system of jurisprudence every defendant in a criminal case is presumed to be innocent of an offense charged until the prosecution, by competent, credible proof, has shown his guilt to the exclusion of every reasonable doubt. And this presumption abides with a defendant through each stage of

his trial until such degree of proof has been adduced. A "reasonable doubt" as the name implies is one conformable to reason—a doubt which a reasonable man would entertain. Stated differently, it is that state of a case which, after a full and complete comparison and consideration of all the evidence, would leave an unbiased, unprejudiced, reflective person, charged with the responsibility for decision, in the state of mind that he could not say that he felt an abiding conviction amounting to a moral certainty of the truth of the charge.

If any of the defendants are to be found guilty under counts two or three of the indictment it must be because the evidence has shown beyond a reasonable doubt that such defendant, without regard to nationality or the capacity in which he acted, participated as a principal in, accessory to, ordered, abetted, took a consenting part in, or was connected with plans or enterprises involving the commission of at least some of the medical experiments and other atrocities which are the subject matter of these counts. Under no other circumstances may he be convicted.

Before examining the evidence to which we must look in order to determine individual culpability, a brief statement concerning some of the official agencies of the German Government and Nazi Party which will be referred to in this judgment seems desirable.

THE MEDICAL SERVICE IN GERMANY

Adolf Hitler was the head of the Nazi Party, the German Government, and the German Armed Forces. His title as Chief of the Government was "Reich Chancellor". As Supreme Leader of the National Socialist German Workers' Party, commonly called the NSDAP or Nazi Party, his title was "Fuehrer". As head of Germany's armed military might he was "Supreme Commander in Chief of the German Armed Forces [Supreme Commander of the German Armed Forces], or Wehrmacht".

The staff through which Hitler controlled the German Armed Forces was known as the "Supreme Command of the Wehrmacht" (OKW). The chief of this staff was Field Marshal Wilhelm Keitel.

Under the Supreme Command of the Wehrmacht were the Supreme [High] Commands of the Army, Navy, and Air Force. The Supreme [High] Command of the Navy (OKM) was headed by Grand Admiral Karl Doenitz. The Supreme [High] Command of the Army (OKH) was headed by Field Marshal Walter von Brauchitsch until December 1941, and thereafter by Hitler himself. The Supreme [High] Command of the Air Force (OKL) was headed by Reich Marshal Hermann Goering.

Each of the three branches of the Wehrmacht maintained its own medical service.

Army Medical Service. The defendant Handloser was the head of the Army Medical Service from 1 January 1941 to 1 September 1944. While in this position he served in two capacities, namely; as Army Medical Inspector and as Army [Heeres] Physician. These positions required the maintenance of two departments, each separate from the other. At one time or another there were subordinated to Handloser in these official capacities the following officers, among others: Generalarzt Professor Schreiber and Professor Rostock; Oberstabsaerzte Drs. Scholz, Eyer, Bernhard Schmidt and Craemer; Oberstabsaerzte Professor Gutzeit and Professor Wirth; Stabsarzt Professor Kliewe and Professor Kilian, and Stabsarzt Dr. Dohmen. Under his supervision in either or both of his official capacities were the Military Medical Academy, the Typhus and Virus Institute of the OKH at Cracow [Krakow] and Lemberg [Lvov], and the Medical School for Mountain Troops at St. Johann.

Luftwaffe Medical Service. From the beginning of the war until 1 January 1944 Hippke was Chief of the Medical Service of the Luftwaffe. On that date the defendant Schroeder succeeded Hippke and remained in that position until the end of the war.

Subordinated to Schroeder as Chief of the Medical Service of the Luftwaffe were the following defendants: Rose, who was consulting medical officer on hygiene and tropical medicine; Weltz, who was chief of the Institute for Aviation Medicine in Munich; Becker-Freyseng, a consultant for aviation medicine in Schroeder's office; Ruff, the chief of the Institute for Aviation Medicine in the German Experimental Institute for Aviation in Berlin; Romberg, Ruff's chief assistant, who toward the end of the war attained the position of a department head at the Institute; Schaefer, who, in the summer of 1942, was assigned to the staff of the Research Institute for Aviation Medicine in Berlin to do research work on the problem of sea emergency; and Beiglboeck, a Luftwaffe officer who performed medical experiments on concentration camp inmates at Dachau in July 1944 for the purpose of determining the potability of processed sea water.

Under Schroeder's jurisdiction as Chief of the Luftwaffe Medical Service was the Medical Academy of the Luftwaffe at Berlin.

SS Medical Service. One of the most important branches of the Nazi Party was the Schutzstaffel of the NSDAP, commonly known as the SS. Heinrich Himmler was chief of the SS with the title of Reichsfuehrer SS, and on his personal staff, serving in various and sundry official capacities was the defendant Rudolf Brandt.

The SS maintained its own medical service headed by a certain Dr. Grawitz, who held the position of Reich Physician SS and Police.

Medical Service of the Waffen SS. The SS branch of the Nazi Party, in turn, was divided into several components, of which one of the most important was the Waffen, or Armed, SS. The Waffen SS was formed into military units and fought at the front with units of the Wehrmacht. Such medical units of the Waffen SS as were assigned to the field, became subordinated to the Medical Service of the Army, which was supervised by Handloser.

The Chief of the Waffen SS Medical Service was the defendant Genzken. His immediate superior was Reich Physician SS and Police Grawitz.

Six other defendants in the dock were members of the Medical Service of the SS, under Grawitz, namely; Gebhardt, who in 1940 became surgical adviser to the Waffen SS and who in August 1943 created and took over the position of chief clinical officer of the Reich Physician SS and Police; Mrugowsky, who became Chief of the Hygiene Institute of the Waffen SS under Genzken in November 1940, and when the Institute was taken from Genzken's supervision on 1 September 1943 and placed under direct subordination to Grawitz, remained as chief; Poppendick, who in 1941 was appointed Chief Physician of the Main Race and Settlement Office in Berlin and who in 1943 also became chief of the personal staff of the Reich Physician SS and Police; Hoven, who from the beginning of 1941 until July 1942, served as the assistant, and from then to September 1943, as chief physician at the Buchenwald concentration camp; Fischer, an assistant physician to the defendant Gebhardt; and finally the defendant Oberheuser, who in December 1940 became a physician at the Ravensbrueck concentration camp, and thereafter, from June 1943 until the end of the war, served as an assistant physician under the defendant Gebhardt at Hohenlychen.

Civilian Medical Service. Throughout the war the Civilian Medical Services of the Reich were headed by a certain Dr. Leonardo Conti. Conti had two principal capacities (1) he was the State Secretary for Health in the Ministry of the Interior of the Government; in this capacity he was a German civil servant subordinated to the Minister of the Interior—first Wilhelm Frick and later, Heinrich Himmler; (2) he was the Reich Health Leader of the Nazi Party; in this capacity he was subordinated to the Nazi Party Chancellery, the Chief of which was Martin Bormann. In his capacity as Reich Health Leader, Conti had as his deputy the defendant Blome.

Reorganization of Wehrmacht Medical Service. In 1942 a re-

organization of the various medical services of the Wehrmacht was effected. By a Fuehrer decree of 28 July 1942, Handloser became Chief of the Medical Services of the Wehrmacht, while at the same time retaining his position as Chief Physician of the Army and Army Medical Inspector. Under the decree referred to, Handloser was given power and authority to supervise and coordinate "all tasks common to the Medical Services of the Wehrmacht, the Waffen SS and the organizations and units subordinate or attached to the Wehrmacht." He was also commanded "to represent the Wehrmacht before the civilian authorities in all common medical problems arising in the various branches of the Wehrmacht, the Waffen SS and organizations and units subordinate or attached to the Wehrmacht" and "to protect the interests of the Wehrmacht in all medical measures taken by the civilian authorities."

Handloser thus became supreme medical leader in the military field, as was Conti in the civilian health and medical service.

By a subsequent Fuehrer decree of 7 August 1944 Handloser was relieved of his duties as Chief Physician of the Army and Army Medical Inspector, but retained his position as Chief of the Wehrmacht Medical Service.

By the decree of 28 July 1942 pursuant to which Handloser became Chief of the Medical Services of the Wehrmacht, the defendant Karl Brandt became empowered, subordinate only to, and receiving instructions directly from, Hitler "to carry out special tasks and negotiations to readjust the requirements for doctors, hospitals, medical supplies, etc., between the military and the civilian sectors of the Health and Medical Services." The decree also directed that Brandt "is to be kept informed about the fundamental events in the Medical Service of the Wehrmacht and in the Civilian Health Service" and "is authorized to intervene in a responsible manner."

A subsequent decree issued 5 September 1943 extended the powers of the defendant Karl Brandt by providing: "The plenipotentiary for the Medical and Health Services * * * is charged with centrally coordinating and directing the problems and activities of the entire Medical and Health Service according to instructions. In this sense this order applies also to the field of medical science and research, as well as to the organizational institutions concerned with the manufacture and distribution of medical material. The plenipotentiary for the Medical and Health services is authorized to appoint and commission special deputies for this sphere of action."

By a later decree of 25 August 1944 Karl Brandt was made

Reich Commissioner for Sanitation and Health for the duration of the war; the decree providing:

“In this capacity his office ranks as highest Reich Authority” and he is “authorized to issue instructions to the offices and organizations of the State, Party, and Wehrmacht which are concerned with the problems of the medical and health services.”

Thus, by this series of decrees, the defendant Karl Brandt, within this sphere of competence, became the supreme medical authority of the Reich subordinate to no one but Hitler.

Three of the defendants are not physicians.

The first is the defendant Brack who became subordinated to Bouhler at the time the latter was appointed Chief of the Chancellery of the Fuehrer, in 1934, and remained with Bouhler throughout the war.

The second is the defendant Rudolf Brandt who, from the time he joined the staff of Himmler in 1933, served for a twelve-year period in varying capacities. At first Rudolf Brandt was a mere clerk in the staff of the Reichsfuehrer SS but by 1936 had risen to chief of the personal staff of Himmler. In 1938 or 1939 he became Himmler's liaison officer to the Ministry of the Interior and particularly to the Office of the Secretary of the Interior. When Himmler became Minister of the Interior in 1943 Rudolf Brandt became Chief of the Ministerial Office; when Himmler became President of the Ahnenerbe Society, Rudolf Brandt became liaison officer between Himmler and the Reich Secretary of the Ahnenerbe Society, defendant Wolfram Sievers.

The third is the defendant Sievers, who was a member of Himmler's personal staff and Reich Business Manager of the Ahnenerbe Society from 1 July 1935 until the end of the war.

THE AHNENERBE SOCIETY

The Ahnenerbe Society, of which Sievers was Reich Business Manager, was in existence as an independent entity as early as 1933. On 1 July 1935 the Ahnenerbe became duly registered as an organization to conduct or further “research on the locality, mind, deeds and heritage of the Northern race of Indo-Germans and to pass on the results of this research to the people in an interesting manner.” On 1 January 1942 the Society became part of the personal staff of the Reichsfuehrer SS and thereby a section of the SS. Its management was composed of Heinrich Himmler as President, Professor Dr. Wuest, Rector of the University of Munich, as Curator, and the defendant Sievers as Reich Business Manager. Subsequently, during the same year, the Institute of

Military Scientific Research was established as a part of the Ahnenerbe. Its purposes are defined in a letter written by Himmler to Sievers, which directed the following with reference to the Ahnenerbe:

- “1. To establish an Institute for Military Scientific Research.
2. To support in every possible way the research carried out by SS Hauptsturmfuehrer Professor Dr. Hirt and to promote all corresponding research and undertakings.
3. To make available the required apparatus, equipment, accessories and assistants, or to procure them.
4. To make use of the facilities available in Dachau.
5. To contact the Chief of the SS Economic and Administrative Main Office with regards to the costs which can be borne by the Waffen SS.”

In its judgment, the International Military Tribunal made the following findings of fact with reference to the Ahnenerbe:

“Also attached to the SS main offices was a research foundation known as the Experiments Ahnenerbe. The scientists attached to this organization are stated to have been mainly honorary members of the SS. During the war an institute for military scientific research became attached to the Ahnenerbe which conducted extensive experiments involving the use of living human beings. An employee of this institute was a certain Dr. Rascher, who conducted these experiments with the full knowledge of the Ahnenerbe, which were subsidized and under the patronage of the Reichsfuehrer SS who was a trustee of the foundation.”*

We shall now discuss the evidence as it pertains to the cases of the individual defendants.

The evidence conclusively shows that the German word “*Fleckfieber*” which is translated in the indictment as “spotted fever” is more correctly translated by “typhus.” This is admitted, and in this judgment, in accord with the evidence, we use the word typhus instead of “spotted fever.”

KARL BRANDT

The defendant Karl Brandt is charged with special responsibility for, and participation in, Freezing, Malaria, Lost Gas, Sulfanilamide, Bone, Muscle and Nerve Regeneration and Bone

* Trial of the Major War Criminals, vol. I, p. 269, Nuernberg, 1947.

Transplantation, Sea-Water, Epidemic Jaundice, Sterilization, and Typhus Experiments, as alleged under counts two and three of the indictment. He is also charged in counts two and three with criminality in connection with the planning and carrying out of the Euthanasia Program of the German Reich. Under count four of the indictment he is charged with membership in the SS, an organization declared criminal by the judgment of the International Military Tribunal.

Karl Brandt was born 8 January 1904 at Muehlhausen, Alsace, then a portion of Germany, studied medicine, and passed his medical examination in 1928. He joined the National Socialist Party in January 1932, and became a member of the SA in 1933. He became a member of the Allgemeine SS in July 1934 and was appointed Untersturmfuehrer on the day he joined that organization. During the summer of 1934 he became Hitler's "Escort Physician"—as he describes the office.

He was promoted to the grade of Obersturmfuehrer in the Allgemeine SS on 1 January 1935, and in 1938 was classed as deferred in order that in case of war he might be free to serve on the staff of the Reich Chancellery in Hitler's headquarters. During the month of April 1939 Karl Brandt was promoted to the rank of Obersturmbannfuehrer in the Allgemeine SS. In 1940 he was transferred from the Allgemeine SS to the Waffen SS, in which commissions were equivalent to those of the army. On 30 January 1943 he received a grade equivalent to that of major general in the Waffen SS, and on 20 April 1944 was promoted to the grade of lieutenant general in that organization. Having at some previous date been relieved as Hitler's escort physician, he was again appointed as such in the fall of 1944. On 16 April 1945 he was arrested by the Gestapo, and the next day was condemned to death by a court at Berlin. He was released from arrest by order of the provisional government under Doenitz on 2 May 1945. On 23 May 1945 he was placed under arrest by the British authorities.

By decree bearing date 28 July 1942, signed by Hitler, Keitel, and Lammers, Karl Brandt was invested with high authority over the medical services, military and civilian, in Germany. Paragraphs 3 and 4 of this decree, referring to Karl Brandt, read as follows:

"3. I empower Professor Dr. Karl Brandt, subordinate only to me personally and receiving his instructions directly from me, to carry out special tasks and negotiations to readjust the requirements for doctors, hospitals, medical supplies, etc., between the military and the civilian sectors of the Health and Medical Services.

"4. My plenipotentiary for Health and Medical Services is to be kept informed about the fundamental events in the Medical Service of the Wehrmacht and in the Civilian Health Service. He is authorized to intervene in a responsible manner."

By decree bearing date 5 September 1943, signed by Hitler and Lammers, Brandt's authority was strengthened. This decree reads as follows:

"In amplification of my decree concerning the Medical and Health Services of 28 July 1942 (RGL. I, P. 515) I order:

"The plenipotentiary for the Medical and Health Services, General Commissioner Professor Dr. med. Brandt, is charged with centrally coordinating and directing the problems and activities of the entire Medical and Health Services according to instructions. In this sense this order applies also to the field of medical science and research, as well as to the organizational institutions concerned with the manufacture and distribution of medical material.

"The plenipotentiary for the Medical and Health Services is authorized to appoint and commission special deputies for his spheres of action."

By further decree bearing date 25 August 1944, signed by Hitler, Lammers, Bormann, and Keitel, Karl Brandt received further authority. This decree reads:

"I hereby appoint the General Commissioner for Medical and Health matters, Professor Dr. Brandt, Reich Commissioner for Sanitation and Health [Reich Commissioner for Medical and Health Services] as well, for the duration of this war. In this capacity his office ranks as highest Reich authority.

"The Reich Commissioner for Medical and Health Services is authorized to issue instructions to the offices and organizations of the State, Party, and Wehrmacht, which are concerned with the problems of the Medical and Health Services."

Prosecution Exhibit 445, a letter bearing date at Munich, 9 January 1943, signed by Conti and marked "Strictly Confidential" directed to the Leaders of Public Health Gau Offices of the National Socialist German Workers' Party, refers to a decree of the Fuehrer on "Suspending the Pledge to Secrecy in Special Cases." The letter continues:

"For your strictly confidential information I am sending attached Fuehrer decree and the circular letter I am writing on that subject to the heads of the medical chambers."

Another portion of the exhibit consists of a copy of Conti's letter, also bearing date 9 January 1943, to the heads of the medical chambers, and reads as follows:

"Strictly Confidential.

"Subject: Fuehrer decree on suspension of pledge to secrecy in special cases.

"Gentlemen:

"I am sending you enclosed a Fuehrer decree which I received from Professor Dr. Brandt.

"Communications having bearing on the Fuehrer decree should be directed to the following address: Professor Doctor Karl Brandt, Personal Attention, Berlin W8, Reich Chancellery.

"It is left to the discretion of the physician who is handling the case whether he wishes to acquaint the patient with the information himself."

Hitler's decree, bearing date 23 December 1942, reads as follows:

"I not only relieve physicians, medical practitioners and dentists of their pledge to secrecy towards my Commissioner General Professor Dr. med. Karl Brandt, but I place upon them the binding obligation to advise him—for my own information—immediately after a final diagnosis has established a serious disease, or a disease of ill-boding character, with a personality holding a leading position or a position of responsibility in the State, the Party, the Wehrmacht, in industry, and so forth."

Concerning this matter Karl Brandt testified that the decree "in special cases" relieved German physicians from one of the generally accepted principles of medical practice.

From the year 1942 to the end of the war Karl Brandt was a member of the Reich Research Council and was also a member of the Presidential Council of that body.

Karl Brandt, then, finally reached a position authorizing him to issue instructions to all the medical services of the State, Party, and Wehrmacht concerning medical problems (Hitler Decree bearing date 25 August 1944). The above decrees of Hitler disclose his great reliance upon Karl Brandt and the high degree of personal and professional confidence which Hitler reposed in him.

It may be noted that by the service regulation governing the Chief of the Medical Services of the Wehrmacht, issued by Keitel 7 August 1944, the chief of those medical services was required

to pay due regard to the general rules of the Fuehrer's Commissioner General for Medical and Health Departments. The regulation contained the following:

"3. The Chief of the Medical Services of the Wehrmacht will inform the Fuehrer's Commissioner General about basic events in the field of the Medical Services of the Wehrmacht."

By a pre-trial affidavit made by the defendant Handloser and put in evidence by the prosecution, Handloser makes the statement that Karl Brandt was his "immediate superior in medical affairs."

SULFANILAMIDE EXPERIMENTS

Certain sulfanilamide experiments were conducted at Ravensbrueck for a period of about a year prior to August 1943. These experiments were carried on by the defendants Gebhardt, Fischer, and Oberheuser—Gebhardt being in charge of the project. At the Third Meeting of the Consulting Physicians of the Wehrmacht held at the Military Medical Academy in Berlin from 24 to 26 May 1943, Gebhardt and Fischer made a complete report concerning these experiments. Karl Brandt was present and heard the reports. Gebhardt testified that he made a full statement concerning what he had done, stating that experiments had been carried out on human beings. The evidence is convincing that statements were also made that the persons experimented upon were concentration camp inmates. It was stated that 75 persons had been experimented upon, that the subjects had been deliberately infected, and that different drugs had been used in treating the infections to determine their respective efficacy. It was also stated that three of the subjects died. It nowhere appears that Karl Brandt made any objection to such experiments or that he made any investigation whatever concerning the experiments reported upon, or to gain any information as to whether other human subjects would be subjected to experiments in the future. Had he made the slightest investigation he could have ascertained that such experiments were being conducted on non-German nationals, without their consent, and in flagrant disregard of their personal rights; and that such experiments were planned for the future.

In the medical field Karl Brandt held a position of the highest rank directly under Hitler. He was in a position to intervene with authority on all medical matters; indeed, it appears that such was his positive duty. It does not appear that at any time he took any steps to check medical experiments upon human subjects. During

the war he visited several concentration camps. Occupying the position he did, and being a physician of ability and experience, the duty rested upon him to make some adequate investigation concerning the medical experiments which he knew had been, were being, and doubtless would continue to be, conducted in the concentration camps.

EPIDEMIC JAUNDICE EXPERIMENTS

Karl Brandt is charged with criminal responsibility for experiments conducted for the purpose of discovering an effective vaccine to bring about immunity from epidemic jaundice. Grawitz, by letter dated 1 June 1943, wrote Himmler stating that Karl Brandt had requested his assistance in the matter of research on the causes of epidemic jaundice. Grawitz stated that Karl Brandt had interested himself in this research and desired that prisoners be placed at his disposal. The letter further stated that up to that date experiments had been made only on animals, but that it had become necessary to pursue the matter further by inoculating human beings with virus cultures. The letter stated that deaths must be anticipated, and that eight prisoners who had been condemned to death were needed for the experiments at the hospital of the concentration camp at Sachsenhausen. Under date of 16 June 1943 Himmler acknowledged the letter from Grawitz and directed that eight criminals in Auschwitz, Jews of the Polish Resistance Movement condemned to death, should be used for experiments which should be conducted by Dr. Dohmen at Sachsenhausen. Karl Brandt's knowledge of experiments on non-German nationals is clearly shown by the foregoing.

LOST (MUSTARD) GAS EXPERIMENTS

It is clear from the record that experiments with Lost gas were conducted on concentration camp inmates throughout the period covered by the indictment. The evidence is that over 200 concentration camp inmates, Russians, Poles, Czechs, and Germans, were used as experimental subjects. At least 50 of these subjects, most of whom were nonvolunteers, died as a direct or indirect result of the treatment received.

Karl Brandt knew of the fact that such experiments were being conducted. The evidence is to the effect that he knew of Lost gas experiments conducted by Bickenbach at Strasbourg during the fall of 1943, in which Russian prisoners were apparently used as subjects, some of whom died.

A letter written by the defendant Sievers to the defendant Rudolf Brandt, dated 11 April 1944, points to the fact that Karl

Brandt knew of still other such experiments. The letter states, that in accordance with instructions he, Sievers, had contacted Karl Brandt, at Beelitz, and had reported to him concerning the activities of a certain Dr. Hirt, who the evidence shows had been experimenting with Lost gas upon concentration camp inmates at Natzweiler. In the letter, Sievers states, further, that Karl Brandt had told him that he would be in Strasbourg in April and would then discuss details with Dr. Hirt.

Knowledge of the conduct of at least some of the experiments was confirmed by Karl Brandt when he testified in his own behalf. He stated that pursuant to competent authority he had engaged in studies concerning defense measures against poison gas. He admitted receiving a report from Hirt, and that one reading the report could reach the conclusion that human beings had been experimented upon in connection with injuries from Lost gas.

FREEZING, MALARIA, BONE, MUSCLE AND NERVE REGENERATION AND BONE TRANSPLANTATION, SEA-WATER, STERILIZATION, AND TYPUS EXPERIMENTS

The evidence does not show beyond a reasonable doubt that Karl Brandt is criminally responsible on account of the experiments with which he is charged under these specifications.

The defendant Karl Brandt certainly knew that medical experiments were carried out in concentration camps upon human subjects, that the experiments caused suffering, injury, and death. By letter bearing date 26 January 1943 Karl Brandt wrote to Wolff at the Fuehrer's (Hitler's) headquarters asking if it were possible to carry out "nutritional experiments" in concentration camps. The nature of the desired experiments does not appear, nor does the evidence show whether or not such experiments were ever made. The letter, however, indicates Brandt's knowledge of the fact that human subjects could be made available for experimentation.

Defendant Rudolf Brandt, by letter dated 4 September 1944, wrote Baumert, evidently a member of Himmler's staff, stating that Karl Brandt had telephoned and requested that Himmler direct that 10 prisoners from Oranienburg should be made available as of the next day for two days to test a certain drug. The letter stated that the prisoners would not be injured by the test.

It appears from an official note filed by Kliewe of the Army Medical Inspectorate, dated 23 February 1944, referring to a conversation with the defendant Blome on that date, that experiments concerning biological warfare connected with plant parasites, etc., had been made; that up to that date no experiments

had been conducted in the field of human medicine; but that such experiments were necessary and were in contemplation. The memorandum continues:

“Field Marshal Keitel has given permission to build; Reichsfuehrer SS and Generalarzt Professor Brandt have assured him of vast support. By request of Field Marshal Keitel the armed forces are not to have a responsible share in the experiments, since experiments will also be conducted on human beings.”

It is significant that Hitler's Chief of Staff should deem it advisable to direct that the Wehrmacht should have nothing to do with experiments on human subjects.

EUTHANASIA

Defendant Karl Brandt is charged under counts two and three of the indictment with criminal activities in connection with the euthanasia program of the German Reich, in the course of which thousands of human beings, including nationals of German occupied countries, were killed between 1 September 1939 and April 1945.

On his own letterhead Hitler, at Berlin, 1 September 1939, signed a secret order reading as follows:

“Reichsleiter Bouhler and Dr. Brandt, M.D., are charged with the responsibility of enlarging the authority of certain physicians to be designated by name in such a manner that persons who, according to human judgment, are incurable can, upon a most careful diagnosis of their condition of sickness, be accorded a mercy death.”

Bouhler was holding a high office in the NSDAP. He was not a physician.

The foregoing order was not based on any previously existing German law; and the only authority for the execution of euthanasia was the secret order issued by Hitler.

The evidence shows that Bouhler and Karl Brandt, who were jointly charged with the administration of euthanasia, entered upon the duties assigned them in connection with the setting up of processes for carrying out the order. A budget was adopted; the method of determining candidates for euthanasia was established; a patients' transport corporation was organized to convey the selected patients to the gassing chambers. Questionnaires were prepared which were forwarded to the heads of mental institutions, one questionnaire to be accomplished concerning each inmate and then returned to the Ministry of the Interior. At the

Ministry the completed questionnaires were examined by so-called experts, who registered their professional opinions thereon, returned them to the appropriate office for final examination, and orders were issued for those patients who by this process were finally selected for extermination. Thereafter the condemned patients were gathered at collection points, from whence they were transported to euthanasia stations and killed by gassing.

Utmost secrecy was demanded of the executioners throughout the entire procedure. Persons actively concerned in the program were required to subscribe a written oath of secrecy and were warned that violation of that oath would result in most serious personal consequences. The consent of the relatives of the "incurables" was not even obtained; the question of secrecy being deemed so important.

Shortly after the commencement of operations for the disposal of "incurables", the program was extended to Jews, and then to concentration camp inmates. In this latter phase of the program, prisoners deemed by the examining doctors to be unfit or useless for labor were ruthlessly weeded out and sent to the extermination stations in great numbers.

Karl Brandt maintains that he is not implicated in the extermination of Jews or of concentration camp inmates; that his official responsibility for euthanasia ceased at the close of the summer of 1941, at which time euthanasia procedures against "incurables" were terminated by order of Hitler.

It is difficult to believe this assertion, but even if it be true, we cannot understand how this fact would aid the defendant. The evidence is conclusive that almost at the outset of the program non-German nationals were selected for euthanasia and exterminated. Needless to say, these persons did not voluntarily consent to become the subjects of this procedure.

Karl Brandt admits that after he had disposed of the medical decisions required to be made by him with regard to the initial program which he maintains was valid, he did not follow the program further but left the administrative details of execution to Bouhler. If this be true, his failure to follow up a program for which he was charged with special responsibility constituted the gravest breach of duty. A discharge of that duty would have easily revealed what now is so manifestly evident from the record; that whatever may have been the original aim of the program, its purposes were prostituted by men for whom Brandt was responsible, and great numbers of non-German nationals were exterminated under its authority.

We have no doubt but that Karl Brandt—as he himself testified—is a sincere believer in the administration of euthanasia to per-

sons hopelessly ill, whose lives are burdensome to themselves and an expense to the state or to their families. The abstract proposition of whether or not euthanasia is justified in certain cases of the class referred to is no concern of this Tribunal. Whether or not a state may validly enact legislation which imposes euthanasia upon certain classes of its citizens is likewise a question which does not enter into the issues. Assuming that it may do so, 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.

The evidence is conclusive that persons were included in the program who were non-German nationals. The dereliction of the defendant Brandt contributed to their extermination. That is enough to require this Tribunal to find that he is criminally responsible in the program.

We find that Karl Brandt was responsible for, aided and abetted, took a consenting part in, and was connected with plans and enterprises involving medical experiments conducted on non-German nationals against their consent, and in other atrocities, in the course of which murders, brutalities, cruelties, tortures and other inhumane acts were committed. To the extent that these criminal acts did not constitute war crimes they constituted crimes against humanity.

MEMBERSHIP IN CRIMINAL ORGANIZATION

Under count four of the indictment Karl Brandt is charged with being a member of an organization declared criminal by the judgment of the International Military Tribunal, namely, the SS. The evidence shows that Karl Brandt became a member of the SS in July 1934 and remained in this organization at least until April 1945. As a member of the SS he was criminally implicated in the commission of war crimes and crimes against humanity, as charged under counts two and three of the indictment.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Karl Brandt guilty, under counts two, three, and four, of the indictment.

HANDLOSER

Under counts two and three of the indictment the defendant Handloser is charged with special responsibility for, and participation in, High-Altitude, Freezing, Malaria, Lost (Mustard) Gas,

Sulfanilamide, Bone, Muscle and Nerve Regeneration and Bone Transplantation, Sea-Water, Epidemic Jaundice, and Typhus Experiments.

The charge of participation in the high-altitude experiments has been abandoned by the prosecution, and hence will not be considered further.

Handloser was a professional soldier, having been commissioned in the Medical Department of the German Army in 1910. During the First World War he rose to the position of commanding officer of a division medical unit, and on 1 September 1939 he was appointed Chief Medical Officer of the 14th German Army. After service in the field, on 6 November 1940 he was appointed Deputy Army Medical Inspector. He became Army Medical Inspector on 1 January 1941, and the following April was given the additional appointment of Chief Medical Officer of the field forces, holding both positions until 28 July 1942, when he became Chief of the Wehrmacht Medical Service. He retained also his other appointment and performed the duties of both positions. He was retained in his position as Chief of the Wehrmacht Medical Service on 1 September 1944, but relieved of the duties pertaining to the other office which he had theretofore held, he having exercised the functions of both offices until the date last mentioned. His professional career is more particularly described above.

Handloser states that prior to his last appointment in 1944 he was authorized to issue "instructions," but not orders—testifying that after his latest appointment he had authority to issue orders to the chiefs of the medical services of all branches of the Wehrmacht. He also had jurisdiction over scientific medical institutes, etc., as designated by the service regulations promulgated at the time of his last appointment. While the chief medical officers of the army, navy, and Luftwaffe were under their appropriate military superiors, Handloser had authority to coordinate the activities of all the Wehrmacht medical services and to establish their coordinated action. As to the Waffen SS, his authority extended only to such units of that organization as were attached to and made part of the Wehrmacht.

Handloser testified that the utilization of medical material and personnel were, insofar as the Wehrmacht was concerned, within his jurisdiction after the entry of the decree of 28 July 1942, and that upon occasion he called meetings of the chief medical officers of the Wehrmacht and specialists in appropriate fields of medicine, in an effort to avoid duplication of certain research problems in connection with malaria, typhus, paratyphus, and cholera.

As Army Medical Inspector he was also *ex officio* president of

the Scientific Senate, but testified that this body did not meet after 1942. As an army physician he denied any special knowledge concerning scientific problems peculiarly affecting the navy or the Luftwaffe; but on an organization chart prepared by him and received in evidence as Prosecution Exhibit 9 he is shown as subordinated to Karl Brandt and as Chief of the Medical Service of the Wehrmacht occupying the position of superior over the Army Medical Service and the chiefs of the Medical Services of the Navy and Luftwaffe and certain other subordinate agencies pertaining to the Wehrmacht. The chart also indicates his authority over the Chief of the Medical Office [Service] of the Waffen SS and components of the Waffen SS when attached to the Wehrmacht.

It appears that Handloser had much to do in connection with the calling of meetings of the "Consulting Physicians"; that he designated some of the subjects to be discussed at these meetings; and that his subordinate, Schreiber, arranged the details.

At the Second Meeting of Consulting Surgeons held 30 November to 3 December 1942 at the Military Medical Academy, he addressed those present (referring to the meeting as "This Second Work Conference East"), observing that representatives of the three branches of the Wehrmacht, of the Waffen SS and Police, of the Labor Service, and the Organization Todt, were also present. He called attention to the presence of Conti, Head of the Medical Services in the Civilian Sector.

At the Fourth Meeting of Consulting Physicians held at Hohenlychen, 16 to 18 May 1944, Karl Brandt—in addressing the meeting—said that Handloser, a soldier and a physician, was "responsible for the use and the performance of our medical officers".

Schreiber, until 30 May 1943 a close subordinate of Handloser in his capacity of Army Medical Inspector, was a member of the Reich Research Council, paying particular regard to the control of epidemics as his special field. Schreiber frequently reported to Handloser, with whom he had worked for some years.

FREEZING EXPERIMENTS

Professor Dr. Holzloehner, who with Drs. Finke and Rascher performed freezing experiments on concentration camp inmates at Dachau, made reports on at least two occasions to groups of army physicians concerning cold and freezing problems. The first such report was made at a meeting held on 26 to 27 October 1942, which was called to consider problems concerning cold. Schreiber, who held a responsible position under Handloser from 1 April 1942 to 31 May 1943, was present at this meeting, as was Craemer, head of the Mountain Medical School of the army at

St. Johann, which was also under Handloser's jurisdiction. During the meeting and after Holzloehner had made his report, Rascher also made statements before the meeting concerning these experiments, from which it was obvious that statements contained in the reports were based upon observations made by experimenting on human beings. From the two reports it was clear that concentration camp inmates had been experimented upon and that some deaths had resulted.

Holzloehner was invited to lecture again upon this subject at the Second Meeting of the Consulting Physicians of the Wehrmacht, held 30 November to 3 December 1942, at the Military Medical Academy at Berlin. Handloser heard this talk by Holzloehner and testified that the matter of cold and freezing was one of the most important problems to the army.

We think it manifestly clear from the evidence dealing with freezing that Handloser had actual knowledge that such experiments had been conducted upon inmates at Dachau concentration camp, during the course of which suffering and deaths had resulted to the experimental subjects.

SULFANILAMIDE EXPERIMENTS

Handloser is charged with participation in the sulfanilamide experiments conducted by the defendant Gebhardt. These experiments were conducted at Ravensbrueck concentration camp during a period extending from 20 July 1942 to August 1943 upon concentration camp inmates without their consent. While these experiments were still in progress Gebhardt was invited to present a report on his research findings at the Third Meeting of the Consulting Physicians held on 18 and 19 May 1943, at the Military Medical Academy in Berlin. Handloser was present at that meeting; in fact, he had addressed the meeting prior to Gebhardt's giving his report.

As stated elsewhere, Gebhardt made a frank and candid report of what he had been doing at Ravensbrueck; honestly telling the group that his experimental subjects were not volunteers but were concentration camp inmates condemned to death, who had been given the hope of reduction of sentence should they survive the experiments. By means of charts to illustrate his lecture, he made it clear that deaths had occurred among the human subjects. When on the witness stand, the defendant Gebhardt testified that prior to the meeting of consulting physicians he had discussed with either Schreiber or the defendant Rostock the subject matter of the lecture to be given, and that at that time Schreiber had stated that he had received data concerning the experiments through official channels.

At that time Schreiber was a direct subordinate of the defendant Handloser, and we think it may be fairly assumed that Schreiber's knowledge was the knowledge of Handloser. However, be that as it may, the evidence is clear that Handloser heard the lecture by Gebhardt, as well as a subsequent lecture on the same subject matter given by the defendant Fischer. There can be no question, therefore, but that when Handloser came away from the meeting he was fully informed of the fact that medical experiments were being conducted in Ravensbrueck concentration camp with inmates who were nonvolunteers. Moreover, he knew that deaths had occurred among the experimental subjects.

After the meeting of consulting physicians had ended, Gebhardt returned to Ravensbrueck and conducted several more series of sulfanilamide experiments. The subjects used for the later experiments were Polish women who had been condemned to Ravensbrueck without trial, and who did not give their consent to act as experimental subjects. Three of these were killed by the experiments.

TYPHUS EXPERIMENTS

Under counts two and three of the indictment Handloser is charged with special responsibility for, and participation in, typhus experiments conducted in the Buchenwald concentration camp which were supervised by a certain Dr. Ding, and like experiments conducted in the Natzweiler concentration camp by a certain Dr. Haagen. As shown elsewhere in the judgment, these experiments were unlawful and resulted in deaths of non-German nationals.

There can be no question but that in 1941 typhus was a potential menace to the German Army and to many German civilians. The use of an adequate typhus vaccine was therefore a matter of prime importance. The distribution of vaccines to the Wehrmacht was within the control of Handloser. In the exercise of his functions he was also interested in typhus vaccine production.

The Typhus and Virus Institutes of the OKH at Cracow [Krakow] and Lemberg [Lvov] were engaged in the production of the Weigl vaccine from the intestines of lice. This vaccine was thought to be effective, but the production procedure was complicated and expensive; hence, sufficient quantities of this vaccine could not be furnished. Another vaccine—the so-called Cox-Haagen-Gildemeister vaccine, produced from egg-yolk cultures—could be quickly produced in large quantities, but its protective qualities had not been sufficiently demonstrated.

Evidence is before the Tribunal that the general problem was discussed at a meeting held in Berlin, 29 December 1941, at-

tended by Dr. Bieber of the Ministry of Interior; Gildemeister; Dr. Scholz, a subordinate of Handloser; two physicians of the "governing body of the Government General"; and three representatives of the Behring Works. It is stated in the minutes of this conference that—

"The vaccine which is presently being produced by the Behring Works from chicken eggs shall be tested for its effectiveness in an experiment."

For the purpose above referred to, Dr. Demnitz of the Behring Works would contact Dr. Mrugowsky. The minutes of the meeting were prepared by Bieber, under date 4 January 1942.

A copy of the minutes of the meeting last referred to was forwarded to the Army Medical Inspectorate at Berlin. It thus appears that a representative of Handloser's office, Scholz, attended the meeting, and that a copy of the minutes was forwarded to the Army Medical Inspectorate.

There is also evidence that on the same day a conference was held between the defendant Handloser, Conti of the Ministry of Interior, Reiter of the Health Department of the Reich, Gildemeister of the Robert Koch Institute, and the defendant Mrugowsky, at which time it was decided to establish a research station at Buchenwald concentration camp to test the efficacy of the egg-yolk, and other vaccines on concentration camp inmates. As a result of the conference an experimental station was established at Buchenwald under the direction of Dr. Ding, with the defendant Hoven acting as his deputy.

Inasmuch as some of this information comes from Prosecution Exhibit 287, referred to as the "Ding Diary", a discussion of the document is now appropriate.

Dr. Ding (who later changed his name to Schuler) was a very ambitious man who was apparently willing to engage in any professional activity which he thought might further his medical career. He gladly seized upon the opportunity to conduct experiments on concentration camp inmates in connection with the vaccine study.

Every German officer holding a position comparable to that held by Dr. Ding was required to keep a journal or diary showing his official activities. It appears that Ding kept two diaries. Ding's personal diary containing official and personal entries and work reports has disappeared; his official log or journal concerning his work at Buchenwald is the document in evidence. This diary was kept by one Eugen Kogon, an inmate at Buchenwald. He made the actual entries and Ding verified and signed them.

Kogon, an Austrian subject, testified for the prosecution. We

learn from his testimony that he was a former newspaper editor and held other highly responsible positions. He was sent by the German authorities to Buchenwald in 1939 as a political prisoner. In April 1943 he was assigned to Ding as a clerk or assistant. For many months prior to that time, however, he had been on extremely friendly terms with Ding and as a consequence was completely familiar with Ding's operations. Indeed, so close was the attachment that during the first half of the year 1942 Ding had dictated the first portion of the diary which is in evidence, and Kogon had transcribed it. After officially becoming Ding's assistant in 1943 all correspondence of every nature with which Ding was concerned passed through the hands of Kogon.

The diary came into Kogon's possession at the breaking up of the camp, and remained in his possession, as he testified, until he delivered it to the Office of Chief of Counsel for War Crimes at Nuernberg.

It is manifest that the entries in the diary were often not made on the day they bear date; but this does not mean that it has no probative value. Almost every entry in the diary is personally signed by Ding. Time and again the entries in the diary have been corroborated by other credible evidence. The defendants themselves who were familiar with operations at Buchenwald have confirmed the entries in important essential particulars. We consider the diary as constituting evidence of considerable probative value, and shall give to the entries such consideration as under all circumstances they are entitled to receive.

The first entry in the Ding diary, under date of 29 December 1941, reads as follows:

“Conference between Army Sanitation Inspection [Inspector], General Chief Surgeon Professor Dr. Handloser; State Secretary for the Department of Health of the Reich, SS Gruppenfuehrer Dr. Conti; President Professor Reiter of the Health Department of the Reich; President Professor Gildemeister of the Robert Koch Institute (Reich Institution to Combat Contagious Diseases) and SS Standartenfuehrer and Lecturer (Dozent) Dr. Mrugowsky of the Institute of Hygiene, Waffen SS, Berlin.

“It has been established that the need exists, to test the efficiency of, and resistance of the human body to, the typhus serum extracted from egg yolks. Since tests on animals are not of sufficient value, tests on human beings must be carried out.”

This entry preceded by only a few days the actual commencement of the experiments on concentration camp inmates to determine the efficiency of the egg-yolk vaccine.

It seems certain that the foregoing entry in the Ding diary was written or rewritten at some date later than that which it bears, but the entry may be accepted as evidence of probative value to the fact that it was agreed by some persons in authority that experiments with vaccine prepared from egg yolks be made on concentration camp inmates at Buchenwald. The next entry in the diary bears date 2 January 1942, and reads as follows:

“The concentration camp Buchenwald is chosen for testing the typhus serums. SS Hauptsturmfuehrer Ding is charged with these tests.”

Handloser testified that many conferences concerning typhus vaccine took place and that he was interested in the testing of chicken-egg vaccine “on a sufficient number of persons in a certain vicinity, that is, within an area where typhus had already occurred or there was imminent danger existing.” He also testified that during the summer of 1941 he met Mrugowsky, who was recommended to him by Schreiber, Handloser’s subordinate. He also testified that he discussed the matter of the chicken-egg vaccines with Gildemeister and Conti. Handloser testified that he was present at many conferences, both at the front and in rear echelons, where such matters were discussed. Mrugowsky, in a letter dated 5 May 1942, reported to Eyer (who was a subordinate of Handloser) of the Typhus and Vaccine Institute of the High Command at Cracow [Krakow], describing the results of the first series of experiments carried out in Buchenwald. The experiments covered both the Weigl and egg-yolk vaccines. This report called attention to the fact that two experimental subjects had died.

An entry in the Ding diary dated 8 February 1943 states that Dr. Eyer and Dr. Schmidt, a hygienist on the staff of the Medical Inspectorate, visited the Typhus and Virus Institute at Buchenwald. Schmidt, a subordinate of Handloser from 1942 until August 1944, stated that he and Eyer had visited Buchenwald. He testified that his visit was concerned only with yellow fever vaccine tests which were being carried out at that station. This statement by the witness is not convincing. From the Ding diary it appears that infected lice were received by Ding prior to 30 November 1942. If this is correct, these lice could have come only from an institute under control of the army over which Handloser had jurisdiction.

Ding reported on his activities at the meeting of the Consulting Surgeons of the Wehrmacht held in May 1943 in Berlin. Handloser was present at that meeting but may not have heard the report, the report having been made to the hygiene section,

which was presided over by Schreiber, Handloser's subordinate. Defendant Rose, having heard the report, openly objected to the character of the experiments carried out at Buchenwald. Schreiber, then, had full knowledge of the nature of the experiments there carried on. Rose's vigorous objection was doubtless a subject of general interest.

Handloser testified that on at least two occasions he discussed with Mrugowsky matters connected with vaccines against typhoid, typhus and other diseases. He stated that he was unable to fix the dates of these conferences.

The entries in the Ding diary clearly indicate an effective liaison between the Army Medical Inspectorate and the experiments which Ding was conducting at Buchenwald. There is also credible evidence that the Inspectorate was informed of medical research carried on by the Luftwaffe. The experiments at Buchenwald continued after Handloser had gained actual knowledge of the fact that concentration camp inmates had been killed at Dachau as the result of freezing; and that inmates at Ravensbrueck had died as victims of the sulfanilamide experiments conducted by Gebhardt and Fischer. Yet with this knowledge Handloser in his superior medical position made no effort to investigate the situation of the human subjects or to exercise any proper degree of control over those conducting experiments within his field of authority and competence.

Had the slightest inquiry been made the facts would have revealed that in vaccine experiments already conducted at Buchenwald, deaths had occurred—both as a result of artificial infections by the lice which had been imported from the Typhus and Virus Institute of the OKH at Cracow [Krakow] or Lemberg [Lvov], or from infections by a virulent virus given to subjects after they had first been vaccinated with either the Weigl, Cox-Haagen-Gildemeister, or other vaccines, whose efficacy was being tested. Had this step been taken, and had Handloser exercised his authority, later deaths would have been prevented in these particular experiments which were originally set in motion through the offices of the Medical Inspectorate and which were being conducted for the benefit of the German armed forces.

These deaths not only occurred with German nationals, but also among non-German nationals who had not consented to becoming experimental subjects.

OTHER EXPERIMENTS

The defendant Handloser is also charged with special responsibility for, and participation in, Malaria, Lost Gas, Bone, Muscle and Nerve Regeneration and Bone Transplantation, Sea-Water,

and Epidemic Jaundice Experiments. In our view the evidence is insufficient to show any criminal connection of the defendant Handloser with regard to these experiments.

The law of war imposes on a military officer in a position of command an affirmative duty to take such steps as are within his power and appropriate to the circumstances to control those under his command for the prevention of acts which are violations of the law of war. The reason for the rule is plain and understandable. As is pointed out in a decision rendered by the Supreme Court of the United States, entitled *Application of Yamashita*, 66 Supreme Court [Reporter] 340-347, 1946—

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

What has been said in this decision applies peculiarly to the case of Handloser.

In connection with Handloser's responsibility for unlawful experiments upon human beings, the evidence is conclusive that with knowledge of the frequent use of non-German nationals as human experimental subjects, he failed to exercise any proper degree of control over those subordinated to him who were implicated in medical experiments coming within his official sphere of competence. This was a duty which clearly devolved upon him by virtue of his official position. Had he exercised his responsibility, great numbers of non-German nationals would have been saved from murder. To the extent that the crimes committed by or under his authority were not war crimes they were crimes against humanity.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Siegfried Handloser guilty under counts two and three of the indictment.

ROSTOCK

The defendant Rostock is charged under counts two and three of the indictment with special responsibility for, and participation in, Malaria, Lost (Mustard) Gas, Sulfanilamide, Bone, Muscle and Nerve Regeneration and Bone Transplantation, Sea-Water, Epidemic Jaundice, and Spotted Fever Experiments.

Rostock was a physician of recognized ability. From 1933 to 1941 he occupied successively the positions of senior surgeon of the Surgical Clinic in Berlin, Professor of Surgery of the University of Berlin, and Deputy Director of the University Clinic. In 1941 he was appointed Director of the Surgical Clinic, and in 1942 he became Dean of the Medical Faculty of the University of Berlin. Prior to the war he had joined the NSDAP, and in 1939 he was assigned to military duty as a consulting surgeon. In 1942 he was appointed consulting surgeon to the Army Medical Inspectorate and was subordinate to the Military Medical Academy in Berlin. He attained the rank of brigadier general, medical department (reserve). In 1943 he was appointed Chief of the Office for Medical Science and Research, a department under the supervision of defendant Karl Brandt, in which position Rostock remained until the end of the war. From the time he received the last-mentioned appointment, Rostock acted as Brandt's deputy on the Reich Research Council.

As Karl Brandt's deputy Rostock was his agent in the field of medical science and research—Rostock being charged with the duty of coordinating and directing problems and activities concerning the medical health service insofar as science and research were concerned. Rostock was informed concerning medical research conducted by the several branches of the Wehrmacht. As head of the Office for Science and Research, he assigned research problems and designated some as "urgent". It was his duty to avoid duplication of work in scientific research and to decide whether or not a suggested problem was worthy of a research assignment. It is clear that Rostock and Karl Brandt were intimate friends of years standing.

The prosecution does not contend that Rostock personally participated in criminal experiments. It vigorously argues, however, that—with full knowledge that concentration camp inmates were being experimented upon—he continued to function upon research assignments concerning scientific investigations, the result of which would probably further experiments upon human beings. The prosecution then argues that his knowledge concerning these matters, considered together with the position of authority which he occupied in connection with scientific research and the

fact that he failed to exercise his authority in an attempt to stop or check criminal experiments, renders him guilty as charged.

In this connection the prosecution relies upon its Exhibit 457, a document which bears date at Berlin, 14 September 1944. It is headed, "Commissioner for Medical and Health Matters," followed by "The Delegate for Science and Research." Below appears:

"List of medical institutes working on problems of research which were designated as urgent by the discussion on research on 26 August 1944 in Beelitz.

"(Summary according to the 650 orders for research submitted to us.)"

The document then contains a list of research assignments numbered "1" to "45." Numbers 42 and 44 read as follows:

"Strasbourg

"42. Hygiene Institute (Haagen) virus research

* * * * *

"44. Anatomical Institute (Hirt) Chemical warfare agents."

The document bears Rostock's signature. Five of the problems concern hepatitis research, and three, virus research.

It appears from the evidence that Rostock's duties included the avoidance of duplication in the distribution of assignments for medical research. If the head of the medical department of a branch of the Wehrmacht assigned to some particular physician or institute a particular scientific or medical problem, a copy of the assignment would be forwarded to Rostock, who would then coordinate the matter by ascertaining whether or not that assignment was being worked on by some other agency or whether it would lead to worthwhile results. Who classified as "urgent" the 45 of the 650 orders for research does not appear; but it may be assumed that Rostock approved that classification.

Doubtless Rostock knew that experiments on concentration camp inmates were being conducted. He presided over the meeting of surgeons held in May 1943, and there heard statements that experimental subjects had been artificially infected. Doubtless he knew that the experiments were dangerous and that further experiments would probably be conducted. However, it does not appear that either Rostock or any subordinate of his directed the work done on any assignment concerning criminal experiments. Certain of these experiments were classified as

“urgent” at a “discussion on research” as above set forth. Nothing in the designation of any such assignment as appears in Prosecution Exhibit 457 contains on its face anything more than a matter of proper scientific investigation.

The record does not show that the position held by Rostock vested in him any authority whatsoever other than as above stated. No experiments were conducted by any person or organization which was to the least extent under Rostock’s control or direction.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Paul Rostock is not guilty as charged under the indictment, and directs that he be released from custody under the indictment when this Tribunal presently adjourns.

SCHROEDER

The defendant Schroeder is charged under counts two and three of the indictment with special responsibility for, and participation in, High-Altitude, Freezing, Sulfanilamide, Sea-Water, Epidemic Jaundice, Typhus and other vaccines, and Gas Experiments. The prosecution has abandoned the charge that he participated in the sulfanilamide experiments and hence that subject will not be considered further.

The defendant served as a medical officer with the infantry during the First World War. In the period prior to 1931 he was attached as medical officer to a number of military units. On 1 January 1931 he was transferred to the Army Medical Inspectorate as a consultant (Referent) on hospital matters and therapeutics with the rank of Oberstabsarzt (major). In 1935 Schroeder became chief of staff to Generalarzt Hippke in the newly established Medical Department of the Reich Ministry for Aviation. He retained this position after Hippke was made Inspector of the Medical Service of the Luftwaffe in 1937. In February 1940 Schroeder was appointed air fleet physician for Air Fleet II with the rank of Generalstabsarzt (major general). On 1 January 1944 he replaced Hippke as Chief of the Medical Service of the Luftwaffe. Simultaneously he was promoted to Generaloberstabsarzt (lieutenant general), which was the highest rank obtainable in the medical services. As Chief of the Medical Service of the Luftwaffe, all medical officers of the German Air Force were subordinated directly or indirectly to Schroeder. After he became Chief of the Medical Service of the Luftwaffe his immediate superior was Handloser, who was Chief of the Medical Service of the Wehrmacht.

HIGH-ALTITUDE EXPERIMENTS

These experiments were performed at Dachau concentration camp for the benefit of the Luftwaffe during the year 1942. Details of the experiments are discussed in other portions of this judgment.

During the period from 1941 to the end of 1943 the defendant Schroeder, in his position as air fleet physician of Air Fleet II, was in the operational zone of Air Fleet II, which comprised the Mediterranean area. He did not become Chief of the Medical Service of the Luftwaffe until 1 January 1944. There is no evidence that while air fleet physician he exercised or could have exercised any control over experiments then being conducted for the benefit of the Luftwaffe.

EPIDEMIC JAUNDICE EXPERIMENTS

Schreiber, a member of Handloser's staff, who presided over a conference held in Breslau in June 1944 for the purpose of coordinating jaundice research, assigned groups of physicians to work together on jaundice problems. Dohmen, Gutzeit, and Haagen were assigned to one of these groups. On 27 June 1944 Haagen, a Luftwaffe officer, wrote his collaborator Kalk, a consultant to Schroeder, asking, "Could you in your official position take the necessary steps to obtain the required experimental subjects?"

The record shows that Haagen subsequently conducted epidemic jaundice experiments on prisoners at Natzweiler concentration camp. There is no evidence, however, to establish Schroeder's criminal connection with these experiments. At most, all that can be said for this evidence is that Schroeder may have gained knowledge of the experiments through Kalk, a member of his staff—but even that fact has not been made plain.

FREEZING EXPERIMENTS

Freezing experiments were carried out at Dachau concentration camp for the benefit of the Luftwaffe, during the year 1942. Details of these experiments are discussed elsewhere in this judgment.

It is conclusively shown from the evidence dealing with freezing that as early as the year 1943 Schroeder had actual knowledge that such experiments had been conducted upon inmates at Dachau concentration camp, during the course of which suffering and deaths had resulted to the experimental subjects.

TYPHUS EXPERIMENTS

Experiments in connection with typhus were conducted at Schirmeck and Natzweiler concentration camps during the years 1942, 1943, and 1944. The details of these experiments are discussed elsewhere in this judgment.

The experiments were carried out by a Luftwaffe medical officer, Professor Dr. Haagen. As a medical officer of the Luftwaffe he was subject to Schroeder's orders after the latter became Chief of the Medical Service of the Luftwaffe. The office of Schroeder issued and approved the research assignments pursuant to which these experiments were carried out. It provided the funds for the research. One of the chief collaborators in the program was the defendant Rose, consultant to the Chief of the Medical Service of the Luftwaffe.

Correspondence was carried on between Haagen and the Chief of Staff for the defendant Schroeder with reference to whether a typhus epidemic prevailing at Natzweiler was connected in any manner with the vaccine research then being conducted. The office of the Chief of the Medical Service of the Luftwaffe received reports on the experiments from which it could be clearly perceived that typhus vaccine experiments were being performed on concentration camp inmates.

While the experiments were in progress, Schroeder admits having visited Haagen at Strasbourg, but denies that he talked with Haagen about the experiments. The defendant's assertion that the experiments were not discussed does not carry conviction.

As has been pointed out in this judgment, 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.

This rule is applicable to the case of Schroeder. At the time he became Chief of the Medical Service of the Luftwaffe, Schroeder knew of the fact that freezing experiments for the benefit of the Luftwaffe had been carried out at Dachau concentration camp by Luftwaffe medical officers. He knew that through these experiments injury and death had resulted to the experimental subjects. He also knew that during the years 1942 and 1943, typhus vaccine research had been carried out by the Luftwaffe officer, Haagen, for the benefit of the Luftwaffe Medical Service, at Natzweiler and Schirmeck concentration camps—and had he taken the trouble to inquire, he could have known that deaths had occurred as a result of these experiments.

With all this knowledge, or means of knowledge, before him as commanding officer, he blindly approved a continuation of typhus research by Haagen, supported the program, and was furnished reports of its progress, without so much as taking one step to determine the circumstances under which the research had been or was being carried on, to lay down rules for the conduct of present or future research by his subordinates, or to prescribe the conditions under which the concentration camp inmates could be used as experimental subjects.

As was the case with reference to the freezing experiments at Dachau, non-German nationals were used as experimental subjects, none gave their consent, and many suffered injury and death as a result of the experiments.

GAS EXPERIMENTS

Experiments with various types of poison gas were performed by Luftwaffe Officer Haagen and a Professor Dr. Hirt in the Natzweiler concentration camp. They began in November 1942 and were conducted through the summer of 1944. During this period a great many concentration camp inmates of Russian, Polish, and Czech nationality were experimented on with gas, at least 50 of whom died. A certain Oberarzt Wimmer, a staff physician of the Luftwaffe worked with Hirt on the gas experiments throughout the period.

We discussed the duty which rests upon a commanding officer to take appropriate measures to control his subordinates, in dealing with the case of Handloser. We shall not repeat what we said there. Had Schroeder adopted the measures which the law of war imposes upon one in position of command to prevent the actions of his subordinates amounting to violations of the law of war, the deaths of the non-German nationals involved in the gas experiments might well have been prevented.

SEA-WATER EXPERIMENTS

Sea-water experiments were conducted on inmates of Dachau concentration camp during the late spring and summer of 1944. The defendant Schroeder openly admits that these experiments were conducted by his authority. When on the witness stand he related the circumstances under which these experiments were initiated and carried through to completion.

As related by Schroeder the experiment on making sea water drinkable was a problem of great importance. Two methods were available in Germany, each of which to some extent had been previously tried, both on animal and on human subjects. These

were known as the Schaefer and the Berkatit processes. Use of the Schaefer method on sea water produced a satisfactory liquid essentially the same in its effects and potable qualities as ordinary pure drinking water. The Schaefer process, however, called for quantities of silver, which were thought to be unavailable. Use of the Berka process, however, resulted merely in changing the taste of sea water, thus making it more palatable, without at the same time doing away with danger to health and life which always results from consuming considerable quantities of untreated sea water. Materials were available for the Berka process, but Schroeder did not feel that it could be adopted until more was known of the method. At Schroeder's direction, the defendant Becker-Freyseng arranged for a conference to be held at the German Air Ministry in May 1944 to discuss the problem. Present at the conference, among others, were Berka and the defendants Becker-Freyseng and Schaefer.

There is no doubt that the conference was well informed, and discussed all current data upon the subject. Such fact appears from the minutes of the meeting, in which it is stated:

“* * * Captain (med.) Dr. Becker-Freyseng reported on the clinical experiments conducted by Colonel (med.) Dr. von Sirany, and came to the final conclusion that he did not consider them as being unobjectionable and conclusive enough for a final decision. The Chief of the Medical Service is convinced that, if the Berka method is used, damage to health has to be expected not later than 6 days after taking Berkatit, which damage will result in permanent injuries to health and—according to the opinion of N.C.O. (med.) Dr. Schaefer—will finally result in death after not later than 12 days. External symptoms are to be expected such as dehydration, diarrhea, convulsions, hallucinations, and finally death.”

It was concluded at this meeting that it would be necessary to perform further sea-water experiments upon human beings in order to determine definitely whether or not the Berkatit method of treating sea water could be safely employed and used in connection with the German war effort. These experiments were planned to be carried on in group series, each of which would require six days, and would be made upon human beings in this order: one group would be supplied only with Berkatit-treated sea water; a second group would receive only ordinary drinking water; a third group would receive no water of any kind; the fourth group was to be given such water as was generally provided in emergency sea-distress kits, then used by German military personnel.

In addition to the first experiment it was agreed that a second experiment should be conducted. The notes of the meeting which deal with the second experimental series read as follows:

“Persons nourished with sea water and Berkatit, and as diet also the emergency sea rations.

“Duration of experiments—12 days.

“Since in the opinion of the Chief of the Medical Service, permanent injuries to health, that is, the death of the experimental subjects, has to be expected, as experimental subjects such persons should be used as will be put at the disposal by the Reichsfuehrer SS.”

On 7 June 1944 Schroeder wrote to Himmler through Grawitz asking for concentration camp inmates to be used as subjects in the sea-water experiments, which letter reads in part as follows:

“Highly Respected Reich Minister:

“Earlier already you made it possible for the Luftwaffe to settle urgent medical matters through experiments on human beings. Today again, I stand before a decision which, after numerous experiments on animals as well as human experiments on voluntary experimental subjects, demands a final solution. The Luftwaffe has simultaneously developed two methods for making sea water potable. The one method, developed by a medical officer, removes the salt from the sea water and transforms it into real drinking water; the second method, suggested by an engineer, leaves the salt content unchanged, and only removes the unpleasant taste from the sea water. The latter method in contrast to the first, requires no critical raw material. From the medical point of view this method must be viewed critically, as the administration of concentrated salt solutions can produce severe symptoms of poisoning.

“As the experiments on human beings could thus far only be carried out for a period of four days, and as practical demands require a remedy for those who are in distress at sea up to 12 days, appropriate experiments are necessary.

“Required are 40 healthy test subjects, who must be available for 4 whole weeks. As it is known from previous experiments that necessary laboratories exist in the concentration camp Dachau, this camp would be very suitable * * *”

Various other parties took part in correspondence upon this application, one of the writers suggesting that Jews or persons held in quarantine be used as experimental subjects. Another correspondent nominated asocial gypsy half-breeds as candidates for

the treatment. Herr Himmler decided that gypsies, plus three others for control purposes, should be utilized.

In fairness to the defendant it should be stated that he contests the translation of the second sentence in the first paragraph of the letter written by him to Himmler, which the prosecution interprets as meaning that experiments could no longer be conducted on voluntary subjects, and that the words "demands a final solution" meant that involuntary subjects in concentration camps should be employed. Regardless of whether or not the letter quoted by us is a correct translation of the German original, the evidence shows that within a month after the letter was sent to Himmler through Grawitz, sea-water experiments were commenced at Dachau by the defendant Beiglboeck.

The method by which the experimental subjects were chosen is not known to the defendant Schroeder. As he explained from the witness stand with reference to his letter and the subsequent procedure, "I sent it away only after I had consulted [about] the possibility of the experiment with Grawitz, and after I had informed him how the whole thing was thought [of] by us, so that he could pass on this information to Himmler in case it became necessary. Then this letter was sent off, and after possibly four weeks when Beiglboeck had arrived at Dachau—in the meantime, he was given an opportunity to carry out this work. Whatever lay in between that, how in the administrative way this was organized, we never learned * * * it was an inter-office affair * * *. We only saw the initial point and the end point of this route."

Thus began another experiment conducted under the auspices of the defendant Schroeder, wherein the initiator of the experiment failed to exercise the personal duty of determining that only consenting human subjects would be used, but left that responsibility to others. Again is demonstrated the case of an officer in a position of superior command who authorizes the performance of experiments by his subordinates while failing to take efforts to prescribe the conditions which will insure the conduct of the experiments within legally permissible limits.

The evidence shows conclusively that gypsies of various nationalities were used as experimental subjects. Former inmates of Auschwitz concentration camp were tricked into coming to Dachau with the promise that they were to be used as members of a labor battalion. When they arrived at Dachau they were assigned to the sea-water experimental station without their consent. During the course of the experiment many of them suffered intense physical and mental anguish.

The Tribunal finds that the defendant Schroeder was respon-

sible for, aided and abetted, and took a consenting part in, medical experiments performed on non-German nationals against their consent; in the course of which experiments deaths, brutalities, cruelties, tortures, and other inhuman acts were committed on the experimental subjects. To the extent that these experiments did not constitute war crimes they constitute crimes against humanity.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Oskar Schroeder guilty under counts two and three of the indictment.

GENZKEN

The defendant Genzken is charged under counts two and three of the indictment with special responsibility for, and participation in, Sulfanilamide, Spotted Fever, Poison, and Incendiary Bomb Experiments. The prosecution has abandoned the two latter charges and hence they will not be considered further. The defendant is also charged under count four of the indictment with membership, after 1 September 1939, in an organization declared criminal by the judgment of the International Military Tribunal—namely, the SS.

Genzken was commissioned in the Medical Service of the German Navy in 1912 and served through the First World War in that capacity. From 1919 to 1934, he engaged in the private practice of medicine. He joined the NSDAP in 1926, and in October 1934 he was again commissioned as a reserve officer of the naval medical department. On 1 March 1936 he was transferred to the medical department of the SS, with the rank of major, and assigned to the medical department of a branch of the SS, which in the summer of 1940 became the Waffen SS. He served as chief surgeon of the SS hospital in Berlin, and was director of the department charged with supplying medical equipment and with the supervision of medical personnel in concentration camps. He was also medical supervisor to Eicke, the head of all the concentration camps, which were within Genzken's jurisdiction insofar as medical matters were concerned. In May 1940, Genzken was appointed Chief of the Medical Office of the Waffen SS with the rank of senior colonel, Grawitz being his medical superior. He retained this position until the close of the war. In 1942 he was designated as Chief of the Medical Service of the Waffen SS, Division D of the SS Operational Headquarters. On 30 January 1943 he was appointed Gruppenfuehrer and Generalleutnant in the Waffen SS.

SULFANILAMIDE EXPERIMENTS

The sulfanilamide experiments referred to in the indictment were conducted by the defendants Gebhardt, Fischer, and Oberheuser at Ravensbrueck concentration camp between 20 July 1942 and August 1943. During this period of time, four of the medical branches of the Waffen SS were under Genzken, including Office XVI, Hygiene, of which the defendant Mrugowsky was chief.

It is submitted by the prosecution that the evidence proves Mrugowsky to have given support and assistance to these experiments, and that, consequently, Genzken becomes criminally liable because of the position of command he held over Mrugowsky. It is also urged that because Genzken attended the meeting in Berlin at which Gebhardt and Fischer gave their lecture on the experiments, this likewise shows criminal connection.

That Mrugowsky rendered assistance to Gebhardt in the sulfanilamide experiments at Ravensbrueck is clearly proved. Mrugowsky put his laboratory and co-workers at Gebhardt's disposal. He furnished the bacterial cultures for the infections. He conferred with Gebhardt about the medical problems involved. It was on the suggestion of Mrugowsky's office that wood shavings and ground glass were placed in artificially inflicted wounds made on the subjects so that battlefield wounds would be more closely simulated. It also appears that Blumenreuter, who was the chief of Office XV under Genzken's direction, may have furthered the experiments by furnishing surgical instruments and medicines to Gebhardt.

The Tribunal finds that Genzken was not present at the Berlin meeting.

Although Mrugowsky and Blumenreuter may have aided Gebhardt in his experiments, the prosecution has failed to show that it was done with Genzken's direction or knowledge.

The prosecution, therefore, has failed to sustain the burden with regard to this particular specification.

TYPHUS EXPERIMENTS

The series of experiments which are the subject of this specification were conducted at Buchenwald concentration camp and began in January 1942. SS Hauptsturmfuehrer Dr. Ding, who was attached to the Hygiene Institute of the Waffen SS, was in charge of these experiments—with the defendant Hoven serving as his deputy.

Until 1 September 1943 both Mrugowsky, the Chief of the Hygiene Institute, and Ding, were subordinate to Genzken. Until

the date last mentioned the chain of military command in the field of hygiene and research was as follows: Himmler-Grawitz-Genzken-Mrugowsky-Ding.

Prior to 1939 Ding had been camp physician at Buchenwald, and as such was subordinate to Genzken. During the early months of the war Genzken served as an army surgeon in the field, Ding being his adjutant. During the fall of 1941 Ding returned to Buchenwald and Genzken to his office at Berlin. During their service in the field Genzken and Ding had become warm personal friends. Ding was attached to the Hygiene Institute of the Waffen SS and was engaged in typhus research for the Institute. Genzken testified that Mrugowsky and the Hygiene Institute were in his chain of command prior to 31 August 1943. He further testified that after the date last mentioned his office had nothing to do with Ding save to provide money for Ding's expenses, there being no other budget from which money was available. Mrugowsky testified that Genzken was his superior officer until 1 September 1943, and knew that the Hygiene Institute was working on the problem of providing an efficient vaccine against typhus. It is admitted that Ding was carrying out medical experiments on concentration camp inmates in order to determine the effect of various typhus vaccines.

It is not contended that such experiments were not carried out. In the course of these experiments two buildings or "blocks" were used. The experiments were conducted in Block 46, and when satisfactory vaccine was decided upon, Block 50 was used for the preparation of vaccines.

During the course of the experiments with vaccines in March 1942, Ding himself contracted typhus. Genzken testified that he was aware of the fact that concentration camp inmates were subjected to experiments, but stated that he was not advised as to the method of experimentation.

It is clear that the experiments necessary to decide upon a satisfactory vaccine preceded by a considerable period the production of the vaccine. Genzken testified that vaccine production began in December 1943, that the production establishment only moved into Block 50 in the middle of August, and that when production actually began "this establishment had already come under the agency of Grawitz and it was not subordinated any more" to him.

Under date of 9 January 1943 the Ding diary contains a lengthy entry stating that by Genzken's order the typhus research station became the "Department of Typhus and Virus Research," that Dr. Ding would be head of this department, and that during his absence defendant Hoven would act in his place. The entry further

stated that Ding was appointed chief department head for special missions in hygiene, etc. The Ding diary is discussed elsewhere in this judgment. Considering the demonstrated desire of Ding for his personal aggrandizement, this entry is not entitled to entire credit, as written. It refers to Genzken as "Major General"—which rank he did not receive until a few weeks after 9 January 1943. The entry, however, has some probative value upon the question of Ding's status during the year 1943.

Genzken testified that he "approved" the establishment of Ding's department for vaccine research. He also testified that his department furnished necessary funds from its budget for Ding's investigations.

From the evidence it appears that prior to 1 September 1943, Mrugowsky reported regularly to Genzken, on an average of once per week, either orally or in writing.

Under date 5 May 1942, Mrugowsky signed a written report upon the subject, "Testing Typhus Vaccines." This report went to six different offices: the first copy, to Conti; the second copy, to Grawitz; and the third copy, to Genzken. The report commences: "The tests of four typhus vaccines made by us on human subjects at the instigation of the Reich Health Leader Dr. Conti had the following results * * *". It is stated that the mortality of victims of typhus during an epidemic "was around 30 percent" and that "during the same epidemic four groups of experimental subjects were vaccinated with one each" of the four types of vaccine described in the beginning of the report.

"The experimental subjects were mostly in their twenties and thirties. Care was taken when selecting them that they did not come from typhus districts and also to ensure an interval of four to six weeks between the protective vaccination and the outbreak of the clinical symptoms of the disease. According to experience this period is imperative to achieve immunity."

The effects of the four vaccines tested were described as follows. The report on the Weigl vaccine states that "nobody died". The report on the Gildemeister and Haagen vaccine also states that no deaths occurred. The report on the Behring-Normal vaccine states that one person died. The experiment with the Behring-Strong vaccine reports one death.

The last paragraph of the report states: "In the last two groups the symptoms were considerably stronger than in the first groups * * *. No difference between the two vaccines of the Behring Works was observed. The attending physicians stated that the general picture of the disease in group four was rather more severe compared with that of the patients of group three."

In a summation, Mrugowsky recommended the use of a vaccine

“produced according to the chicken egg process, which, in its immunization effect, is equal to the vaccine after Weigl.”

“The effectiveness of protection depends on the method used in making the vaccine.”

Of course, experiments with vaccines, conducted because of the urgent need for the discovery of a protective vaccine, would lead to scant results unless the subjects vaccinated were subsequently in some manner effectively exposed to typhus, thereby demonstrating the effectiveness or noneffectiveness of the vaccination. While Mrugowsky's report, above referred to, makes no reference to an artificial infection, it does state without further explanation that two deaths occurred, and in the last paragraph, quoted above, compares the severity of “the diseased” between groups three and four.

On cross-examination Mrugowsky testified that Dr. Ding was to lecture at a meeting of consulting surgeons in the spring of 1943, and that the witness informed Genzken concerning “the intended amount of vaccines to be produced by the SS.” Mrugowsky testified that he gave Genzken this information for three reasons: first, that Genzken had to be advised of the fact that Ding, as a member of the Waffen SS, was to give a lecture to the surgeons; second, that Genzken should be informed concerning “the effectiveness of a number of vaccines to be used for troops”; third, that Genzken should know when he could expect the first production of vaccines for the SS and the amounts he could count on for each month. Mrugowsky further testified:

“The conference with Dr. Genzken was extremely brief. As far as I remember we were standing close to his desk. I told him that the various vaccines which I mentioned to him had a different effect; I told him that the effect varied as to the length of the temperature and a reduction of fatalities; and I told him that after having vaccinated the entire SS we could count on some protective effect for all soldiers. On that occasion I showed him a few charts which Ding had handed over to me at that time, the same charts which Ding reproduced in his paper, and I used these charts in order to explain the effectiveness of the vaccines to him.

Q. “The mortality figures and the temperature figures could be derived from these charts, couldn't they?”

A. “Yes. If I remember correctly, on the heading of these charts the information was given what the day of the infection was. This entire conference was very brief and it is quite possible that Dr. Genzken—who was only concerned with the most important points which he had to know—it is quite possible that

he overlooked that. I had no cause to point it out to him in particular since I was not reporting to him about Ding's series of experiments but was only reporting to him about the protective value of various vaccines which he, as medical chief, had to know. These were two completely different points of view."

The Tribunal is convinced that prior to 1 September 1943, Genzken knew the nature and scope of the activities of his subordinates, Mrugowsky and Ding, in the field of typhus research; yet he did nothing to insure that such research would be conducted within permissible legal limits. He knew that concentration camp inmates were being subjected to cruel medical experiments in the course of which deaths were occurring; yet he took no steps to ascertain the status of the subjects or the circumstances under which they were being sent to the experimental block. Had he made the slightest inquiry he would have discovered that many of the human subjects used were non-German nationals who had not given their consent to the experiments.

As the Tribunal has already pointed out in this judgment, "the duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs, or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity."

We find that Genzken, in his official capacity, was responsible for, aided and abetted the typhus experiments, performed on non-German nationals against their consent, in the course of which deaths occurred as a result of the treatment received. To the extent that these experiments did not constitute war crimes they constituted crimes against humanity.

MEMBERSHIP IN CRIMINAL ORGANIZATION

Under count four of the indictment Genzken is charged with being a member of an organization declared criminal by the judgment of the International Military Tribunal, namely, the SS. The evidence shows that Genzken became a member of the SS on 1 March 1936 and voluntarily remained in that organization until the end of the war. As a high-ranking member of the Medical Service of the Waffen SS he was criminally implicated in the commission of war crimes and crimes against humanity, as charged under counts two and three of the indictment.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Karl Genzken guilty, under counts two, three, and four of the indictment.

GEBHARDT

The defendant Gebhardt is charged under counts two and three of the indictment with special responsibility for, and participation in, High-Altitude, Freezing, Malaria, Lost Gas, Sulfanilamide, Bone, Muscle and Nerve Regeneration and Bone Transplantation, Sea-Water, Epidemic Jaundice, Sterilization, Typhus, Poison, and Incendiary Bomb Experiments.

The defendant Gebhardt held positions of great power and responsibility in the Medical Service of the SS in Nazi Germany. He joined the NSDAP in 1933 and the SS at least as early as 1935. He took part in the Nazi Putsch of 1923, which aimed at the overthrow of the so-called Weimar Republic, the democratic government of Germany, being then a member of the illegal Free Corps, "Bund Oberland." When, in 1933, the hospital at Hohenlychen was founded, Gebhardt was appointed chief physician of this institution. In 1938 he became the attending physician to Himmler. He was also personal physician to Himmler and his family. In 1940 Gebhardt was appointed consulting surgeon of the Waffen SS and, in 1943, chief clinical officer (Oberster Kliniker) of the Reich Physician SS and Police, Grawitz. In the Allgemeine SS Gebhardt attained the rank of a Gruppenfuehrer (major general), and in the Waffen SS the rank of major general in the reserve.

SULFANILAMIDE EXPERIMENTS

The purpose for which these experiments were undertaken is defined in counts two and three of the indictment.

In the Ravensbrueck concentration camp during a period from 20 July 1942 until August 1943, the defendant Gebhardt, aided by defendants Fischer and Oberheuser, performed such experiments upon human subjects without their consent. Gebhardt personally requested Heinrich Himmler's permission to carry out these experiments, and attempts to assume full responsibility for them and for any consequences resulting therefrom. He himself personally carried out the initial operations.

While it is not deemed strictly necessary in this judgment to describe in any detail the procedure followed in performing these experiments, a brief statement will now be made thereon. The first experimental subjects consisted of 15 male concentration camp inmates used during preliminary experiments in July 1942, but later 60 Polish women, who were experimented on in 5 groups of 12 subjects each.

In the first series of experiments the healthy subjects were infected with various bacteria, but resulting infections were not thereafter considered sufficiently serious to furnish an answer to

the problem sought to be solved and further experiments were then undertaken.

Dr. Gebhardt has admitted that in the second series of experiments three of the subjects died as a result of the treatment received. All of these subjects were persons who had been selected by the concentration camp authorities and who were not consulted as to their consent or willingness to participate. Notwithstanding this, however, the experimental subjects protested against experiments both orally and in writing, stating that they would have preferred death to continued experiments, since they were convinced that they would die in any event.

An examination of the evidence presented to this Tribunal in connection with sulfanilamide experiments performed upon unwilling and nonconsenting concentration camp inmates indicates conclusively, that participating human subjects were used under duress and coercion in experiments performed upon their bodies; that persons acting as subjects incurred and suffered physical torture and the risk of death; that in the experiments here discussed at least five deaths of subjects were caused therefrom.

It is claimed by Dr. Gebhardt that all of the non-German experimental subjects were selected from inmates of concentration camps, former members of the Polish Resistance Movement, who had previously been condemned to death and were in any event marked for legal execution. This is not recognized as a valid defense to the charge of the indictment.

The Polish women who were used in the experiments had not given their consent to become experimental subjects. That fact was known to Gebhardt. The evidence conclusively shows that they had been confined at Ravensbrueck without so much as a semblance of trial. That fact could have been known to Gebhardt had he made the slightest inquiry of them concerning their status. Moreover, assuming for the moment that they had been condemned to death for acts considered hostile to the German forces in the occupied territory of Poland, these persons still were entitled to the protection of the laws of civilized nations. While under certain specific conditions the rules of land warfare may recognize the validity of an execution of spies, war rebels, or other resistance workers, it does not under any circumstances countenance the infliction of death or other punishment by maiming or torture.

BONE, MUSCLE AND NERVE REGENERATION AND BONE TRANSPLANTATION EXPERIMENTS

These experiments were carried out in Ravensbrueck concentration camp during the same time, and on the same group of

Polish women used in the sulfanilamide experiments. Upon these Polish inmates three kinds of bone operations were performed—artificially induced fractures, bone transplantations, bone splints—the conditions of the operations being specially created in each particular case. Some girls were required to submit to operations several times. In one instance small pieces of fibula were taken out; in another instance the periosteum of the leg was removed. Cases occurred where subjects were experimented on by deliberately fracturing their limbs in several places and testing the effect of certain treatments. In at least one case bone incisions were performed on a subject six different times. In another case the shoulder blade of a subject was removed.

Further recital of these activities is as unnecessary as were the operations themselves. The testimony heard and exhibits filed and examined by the Tribunal conclusively sustain the allegations of the indictment with reference to the experiments mentioned therein.

SEPSIS (PHLEGMON) EXPERIMENTS

A witness whose testimony must be accepted as credible testified concerning these experiments in which concentration camp inmates were used without their consent and were thereafter infected with pus. He testified as to at least two series of experiments which resulted fatally for 12 of the subjects.

The prosecution claims, and it is likely that these biochemical experiments which were performed in the Dachau concentration camp were complementary to and formed parts of the sulfanilamide experiments in Ravensbrueck. The evidence, however, is not sufficient to establish the criminal connection of Gebhardt with these experiments.

SEA-WATER EXPERIMENTS

Dr. Gebhardt's position, which has been mentioned in this judgment as that of an official and personal associate of Heinrich Himmler—part of whose duties concerned concentration camp medical experiments, was partially defined by an order issued by Himmler 15 May 1944 directing that an opinion from Gebhardt would be required before any experiments thereafter could be carried out on such human subjects. This order stated that all medical experiments to be carried out at the concentration camps had to have Himmler's personal approval. It appears, however, that while the application for permission to carry out experiments involving human subjects was required to be obtained from Himmler—yet before such application could be examined, a crit-

ical opinion of the chief clinical officer of the SS, Dr. Gebhardt, concerning its technical aspects was required to accompany it. Complying with this order Gebhardt, in reference to sea-water experiments, wrote—

“I deem it absolutely right to support the Luftwaffe in every way and to place a general physician of the Waffen SS at disposal to supervise the experiments.”

This alone is deemed to be sufficient to show that Dr. Gebhardt knew about, and approved, the performance of the sea-water experiments as charged in the indictment.

STERILIZATION EXPERIMENTS

Details of the sterilization experiments will be dealt with elsewhere in this judgment; and it is unnecessary to repeat them here, except to the extent necessary to inquire the part, if any, taken by Gebhardt therein.

On 7 and 8 July 1942 a conference took place between Himmler, Gebhardt, SS Brigadefuehrer Gluecks, and SS Brigadefuehrer Clauberg, to discuss the sterilization of Jewesses. Dr. Clauberg was promised that the Auschwitz concentration camp would be placed at his disposal for experiments on human beings and animals, and he was requested to discover by means of fundamental experiments a method of sterilizing persons without their knowledge. During the course of the conference, Himmler called the special attention of all present “to the fact that the matter involved was most secret and should be discussed only with the officers in charge and that the persons present at the experiments or discussions had to pledge secrecy.”

From this evidence it is apparent that Gebhardt was present at the initial meeting which launched at least one phase of the sterilization program in the concentration camps, and thus had knowledge and gave at least passive approval to the program.

HIGH-ALTITUDE, FREEZING, MALARIA, LOST GAS, EPIDEMIC JAUNDICE, TYPHUS, POISON, AND INCENDIARY BOMB EXPERIMENTS

Details as to the origin of and procedure followed in these experiments are discussed elsewhere in this judgment, and will not be repeated. Our only concern is to determine to what extent, if any, the defendant Gebhardt took part in the experiments.

In these enterprises the defendant seems not to have taken any active part, as he did in the sulfanilamide experiments and in other programs. It may be argued that his close connection with Heinrich Himmler creates a presumption that these experiments were conducted with Gebhardt's knowledge and approval.

Be that as it may, no sufficient evidence to that effect has been presented, and a mere presumption is not enough in this case to convict the defendant.

Attention has been given to the brief filed by counsel for the defendant Gebhardt. For the most part it is unnecessary to discuss the theories presented in this brief, for the reason that the main reliance of the defense seems to be that in his connection with the experiments charged in the indictment, Dr. Gebhardt acted as a soldier in the execution of orders from an authorized superior. We cannot see the applicability of the doctrine of superior orders as a defense to the charges contained in the indictment. Such doctrine has never been held applicable to a case where the one to whom the order is given has free latitude of decision whether to accept the order or reject it. Such was the situation with reference to Gebhardt. The record makes it manifestly plain that he was not ordered to perform the experiments, but that he sought the opportunity to do so. Particularly is this true with reference to the sulfanilamide experiments: Gebhardt, in effect, took them away from Grawitz to demonstrate that certain surgical procedures advocated by him at the bedside of the mortally wounded Heydrich at Prague in May of 1942 were scientifically and surgically superior to the methods of treatment proposed by Dr. Morell, Hitler's personal physician. The doctrine, therefore, is not applicable. But even if it were, the fact of such orders could merely be considered, under Control Council Law No. 10, as palliating punishment.

Another argument presented in briefs of counsel attempts to ground itself upon the debatable proposition that in the broad interest of alleviating human suffering, a state may legally provide for medical experiments to be carried out on prisoners condemned to death without their consent, even though such experiments may involve great suffering or death for the experimental subject. Whatever may be the right of a state with reference to its own citizens, it is certain that such legislation may not be extended so as to permit the practice upon nationals of other countries who, held in the most abject servitude, are subjected to experiments without their consent and under the most brutal and senseless conditions.

We find that Gebhardt, in his official capacity, was responsible for, aided and abetted, and took a consenting part in medical experiments performed on non-German nationals against their consent; in the course of which deaths, maiming, and other inhuman treatment resulted to the experimental subjects. To the extent that these experiments did not constitute war crimes they constituted crimes against humanity.

MEMBERSHIP IN CRIMINAL ORGANIZATION

Under count four of the indictment Gebhardt is charged with being a member of an organization declared criminal by the judgment of the International Military Tribunal, namely the SS. The evidence shows that Gebhardt became a member of the SS at least as early as 1933 and voluntarily remained in that organization until the end of the war. As one of the most influential members of the Medical Service of the Waffen SS he was criminally implicated in the commission of war crimes and crimes against humanity as charged under counts two and three of the indictment.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Karl Gebhardt guilty under counts two, three and four of the indictment.

BLOME

The defendant Blome is charged under counts two and three of the indictment with personal responsibility for, and participation in Malaria, Lost Gas, and Sulfanilamide Experiments, the extermination of tubercular Poles, and the execution of the Euthanasia Program. Proof has also been adduced for the purpose of showing that he participated in the freezing bacteriological warfare, and blood coagulation experiments.

The charge with reference to sulfanilamide experiments has been abandoned by the prosecution and hence will not be considered further.

The defendant Blome studied medicine at Goettingen and received his medical degree in 1920. From 1924 to 1934 he engaged in private practice. In the latter year he was summoned to Berlin where, in 1935, he reorganized the German medical educational system. He also acted as adjutant in the central office of the German Red Cross and as business manager of the German Physicians' Association, which position he held until the end of World War II. In 1938 he became President of the Bureau of the Academy for International Medical Education. From 1939 on Blome acted as deputy for Dr. Leonardo Conti who was leader of the German Physicians' Association, Head of the Main Office for Public Health of the Party, and Leader of the National Socialist Physicians' Association. In 1941 he became a member of the Reich Research Council, and in 1943 was appointed Plenipotentiary for Cancer Research, connected with the research commission for protection against biological warfare.

Blome joined the SA in 1931 and became the chief medical officer of the SA in the province of Mecklenburg. In 1934 he was appointed a province office leader, and in the SA he attained a rank equivalent to that of major general. In 1943 he was awarded the highest decoration of the Nazi Party.

As Plenipotentiary for Cancer Research, it was his duty to determine which research problems should be studied and to assign such problems to scientists best fitted to investigate them.

FREEZING EXPERIMENTS

The prosecution argues that Blome is criminally responsible for participation in the freezing experiments as charged in the indictment. In the subparagraph which particularly refers to freezing, Blome is not named among the defendants charged with special responsibility for the experiments. Moreover, the record does not contain evidence which shows beyond a reasonable doubt that Blome bore any responsible part in the conduct of the freezing experiments.

MALARIA EXPERIMENTS

The evidence is insufficient to disclose any criminal responsibility of the defendant in connection with the malaria experiments.

LOST GAS EXPERIMENTS

The evidence is insufficient to disclose any criminal responsibility of the defendant in connection with these experiments.

EXTERMINATION OF TUBERCULAR POLES

The basis for the prosecution's case against the defendant in this regard is to be found in a series of letters with reference to the tuberculosis menace in the Reichsgau Wartheland, which had been overrun by the German Reich and settled by its citizens.

During the year 1941 the German Government began a program of extermination of the Jewish population of the eastern occupied territories. On 1 May 1942 Greiser, the German Military Governor of Reichsgau Wartheland, wrote Himmler advising him that "as to the 100,000 Jews in the district, the 'special treatment' approved by Himmler was about completed." The letter then continued:

"* * * I ask you for permission to rescue the district immediately, after the measures taken against the Jews, from a

menace which is increasing week by week, and use the existing and efficient special commandos for that purpose.

"There are about 230,000 people of Polish nationality in my district who were diagnosed to suffer from tuberculosis. The number * * * infected with open tuberculosis is estimated at about 35,000. This fact has led in an increasingly frightening measure to the infection of Germans who came to the Warthegau perfectly healthy * * *. A considerable number of well known leading men, especially of the police, have been infected lately and are not available for the war effort * * *. The ever increasing risks were also recognized and appreciated by the deputy of the Reich Leader for Public Health, Comrade Professor Dr. Blome * * * .

"Though in Germany proper it is not possible to take appropriate draconic steps against this public plague, I think I could take responsibility * * * to have cases of open tuberculosis exterminated among the Polish race here in the Warthegau. Of course, only a Pole should be handed over for such an action who is not only suffering from open tuberculosis, but whose incurability is proved and certified by a public health officer.

"Considering the urgency of this project I ask for your approval in principle as soon as possible. This would enable us to make the preparations with all necessary precautions now to get the action against the Poles suffering from open tuberculosis under way, while the action against the Jews is in its closing stages.

"Heil Hitler!

"GREISER"

Two days later Koppe, the police leader on Greiser's staff, wrote to Rudolf Brandt restating Greiser's proposal and urging Brandt to call the matter to Himmler's attention. Brandt promptly acknowledged the letter, advising Koppe that the proposal had been referred to the Chief of the Security Police for opinion, but that the final decision would rest with Hitler.

On 9 June 1942 the Chief of the Security Police rendered his opinion to Himmler: "I have no scruples against having the protectorate members and stateless persons of the Polish race * * * who are afflicted with open tuberculosis, submitted to the special treatment in the sense of the proposal of Gau Leader Greiser. * * * The individual measures, though, will first have to be discussed thoroughly with the Security Police, in order to carry out the execution with the least possible attraction of attention." The opinions thus rendered undoubtedly received the full ap-

proval of Himmler, for on 27 June 1942 Rudolf Brandt passed on to Greiser a letter from Himmler containing the following decision:

“Dear Comrade Greiser:

“I have no objection to having protectorate people and stateless persons of Polish origin who live within the territory of the Warthegau and are infected with tuberculosis handed over for special treatment as you suggest; as long as their disease is incurable * * *. I would like to request, however, to discuss the individual measures in detail with the Security Police first, in order to assure inconspicuous accomplishment of the task * * *.

[Signed] “H. HIMMLER”

The Himmler letter was acknowledged by Greiser on 21 November 1942, Greiser advising Himmler that in pursuance of the permission given him to apply “special treatment” to tubercular Poles he had made arrangements for an X-ray examination of all people in the territory, but that now that “special treatment” had been approved, Blome, Deputy Chief of the Public Health Office of the NSDAP was raising objections to its execution. A copy of Blome’s letter to Greiser was enclosed for Himmler’s information.

Blome’s letter to Greiser is dated 18 November 1942. It opens by recalling various conversations between the writer and Greiser concerning the campaign against tuberculosis in the Warthegau, and then proceeds to consider the matter in detail; the letter proceeding:

“With the settlement of Germans in all parts of the Gau, an enormous danger has arisen for them * * *. What goes for the Warthegau [* * *] also holds true for the other annexed territories * * *.

“Therefore, something basic must be done soon. One must decide the most efficient way in which this can be done. There are three ways to be taken into consideration:

- “1. Special treatment of the seriously ill persons,
- “2. Most rigorous isolation of the seriously ill persons,
- “3. Creation of a reservation for all TB patients.

“For the planning, attention must be paid to different points of view of a practical, political and psychological nature. Considering it most soberly, the simplest way would be the following: Aided by the X-ray battalion, we could reach the entire population, German and Polish, of the Gau during the first half of 1943. As to the Germans, the treatment and isolation is to

be prepared and carried out according to the regulations of Tuberculosis Relief. The approximately 35,000 Poles who are incurable and infectious will be 'specially treated'. All other Polish consumptives will be subjected to an appropriate cure in order to save them for work and to avoid their causing contagion."

Blome then proceeds, stating that he has made arrangements for commencement of the "radical procedure", but suggests that some assurance should be procured that Hitler would agree to the project. The letter then goes on to say—

"I could imagine that the Fuehrer, having some time ago stopped the program in the insane asylums, might at this moment consider a 'special treatment' of the incurably sick as unsuitable and irresponsible from a political point of view. As regards the Euthanasia Program it was a question of people of German nationality afflicted with hereditary diseases. Now it is a question of infected sick people of a subjugated nation."

Blome then voices the opinion that if the program is put into execution, it cannot be kept secret and will be made the basis for much adverse and harmful propaganda both at home and abroad. He suggests accordingly that before the program is commenced all points of view should again be presented to Hitler.

Continuing, Blome writes that if Hitler should forbid the radical proposal suggested by Greiser, three other solutions were open (1) consumptives and incurables could be isolated with their relatives; (2) all infectious consumptives might be strictly isolated in nursing establishments; (3) the consumptives might be resettled in a particular area. If the latter plan were adopted, the sick could reach the assigned territory on foot, and thus save the costs of transportation.

Blome's letter finally concludes—

"After a proper examination of all these considerations and circumstances, the creation of a reservation, such as the reservations for lepers, seems to be the most practicable solution. Such a reservation should be able to be created in the shortest time by means of the necessary settlement. Within the reservation one could easily set up conditions for the strict isolation of the strongly contagious.

"Even the case of the German consumptives represents an extremely difficult problem for the Gau. But this cannot be overcome, unless the problem of the Polish consumptives is solved at the same time."

The evidence shows that the letter from Greiser to Himmler, with Blome's suggestions enclosed, was acknowledged by Himmler on 3 December 1942 with the following final decision:

"Dear Party Comrade Greiser:

"I have received your letter of 21 November 1942. I, too, believe that it would be better to take into consideration the misgivings set forth by Party Member Dr. Blome. In my opinion it is impossible to proceed with the sick persons in the manner intended, especially since, as you have informed me, it will be possible to exploit the practical results of the tests only in six months.

"I suggest you look for a suitable area to which the incurable consumptives can be sent. Besides the incurables, other patients with less severe cases of tuberculosis could quite well be put into this territory, too. This action would also, of course, have to be exploited with the appropriate form of propaganda.

"Before writing you this letter I again thoroughly thought over whether the original idea could not in some way be carried out. However, I am convinced now that it is better to proceed the other way."

The prosecution maintains that this series of letters which have been referred to establishes the criminal participation of the defendant Blome in the extermination of tubercular Poles. We cannot follow the argument. It is probable that the proposal to isolate tubercular Poles, as suggested by Blome and approved by Himmler, was at least partially carried out; although the record discloses but little with reference to what actually transpired. It may be that in the course of such a program Poles may have died as the result of being uprooted from their homes and sent to isolation stations; but the record contains no direct credible evidence upon the subject. Blome explained from the witness stand his letter to Greiser by saying that it was written in order to prevent the extermination program of tubercular Poles from being put into execution. Certainly, his letter indicates on its face that he opposed the "special treatment" suggested by Greiser.

We cannot say, therefore, that the explanation offered is wholly without substance. It at least raises a reasonable doubt in our minds concerning the matter. Blome knew Hitler and Himmler. He well knew that any objections to "special treatment" based on moral or humanitarian grounds would make but small impact upon the minds of men like these Nazi leaders. He knew, moreover, that before Greiser's proposal for extermination would be abandoned a plan which appeared to be better must be suggested.

If viewed from the standpoint of factual and psychological considerations, it cannot be held that the letter was not well-worded when considered as an attempt to put an end to the plan originally adopted, and to bring the substitution of another plan not so drastic. Whatever may have been its purpose, the record shows that, in this particular, the letter did in fact divert Himmler from his original program and that as a result thereof the extermination plan was abandoned.

EUTHANASIA PROGRAM

Blome is charged with criminal responsibility in connection with the Euthanasia Program, but we are of opinion that the evidence is insufficient to sustain the charge.

BACTERIOLOGICAL WARFARE

The prosecution contends that the evidence in the case established Blome's guilt in connection with research concerning different forms of bacteriological warfare. Blome, who was plenipotentiary for cancer research in the Reich Research Council, admits that the problem of cancer research was allied with the research commission for protection against biological warfare. He admits further, that he was placed in charge of an institute near Poznan in which the problems of biological warfare were to be investigated, but states that the work being done at the Poznan institute was interrupted in March 1945 by the advance of the Russian army.

This latter fact seems to be confirmed by the evidence. In this connection Schreiber appeared as a witness before the International Military Tribunal. His testimony given there has been received in evidence before this Tribunal. From the testimony it appears that Blome visited Schreiber at the Military Medical Academy, Berlin, during March 1945 and stated to him that he, Blome, had abandoned his institute in Poznan due to the advance of the Russians, but before leaving had attempted to destroy his installations as he feared that the Russians might discover that preparations had been made in the institute for experiments on human beings.

Counsel for the prosecution has brought to our judicial notice a finding by the International Military Tribunal in its judgment wherein it is found that—

“In July 1943 experimental work was begun in preparation for a campaign of bacteriological warfare; Soviet prisoners of war were used in the medical experiments, which more often

than not proved fatal." (See *"Trial of the Major War Criminals"*, Vol. I, p. 231.)

It is submitted by the prosecution that this finding of the International Military Tribunal, when considered in connection with other evidence in the case, requires this Tribunal to find the defendant Blome guilty under the indictment.

The suggestion is not tenable. It may well be that defendant Blome was preparing to experiment upon human beings in connection with bacteriological warfare, but the record fails to disclose that fact, or that he ever actually conducted experiments. The charge of the prosecution on this item is not sustained.

POLYGAL EXPERIMENTS

The prosecution has introduced evidence which suggests that Blome may be criminally responsible for polygal experiments conducted by Rascher at Dachau, in which Russian prisoners of war were used as experimental subjects. In our view the evidence does no more than raise a strong suspicion; it does not sustain the charge beyond a reasonable doubt.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Kurt Blome not guilty as charged under the indictment and directs that he be released from custody under the indictment when this Tribunal presently adjourns.

RUDOLF BRANDT

Under counts two and three of the indictment the defendant Rudolf Brandt is charged with special responsibility for, and participation in, High-Altitude, Freezing, Malaria, Lost Gas, Sulfanilamide, Bone, Muscle and Nerve Regeneration and Bone Transplantation, Sea Water, Epidemic Jaundice, Sterilization, and Typhus Experiments. He is also charged under these counts with criminal responsibility for the murder of 112 Jews for the purpose of completing a Skeleton Collection for the Reich University of Strasbourg, for the murder and ill-treatment of tubercular Poles, and for the Euthanasia Program carried out by the German Reich.

Under count four of the indictment he is charged with membership in an organization declared criminal by the judgment of the International Military Tribunal.

The prosecution has abandoned the charge of participation in

the bone, muscle and nerve regeneration and bone transplantation experiment; hence, it will not be considered further.

The defendant Rudolf Brandt joined the Nazi Party in 1932. He was commissioned a second lieutenant in the SS in 1935. In approximately ten years he rose to the rank of SS colonel. He is one of the three defendants in the case who is not a physician.

From the commencement of his career in the Nazi organization until his capture by the Allied Forces in 1945 he was directly subordinate to and closely associated with the leader of the SS, Heinrich Himmler, and he had full knowledge of his chief's personal and official interests and activities.

To Himmler, Rudolf Brandt was first of all an important and trusted clerical assistant. The record shows him to have been an unusually proficient stenographer. That is the road by which he finally arrived at a position of considerable power and authority as personal Referent on Himmler's Personal Staff, Ministerial Counsellor in the Ministry of the Interior, and a member of the Ahnenerbe. Acting for Himmler during his absences, Rudolf Brandt, in these positions, had a tremendous opportunity to and did exercise personal judgment and discretion in many serious and important matters.

HIGH-ALTITUDE EXPERIMENTS

These experiments extended from March to August 1942. Their details are dealt with elsewhere in this judgment. A portion of the evidence in this specification consists of correspondence between the defendant Rudolf Brandt and various others in the German military service who were personally engaged in, or were closely connected with, the physical details of the experiments performed. The correspondence just previously mentioned was admitted in evidence, is well authenticated, and even standing alone, without additional oral testimony—of which there was also plenty—is deemed amply sufficient to disclose beyond reasonable doubt that except for the sanction and diligent cooperation of the defendant Rudolf Brandt, or someone occupying his position, the high-altitude experiments mentioned in the indictment could not have been conducted.

Taken altogether, the evidence on this item discloses that during the period between March and August 1942, certain medical experiments were conducted at the Dachau concentration camp in Germany for the benefit of the German Air Force, to determine the limits of human endurance and existence at extremely high altitudes. Various human beings, unwillingly, and entirely without their consent, were required and compelled to, and did participate in the aforesaid experiments as subjects thereof. The

said nonconsenting subjects were prisoners of war, German civilians and civilians from German occupied territory, whose exact citizenship, in many cases, could not be ascertained. Among the experimental subjects there were numerous deaths, estimated by witnesses at 70 or 80, resulting directly from compulsory participation in the experiments. Exact data on the total fatalities cannot be stated, but there is convincing evidence that during the last day's operation of the high-altitude experiments, five participating and nonconsenting subjects died as the result thereof. The greater number of the experimental subjects suffered grave injury, torture and ill-treatment.

FREEZING EXPERIMENTS

In this experiment, or series of experiments, Rudolf Brandt is established as an intermediary and necessary aid between Heinrich Himmler, who authorized the work to be done, and those who were appointed by him actually to perform the ruthless task. Evidence is conclusive that Rudolf Brandt at all times knew exactly what experimental processes would be carried out. He knew that the procedure followed was to select from the inmates at Dachau such human subjects as were considered most suitable for experimental purposes. He knew that no consent was ever deemed necessary from the persons upon whom the experiments were to be performed. He knew that among the experimental subjects were non-German nationals, including civilians and prisoners of war.

The exact number of deaths cannot be ascertained from the evidence, but that fatalities occurred among the experimental subjects has been proved beyond a reasonable doubt.

LOST (MUSTARD) GAS EXPERIMENTS

On this specification, an affidavit of the defendant Rudolf Brandt which is confirmed by other evidence reads substantially as follows:

"Towards the end of the year 1939, experiments were conducted at the Sachsenhausen concentration camp on persons who were certainly not all volunteers, in order to ascertain the efficacy of the different treatment of wounds inflicted by Lost gas. Lost is a poisonous gas which produces injurious effects on the epidermis. I think it is generally known as mustard gas. * * * Therefore, experiments were conducted on inmates of concentration camps. As far as I understand, the experiments consisted of inflicting wounds upon various parts of the bodies

of the experimental subjects and infecting them thereafter with Lost. Various methods of treatment were applied in order to determine the most effective one * * * .

"In the second half of 1942, Hirt (Dr. August Hirt) together with * * * who served in the Luftwaffe, initiated experiments on inmates of the Natzweiler concentration camp. The inmates for these as well as other experiments were simply chosen by Pohl's office, the Economic and Administrative Main Office, WVHA. In order to be employed for such purposes, the experiments on human subjects with Lost gas had been carried on during the years 1943 and 1944 in the Sachsenhausen concentration camp as well as in the Natzweiler concentration camp. The result was that some of the inmates died."

In the course of the gas experiments above referred to, testimony in the record discloses that a considerable amount of correspondence was carried on by persons concerned (except the experimental subjects themselves), and it appears that some, at least, of this was referred to Rudolf Brandt for action, upon which he personally intervened sufficiently to associate himself actively with the conduct of the work being done. And so he must be regarded as criminally responsible.

STERILIZATION EXPERIMENTS

Rudolf Brandt is charged, as in the indictment set forth, with special responsibility under the above heading. The means by which sterilization experiments or processes were to be made or utilized included X-ray treatment, surgery, and drugs.

No specific instances of any drug being actually used have been clearly shown by oral testimony, or exhibits herein submitted in evidence. In reference to the X-ray and surgery methods of sterilization, however, Rudolf Brandt is shown by the evidence to have taken a moving part in the preparation of plans, and in their execution, sufficient to justify the Tribunal in finding his criminal connection therewith. An affidavit executed by the defendant Rudolf Brandt reads as follows:

"Himmler was extremely interested in the development of a cheap, rapid sterilization method which could be used against enemies of Germany, such as the Russians, Poles, and Jews. One hoped thereby not only to defeat the enemy, but to exterminate him. The capacity for work of the sterilized persons could be exploited by Germany, while the danger of propagation would be eliminated. This mass sterilization was part of Himmler's racial theory; particular time and care were devoted to these sterilization experiments."

We learn from the record that persons subjected to treatment were "young, well-built inmates of concentration camps who were in the best of health, and these were Poles, Russians, French, and prisoners of war."

It goes without saying that the work done in conformity with the plans of Himmler, substantially aided by the cooperation of Rudolf Brandt, brought maiming and suffering to great numbers of people.

TYPHUS EXPERIMENTS

Medical experiments ostensibly conducted to benefit Germany in the prevention of typhus fever were carried on in the Natzweiler concentration camp beginning with the year 1942. The details of these experiments have been dealt with elsewhere in this judgment.

In the evidence it is proved that not less than 50 experimental subjects died as a direct result of their participation in these typhus experiments. Persons of all nationalities were used as subjects. Regarding these enterprises, Rudolf Brandt, in his own affidavit, admits that these experimental subjects did not volunteer but were conscripted and compelled to serve without their consent being sought or given.

Inasmuch as information on the typhus experiments, both before and after their performance, was furnished, as a matter of course, to Himmler through Brandt, the defendant's full knowledge of them is regarded as definitely proven.

Here, again, the managing hand of the defendant is shown. The smooth operation of these experiments is demonstrated to have been contingent upon the diligence with which Rudolf Brandt arranged for the supply of quotas of suitable human experimental material to the physicians at the scene of the experiment.

In view of these proven facts, the defendant Rudolf Brandt must be held and considered as one of the defendants responsible for performance of illegal medical experiments where deaths resulted to the nonconsenting human subjects.

SKELETON COLLECTION

In response to a request by Rudolf Brandt, on 9 February 1942 the defendant Sievers, business manager of the Ahnenerbe, submitted to him certain data on the alleged desirability of securing a Jewish skeleton collection for the Reich University of Strasbourg. The report furnished to the defendant Brandt contained among other things the following:

"By procuring the skulls of the Jewish Bolshevik Commissars, who personified a repulsive yet characteristic humanity, we have the opportunity of obtaining tangible scientific evidence. The actual obtaining and collecting of these skulls without difficulty could be best accomplished by a directive issued to the Wehrmacht in the future to immediately turn over alive all Jewish Bolshevik Commissars to the field police."

On 27 February 1942, Rudolf Brandt informed defendant Sievers that Himmler would support the enterprise and would place everything necessary at his disposal; and that Sievers should report again in connection with the undertaking.

Testimony and exhibits placed before this Court are abundantly sufficient to show that the plan mentioned was actually put into operation; that not less than 86 people were murdered for the sole purpose of obtaining their skeletons. Much more could be said in reference to this revolting topic, but it would add nothing to the judgment. The fact that Rudolf Brandt showed an initial interest and collaborated in the undertaking is enough to require a finding that he is guilty of murder in connection with the program.

MALARIA, SEA-WATER, AND EPIDEMIC JAUNDICE EXPERIMENTS; AND THE CHARGE OF THE MURDER AND MISTREATMENT OF POLES

It appears to be well established that Himmler sponsored, supported, furthered or initiated each of these enterprises. Doubtless Brandt knew what was going on, and perhaps he helped in the program. The evidence is not sufficient, however, to justify such a finding.

The Tribunal finds that the defendant Rudolf Brandt was an accessory to, ordered, abetted, took a consenting part in, was knowingly connected with plans and enterprises involving, and was a member of an organization or group connected with, the commission of medical experiments on non-German nationals, without their consent, in the course of which experiments murders, brutalities, cruelties, tortures, atrocities, and other inhuman acts were committed; and the murder of no less than 86 non-German Jews for a skeleton collection. To the extent that these crimes were not war crimes they were crimes against humanity.

MEMBERSHIP IN CRIMINAL ORGANIZATION

Under count four of the indictment Rudolf Brandt is charged with being a member of an organization declared criminal by the judgment of the International Military Tribunal, namely, the SS.

The evidence shows that Rudolf Brandt became a member of the SS in 1933, and remained in this organization until the end of the war. As a member of the SS he was criminally implicated in the commission of war crimes and crimes against humanity, as charged under counts two and three of the indictment.

An extremely persuasive and interesting brief on behalf of the defendant Rudolf Brandt, filed by his attorney, has received careful attention by this Tribunal. Therein it is urged that Rudolf Brandt's position under Heinrich Himmler was one of such subordination, his personal character so essentially mild, and he was so dominated by his chief, that the full significance of the crimes in which he became engulfed came to him with a shock only when he went to trial. This plea is offered in mitigation of appalling offenses in which the defendant Brandt is said to have played only an unassuming role.

If it be thought for even a moment that the part played by Rudolf Brandt was relatively unimportant when compared with the enormity of the charges proved by the evidence, let it be said that every Himmler must have his Brandt else the plans of a master criminal would never be put into execution.

The Tribunal, therefore, cannot accept the thesis.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Rudolf Brandt is guilty under counts two, three and four of the indictment.

MRUGOWSKY

The defendant is charged under counts two and three of the indictment with special responsibility for, and participation in, Freezing, Malaria, Sulfanilamide, Typhus, Poison, Epidemic Jaundice, and Incendiary Bomb Experiments. Charges were made concerning certain other medical experiments, but they have been abandoned by the prosecution.

Mrugowsky joined the NSDAP in 1930 and the SS in 1931. He ultimately rose to the rank of senior colonel in the Waffen SS.

In 1938 Mrugowsky became a member of the staff of the SS medical office, as hygienist. At the beginning of 1939 he founded the Hygiene Bacteriological Testing Station of the SS in Berlin, whose purpose was to combat epidemics in the SS garrison troops of the Waffen SS. In 1940 the station was enlarged and renamed the "Hygiene Institute of the Waffen SS." Mrugowsky became

its chief and at the same time Chief of the Office for Hygiene in the Medical Service of the Waffen SS under Genzken.

In his dual capacity Mrugowsky was answerable to Genzken in all questions concerning epidemic control and hygiene in the Waffen SS, but as Chief of the Hygiene Institute, was military superior and commander of the Institute and its affiliated institutions with power to issue orders.

The Medical Service of the Waffen SS was reorganized on 1 September 1943. Mrugowsky and the Hygiene Institute were transferred from under Genzken and became directly subordinated to Grawitz as Reich Physician SS and Police. By this transfer Mrugowsky became chief hygienist under Grawitz, but remained Chief of the Hygiene Institute.

TYPHUS AND OTHER VACCINE EXPERIMENTS

The details concerning the vaccine experiments conducted at Buchenwald concentration camp have been related elsewhere in this judgment and hence the details need no further discussion.

As pointed out in the case against Handloser, there is evidence in the record that on 29 December 1941 a conference was held in Berlin attended by Mrugowsky at which the decision was reached to begin research tests at Buchenwald to determine the efficacy of egg yolk, and other vaccines as protection against typhus. As a result of the conference, such an experimental station was established at Buchenwald under the direction of Dr. Ding with the defendant Hoven acting as his deputy.

Except for a few tests conducted early in 1942, all experiments were carried out in Block 46—so-called clinical block of the station. In the autumn of 1943 a vaccine production department was established in Block 50 and this also came under the supervision of Dr. Ding-Schuler.

It would burden this judgment unnecessarily to narrate in detail the various tests and experiments carried out by Ding at Buchenwald as a result of the decisions reached at higher levels. All of them conformed to a more or less uniform pattern, with certain groups of inmates being inoculated with vaccines, other groups (known as control groups) being given no immunization, and finally both groups being artificially infected with a virulent virus, and the results noted upon the experimental subjects.

We learn from the Ding diary, the authenticity and reliability of which has been discussed at length in other portions of the judgment, the methods employed, and the results obtained in at least some of the experiments.

For example: In "Typhus vaccination material research series I", which began on 6 January 1942, 135 inmates were vaccinated

with Weigl, Cox-Haagen-Gildemeister, Behring-Normal, or Behring-Strong, vaccines; 10 persons were used for control. On 3 March 1942 all test subjects, including control persons, were artificially infected with virulent virus of *Rickettsia-Prowazeki* furnished by the Robert Koch Institute. Five deaths occurred; three in the control group and two among the vaccinated subjects.

In "Typhus vaccine, research series II", from 19 August to 4 September 1942, 40 persons were vaccinated with two different vaccines; 19 persons were used for control. Subsequently all were artificially infected with virulent virus; four deaths among the control persons occurred.

The entries in the diary concerning "Typhus vaccine experimental series VII" read as follows:

"28 May 43-18 June 1943: Carrying out of typhus vaccination for immunization with the following vaccine (1) 20 persons with vaccine 'Asid', (2) 20 persons with vaccine 'Asid Adsorbat', (3) 20 persons with vaccine 'Weigl' of the Institute for Typhus and Virus Research of the High Command, Army (OKH) Krakow (Eyer) * * *. All experimental persons got very serious typhus. 7 Sept. 43: Chart and case history completed. The experimental series was concluded. 53 deaths (18 with 'Asid') (18 with 'Asid Adsorbat') (9 with 'Weigl') (8 control) 9 Sep. 43: Charts and case histories delivered to Berlin. Dr. Ding, SS Sturbannfuehrer."

Concerning "Typhus vaccine experimental series VIII" began on 8 March 1944 the following entry appears in the diary:

"Suggested by Colonel M.C. of the Air Corps, Professor Rose (Oberstarzt) the vaccine 'Kopenhagen' (Ipsen-Murine-vaccine), produced from mouse liver by the national serum institute in Copenhagen, was tested for its compatibility on humans. 20 persons were vaccinated for immunization by intramuscular injection * * *, 10 persons were contemplated for control and comparison. 4 of the 30 persons were eliminated *before* the start of the artificial injection because of intermittent sickness * * *. The remaining experimental persons were infected on 16 April 44 by subcutaneous injection of 1/20 cc. typhus sick fresh blood * * *. The following fell sick: 17 persons immunized: 9 medium, 8 seriously; 9 persons control, 2 medium, 7 seriously * * *. 2 June 44: The experimental series was concluded. 13 June 44: Chart and case history completed and sent to Berlin. 6 deaths (3 Kopenhagen) (3 control). Dr. Ding."

"Typhus vaccine experimental series IX" began on 17 July

1944. Twenty persons were immunized with the vaccine "Weimar" produced by the department for Typhus and Virus Research of the Hygiene Institute of the Waffen SS; and for comparison, another group of 20 persons were immunized with vaccine "Weigl" produced from lice by the Army High Command (OKH) in Cracow [Krakow]. Still another group of 20 persons were used for the control group. On 6 September 1944 the 60 experimental persons were infected with fresh blood "sick with typhus" which was injected into the upper arm. As a result, all experimental persons became sick, some seriously. The narration of this experimental series closes with the cryptic report: "4 Nov 44: Chart and case history completed, 24 deaths (5 'Weigl') (19 Control). Dr. Schuler."

These entries are but few of the many which we have taken at random from the Ding diary, dealing with the sordid murders of defenseless victims in the name of Nazi medical science. Many more could be set forth if time and space permitted. An analysis of the Ding diary discloses that no less than 729 concentration camp inmates were experimented on with typhus, at least 154 of whom died. And this toll of death takes no account of the certain demise of scores of so-called "passage" persons who were artificially infected with typhus for the sole purpose of having at hand an ever-ready supply of fresh blood "sick with typhus" to be used to infect the experimental subjects.

There is some evidence to the effect that the camp inmates used as subjects in the first series submitted to being used as experimental subjects after being told that the experiments were harmless and that additional food would be given to volunteers. But these victims were not informed that they would be artificially infected with a highly virulent virus nor that they might die as a result. Certainly no one would seriously suggest that under the circumstances these men gave their legal consent to act as subjects. One does not ordinarily consent to be the special object of a murder, and if one did, such consent would not absolve his slayer.

Later, when news of what was happening in Block 46 became generally known in the camp, it was no longer possible to delude the inmates into offering themselves as victims. Thereupon, the shabby pretense of seeking volunteers was dropped and the experimental subjects were taken arbitrarily from a list of inmates prepared by the camp administration.

Other experiments were also carried out in Block 46 of Buchenwald to test typhoid, para-typhoid A and B, and yellow fever.

As in the typhus experiments, nonconsenting human subjects were used, including not only German criminal prisoners but also

Poles, Russians, and Frenchmen, both civilians and prisoners of war.

In all the typhus experiments, death resulted to many experimental subjects. As to each of these experiments the evidence is overwhelming that they were carried out by Ding under the orders or authority of the defendant Mrugowsky.

POISON EXPERIMENTS

On 11 September 1944 Mrugowsky, Ding, and a certain Dr. Widmann carried out an experiment with aconitin nitrate projectiles in the Sachenshausen concentration camp. Details of the experiment are fully explained by a "Top Secret" report of the sordid affair in a letter written by the defendant Mrugowsky to the Criminological Institute, Berlin. The letter follows:

"Subject: Experiments with aconitin nitrate projectiles.

To the Criminological Institute
Attn: Dr. Widmann
Berlin

"In the presence of SS Strumbannfuehrer Dr. Ding, Dr. Widmann, and the undersigned, experiments with aconitin nitrate projectiles were conducted on 11 September 1944 on 5 persons who had been condemned to death. The projectiles in question were of a 7.65-mm caliber, filled with crystalized poison. The experimental subjects, in a lying position, were each shot in the upper part of the left thigh. The thighs of two of them were cleanly shot through. Even afterwards, no effect of the poison was to be observed. These two experimental subjects were therefore exempted.

"The entrance of the projectile did not show any peculiarities. Evidently, the arteria femolaries of one of the subjects was injured. A light stream of blood issued from the wound. But the bleeding stopped after a short time. The loss of blood was estimated as having been at the most $\frac{3}{4}$ of a liter, and consequently was on no account fatal.

"The symptoms of the condemned three showed a surprising similarity. At first no peculiarities appeared. After 20-25 minutes a motor agitation and a slight ptyalism set in but stopped again. After 40 to 45 minutes a stronger salivation set in. The poisoned persons swallowed repeatedly, but later the flow of saliva became so strong that it could not even be overcome by swallowing. Foamy saliva flowed from their mouths. Then choking and vomiting set in.

"After 58 minutes the pulse of two of them could no longer

be felt. The third had a pulse rate of 76. After 65 minutes his blood pressure was 90/60. The sounds were extremely low. A reduction of blood pressure was evident.

"During the first hour of the experiment the pupils did not show any changes. After 78 minutes the pupils of all three showed a medium dilation together with a retarded light reaction. Simultaneously, maximum respiration with heavy breathing inhalations set in. This subsided after a few minutes. The pupils contracted again and their reaction improved. After 65 minutes the patellar and achilles tendon reflexes of the poisoned subjects were negative. The abdominal reflexes of two of them were also negative. The upper abdominal reflexes of the third were still positive, while the lower were negative. After approximately 90 minutes, one of the subjects again started breathing heavily, this was accompanied by an increasing motor unrest. Then the heavy breathing changed into a flat, accelerated respiration, accompanied by extreme nausea. One of the poisoned persons tried in vain to vomit. To do so he introduced four fingers of his hand up to the knuckles into his throat, but nevertheless could not vomit. His face was flushed.

"The other two experimental subjects had already early shown a pale face. The other symptoms were the same. The motor unrest increased so much that the persons flung themselves up, then down, rolled their eyes, and made meaningless motions with their hands and arms. Finally the agitation subsided, the pupils dilated to the maximum, and the condemned lay motionless. Masseter spasms and urination were observed in one case. Death occurred 121, 123 and 129 minutes after entry of the projectile.

"*Summary.* The projectiles filled with approximately 38 mg. of aconitin nitrate in solid form had, in spite of only insignificant injuries, a deadly effect after two hours. Poisoning showed 20 to 25 minutes after injury. The main reactions were: salivation, alteration of the pupils, negative tendon reflexes, motor unrest, and extreme nausea.

"MRUGOWSKY

"SS Lecturer Oberfuehrer and Office Chief."

The defendant attempts to meet this charge with the defense that the subjects used in this experiment were persons who had been condemned to death and that he, Mrugowsky, had been appointed as their legal executioner.

One need but read the letter introduced in evidence to arrive at the conclusion that the defense has no validity. This was not a legal execution carried out in conformance with the laws and

rules of war, but a criminal medical experiment wherein wounds were inflicted on prisoners with the sole end in view of determining the effectiveness of poisoned bullets as a means of taking life. The hapless victims of this dastardly torture were Russian prisoners of war, entitled to the protection afforded by the laws of civilized nations. As has been said, in substance, in this judgment: While under certain specific conditions the rules of land warfare may recognize the validity of an execution by shooting, it will not under any circumstances countenance the infliction of death by maiming or torture.

SULFANILAMIDE EXPERIMENTS

That Mrugowsky rendered assistance to Gebhardt in the sulfanilamide experiments at Ravensbrueck is plainly shown by the record. Mrugowsky put his laboratory and co-workers at Gebhardt's disposal. He furnished the cultures for the infections. It was on the suggestion of Mrugowsky's office that wood shavings and ground glass were placed in the wounds of the subjects so that battlefield wounds would be more closely simulated.

GAS OEDEMA EXPERIMENTS

Toward the end of 1942 a conference was held in the Military Medical Academy, Berlin, to discuss the effects of gas oedema serum on wounded persons. During the conference, several cases were reported in which wounded soldiers who had received gas oedema serum injections in large quantities suddenly died without apparent reason. Mrugowsky, who participated in the conference, expressed the possibility that perhaps the deaths had been due to the phenol content of the serum. As a step toward solving the problem Mrugowsky ordered Dr. Ding-Schuler, his subordinate, to take part in a euthanasia killing with phenol and to report on the results in detail.

In pursuance of the order given, Dr. Ding and the defendant Hoven killed some of the concentration camp inmates at Buchenwald with phenol injections and Ding reported his findings to his superior officer, Mrugowsky, as required by the order.

FREEZING, INCENDIARY BOMB, AND EPIDEMIC JAUNDICE EXPERIMENTS

As to these items the Tribunal is of the view that the evidence is insufficient to sustain the charges.

It has been proved beyond a reasonable doubt that the defendant Mrugowsky was a principal in, accessory to, ordered, abetted, took a consenting part in, and was knowingly connected with

plans and enterprises involving medical experiments on non-German nationals, without their consent, in the course of which experiments, murders, brutalities, cruelties, tortures, atrocities, and other inhuman acts were committed. To the extent that these crimes were not war crimes they were crimes against humanity.

COUNT FOUR

Under count four of the indictment, the defendant is charged with being a member of an organization declared criminal by the International Military Tribunal, namely, the SS.

The evidence proves that Mrugowsky joined the NSDAP in 1930 and voluntarily became a member of the Waffen SS in 1931. He remained in these organizations throughout the war. As a member of the Waffen SS, he was criminally implicated in the commission of war crimes and crimes against humanity as discussed in this judgment.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Joachim Mrugowsky is guilty under counts two, three, and four of the indictment.

POPPENDICK

The defendant Poppendick is charged under counts two and three of the indictment with personal responsibility for, and participation in, High-Altitude, Freezing, Malaria, Sulfanilamide, Sea-Water, Epidemic Jaundice, Sterilization, Typhus, and Poison experiments. He is charged under count four with being a member of an organization declared criminal by the judgment of the International Military Tribunal.

The charges with reference to high-altitude and poison experiments have been abandoned by the prosecution and hence will not be considered further.

Poppendick studied medicine at several German universities from 1921 to 1926 and passed his state examination in December of the latter year. He joined the NSDAP on 1 March 1932 and the SS on 1 July following. He rose to the rank of lieutenant colonel in the SS and to the rank of senior colonel in the Waffen SS. He was also a member of a Nazi Physicians' Association. In August 1935 he was appointed as a physician in the Main Race and Settlement Office in Berlin and became chief physician of that office in 1941. He held the latter appointment until the fall of 1944.

From 1 September 1939 until sometime in 1941, Poppendick was on active duty in the army as a surgeon. During the latter year he resumed his duties with the Race and Settlement Office in Berlin. Between 1939 and 1943, he performed some duties as a member of the staff of the Reich Physician SS and Police, Dr. Grawitz, taking care of special assignments.

In the fall of 1943 Poppendick was made Chief of the Personal Office of Grawitz, which position he retained until the end of the war.

FREEZING EXPERIMENTS

The evidence is that Poppendick gained knowledge of the freezing experiments conducted by Rascher at Dachau, as the result of a conference held between Rascher, Grawitz, and Poppendick on 13 January 1943 for the purpose of discussing certain phases of the research. The evidence does not prove beyond a reasonable doubt that Poppendick was criminally connected with these experiments.

MALARIA EXPERIMENTS

The prosecution contends that Poppendick is criminally responsible for the malaria experiments conducted by Dr. Schilling at Dachau. Dr. Ploetner was engaged in the malaria experiments as a subordinate of Schilling. Sievers' Diary, which is in evidence, contains a notation that on 23 May 1944 Grawitz, Poppendick, Ploetner, and Sievers held a conference, which had probably been arranged by Poppendick three days previously by telephone. The subject of the conference is not disclosed by the diary entry, but it appears elsewhere in the diary that on 31 May 1944 Grawitz sanctioned Ploetner's collaboration with Schilling.

Poppendick testified as a witness on his own behalf that he had heard that Schilling was carrying on special investigations at Dachau concerning immunity from malaria. He stated further that his knowledge of the nature of the investigations went no further. The record does not contradict his testimony.

The Tribunal finds that the evidence does not disclose beyond a reasonable doubt that Poppendick was criminally connected with the malaria experiments.

SULFANILAMIDE EXPERIMENTS

Poppendick attended the Third Meeting of Consulting Surgeons at the Military Medical Academy, Berlin, and heard lectures by Gebhardt and Fischer concerning the sulfanilamide experiments, which have been discussed elsewhere in this judgment. Under

date of 7 September 1942 he signed a certificate to a true copy of a report, concerning sulfanilamide experiments which had been conducted at Ravensbrueck, made by Gebhardt to Grawitz. Grawitz forwarded the report, or a certified copy thereof, to Himmler.

We are of the opinion that Poppendick had knowledge of the criminal nature of the experiments conducted by Gebhardt and Fischer at Ravensbrueck, but the defendant's criminal connection with any such experiments has not been proved by the evidence.

SEA-WATER EXPERIMENTS

The evidence does not disclose beyond a reasonable doubt that Poppendick was criminally implicated in these experiments.

EPIDEMIC JAUNDICE EXPERIMENTS

The evidence does not disclose beyond a reasonable doubt that Poppendick was criminally implicated in these experiments.

STERILIZATION EXPERIMENTS

Poppendick was Chief Physician of the Main Race and Settlement Office. The judgment of the International Military Tribunal found that this office was "active in carrying out schemes for Germanization of occupied territories according to the racial principles of the Nazi Party and were involved in the deportation of Jews and other foreign nationals." (*See the "Trial of the Major War Criminals," Vol. 1, p. 270.*)

Testifying before this Tribunal, Poppendick stated that the Nazi racial policy was twofold in aspect; one policy being positive, the other, negative in character. The positive policy included many matters, one being the encouragement of German families to produce more children. The negative policy concerned the sterilization and extermination of non-Aryans as well as other measures to reduce the non-Aryan population. According to Poppendick's testimony, he was not concerned with the execution of negative, but only with positive measures.

By letter dated 29 May 1941 Grawitz wrote to Himmler concerning a conference held on 27 May 1941 at which Dr. Clauberg was present, and discussed his "new method of sterilization of inferior women without an operation."

Poppendick by letter dated 4 June 1941, which referred to a previous telephone conversation with Grawitz, wrote Rudolf Brandt stating that he was enclosing "the list of physicians who are prepared to perform the treatment of sterility" as requested

by Himmler. The list referred to is evidently the same as was contained in a letter from Grawitz to Himmler, dated 30 May 1941, which stated: "In the following, I submit a list of specialists in charge of the treatment of sterility in women according to the method of Professor Clauberg."

It is shown by the evidence that Clauberg later carried out sterilization experiments on Jewesses at Auschwitz. Similar experiments were carried out in other concentration camps by SS doctors who were subordinate to Grawitz. It is evident that Poppendick knew of these sterilization experiments, although it is not shown that he was criminally connected with them.

TYPHUS EXPERIMENTS

It is not clear from the evidence that Poppendick was criminally connected with, or had knowledge of, the nature of the typhus experiments at Buchenwald, or the type of subjects upon which they were conducted.

INCENDIARY BOMB EXPERIMENTS

There is some evidence in the record to the effect that after incendiary bomb experiments were completed at Buchenwald, reports of the experiments were forwarded to Poppendick and Mrugowsky. It is evident that through the reports Poppendick gained knowledge of the nature of the experiments, but the record fails to show criminal responsibility of the defendant in connection therewith.

PHLEGMON EXPERIMENTS

The evidence clearly proves Poppendick's knowledge of these experiments, but it fails to show the defendant's criminal connection therewith.

POLYGAL EXPERIMENTS

The record does not show Poppendick's knowledge of or connection with these experiments.

HORMONE EXPERIMENTS

The prosecution contends that the evidence shows Poppendick's criminal responsibility in connection with a series of experiments conducted at Buchenwald by Dr. Varnet, a Danish physician who claimed to have discovered a method of curing homosexuality by transplantation of an artificial gland.

Under date 15 July 1944, Poppendick wrote to Dr. Ding at the concentration camp Buchenwald as follows:

"By request of the Reichsfuehrer SS the Danish doctor SS Sturmbannfuehrer Dr. Varnet has been given opportunity to continue his hormone research with the SS, particularly the development of his artificial gland. The Reichsfuehrer SS anticipates certain results from the treatment of homosexuals with Varnet's artificial gland. The technical preparations have come to such a point that experiments on human beings can be started within a reasonable space of time.

"As SS Standartenfuehrer Dr. Lolling informed me, the concentration camp Weimar-Buchenwald has been directed to make available 5 prisoners for SS Sturmbannfuehrer Varnet's experiments. These prisoners will be made available to SS Sturmbannfuehrer Varnet by the camp physician at any time.

"SS Sturmbannfuehrer Varnet intends to go to Buchenwald shortly in order to make certain necessary preliminary tests on these prisoners. In case there will be special laboratory tests, you are requested to assist Varnet within the scope of your possibilities.

"Particulars on Varnet's research were sent today to the camp physician of Weimar-Buchenwald for his information."

There is evidence that during the summer of 1944 Dr. Varnet conducted the experiments referred to in Poppendick's letter. However, the nationality of the prisoners used for the experiments is not shown, nor has it been proved beyond a reasonable doubt that the experiments were harmful or caused death, or injury to the experimental subjects.

We have given careful consideration to the evidence concerning the charges made by the prosecution against the defendant Poppendick. Certainly the evidence raises a strong suspicion that he was involved in the experiments. He at least had notice of them and of their consequences. He knew also that they were being carried on by the SS, of which he was and remained a member.

But this Tribunal, however, cannot convict upon mere suspicion; evidence beyond a reasonable doubt is necessary. The evidence is insufficient to sustain guilt under counts two and three of the indictment.

MEMBERSHIP IN A CRIMINAL ORGANIZATION

The defendant Poppendick is charged with membership in an organization declared criminal by the judgment of the International Military Tribunal, namely, the SS. Poppendick joined the

SS in July 1932. He remained in the SS voluntarily throughout the war, with actual knowledge of the fact that that organization was being used for the commission of acts now declared criminal by Control Council Law No. 10. He must, therefore, be found guilty under count four of the indictment.

With reference to the nature of punishment which should be imposed under such circumstances, the International Military Tribunal has made the following recommendation:

"1. That so far as possible throughout the four zones of occupation in Germany the classifications, sanctions, and penalties be standardized. Uniformity of treatment so far as practical should be a basic principle. This does not, of course, mean that discretion in sentencing should not be vested in the Court; but the discretion should be within fixed limits appropriate to the nature of the crime.

"2. Law No. 10 * * * leaves punishment entirely to the discretion of the trial court even to the extent of inflicting the death penalty.

"The De-Nazification Law of 5 March 1946, however, passed for Bavaria, Greater Hesse, and Wuerttemberg-Baden, provides definite sentences for punishment in each type of offense. The Tribunal recommends that in no case should punishment imposed under Law No. 10 upon any members of an organization or group declared by the Tribunal to be criminal exceed the punishment fixed by the De-Nazification Law. No person should be punished under both laws."

(See *"Trial of the Major War Criminals,"* Vol. 1, p. 257.)

In weighing the punishment, if any, which should be meted out to the defendant for his guilt by reason of the charge contained in count four of the indictment, this Tribunal will give such consideration to the recommendations of the International Military Tribunal as may under the premises seem meet and proper.

CONCLUSION

Military Tribunal I finds the defendant Helmut Poppendick not guilty under counts two and three of the indictment, and finds and adjudges the defendant Helmut Poppendick guilty as charged in the fourth count of the indictment.

SIEVERS

The defendant Sievers is charged under counts two and three of the indictment with special responsibility for, and participation in, High-Altitude, Freezing, Malaria, Lost Gas, Sea-Water,

Epidemic Jaundice, and Typhus Experiments, and with extermination of Jews to complete a skeleton collection. Under count four of the indictment, he is charged with being a member of an organization declared criminal by the judgment of the International Military Tribunal, namely, the SS.

The prosecution has abandoned the charge of participation in the Epidemic Jaundice experiments, and hence, this charge will not be considered further.

Sievers is one of the three defendants who are not physicians. He joined the NSDAP in 1929 and renewed his membership in the Nazi Party in 1933. He joined the SS at the end of 1935 on the suggestion of Himmler. In this organization he attained the rank of a Standartenfuehrer (colonel).

From 1 July 1935 until the war ended, Sievers was a member of Himmler's personal staff and Reich Business Manager of the Ahnenerbe Society. According to a statute of 1 January 1939, the purpose of the Ahnenerbe was to support scientific research concerning the culture and heritage of the Nordic race. The Board of Directors was composed of Himmler as president, Dr. Wuest as curator, and Sievers as the business manager. Sievers was responsible for the business organization administration and the budget of the Ahnenerbe. The place of business was Berlin. Sievers supported and participated in the medical experiments which are the subject of the indictment, primarily through the Institute of Military Scientific Research which was established by order of Himmler dated 7 July 1942 and was administratively attached to the Ahnenerbe.

On 1 January 1942 Himmler ordered the establishment of an entomological institute; in March 1942 the Institute Dr. Rascher in Dachau; and in the first month of the year 1942, the Institute Dr. Hirt, at Strasbourg. These subsequently became part of the Institute for Military Scientific Research.

Sievers was, for all practical purposes, the acting head of the Ahnenerbe. In this capacity he was subordinated to Himmler and regularly reported to him on the affairs of this Society. The top secret correspondence of Himmler concerning the Ahnenerbe was sent to Sievers. The charter of the Ahnenerbe defines Sievers' duties as follows:

"The Reich Business Manager handles the business affairs of the community; he is in charge of the business organization and administration. He is responsible for the drawing up of the budget and for the administration of the treasury."

Sievers was responsible for the entire administrative problems of the secretary's office, bookkeeping and treasury. Besides that

he also had to manage the Ahnenerbe publishing house. In June 1943 Professor Dr. Mentzel, who among other things was Chief of the Business Managing Advisory Council of the Reich Research Council, appointed Sievers as his deputy. By this act Sievers did not become a member of the Reich Research Council but held only an honorary position.

In a letter to the defendant Rudolf Brandt, dated 28 January 1943, Sievers defines his position as Reich Business Manager of the Ahnenerbe as follows:

"My duty merely consists in smoothing the way for the research men and seeing that the tasks ordered by the Reichsfuehrer SS are carried out in the quickest possible way. On one thing I certainly can form an opinion; that is, on who is doing the quickest job."

Sievers received orders directly from Himmler on matters of research assignments for the Ahnenerbe and he reported directly to Himmler on such experiments. Sievers devoted his efforts to obtaining the funds, materials, and equipment needed by the research workers. The materials obtained by Sievers included concentration camp inmates to be used as experimental subjects. When the experiments were under way, Sievers made certain that they were being performed in a satisfactory manner. In this connection, Sievers necessarily exercised his own independent judgment and had to familiarize himself with the details of such assignments.

HIGH-ALTITUDE EXPERIMENTS

The details of these experiments are discussed in other portions of this judgment. Sievers' activities in the high-altitude experiments are revealed clearly by the evidence. Rascher, in a letter to Himmler dated 5 April 1942, states as follows:

"SS Obersturmbannfuehrer Sievers took a whole day off to watch some of the interesting standard experiments and may have given you a brief report * * * I am very much indebted to Obersturmbannfuehrer Sievers as he has shown a very active interest in my work in every respect."

Sievers admitted that he reported to Himmler about his visit to Dachau. On the basis of the reports of Sievers and Rascher, Himmler authorized Rascher to continue the high-altitude experiments in Dachau, in the course of which the evidence shows that 180 to 200 inmates were experimented upon; that 70 to 80 of them died. Rascher became associated with the Ahnenerbe in

March 1942, and during the entire time covered by the period of the high-altitude experiments, Rascher was attached to the Ahnenerbe and performed the high-altitude experiments with its assistance. On 20 July 1942, when the final report on high-altitude experiments was submitted to Himmler, Rascher's name appeared on the letterhead of the Ahnenerbe Institute for Military Scientific Research as shown by the cover letter, and the inclosed report bore the statement that the experiments had been carried out in conjunction with the research and instruction association "Das Ahnenerbe". Sievers had actual knowledge of the criminal aspects of the Rascher experiments. He was notified that Dachau inmates were to be used. He himself inspected the experiments. Sievers admitted that Rascher told him that several died as a result of the high-altitude experiments.

Under these facts Sievers is specially chargeable with the criminal aspects of these experiments.

FREEZING EXPERIMENTS

Before the high-altitude experiments had actually been completed, freezing experiments were ordered to be performed at Dachau. They were conducted from August 1942 to the early part of 1943 by Holzloehner, Finke and Rascher, all of whom were officers in the Medical Services of the Luftwaffe. Details of the freezing experiments have been given elsewhere in this judgment.

In May 1943 Rascher was transferred to the Waffen SS and then proceeded alone to conduct freezing experiments in Dachau until May 1945. Rascher advised the defendant Rudolf Brandt that Poles and Russians had been used as subjects.

The witness Neff testified that the defendant Sievers visited the experimental station quite frequently during the freezing experiments. He testified further that in September 1942 he received orders to take the hearts and lungs of 5 experimental subjects killed in the experiments to Professor Hirt in Strasbourg for further scientific study; that the travel warrant for the trip was made out by Sievers; and that the Ahnenerbe Society paid the expenses for the transfer of the bodies. One of the 5 experimental subjects killed was a Dutch citizen.

Neff's testimony is corroborated in large part by the affidavits of the defendants Rudolf Brandt and Becker-Freyseng, by the testimony of the witnesses Lutz, Michalowsky and Vieweg, and by the documentary evidence in the record. In the Sievers' diary, there are numerous instances of Sievers' activities in the aid of Rascher. On 1 February 1943 Sievers noted efforts in obtaining

apparatus, implements and chemicals for Rascher's experiments. On 6 and 21 January 1944 Sievers noted the problem of location. Rascher reported to Sievers periodically concerning the status and details of the freezing experiments.

It is plain from the record that the relationship of Sievers and Rascher in the performance of freezing experiments required Sievers to make the preliminary arrangements for the performance of the experiments to familiarize himself with the progress of the experiments by personal inspection, to furnish necessary equipment and material, including human beings used during the freezing experiments, to receive and make progress reports concerning Rascher, and to handle the matter of evaluation and publication of such reports. Basically, such activities constituted a performance of his duties as defined by Sievers in his letter of 28 January 1943 to Rudolf Brandt, in which he stated that he smoothed the way for research workers and saw to it that Himmler's orders were carried out.

Under these facts Sievers is chargeable with the criminal activities in these experiments.

MALARIA EXPERIMENTS

Details of these experiments are given elsewhere in this judgment. These experiments were performed at Dachau by Schilling and Ploetner. The evidence shows that Sievers had knowledge of the nature and purpose of these criminal enterprises and supported them in his official position.

LOST GAS EXPERIMENTS

These experiments were conducted in the Natzweiler concentration camp under the supervision of Professor Hirt of the University of Strasbourg. The Ahnenerbe Society and the defendant Sievers supported this research on behalf of the SS. The arrangement for the payment of the research subsidies of the Ahnenerbe was made by Sievers. The defendant Sievers participated in these experiments by actively collaborating with the defendants Karl Brandt and Rudolf Brandt and with Hirt and his principal assistant, Dr. Wimmer. The record shows that Sievers was in correspondence with Hirt at least as early as January 1942, and that he established contact between Himmler and Hirt.

In a letter of 11 September 1942 to Gluecks, Sievers wrote that the necessary conditions existed in Natzweiler "for carrying out our military scientific research work". He requested that Gluecks issue the necessary authorization for Hirt, Wimmer, and Kieselbach to enter Natzweiler, and that provision be made for their board and accommodations. The letter also stated:

"The experiments which are to be performed on prisoners are to be carried out in four rooms of an already existing medical barrack. Only slight changes in the construction of the building are required, in particular the installation of the hood which can be produced with very little material. In accordance with attached plan of the construction management at Natzweiler, I request that necessary orders be issued to same to carry out the reconstruction. All the expenses arising out of our activity at Natzweiler will be covered by this office."

In a memorandum of 3 November 1942 to the defendant Rudolf Brandt, Sievers complained about certain difficulties which had arisen in Natzweiler because of the lack of cooperation from the camp officials. He seemed particularly outraged by the fact that the camp officials were asking that the experimental prisoners be paid for. A portion of the memorandum follows:

"When I think of our military research work conducted at the concentration camp Dachau, I must praise and call special attention to the generous and understanding way in which our work was furthered there and to the cooperation we were given. Payment of prisoners was never discussed. It seems as if at Natzweiler they are trying to make as much money as possible out of this matter. We are not conducting these experiments, as a matter of fact, for the sake of some fixed scientific idea, but to be of practical help to the armed forces and beyond that, to the German people in a possible emergency."

Brandt was requested to give his help in a comradely fashion in setting up the necessary conditions at Natzweiler. The defendant Rudolf Brandt replied to this memorandum on 3 December 1942 and told Sievers that he had had occasion to speak to Pohl concerning these difficulties, and that they would be remedied.

The testimony of the witness Holl was that approximately 220 inmates of Russian, Polish, Czech, and German nationality were experimented upon by Hirt and his collaborators, and that approximately 50 died. None of the experimental subjects volunteered. During the entire period of these experiments, Hirt was associated with the Ahnenerbe Society.

In early 1944 Hirt and Wimmer summarized their findings from the Lost experiments in a report entitled "Proposed Treatment of Poisoning Caused by Lost." The report was described as from the Institute for Military Scientific Research, Department H of the Ahnenerbe, located at the Strasbourg Anatomical Institute. Light, medium, and heavy injuries due to Lost gas are

mentioned. Sievers received several copies of this report. On 31 March 1944, after Karl Brandt had received a Fuehrer Decree giving him broad powers in the field of chemical warfare, Sievers informed Brandt about Hirt's work and gave him a copy of the report. This is proved by Sievers' letter to Rudolf Brandt on 11 April 1944. Karl Brandt admitted that the wording of the report made it clear that experiments had been conducted on human beings.

Sievers testified that on 25 January 1943, he went to Natzweiler concentration camp and consulted with the camp authorities concerning the arrangements to be made for Hirt's Lost experiments. These arrangements included the obtaining of laboratories and experimental subjects. Sievers testified that the Lost experiments were harmful. On the visit of 25 January 1943, Sievers saw ten persons who had been subjected to Lost experiments and watched Hirt change the bandages on one of the persons. Sievers testified that in March 1943 he asked Hirt whether any of the experimental subjects had suffered harm from the experiments and was told by Hirt that two of the experimental subjects had died due to other causes.

It is evident that Sievers was criminally connected with these experiments.

SEA-WATER EXPERIMENTS

These experiments were conducted at Dachau from July through September 1944. Details of these experiments are explained elsewhere in the judgment.

The function of the Ahnenerbe in the performance of sea-water experiments conducted at Dachau from July through September 1944 was chiefly in connection with the furnishing of space and equipment for the experiments. Sievers made these necessary arrangements on behalf of the Ahnenerbe. As a result of Schroeder's request to Himmler through Grawitz for permission to perform the sea-water experiments on inmates in Dachau, Himmler directed on 8 July 1944 that the experiments be made on gypsies and three other persons with other racial qualities as control subjects. Sievers was advised by Himmler's office of the above authorization for experiments at the Rascher station at Dachau.

On 27 June 1944, Rascher was replaced by Ploetner as head of the Ahnenerbe Institute for Military Scientific Research at Dachau. Sievers, on 20 July, went to Dachau and conferred with Ploetner of the Ahnenerbe Institute and the defendant Beiglboeck, who was to perform the experiments, concerning the execution of the sea-water experiments and the availability of working

space for them. Sievers agreed to supply working space in Ploetner's department and at the Ahnenerbe Entomological Institute.

On 26 July 1944, Sievers made a written report to Grawitz concerning details of his conference at Dachau. Sievers wrote that 40 experimental persons could be accommodated at "our" research station, that the Ahnenerbe would supply a laboratory, and that Dr. Ploetner would give his assistance, help, and advice to the Luftwaffe physicians performing the experiments. Sievers also stated the number and assignment of the personnel to be employed, estimating that the work would cover a period of three weeks and designated 23 July 1944 as the date of commencement, provided that experimental persons were available and the camp commander had received the necessary order from Himmler. In conclusion, Sievers expressed his hope that the arrangements which he had made would permit a successful conduct of the experiments and requested that acknowledgment be made to Himmler as a participant in the experiments.

In his testimony Sievers admitted that he had written the above letter and had conferred with Beiglboeck at Dachau. As the letter indicates, Sievers knew that concentration camp inmates were to be used.

Sievers had knowledge of and criminally participated in sea-water experiments.

TYPHUS EXPERIMENTS

Detailed description of these experiments is contained elsewhere in this judgment. Sievers participated in the criminal typhus experiments conducted by Haagen on concentration camp inmates at Natzweiler by making the necessary arrangements in connection with securing experimental subjects, handling administrative problems incident to the experiments, and by furnishing the Ahnenerbe station with its equipment in Natzweiler for their performance.

On 16 August 1943, when Haagen was preparing to transfer his typhus experiments from Schirmeck to Natzweiler, he requested Sievers to make available a hundred concentration camp inmates for his research. This is seen from a letter of 30 September 1943 from Sievers to Haagen in which he states that he will be glad to assist, and that he is accordingly contacting the proper source to have the "desired personnel" placed at Haagen's disposal. As a result of Sievers' efforts, a hundred inmates were shipped from Auschwitz to Natzweiler for Haagen's experiments. These were found to be unfit for experimentation because of their pitiful physical condition. A second group of one hundred was

then made available. Some of these were used by Haagen as experimental subjects.

That the experiments were carried out in the Ahnenerbe experimental station in Natzweiler is proved by excerpts from monthly reports of the camp doctor in Natzweiler. A number of deaths occurred among non-German experimental subjects as a direct result of the treatment to which they were subjected.

POLYGAL EXPERIMENTS

Evidence has been introduced during the course of the trial to show that experiments to test the efficacy of a blood coagulant "polygal" were conducted on Dachau inmates by Rascher. The Sievers' diary shows that the defendant had knowledge of activities concerning the production of polygal, and that he lent his support to the conduct of the experiments.

JEWISH SKELETON COLLECTION

Sievers is charged under the indictment with participation in the killing of 112 Jews who were selected to complete a skeleton collection for the Reich University of Strasbourg.

Responding to a request by the defendant Rudolf Brandt, Sievers submitted to him on 9 February 1942 a report by Dr. Hirt of the University of Strasbourg on the desirability of securing a Jewish skeleton collection. In this report, Hirt advocated outright murder of "Jewish Bolshevik Commissars" for the procurement of such a collection. On 27 February 1942, Rudolf Brandt informed Sievers that Himmler would support Hirt's work and would place everything necessary at his disposal. Brandt asked Sievers to inform Hirt accordingly and to report again on the subject. On 2 November 1942 Sievers requested Brandt to make the necessary arrangements with the Reich Main Security Office for providing 150 Jewish inmates from Auschwitz to carry out this plan. On 6 November, Brandt informed Adolf Eichmann, the Chief of Office IV B/4 (Jewish Affairs) of the Reich Main Security Office to put everything at Hirt's disposal which was necessary for the completion of the skeleton collection.

From Sievers' letter to Eichmann of 21 June 1943, it is apparent that SS Hauptsturmfuehrer Beger, a collaborator of the Ahnenerbe Society, carried out the preliminary work for the assembling of the skeleton collection in the Auschwitz concentration camp on 79 Jews, 30 Jewesses, 2 Poles, and 4 Asiatics. The corpses of the victims were sent in three shipments to the Anatomical Institute of Hirt in the Strasbourg University.

When the Allied Armies were threatening to overrun Stras-

bourg early in September 1944, Sievers dispatched to Rudolf Brandt the following teletype message:

“Subject: Collection of Jewish Skeletons.

“In conformity with the proposal of 9 February 1942 and with the consent of 23 February 1942 * * * SS Sturmbannfuehrer Professor Hirt planned the hitherto missing collection of skeletons. Due to the extent of the scientific work connected herewith, the preparation of the skeletons is not yet concluded. Hirt asks with respect to the time needed for 80 specimens, and in case the endangering of Strasbourg has to be reckoned with, how to proceed with the collection situated in the dissecting room of the anatomical institute. He is able to carry out the maceration and thus render them irrecognizable. Then, however, part of the entire work would have been partly done in vain, and it would be a great scientific loss for this unique collection, because hominit casts could not be made afterwards. The skeleton collection as such is not conspicuous. Viscera could be declared as remnants of corpses, apparently left in the anatomical institute by the French and ordered to be cremated. Decision on the following proposals is requested:

- “1. Collection can be preserved.
- “2. Collection is to be partly dissolved.
- “3. Entire collection is to be dissolved.

“Sievers”

The pictures of the corpses and the dissecting rooms of the Institute, taken by the French authorities after the liberation of Strasbourg, point up the grim story of these deliberate murders to which Sievers was a party.

Sievers knew from the first moment he received Hirt's report of 9 February 1942 that mass murder was planned for the procurement of the skeleton collection. Nevertheless he actively collaborated in the project, sent an employee of the Ahnenerbe to make the preparatory selections in the concentration camp at Auschwitz, and provided for the transfer of the victims from Auschwitz to Natzweiler. He made arrangements that the collection be destroyed.

Sievers' guilt under this specification is shown without question.

Sievers offers two purported defenses to the charges against him (1) that he acted pursuant to superior orders; (2) that he was a member of a resistance movement.

The first defense is wholly without merit. There is nothing to show that in the commission of these ghastly crimes, Sievers

acted entirely pursuant to orders. True, the basic policies or projects which he carried through were decided upon by his superiors, but in the execution of the details Sievers had an unlimited power of discretion. The defendant says that in his position he could not have refused an assignment. The fact remains that the record shows the case of several men who did, and who have lived to tell about it.

Sievers' second matter of defense is equally untenable. In support of the defense, Sievers offered evidence by which he hoped to prove that as early as 1933 he became a member of a secret resistance movement which plotted to overthrow the Nazi Government and to assassinate Hitler and Himmler; that as a leading member of the group, Sievers obtained the appointment as Reich Business Manager of the Ahnenerbe so that he could be close to Himmler and observe his movements; that in this position he became enmeshed in the revolting crimes, the subject matter of this indictment; that he remained as business manager upon advice of his resistance leader to gain vital information which would hasten the day of the overthrow of the Nazi Government and the liberation of the helpless peoples coming under its domination.

Assuming all these things to be true, we cannot see how they may be used as a defense for Sievers. The fact remains that murders were committed with cooperation of the Ahnenerbe upon countless thousands of wretched concentration camp inmates who had not the slightest means of resistance. Sievers directed the program by which these murders were committed.

It certainly is not the law that a resistance worker can commit no crime, and least of all, against the very people he is supposed to be protecting.

MEMBERSHIP IN A CRIMINAL ORGANIZATION

Under count four of the indictment, Wolfram Sievers is charged with being a member of an organization declared criminal by the judgment of the International Military Tribunal, namely, the SS. The evidence shows that Wolfram Sievers became a member of the SS in 1935 and remained a member of that organization to the end of the war. As a member of the SS he was criminally implicated in the commission of war crimes and crimes against humanity, as charged under counts two and three of the indictment.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Wolfram Sievers guilty under counts two, three and four of the indictment.

ROSE

The defendant Rose is charged under counts two and three of the indictment with special responsibility for, and participation in Typhus and Epidemic Jaundice Experiments.

The latter charge has been abandoned by the prosecution.

Evidence was offered concerning Rose's criminal participation in malaria experiments at Dachau, although he was not named in the indictment as one of the defendants particularly charged with criminal responsibility in connection with malaria experiments. Questions presented by this situation will be discussed later.

The defendant Rose is a physician of large experience, for many years recognized as an expert in tropical diseases. He studied medicine at the Universities of Berlin and Breslau and was admitted to practice in the fall of 1921. After serving as interne in several medical institutes, he received an appointment on the staff of the Robert Koch Institute in Berlin. Later he served on the staff of Heidelberg University and for three years engaged in the private practice of medicine in Heidelberg. In 1929 he went to China, where he remained until 1936, occupying important positions as medical adviser to the Chinese Government. In 1936 he returned to Germany and became head of the Department for Tropical Medicine at the Robert Koch Institute in Berlin. Late in August 1939 he joined the Luftwaffe with the rank of first lieutenant in the Medical Corps. In that service he was commissioned brigadier general in the reserve and continued on active duty until the end of the war. He was consultant on hygiene and tropical medicine to the Chief of the Medical Service of the Luftwaffe. From 1944 he was also consultant on the staff of defendant Handloser and was medical adviser to Dr. Conti in matters pertaining to tropical diseases. During the war Rose devoted practically all of his time to his duties as consultant to the Chief of the Medical Service of the Luftwaffe, Hippke, and after 1 January 1944, the defendant Schroeder.

MALARIA EXPERIMENTS

Medical experiments in connection with malaria were carried on at Dachau concentration camp from February 1942 until the end of the war. These experiments were conducted under Dr. Klaus Schilling for the purpose of discovering a method of establishing immunity against malaria. During the course of the experiments probably as many as 1,000 inmates of the concentration camp were used as subjects of the experiments. Very many of these persons were nationals of countries other than

Germany who did not volunteer for the experiments. By credible evidence it is established that approximately 30 of the experimental subjects died as a direct result of the experiments and that many more succumbed from causes directly following the experiments, including non-German nationals.

With reference to Rose's participation in these experiments, the record shows the following: The defendant Rose had been acquainted with Schilling for a number of years, having been his successor in a position once held by Schilling in the Robert Koch Institute. Under date 3 February 1941, Rose, writing to Schilling, then in Italy, referred to a letter received from Schilling, in which the latter requested "malaria spleens" (spleens taken from the bodies of persons who had died from malaria). Rose in reply asked for information concerning the exact nature of the material desired. Schilling wrote 4 April 1942 from Dachau to Rose at Berlin, stating that he had inoculated a person intracutaneously with sporocoides from the salivary glands of a female anopheles which Rose had sent him. The letter continues:

"For the second inoculation I miss the sporocoides material because I do not possess the 'Strain Rose' in the anopheles yet. If you could find it possible to send me in the next days a few anopheles infected with 'Strain Rose' (with the last consignment two out of ten mosquitoes were infected) I would have the possibility to continue this experiment and I would naturally be very thankful to you for this new support of my work.

"The mosquito breeding and the experiments proceed satisfactorily and I am working now on six tertiary strains."

The letter bears the handwritten endorsement "finished 17 April 1942. L. g. RO 17/4," which evidence clearly reveals that Rose had complied with Schilling's request for material.

Schilling again wrote Rose from Dachau malaria station 5 July 1943, thanking Rose for his letter and "the consignment of atroparvus eggs." The letter continues:

"Five percent of them brought on water went down and were therefore unfit for development; the rest of them hatched almost 100 percent.

"Thanks to your solicitude, achieved again the completion of my breed.

"Despite this fact I accept with great pleasure your offer to send me your excess of eggs. How did you dispatch this consignment? The result could not have been any better!

"Please tell Fraeulein Lange, who apparently takes care of

her breed with greater skill and better success than the prisoner August, my best thanks for her trouble.

“Again my sincere thanks to you!”

The “prisoner August” mentioned in the letter was doubtless the witness August Vieweg, who testified before this Tribunal concerning the malaria experiments.

Rose wrote Schilling 27 July 1943 in answer to the latter's letter of 5 July 1943, stating he was glad the shipment of eggs had arrived in good order and had proved useful. He also gave the information that another shipment of anopheles eggs would follow.

In the fall of 1942 Rose was present at the “Cold Conference” held at Nuernberg and heard Holzloehner deliver his lecture on the freezing experiments which had taken place at Dachau. Rose testified that after the conference he talked with Holzloehner, who told him that the carrying out of physiological experiments on human beings imposed upon him a tremendous mental burden, adding that he hoped he never would receive another order to conduct such experiments.

It is impossible to believe that during the years 1942 and 1943 Rose was unaware of malaria experiments on human beings which were progressing at Dachau under Schilling, or to credit Rose with innocence of knowledge that the malaria research was not confined solely to vaccinations designed for the purpose of immunizing the persons vaccinated. On the contrary, it is clear that Rose well knew that human beings were being used in the concentration camp as subjects for medical experimentation.

However, no adjudication either of guilt or innocence will be entered against Rose for criminal participation in these experiments for the following reason: In preparing counts two and three of its indictment the prosecution elected to frame its pleading in such a manner as to charge all defendants with the commission of war crimes and crimes against humanity, generally, and at the same time to name in each sub-paragraph dealing with medical experiments only those defendants particularly charged with responsibility for each particular item.

In our view this constituted, in effect, a bill of particulars and was, in essence, a declaration to the defendants upon which they were entitled to rely in preparing their defenses, that only such persons as were actually named in the designated experiments would be called upon to defend against the specific items. Included in the list of names of those defendants specifically charged with responsibility for the malaria experiments the name of Rose does not appear. We think it would be manifestly unfair

to the defendant to find him guilty of an offense with which the indictment affirmatively indicated he was not charged.

This does not mean that the evidence adduced by the prosecution was inadmissible against the charges actually preferred against Rose. We think it had probative value as proof of the fact of Rose's knowledge of human experimentation upon concentration camp inmates.

TYPHUS EXPERIMENTS

These experiments were carried out at Buchenwald and Natzweiler concentration camps, over a period extending from 1942 to 1945, in an attempt to procure a protective typhus vaccine.

In the experimental block at Buchenwald, with Dr. Ding in charge, inmates of the camp were infected with typhus for the purpose of procuring a continuing supply of fresh blood taken from persons suffering from typhus. Other inmates, some previously immunized and some not, were infected with typhus to demonstrate the efficacy of the vaccines. Full particulars of these experiments have been given elsewhere in the judgment.

Rose visited Buchenwald in company with Gildemeister of the Robert Koch Institute in the spring of 1942. At this time Dr. Ding was absent, suffering from typhus as the result of an accidental infection received while infecting his experimental subjects. Rose inspected the experimental block where he saw many persons suffering from typhus. He passed through the wards and looked at the clinical records "of * * * persons with severe cases in the control cases and * * * lighter cases among those vaccinated."

The Ding diary, under dates 19 August-4 September 1942, referring to use of vaccines for immunization, states that 20 persons were inoculated with vaccine from Bucharest, with a note "this vaccine was made available by Professor Rose, who received it from Navy Doctor Professor Ruegge from Bucharest." Rose denied that he had ever sent vaccine to Mrugowsky or Ding for use at Buchenwald. Mrugowsky, from Berlin, under date 16 May 1942, wrote Rose as follows:

"Dear Professor:

"The Reich Physician SS and Police has consented to the execution of experiments to test typhus vaccines. May I therefore ask you to let me have the vaccines.

"The other question which you raised, as to whether the louse can be infected by a vaccinated typhus patient, will also be dealt with. In principle, this also has been approved. There are, however, still some difficulties at the moment about the

practical execution, since we have at present no facilities for breeding lice.

"Your suggestion to use Olzscha has been passed on to the personnel department of the SS medical office. It will be given consideration in due course."

From a note on the letter, it appears that Rose was absent from Berlin and was not expected to return until June. The letter, however, refers to previous contact with Rose and to some suggestions made by him which evidently concern medical experiments on human beings. Rose in effect admitted that he had forwarded the Bucharest vaccine to be tested at Buchenwald.

At a meeting of consulting physicians of the Wehrmacht held in May 1943, Ding made a report in which he described the typhus experiments he had been performing at Buchenwald. Rose heard the report at the meeting and then and there objected strongly to the methods used by Ding in conducting the experiments. As may well be imagined, this protest created considerable discussion among those present.

The Ding diary shows that, subsequent to this meeting, experiments were conducted at Buchenwald at the instigation of the defendant Rose. The entry under date of 8 March 1944, which refers to "typhus vaccine experimental series VIII", appears as follows:

"Suggested by Colonel M. C. of the Air Corps, Professor Rose (Oberstarzt), the vaccine 'Kopenhagen' (Ipsen-Murine-vaccine) produced from mouse liver by the National Serum Institute in Copenhagen was tested for its compatibility on humans. 20 persons were vaccinated for immunization by intramuscular injection * * * . 10 persons were contemplated for control and comparison. 4 of the 30 persons were eliminated before the start of the artificial injection because of intermittent sickness * * * . The remaining experimental persons were infected on 16 April 44 by subcutaneous injection of 1/20 cc. typhus sick fresh blood * * * . The following fell sick: 17 persons immunized: 9 medium, 8 seriously; 9 persons control: 2 medium, 7 seriously * * * . 2 June 44: The experimental series was concluded 13 June 44: Chart and case history completed and sent to Berlin. 6 deaths (3 Copenhagen) (3 control). Dr. Ding."

When on the witness stand Rose vigorously challenged the correctness of this entry in the Ding diary and flatly denied that he had sent a Copenhagen vaccine to Mrugowsky or Ding for use at Buchenwald. The prosecution met this challenge by offering

in evidence a letter from Rose to Mrugowsky dated 2 December 1943, in which Rose stated that he had at his disposal a number of samples of a new murine virus typhus vaccine prepared from mice livers, which in animal experiments had been much more effective than the vaccine prepared from the lungs of mice. The letter continued:

"To decide whether this first-rate murine vaccine should be used for protective vaccination of human beings against lice typhus, it would be desirable to know if this vaccine showed in your and Ding's experimental arrangement at Buchenwald an effect similar to that of the classic virus vaccines.

"Would you be able to have such an experimental series carried out? Unfortunately I could not reach you over the phone. Considering the slowness of postal communications I would be grateful for an answer by telephone * * *."

The letter shows on its face that it was forwarded by Mrugowsky to Ding, who noted its receipt by him 21 February 1944.

On cross-examination, when Rose was confronted with the letter he admitted its authorship, and that he had asked that experiments be carried out by Mrugowsky and Ding at Buchenwald.

The fact that Rose contributed actively and materially to the Mrugowsky-Ding experiments at Buchenwald clearly appears from the evidence.

The evidence also shows that Rose actively collaborated in the typhus experiments carried out by Haagen at the Natzweiler concentration camp for the benefit of the Luftwaffe.

From the exhibits in the record, it appears that Rose and Haagen corresponded during the month of June 1943 concerning the production of a vaccine for typhus. Under date 5 June 1943 Haagen wrote to Rose amplifying a telephone conversation between the two and referring to a letter from a certain Giroud with reference to a vaccine which had been used on rabbits. A few days later Rose replied, thanking him for his letters of 4 and 5 June and for "the prompt execution of my request." The record makes it plain that by use of the phrase "the prompt execution of my request" was meant a request made by Rose to the Chief of the Medical Service of the Wehrmacht for an order to produce typhus vaccine to be used by the armed forces in the eastern area.

Under date 4 October 1943 Haagen again wrote Rose concerning his plans for vaccine production, making reference in the letter to a report made by Rose on the Ipsen vaccine. Haagen stated that he had already reported to Rose on the results of

experiments with human beings and expressed his regret that, up to the date of the letter, he had been unable to "perform infection experiments on the vaccinated persons." He also stated that he had requested the Ahnenerbe to provide suitable persons for vaccination but had received no answer; that he was then vaccinating other human beings and would report results later. He concluded by expressing the wish and need for experimental subjects upon whom to test vaccinations, and suggested that when subjects were procured, parallel tests should be made between the vaccine referred to in the letter and the Ipsen tests.

We think the only reasonable inference which can be drawn from this letter is that Haagen was proposing to test the efficacy of the vaccinations which he had completed, which could only be accomplished by infecting the vaccinated subjects with a virulent pathogenic virus.

In a letter written by Rose and dated "in the field, 29 September 1943", directed to the Behring Works at Marburg/Lahn, Rose states that he is enclosing a memorandum regarding reports by Dr. Ipsen on his experience in the production of typhus vaccine. Copy of the report which Rose enclosed is in evidence, Rose stating therein that he had proposed, and Ipsen had promised, that a number of Ipsen's liver vaccine samples should be sent to Rose with the object of testing its protective efficacy on human beings whose lives were in special danger. Copies of this report were forwarded by Rose to several institutions, including that presided over by Haagen.

In November 1943, 100 prisoners were transported to Natzweiler, of whom 18 had died during the journey. The remainder were in such poor health that Haagen found them worthless for his experiments and requested additional healthy prisoners through Dr. Hirt, who was a member of the Ahnenerbe.

Rose wrote to Haagen 13 December 1943, saying among other things "I request that in procuring persons for vaccination in your experiment, you request a corresponding number of persons for vaccination with Copenhagen vaccine. This has the advantage, as also appeared in the Buchenwald experiments, that the test of various vaccines simultaneously gives a clearer idea of their value than the test of one vaccine alone."

There is much other evidence connecting Rose with the series of experiments conducted by Haagen but we shall not burden the judgment further. It will be sufficient to say that the evidence proves conclusively that Rose was directly connected with the criminal experiments conducted by Haagen.

Doubtless at the outset of the experimental program launched in the concentration camps, Rose may have voiced some vigorous

opposition. In the end, however, he overcame what scruples he had and knowingly took an active and consenting part in the program. He attempts to justify his actions on the ground that a state may validly order experiments to be carried out on persons condemned to death without regard to the fact that such persons may refuse to consent to submit themselves as experimental subjects. This defense entirely misses the point of the dominant issue. As we have pointed out in the case of Gebhardt, whatever may be the condition of the law with reference to medical experiments conducted by or through a state upon its own citizens, such a thing will not be sanctioned in international law when practiced upon citizens or subjects of an occupied territory.

We have indulged every presumption in favor of the defendant, but his position lacks substance in the face of the overwhelming evidence against him. His own consciousness of turpitude is clearly disclosed by the statement made by him at the close of a vigorous cross-examination in the following language:

"It was known to me that such experiments had earlier been carried out, although I basically objected to these experiments. This institution had been set up in Germany and was approved by the state and covered by the state. At that moment I was in a position which perhaps corresponds to a lawyer who is, perhaps, a basic opponent of execution or death sentence. On occasion when he is dealing with leading members of the government, or with lawyers during public congresses or meetings, he will do everything in his power to maintain his opinion on the subject and have it put into effect. If, however, he does not succeed, he stays in his profession and in his environment in spite of this. Under circumstances he may perhaps even be forced to pronounce such a death sentence himself, although he is basically an opponent of that set-up."

The Tribunal finds that the defendant Rose was a principal in, accessory to, ordered, abetted, took a consenting part in, and was connected with plans and enterprises involving medical experiments on non-German nationals without their consent, in the course of which murders, brutalities, cruelties, tortures, atrocities, and other inhuman acts were committed. To the extent that these crimes were not war crimes they were crimes against humanity.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Gerhard Rose guilty under counts two and three of the indictment.

RUFF, ROMBERG, AND WELTZ

The defendants Ruff, Romberg, and Wetz are charged under counts two and three of the indictment with special responsibility for, and participation in, High-Altitude Experiments.

The defendant Wetz is also charged under counts two and three with special responsibility for, and participation in, Freezing Experiments.

To the extent that the evidence in the record relates to the high-altitude experiments, the cases of the three defendants will be considered together.

Defendant Ruff specialized in the field of aviation medicine from the completion of his medical education at Berlin and Bonn in 1932. In January 1934 he was assigned to the German Experimental Institute for Aviation, a civilian agency, in order to establish a department for aviation medicine. Later he became chief of the department.

Defendant Romberg joined the NSDAP in May 1933. From April 1936 until 1938 he interned as an assistant physician at a Berlin hospital. On 1 January 1938 he joined the staff of the German Experimental Institution for Aviation as an associate assistant to the defendant Ruff. He remained as a subordinate to Ruff until the end of the war.

Defendant Wetz for many years was a specialist in X-ray work. In the year 1935 he received an assignment as lecturer in the field of aviation medicine at the University of Munich. At the same time he instituted a small experimental department at the Physiological Institute of the University of Munich. Wetz lectured at the University until 1945; at the same time he did research work at the Institute.

In the summer of 1941 the experimental department at the Physiological Institute, University of Munich, was taken over by the Luftwaffe and renamed the "Institute for Aviation Medicine in Munich." Wetz was commissioned director of this Institute by Hippke, then Chief of the Medical Inspectorate of the Luftwaffe. In his capacity as director of this Institute, Wetz was subordinated to Luftgau No. VII in Munich for disciplinary purposes. In scientific matters he was subordinated directly to Anthony, Chief of the Department for Aviation Medicine in the Office of the Medical Inspectorate of the Luftwaffe.

HIGH-ALTITUDE EXPERIMENTS

The evidence is overwhelming and not contradicted that experiments involving the effect of low air pressure on living human

beings were conducted at Dachau from the latter part of February through May 1942. In some of these experiments great numbers of human subjects were killed under the most brutal and senseless conditions. A certain Dr. Sigmund Rascher, Luftwaffe officer, was the prime mover in the experiments which resulted in the deaths of the subjects. The prosecution maintains that Ruff, Romberg, and Wetz were criminally implicated in these experiments.

The guilt of the defendant Wetz is said to arise by reason of the fact that, according to the prosecution's theory, Wetz, as the dominant figure proposed the experiments, arranged for their conduct at Dachau, and brought the parties Ruff, Romberg, and Rascher together. The guilt of Ruff and Romberg is charged by reason of the fact that they are said to have collaborated with Rascher in the conduct of the experiments. The evidence on the details of the matter appears to be as follows:

In the late summer of 1941 soon after the Institute Wetz at Munich was taken over by the Luftwaffe, Hippke, Chief of the Medical Service of the Luftwaffe, approved, in principle, a research assignment for Wetz in connection with the problem of rescue of aviators at high altitudes. This required the use of human experimental subjects. Wetz endeavored to secure volunteer subjects for the research from various sources; however, he was unsuccessful in his efforts.

Rascher, one of Himmler's minor satellites, was at the time an assistant at the Institute. He, Rascher, suggested the possibility of securing Himmler's consent to conducting the experiments at Dachau. Wetz seized upon the suggestion, and thereafter arrangements to that end were completed, Himmler giving his consent for experiments to be conducted on concentration camp inmates condemned to death, but only upon express condition that Rascher be included as one of the collaborators in the research.

Rascher was not an expert in aviation medicine. Ruff was the leading German scientist in this field, and Romberg was his principal assistant. Wetz felt that before he could proceed with his research these men should be persuaded to come into the undertaking. He visited Ruff in Berlin and explained the proposition. Thereafter Ruff and Romberg came to Munich, where a conference was held with Wetz and Rascher to discuss the technical nature of the proposed experiments.

According to the testimony of Wetz, Ruff, and Romberg, the basic consideration which impelled them to agree to the use of concentration camp inmates as subjects was the fact that the inmates were to be criminals condemned to death who were to

receive some form of clemency in the event they survived the experiments. Rascher, who was active in the conference, assured the defendants that this also was one of the conditions under which Himmler had authorized the use of camp inmates as experimental subjects.

The decisions reached at the conference were then made known to Hippke, who gave his approval to the institution of experiments at Dachau and issued an order that a mobile low-pressure chamber which was then in the possession of Ruff at the Department for Aviation Medicine, Berlin, should be transferred to Dachau for use in the project.

A second meeting was held at Dachau, attended by Ruff, Romberg, Wetz, Rascher, and the camp commander, to make the necessary arrangements for the conduct of the experiments. The mobile low-pressure chamber was then brought to Dachau, and on 22 February 1942 the first series of experiments was instituted.

Wetz was Rascher's superior; Romberg was subordinate to Ruff. Rascher and Romberg were in personal charge of the conduct of the experiments. There is no evidence to show that Wetz was ever present at any of these experiments. Ruff visited Dachau one day during the early part of the experiments, but thereafter remained in Berlin and received information concerning the progress of the experiments only through his subordinate, Romberg.

There is evidence from which it may reasonably be found that at the outset of the program personal friction developed between Wetz and his subordinate Rascher. The testimony of Wetz is that on several occasions he asked Rascher for reports on the progress of the experiments and each time Rascher told Wetz that nothing had been started with reference to the research. Finally Wetz ordered Rascher to make a report; whereupon Rascher showed his superior a telegram from Himmler which stated, in substance, that the experiments to be conducted by Rascher were to be treated as top secret matter and that reports were to be given to none other than Himmler. Because of this situation Wetz had Rascher transferred out of his command to the DVL branch at Dachau. Defendant Romberg stated that these experiments had been stopped soon after their inception by the adjutant of the Reich War Ministry, because of friction between Wetz and Rascher, and that the experiments were resumed only after Rascher had been transferred out of Wetz Institute.

While the evidence is convincingly plain that Wetz participated in the initial arrangements for the experiments and brought all parties together, it is not so clear that illegal experiments were planned or carried out while Rascher was under Wetz command,

or that he knew that experiments which Rascher might conduct in the future would be illegal and criminal.

There appear to have been two distinct groups of prisoners used in the experimental series. One was a group of 10 to 15 inmates known in the camp as "exhibition patients" or "permanent experimental subjects". Most, if not all, of these were German nationals who were confined in the camp as criminal prisoners. These men were housed together and were well-fed and reasonably contented. None of them suffered death or injury as a result of the experiments. The other group consisted of 150 to 200 subjects picked at random from the camp and used in the experiments without their permission. Some 70 or 80 of these were killed during the course of the experiments.

The defendants Ruff and Romberg maintain that two separate and distinct experimental series were carried on at Dachau; one conducted by them with the use of the "exhibition subjects", relating to the problems of rescue at high altitudes, in which no injuries occurred; the other conducted by Rascher on the large group of nonvolunteers picked from the camp at random, to test the limits of human endurance at extremely high altitudes, in which experimental subjects in large numbers were killed.

The prosecution submits that no such fine distinction may be drawn between the experiments said to have been conducted by Ruff and Romberg, on the one hand, and Rascher on the other, or in the prisoners who were used as the subjects of these experiments; that Romberg—and Ruff as his superior—share equal guilt with Rascher for all experiments in which deaths to the human subjects resulted.

In support of this submission the members of the prosecution cite the fact that Rascher was always present when Romberg was engaged in work at the altitude chamber; that on at least three occasions Romberg was at the chamber when deaths occurred to the so-called Rascher subjects, yet elected to continue the experiments. They point likewise to the fact that, in a secret preliminary report made by Rascher to Himmler which tells of deaths, Rascher mentions the name of Romberg as being a collaborator in the research. Finally they point to the fact that, after the experiments were concluded, Romberg was recommended by Rascher and Sievers for the War Merit Cross, because of the work done by him at Dachau.

The issue on the question of the guilt or innocence of these defendants is close; we would be less than fair were we not to concede this fact. It cannot be denied that there is much in the record to create at least a grave suspicion that the defendants Ruff and Romberg were implicated in criminal experiments at

Dachau. However, virtually all of the evidence which points in this direction is circumstantial in its nature. On the other hand, it cannot be gainsaid that there is a certain consistency, a certain logic, in the story told by the defendants. And some of the story is corroborated in significant particulars by evidence offered by the prosecution.

The value of circumstantial evidence depends upon the conclusive nature and tendency of the circumstances relied on to establish any controverted fact. The circumstances must not only be consistent with guilt, but they must be inconsistent with innocence. Such evidence is insufficient when, assuming all to be true which the evidence tends to prove, some other reasonable hypothesis of innocence may still be true; for it is the actual exclusion of every other reasonable hypothesis but that of guilt which invests mere circumstances with the force of proof. Therefore, before a court will be warranted in finding a defendant guilty on circumstantial evidence alone, the evidence must show such a well-connected and unbroken chain of circumstances as to exclude all other reasonable hypotheses but that of the guilt of the defendant. What circumstances can amount to proof can never be a matter of general definition. In the final analysis the legal test is whether the evidence is sufficient to satisfy beyond a reasonable doubt the understanding and conscience of those who, under their solemn oaths as officers, must assume the responsibility for finding the facts.

On this particular specification, it is the conviction of the Tribunal that the defendants Ruff, Romberg, and Wertz must be found not guilty.

FREEZING EXPERIMENTS

In addition to the high-altitude experiments, the defendant Wertz is charged with freezing experiments, likewise conducted at Dachau for the benefit of the German Luftwaffe. These began at the camp at the conclusion of the high-altitude experiments and were performed by Holzloehner, Finke, and Rascher, all of whom were officers in the medical services of the Luftwaffe. Non-German nationals were killed in these experiments.

We think it quite probable that Wertz had knowledge of these experiments, but the evidence is not sufficient to prove that he participated in them.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Siegfried Ruff is not guilty under either counts two or three of the

indictment, and directs that he be released from custody under the indictment when this Tribunal presently adjourns; and

Military Tribunal I finds and adjudges that the defendant Hans Wolfgang Romberg is not guilty under either counts two or three of the indictment, and directs that he be released from custody under the indictment when this Tribunal presently adjourns; and

Military Tribunal I finds and adjudges that the defendant Georg August Weltz is not guilty under either counts two or three of the indictment; and directs that he be released from custody under the indictment when this Tribunal presently adjourns.

BRACK

The defendant Brack is charged under counts two and three of the indictment with personal responsibility for, and participation in, Sterilization Experiments and the Euthanasia Program of the German Reich. Under count four the defendant is charged with membership in an organization declared criminal by the judgment of the International Military Tribunal, namely, the SS.

The defendant Brack enlisted in an artillery unit of an SA regiment in 1923, and became a member of the NSDAP and the SS in 1929. Throughout his career in the Party he was quite active in high official circles. He entered upon full-time service in the Braune Haus, the Nazi headquarters at Munich, in the summer of 1932. The following year he was appointed to the Staff of Bouhler, business manager of the NSDAP in Munich. When in 1934 Bouhler became Chief of the Chancellery of the Fuehrer of the NSDAP, Brack was transferred from the Braune Haus to Bouhler's Berlin office. In 1936 Brack was placed in charge of office 2 (Amt 2) in the Chancellery of the Fuehrer in Berlin, that office being charged with the examinations of complaints received by the Fuehrer from all parts of Germany. Later, he became Bouhler's deputy in office 2. As such he frequently journeyed to the different Gaue for the purpose of gaining first-hand information concerning matters in which Bouhler was interested.

Brack was promoted to the rank of Sturmabfuhrer in the SS in 1935, and in April 1936 to the rank of Obersturmbannfuhrer. The following September he became a Standartenfuhrer in the SS, and was transferred to the staff of the Main Office of the SS in November. In November 1940 he was promoted to the grade of Oberfuhrer.

In 1942 Brack joined the Waffen SS, and during the late summer of that year was ordered to active duty with a Waffen SS division. He apparently remained on active duty until the close of the war.

STERILIZATION EXPERIMENTS

The persecution of the Jews had become a fixed Nazi policy very soon after the outbreak of World War II. By 1941 that persecution had reached the stage of the extermination of Jews, both in Germany and in the occupied territories. This fact is confirmed by Brack himself, who testified that he had been told by Himmler that he, Himmler, had received a personal order to that effect from Hitler.

The record shows that the agencies organized for the so-called euthanasia of incurables were used for this bloody pogrom. Later, because of the urgent need for laborers in Germany, it was decided not to kill Jews who were able to work but, as an alternative, to sterilize them.

With this end in view Himmler instructed Brack to inquire of physicians who were engaged in the Euthanasia Program about the possibility of a method of sterilizing persons without the victim's knowledge. Brack worked on the assignment, with the result that in March 1941 he forwarded to Himmler his signed report on the results of experiments concerning the sterilization of human beings by means of X-rays. In the report a method was suggested by which sterilization with X-ray could be effected on groups of persons without their being aware of the operation.

On 23 June 1942 Brack wrote the following letter to Himmler:

“Dear Reichsfuehrer :

“* * * Among 10 millions of Jews in Europe, there are, I figure, at least 2-3 millions of men and women who are fit enough to work. Considering the extraordinary difficulties the labor problem presents us with I hold the view that those 2-3 millions should be specially selected and preserved. This can however only be done if at the same time they are rendered incapable to propagate. About a year ago I reported to you that agents of mine have completed the experiments necessary for this purpose. I would like to recall these facts once more. Sterilization, as normally performed on persons with hereditary diseases is here out of the question, because it takes too long and is too expensive. Castration by X-ray however is not only relatively cheap, but can also be performed on many thousands in the shortest time. I think, that at this time it is already irrelevant whether the people in question become aware of having been castrated after some weeks or months, once they feel the effects.

“Should you, Reichsfuehrer, decide to choose this way in the interest of the preservation of labor, then Reichsleiter Bouhler would be prepared to place all physicians and other personnel

needed for this work at your disposal. Likewise he requested me to inform you that then I would have to order the apparatus so urgently needed with the greatest speed.

“Heil Hitler!

“Yours

“VIKTOR BRACK.”

Brack testified from the witness stand that at the time he wrote this letter he had every confidence that Germany would win the war.

Brack's letter was answered by Himmler on 11 August 1942. In the reply Himmler directed that sterilization by means of X-rays be tried in at least one concentration camp in a series of experiments, and that Brack place at his disposal expert physicians to conduct the operation.

Blankenburg, Brack's deputy, replied to Himmler's letter and stated that Brack had been transferred to an SS division, but that he, Blankenburg, as Brack's permanent deputy would “immediately take the necessary measures and get in touch with the chiefs of the main offices of the concentration camps.”

A Polish Jew testified before the Tribunal that while confined in Auschwitz concentration camp he was marched to Birkenau and forcibly subjected to severe X-ray exposure and was castrated later in order that the effects of the X-ray could be studied.

A French physician of Jewish descent who was confined at Auschwitz from September 1943 to January 1945, testified that near Auschwitz was Birkenau camp where people were sterilized by SS doctors. About 100 male Poles who had been sterilized at Birkenau were attended by the witness after the operation. Later this group was castrated by the camp physicians.

The record contains other evidence from which it is manifestly plain that sterilization by means of X-rays was attempted on groups of persons who were painfully injured thereby; and that castration followed the X-ray procedures.

Brack's part in the organization of the sterilization program with full knowledge that it would be put into execution, is conclusively shown by the record.

EUTHANASIA PROGRAM

The Euthanasia Program, which was put into effect by a secret decree of Hitler on the day that Germany invaded Poland, has been discussed at length in the judgment in the case against Karl Brandt.

Brack contends that he was basically opposed to this program

and that, on occasion, he assisted certain of his Jewish friends to escape from its consequences. But be that as it may, the evidence is that whatever sentiments Brack may have entertained toward individual members of the race, he was perfectly willing to and did act as an important administrator in furthering the Euthanasia Program. After it had gotten under way, he wrote letters to various public officials, explaining to them how to keep the matter secret and to allay the public sentiment against the program.

This much is shown by Brack's own statements. As a witness on the stand he testified that while at first he did not understand the full import of the program, he decided, after a talk with Bouhler, to collaborate in carrying out the assignment and to execute Bouhler's orders.

He participated in the initial meetings called for the purpose of placing the project in operation. He was present at meetings of the experts, as well as the administrative discussions. He often acted as Bouhler's representative, frequently making decisions which called for the exercise of personal judgment and a wide latitude of discretion.

Brack admitted that such were his activities in the program, that one might well have come to the conclusion that he was the influential man in euthanasia.

As Bouhler's deputy he addressed a meeting at Munich, where he explained the purpose of Hitler's decree and mentioned the draft of a law which was being prepared to give complete legislative sanctity to euthanasia—a law, incidentally, which was never in fact enacted. He represented Bouhler in April of 1941 at a meeting attended by Nazi judges and prosecutors. He testified that the Ministry of Justice had become considerably embarrassed because of the Euthanasia Program, and that he was present at the meeting for the purpose of imparting information concerning the salutary features of euthanasia to those who were present.

Brack gave the Tribunal considerable information concerning the method of extermination by euthanasia, stating that the program was so designed as to render the process inconspicuous and painless. In December 1939, or January 1940, Brack, Bouhler, Conti, and some other doctors were present at the administration of euthanasia to four experimental subjects. The victims were led into a gas chamber which had been built to resemble a shower room. The patients were seated on benches and poisonous gas was let into the chamber. A few moments later the patients became drowsy and finally lapsed into a death sleep without even knowing they were being executed. On the basis of this execution "Hitler decided that only carbon monoxide was to be used for killing the

patients." According to Brack these persons were not Jews, because, as Bouhler had explained to him, "the philanthropic action of euthanasia should be extended only to Germans."

The evidence is plain that the euthanasia program explained by the defendant, gradually merged into the "Action 14 f 13," which, briefly stated, amounted to an extermination of concentration camp inmates by methods and agencies used in euthanasia. One of the prime motives behind the program was to eliminate "useless eaters" from the scene, in order to conserve food, hospital facilities, doctors and nurses for the more important use of the German Armed Forces. Many nationals of countries other than Germany were killed.

Brack's direct connection with and participation in the execution of euthanasia is conclusively proved by the evidence in the record.

MEMBERSHIP IN A CRIMINAL ORGANIZATION

Under count four of the indictment the defendant Brack is charged with being a member of the organization declared criminal by the judgment of the International Military Tribunal, namely, the SS. The evidence shows that Brack became a member of the SS in 1929, and voluntarily remained in that organization until the end of the war. As a member of the SS he was criminally implicated in the commission of war crimes and crimes against humanity, as charged under counts two and three of the indictment.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Viktor Brack guilty under counts two, three and four of the indictment.

BECKER-FREYSENG

The defendant Becker-Freyseng is charged under counts two and three of the indictment with personal responsibility for, and participation in, High-Altitude, Freezing, Sulfanilamide, Sea-Water, Epidemic Jaundice, and Typhus Experiments.

The prosecution has abandoned all charges except as to high-altitude, freezing, sea-water and typhus experiments, and hence only these will be considered.

The defendant Becker-Freyseng joined the Nazi Party in 1933. In 1940 he was drafted into the Luftwaffe. In 1943 he was promoted to the rank of Stabsarzt in the Luftwaffe.

From August 1941 until May 1944 the defendant was an as-

sistant consultant to Anthony, Chief of the Referat for Aviation Medicine, Berlin. This department dealt with all questions concerning aviation medicine and reported to the Chief of the Medical Service of the Luftwaffe. When Schroeder became Chief of the Medical Service of the Luftwaffe on 1 January 1944, the defendant became the consultant for aviation medicine in Schroeder's office.

HIGH-ALTITUDE EXPERIMENTS

As shown elsewhere in the judgment, high-altitude experiments for the benefit of the Luftwaffe were conducted at Dachau concentration camp on non-German nationals, beginning in February or March 1942. These experiments had been approved, in principle at least, by Hippke, Chief of the Medical Service of the Luftwaffe. A mobile low-pressure chamber which had been in the possession of the department of aviation medicine, Berlin, was transferred to Dachau for use in the experiments. Concentration camp inmates were killed while being subjected to experiments conducted in the chamber.

During the time the experiments were conducted, defendant Becker-Freyseng was an assistant consultant to Anthony, Chief of the Referat for Aviation Medicine, Berlin. All low-pressure chambers owned by the Luftwaffe were under the general control of that office.

It is submitted by the prosecution that the record shows that Becker-Freyseng was a principal in, accessory to, aided, abetted, took a consenting part in, and was connected with plans and enterprises involving the commission of these experiments.

The evidence upon this charge is not deemed sufficient to preponderate against a reasonable doubt as to the defendant's guilty participation in the experiments here involved.

FREEZING EXPERIMENTS

It is claimed that in June 1942 Becker-Freyseng was informed from certain of his official files that a meeting to consider experiments to investigate the treatment of persons who had been severely chilled or frozen would be held in Nuernberg the following October (referred to as the "Cold Congress"). It is contended that the directive which set the experiment into motion was issued from the office of the department for aviation medicine, that the funds and equipment were supplied by that office, and that Becker-Freyseng had knowledge of the experiments, and that he admitted such knowledge.

As to all this, the proof is clear that Becker-Freyseng was

actively employed in organizing and was present at the so-called "Cold Congress." But more than the evidence discloses is needed to establish that he had any later part in or connection with the experiments themselves, or that he had any controlling relationship to their initial establishment.

TYPHUS EXPERIMENTS

The evidence is insufficient to disclose any criminal responsibility of the defendant Becker-Freyseng in connection with the typhus experiments.

SEA-WATER EXPERIMENTS

We have discussed the sea-water experiments in that portion of our judgment which deals with the case of the defendant Schroeder. As was pointed out there, two methods of making sea water drinkable were available to the Luftwaffe. One, the so-called Schaefer method, had been chemically tested and apparently produced potable sea water; the other, the so-called Berka process, which changed the taste of the sea water but did not reduce the salt content.

Becker-Freyseng, as chief consultant for aviation medicine in the office of Schroeder, arranged for a conference to be held in May 1944 to discuss the testing of these two methods. At the conference the defendant reported on various clinical experiments which had been conducted by a certain von Sirany to test the Berka process. He came to the conclusion that the experiments had not been conducted under sufficiently realistic conditions of sea distress to make the findings conclusive.

As a result of the conference it was decided that new experiments should be conducted.

We learn from the report of the meeting, which is in evidence, that two series of experiments were to be conducted. The first, a maximum period of six days, during which one group of subjects would receive sea water processed with the Berka method; a second group, ordinary drinking water; a third group no water at all; and the fourth group, such water as would be available in the emergency sea distress kits then used. During the duration of the experiment all persons were to receive only an emergency sea diet, such as provided for persons in distress at sea.

In addition to the 6-day experiment it was determined that a 12-day experiment should be run. The plan for this series reads as follows:

"Persons nourished with sea water and Berkatit, and as diet also the emergency sea rations.

"Duration of experiments: 12 days.

"Since in the opinion of the Chief of the Medical Service permanent injuries to health, that is the death of the experimental subjects, has to be expected, as experimental subjects such persons should be used as will be put at the disposal by [the] Reichsfuehrer SS."

By letter dated 7 June 1944 Schroeder requested the Reichsfuehrer SS to allow him to use concentration camp inmates for the sea-water experiments. The letter stated among other things the following:

"As the experiments on human beings could thus far only be carried out for a period of four days, and as practical demands require a remedy for those who are in distress at sea up to 12 days, appropriate experiments are necessary.

"Required are 40 healthy test subjects, who must be available for 4 whole weeks. As it is known from previous experiments that necessary laboratories exist in the concentration camp Dachau, this camp would be very suitable * * *."

When on the stand as a witness, the defendant Becker-Freyseng admitted that he prepared the substance of the letter for Schroeder's dictation and signature.

Thus with actual knowledge of the nature of the Berka process, and the fact that if used over prolonged periods it would cause suffering and death, Becker-Freyseng counselled and conferred with his chief concerning the necessity for experiments wherein the process would be used. He gave advice upon the exact procedure to be used in the 6-day and 12-day experimental series. He framed the letter to Himmler requesting the use of concentration camp inmates at Dachau for experimental subjects. He called the defendant Beiglboeck to Berlin to explain to him the details and purpose of the experiments. He issued the order under which Beiglboeck went to Dachau to begin the experiments. He received Beiglboeck's report after the experimental series had been concluded.

Throughout all stages of the affair, from its inception to its conclusion, the defendant knew of the dangerous nature of the experiments. He knew that deaths were reasonably to be expected. He knew that concentration camp inmates were to be used as experimental subjects. It is impossible to believe that he supposed that the inmates of the camps, who were to be fur-

nished by Himmler, were to be volunteers. The entire language of the letter, which was written to Himmler asking for experimental subjects, entirely refutes such implication.

The evidence shows conclusively that gypsies of various nationalities were used as experimental subjects. They were former inmates of Auschwitz who had been tricked into coming to Dachau under the promise that they were to be used in a special labor battalion. When they arrived at Dachau they were detailed to the sea-water experiments without their voluntary consent being asked or given.

During the course of the experiment many of the experimental subjects were treated brutally and endured much pain and suffering.

It is apparent from the evidence that Becker-Freyseng was criminally connected with the experiments, and that the experiments were essentially criminal in their nature. To the extent that the crimes committed by him or under his authority were not war crimes, they were crimes against humanity.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Hermann Becker-Freyseng guilty under counts two and three of the indictment.

SCHAEFER

The defendant Schaefer is charged under counts two and three of the indictment with personal responsibility for and participation in Sea-Water Experiments.

Konrad Schaefer was a scientist whose special field of research was chemical therapy. In November 1941 he was drafted into the Luftwaffe. In spring of the following year he was transferred to the Luftwaffe Replacement Depot in Salow, and from there to the Luftwaffe base at Frankfurt on the Oder. In summer of 1942 he was transferred to Berlin and assigned to the staff of the Research Institute for Aviation Medicine. His chief assignment at the Institute was to do research on the problem of sea emergency for the Luftwaffe. This included research work on various methods to render sea water potable. Schaefer remained in his position at the Institute without ever having attained officer rank.

In May of 1944 the defendant was ordered to be present at a meeting to be held at the German Air Ministry in Berlin, called to consider further research on making sea water potable. Some months previous to the meeting Schaefer had developed a process

which actually precipitated the salts from sea water, but it was thought by the Chief of the Luftwaffe Medical Service to be too bulky and expensive for military use by the Luftwaffe.

Present at the meeting were Schaefer; Becker-Freyseng, research advisor to Schroeder; Christensen, of the Technical Bureau of the Reich Ministry of Aviation; and others. The subject of discussion was the feasibility of using the Schaefer process, or of turning to another process known as the Berka Method. The latter method, while cheap, did not precipitate salts from sea water and was dangerous to health when used for a period of time—as Schaefer, previous to the meeting, had already reported to Schroeder. Nevertheless, those in command of the meeting agreed that experiments should be conducted on concentration camp inmates to determine the extent to which the Berka method might be usable.

The experiments later conducted have been described at length in dealing with the case of Schroeder. Due to his attendance at this meeting, Schaefer is sought to be held criminally responsible in connection with the sea-water experiments.

The record has received careful attention from the Tribunal.

Nowhere have we been able to find that Schaefer was a principal in, or accessory to, or was otherwise criminally involved in or connected with the experiments mentioned. In fact, the record fails to show that the defendant had anything to do with these experiments, except such as might be implied from his attendance at several meetings of the parties who were actively interested therein. Nowhere in the testimony or elsewhere is it revealed that Schaefer voted for commencement or prosecution of the experiments or in any other manner aided in their execution.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Konrad Schaefer not guilty of the charges contained in the indictment, and directs that he be released from custody under the indictment when the Tribunal presently adjourns.

HOVEN

The defendant Hoven is charged under counts two and three of the indictment with special responsibility for and participation in Typhus and other Vaccine Experiments, Gas Oedema Experiments, and the Euthanasia Program. In count four he is charged with being a member, after 1 September 1939, of an organization declared criminal by the International Military Tribunal.

Hoven joined the SS in 1934 and the Nazi Party in 1937. Soon after the outbreak of the war he joined the Waffen SS. In October 1939 he became assistant medical officer in the SS hospital at Buchenwald concentration camp. In 1941 he was appointed medical officer in charge of the SS troops stationed in the camp. He became assistant medical officer at the camp inmate hospital, and in July 1942 he became chief camp physician. He remained in the latter position until September 1943. At that time he was arrested on the order of the SS police court in Kassel for having allegedly murdered an SS noncommissioned officer who was a dangerous witness against Koch, the camp commander.

TYPHUS AND OTHER VACCINE EXPERIMENTS

The vaccine experiments with which Hoven is charged were conducted at Buchenwald under the supervision of SS Sturmbannfuhrer Dr. Ding, alias Ding-Schuler. They have already been described at length in other portions of this judgment.

The prosecution has shown beyond a reasonable doubt that Hoven was a criminal participant in these experiments. In collaboration with the SS camp administration he helped select the concentration camp inmates who became the experimental subjects. During the course of selection he exercised the right to include some prisoners and to reject others. While perhaps not empowered to initiate new series of experiments on his own responsibility—that apparently being a power which only Ding could exercise—the defendant worked with Ding on experiments then in progress. He supervised the preparation of diary notes, fever charts, and report sheets of the experiments. Occasionally he injected some of the subjects with the vaccines. He acted as Ding's deputy in the conduct of the experiments. He was in command of experimental Block 46 in Ding's absence. During the period of Hoven's activity in the experimental station no less than 100 inmates were killed as a result of the typhus experiments. Many of these victims were non-German nationals who had not given their consent to be used as experimental subjects.

GAS OEDEMA EXPERIMENTS

It is asserted in an affidavit made by Dr. Ding-Schuler, who was in charge of Blocks 46 and 50, Buchenwald, that toward the end of 1942 a conference was held in the Military Medical Academy, Berlin, for the purpose of discussing the fatal effects of gas oedema serum on wounded persons. During the conference, Kilian, of the Army Medical Inspectorate, and the defendant Mru-gowsky reported several cases in which wounded soldiers who

had received gas oedema serum injections in high quantities died suddenly without apparent reason. Mrugowsky suspected that the fatalities were due to the phenol content of the serum. To help solve the problem Mrugowsky ordered Ding to take part in a euthanasia killing with phenol and to report on the results in detail. A few days later Hoven, in the presence of Ding, gave phenol injections to several of the concentration camp inmates with the result that they died instantly. In accordance with instructions, Ding made a report of the killings to his superior officer.

The fact that Hoven engaged in phenol killings is substantiated by an affidavit voluntarily made by Hoven himself prior to the trial, which was received in evidence as a part of the case of the prosecution. In the affidavit Hoven makes the following statement:

"There were many prisoners who were jealous of the positions held by a few political prisoners and tried to discredit them. These traitors were immediately killed, and I was later notified in order to make out statements that they had died of natural causes.

"In some instances I supervised the killings of these unworthy inmates by injections of phenol, at the request of the inmates, in the hospital assisted by several inmates. Dr. Ding came once and said I was not doing it correctly, and performed some of the injections himself, killing three inmates who died within a minute.

"The total number of traitors killed was about 150, of whom 60 were killed by phenol injections, either by myself or under my supervision, and the rest were killed by beatings, etc., by the inmates."

EUTHANASIA PROGRAM

The details of the Euthanasia Program have been discussed by us at length in dealing with the charges against certain other defendants; consequently they will not be repeated here.

In the Hoven pre-trial affidavit, portions of which were quoted while discussing gas oedema serum experimentation, the defendant gives us a partial picture of the Euthanasia Program, in the following statement:

"In 1941 Koch, the camp commander, called all the important SS officials of the camp together and informed them that he had received a secret order from Himmler that all mentally and physically deficient inmates should be killed, including Jews. 300 to 400 Jewish prisoners of different nationalities were

sent to the 'euthanasia station' at Bernburg for extermination. I was ordered to issue falsified statements of the death of these Jews, and obeyed the order. This action was known as '14 f 13'."

When the defendant Hoven took the stand in his own defense, he attempted to discredit the effects of the statements contained in his affidavit by testifying that the affidavit was taken as a result of interrogations propounded to him by the prosecution in English, and that he was not sufficiently familiar with the language to be fully aware of the inculpatory nature of the statements he was making.

The Tribunal is not impressed with these assertions. The evidence shows that prior to the war the defendant had lived for several years in the United States, where he had acquired at least an average understanding and comprehension of the English language. When he was on the witness stand, the Tribunal questioned him at length in order to ascertain the extent of his knowledge of English, and in particular, of his understanding of the meaning of the words used by him in his affidavit. As a result of this questioning the Tribunal is convinced that no undue or improper advantage was taken of the defendant in procuring the affidavit, and that at the time of his interrogation by the prosecution, Hoven knew and understood perfectly well the nature of the statements he was making.

The facts contained in the Hoven affidavit were convincingly substantiated by other evidence in the record, the only real difference being that the evidence shows the defendant to have been guilty of even many hundreds more murders than are admitted by him in his affidavit. As stated, in essence, by one of the prosecution witnesses in connection with the subject, Hoven personally killed inmates in the hospital barracks by injection. These people were mostly suffering from malnutrition and exhaustion. Hoven must have killed 1,000 of every nationality. These inmates were killed on the initiative of Hoven with no requests from the illegal camp administration or the political prisoners.

It is obvious from the evidence that throughout his entire service at Buchenwald, Hoven attempted to serve three masters: the SS camp administration, the criminal prisoners, and the political prisoners of the camp. As a result he became criminally implicated in murders committed by all three groups involving the deaths of non-German nationals, some of whom were prisoners of war and others of whom were civilians. In addition to these, he committed murders on his own individual responsibility. There

can be nothing said in mitigation of such conduct. To the extent that the crimes committed by Hoven were not war crimes, they were crimes against humanity.

MEMBERSHIP IN CRIMINAL ORGANIZATION

Under count four of the indictment the defendant is charged with being a member of an organization declared criminal by the judgment of the International Military Tribunal, namely, the SS. The evidence shows that Hoven became a member of the SS in 1934, and remained in this organization throughout the war. As a member of the SS he was criminally implicated in the commission of war crimes and crimes against humanity, as charged under counts two and three of the indictment.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Waldemar Hoven guilty, under counts two, three and four of the indictment.

BEIGLBOECK

The defendant Beiglboeck is charged under counts two and three of the indictment with personal responsibility for, and participation in Sea-Water Experiments.

The defendant Beiglboeck, an Austrian citizen, was a captain in the medical department of the German Air Force from May 1941 until the end of the war. In June 1944, while stationed at the hospital for paratroopers at Tarvis [Tarvisio], Italy, he received orders from his military and medical superior, defendant Becker-Freyseng, to carry out sea-water experiments at Dachau.

The sea-water experiments have been described in detail in those portions of the judgment dealing with defendants Schroeder and Becker-Freyseng.

The defendant Beiglboeck testified that he reported to Berlin at the end of June 1944, where Becker-Freyseng told him the nature and purpose of the experiments. Upon that trip he also reported to and talked with the defendant Schroeder. From these conversations he learned that the prime purpose of the experiments was to test the process developed by Berka for making sea water potable and also to ascertain whether it would be better for a shipwrecked person in distress at sea to go completely without sea water or to drink small quantities thereof.

It appears from the record that the persons used in the experiments were 40 gypsies of various nationalities who had been formerly at Auschwitz but who had been brought to Dachau

under the pretext that they were to be assigned to various work details. These persons had been imprisoned in the concentration camps on the basis that they were "asocial persons." Nothing was said to them about being used as human subjects in medical experiments. When they reached Dachau some of them were told that they were being assigned to the sea-water experiment detail.

Beiglboeck testified that before beginning the experiments he called the subjects together and told them the purpose of the experiments and asked them if they wanted to participate. He did not tell them the duration of the experiments, or that they could withdraw if ever they reached the physical or mental state that continuation of the experiment should seem to them to be impossible. The evidence is that none of the experimental subjects felt that they dared refuse becoming experimental subjects for fear of unpleasant consequences if they voiced any objections.

The defendant testified that pursuant to the order that had been given him, it was necessary that the subjects thirst for a continuous period; and that the question of when, if ever, they should be relieved during the course of the experiment was a matter which he reserved for his own decision.

During the course of the experiments the subjects were locked in a room. As to this phase of the program the defendant testified that "They should have been locked in a lot better than they were, because then they would have had no opportunity at all to get fresh water on the side."

At the trial the defendant produced clinical charts which he said were made during the course of the experiments and which, according to the defendant, showed that the subjects did not suffer injury. On cross-examination the defendant admitted that some of the charts had been altered by him since he reached Nuernberg in order to present a more favorable picture of the experiments.

We do not think it necessary to discuss in detail what is shown by the charts either before or after the fraudulent alterations. We think it only necessary to say that a man who intends to rely on written evidence at a trial does not fraudulently alter such evidence from any honest or worthy motive.

The defendant claims that he was at all times extremely reluctant to perform the experiments with which he is charged, and did so only out of his sense of obedience as a soldier to superior authority. Under Control Council Law No. 10 such fact does not constitute a defense, but will be considered, if at all, only in mitigation of sentence.

In our view the experimental subjects were treated brutally. Many of them endured much pain and suffering, although from the evidence we cannot find that any deaths occurred among the experimental subjects.

It is apparent from the evidence that the experiments were essentially criminal in their nature, and that non-German nationals were used without their consent as experimental subjects. To the extent that the crimes committed by defendant Beiglboeck were not war crimes they were crimes against humanity.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Wilhelm Beiglboeck guilty under counts two and three of the indictment.

POKORNY

The defendant Pokorny is charged with special responsibility for, and participation in, criminal Sterilization Experiments, as set forth in counts two and three of the indictment.

It is conceded by the prosecution that, in contradistinction to all other defendants, the defendant Pokorny never held any position of responsibility in the Party or State Hierarchy of Nazi Germany. Neither was he a member of the Nazi Party or of the SS. Formerly a Czechoslovakian citizen, he became a citizen of the Greater German Reich under the Munich Agreement of October 1938. During the war he served as a medical officer in the German Army and attained the rank of captain.

The only direct evidence bearing on the guilt of the defendant is a letter written by Pokorny to Himmler in October 1941, suggesting the use of a drug, *caladium seguinum*, as a possible means of medical sterilization of peoples of the occupied territories. The letter follows:

“To the Reich Commissioner for the Consolidation of German Folkdom,
SS Himmler, Chief of Police,
Berlin.

“I beg you to turn your attention to the following arguments. I have requested Professor Hoehn to forward this letter to you. I have chosen this direct way to you in order to avoid the slower process through channels and the possibility of an indiscretion in regard to the eventually enormous importance of the ideas presented.

“Led by the idea that the enemy must not only be conquered but destroyed, I feel obliged to present to you, as the Reich Commissioner for the Consolidation of German Folkdom the following:

“Dr. Madaus published the result of his research on a *medicinal sterilization* (both articles are enclosed). Reading these articles, the immense importance of this drug in the present fight of our people occurred to me. *If, on the basis of this research, it were possible to produce a drug which, after a relatively short time, effects an imperceptible sterilization on human beings, then we would have a new powerful weapon at our disposal.* The thought alone that the 3 million Bolsheviks, at present German prisoners, could be sterilized so that they could be used as laborers but be prevented from reproduction, opens the most far-reaching perspectives.

“Madaus found that the sap of the Schweigrohr (caladium seguinum) when taken by mouth or given as injection to male but also to female animals, after a certain time produces permanent sterility. The illustrations accompanying the scientific article are convincing.

If my ideas meet your approval the following course should be taken:

1. Dr. Madaus must not publish any more such articles. (The enemy listens!)
2. Multiplying the plant (easily cultivated in greenhouses!)
3. Immediate research on human beings (criminals!) in order to determine the dose and length of the treatment.
4. Quick research of the constitutional formula of the effective chemical substance in order to
5. produce it synthetically if possible.

“As German physician and Chief Physician of the Reserves of the German Wehrmacht, retired (d.R.a.D), I undertake to keep secret the purpose as suggested by me in this letter.

“Heil Hitler!

[Signed] “Dr. Pokorny

“Specialist for skin and venereal diseases.

“Komotau, October 1941.”

The defendant has attempted to explain his motives for sending the letter by asserting that for some time prior to its transmittal he had known of Himmler's intentions to sterilize all Jews and inhabitants of the eastern territories, and had hoped to find some means of preventing the execution of this dreadful program. He knew, because of his special experience as a specialist in skin and venereal diseases, that sterilization of human beings could not be effected by the administration of caladium seguinum. He thought, however, that if the articles written by Madaus could be brought to the attention of Himmler, the latter might turn

his attentions to the unobtrusive method for sterilization which had been suggested by the articles and thus be diverted, at least temporarily, from continuing his program of castration and sterilization by well-known, tried and tested methods. Therefore the letter was written—so explained the defendant—not for the purpose of furthering, but of sabotaging the program.

We are not impressed with the defense which has been tendered by the defendant and have great difficulty in believing that he was motivated by the high purposes which he asserted impelled him to write the letter. Rather are we inclined to the view that the letter was written by Pokorny for very different and more personal reasons.

Be that however as it may, every defendant is presumed to be innocent until he has been proved guilty. In the case of Pokorny the prosecution has failed to sustain the burden. As monstrous and base as the suggestions in the letter are, there is not the slightest evidence that any steps were ever taken to put them into execution by human experimentation. We find, therefore, that the defendant must be acquitted—not because of the defense tendered, but in spite of it.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Adolf Pokorny is not guilty of the charge contained in the indictment, and directs that he be discharged from custody under the indictment when the Tribunal presently adjourns.

OBERHEUSER

The defendant Oberheuser is charged under counts two and three of the indictment with Sulfanilamide, Bone, Muscle and Nerve Regeneration and Bone Transplantation, and Sterilization Experiments.

The charge of participation in the sterilization experiments has been abandoned by the prosecution and will not be considered further.

The defendant Oberheuser joined the league of German Girls (BDM) in 1935 and held the rank of "block leader." In August 1937 she became a member of the Nazi Party. She was also a member of the Association of National Socialist Physicians. She volunteered for the position of a camp doctor in the women's department of the Ravensbrueck concentration camp in 1940 and remained there until June 1943. She was then given a position as assistant physician in the Hohenlychen Hospital under the defendant Gebhardt.

Regarding her connection with both the sulfanilamide and the bone, muscle, and nerve regeneration and bone transplantation experiments, the same facts are applicable as were presented in the cases of the defendants Fischer and Gebhardt. Fischer and Oberheuser were Gebhardt's active agents in carrying out these experiments. They did a great deal of the actual work. They personally committed atrocities involved in the experiments.

A few facts produced in evidence regarding the special work of defendant Oberheuser in these experiments are entitled to comment.

Oberheuser was thoroughly aware of the nature and purpose of the experiments. She aided in the selection of the subjects, gave them physical examinations, and otherwise prepared them for the operation table. She was present in the operating room at the time of the operations and assisted in the operational procedures. She faithfully cooperated with Gebhardt and Fischer at the conclusion of each operation by deliberately neglecting the patients so that the wounds which had been given the subjects would reach the maximum degree of infection.

Testimony of the witness Sofia Maczka, an X-ray technician in the camp at Ravensbrueck, is that deaths occurred among the experimental subjects. Most of these deaths could have been averted by proper post-operative care, proper treatment, or by the amputation of badly infected members.

In one instance—the case of a Krystina Dabska—small pieces of bone were cut from both legs of the subject. Witness Maczka testified that she read on the cast of the patient that on one leg periosteum had been left and on the other leg periosteum had been removed together with bone. Because she was of the opinion that the purpose of the experiment had been to check regeneration, the witness asked the defendant Oberheuser, "How do you expect to get regeneration of bone if the bones are removed with periosteum?" To this the defendant replied, "That is just what we want to check."

Nonconsenting non-German nationals were used in at least some of the experiments. Many of them died as a result of the experiments. To the extent that the crimes committed were not war crimes, they were crimes against humanity.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Herta Oberheuser is guilty under counts two and three of the indictment.

FISCHER

The defendant Fischer is charged under counts two and three with Sulfanilamide and Bone, Muscle and Nerve Regeneration and Bone Transplantation Experiments.

Fritz Fischer joined the Allgemeine SS in February 1934 and the NSDAP in 1939. In the latter year he joined the Waffen SS and was assigned to the SS unit in the Hohenlychen Hospital as a physician subordinated to the defendant Gebhardt. In June 1940 he was transferred to the SS regiment Leibstandarte "Adolf Hitler", and returned the same year to Hohenlychen as assistant physician to Gebhardt, where he remained until May 1943. He then served as a surgeon on both the eastern and western fronts and, after having been wounded in August 1944, came back to Hohenlychen as a patient. In December 1944 he was assigned to the Charity Hospital in Berlin, but returned again to Hohenlychen as Gebhardt's assistant in April 1945. In the Waffen SS he attained the rank of Sturmbannfuehrer (major).

SULFANILAMIDE EXPERIMENTS

Gebhardt, as shown elsewhere in this judgment, was in personal charge of the work being done in this field by his assistant Fritz Fischer. That the latter performed most of the sulfanilamide experimental work is not denied by him; on the contrary, he freely admits it. The defense offered in his behalf is twofold; that the experimental subjects were to have alleged death sentences, then impending, commuted to something less severe in the event they survived the experiments; and that defendant Fischer was acting under military orders from his superior officer, Gebhardt. These defenses have been considered and separately rejected in other parts of this judgment.

It is true, however, that paragraph 4 (b) of Article II of Control Council Law No. 10 reads:

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

It is unnecessary to take up and answer all the arguments that might be presented upon whether or not Fischer is entitled to a mitigation of sentence due to the circumstances claimed as the basis of such mitigation. He acted with most complete knowledge that what he was doing was fundamentally criminal, even though directed by a superior. Under the circumstances his defense must be rejected, and he must be held to be guilty as charged.

BONE, MUSCLE AND NERVE REGENERATION AND BONE TRANSPLANTATION

These experiments have been discussed in connection with the case of the defendant Gebhardt, who was assisted therein by the defendant Fischer. Testimony and exhibits now constituting parts of the record in this case reveal that Fischer has offered no substantial defense to the charge. Indeed, criminal connection with these experiments is admitted, and the admission includes the defendant's own testimony that he personally performed at least some of the operations. It only remains for the Tribunal to hold that on the specification above-mentioned the defendant Fischer is guilty.

To the extent that the crimes committed by defendant Fischer were not war crimes they were crimes against humanity.

MEMBERSHIP IN CRIMINAL ORGANIZATION

Under count four of the indictment Fritz Fischer is charged with being a member of an organization declared criminal by the judgment of the International Military Tribunal, namely, the SS. The evidence shows that Fritz Fischer became a member of the SS in 1934 and remained in this organization until the end of the war. As a member of the SS he was criminally implicated in the commission of war crimes and crimes against humanity, as charged under counts two and three of the indictment.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Fritz Fischer is guilty under counts two, three, and four of the indictment.

[signed] WALTER B. BEALS
PRESIDING JUDGE.
HAROLD L. SEBRING
JUDGE.
JOHNSON T. CRAWFORD
JUDGE.

SENTENCES

PRESIDING JUDGE BEALS: Military Tribunal I has convened this morning for the purpose of imposing sentences upon the defendants who have been on trial before this Tribunal and who have been adjudged guilty by the Tribunal.

“KARL BRANDT, Military Tribunal I has found and adjudged you guilty of war crimes, crimes against humanity, and membership in an organization declared criminal by the judgment of the International Military Tribunal, as charged under the indictment heretofore filed against you. For your said crimes on which you have been and now stand convicted Military Tribunal I sentences you, Karl Brandt, to death by hanging.

“SIEGFRIED HANDLOSER, Military Tribunal I has found and adjudged you guilty of war crimes and crimes against humanity, as charged under the indictment heretofore filed against you. For your said crimes on which you have been and now stand convicted, Military Tribunal I sentences you, Siegfried Handloser, to imprisonment for the full term and period of your natural life, to be served at such prison or prisons, or other appropriate place of confinement, as shall be determined by competent authority.

“OSKAR SCHROEDER, Military Tribunal I has found and adjudged you guilty of war crimes and crimes against humanity, as charged under the indictment heretofore filed against you. For your said crimes on which you have been and now stand convicted Military Tribunal I sentences you, Oskar Schroeder, to imprisonment for the full term and period of your natural life, to be served at such prison or prisons, or other appropriate place of confinement, as shall be determined by competent authority.

“KARL GENZKEN, Military Tribunal I has found and adjudged you guilty of war crimes, crimes against humanity, and membership in an organization declared criminal by the judgment of the International Military Tribunal, as charged under the indictment heretofore filed against you. For your said crimes on which you have been and now stand convicted, Military Tribunal I sentences you, Karl Genzken, to imprisonment for the full term and period of your natural life, to be served at such prison or prisons, or other appropriate place of confinement, as shall be determined by competent authority.

“KARL GEBHARDT, Military Tribunal I has found and adjudged you guilty of war crimes, crimes against humanity, and membership in an organization declared criminal by the judgment of the International Military Tribunal, as charged under the indictment heretofore filed against you. For your said crimes on which you

have been and now stand convicted, Military Tribunal I sentences you, Karl Gebhardt, to death by hanging.

“RUDOLF BRANDT, Military Tribunal I has found and adjudged you guilty of war crimes, crimes against humanity, and membership in an organization declared criminal by the judgment of the International Military Tribunal, as charged under the indictment heretofore filed against you. For your said crimes on which you have been and now stand convicted, Military Tribunal I sentences you, Rudolf Brandt, to death by hanging.

“JOACHIM MRUGOWSKY, Military Tribunal I has found and adjudged you guilty of war crimes, crimes against humanity, and membership in an organization declared criminal by the judgment of the International Military Tribunal, as charged under the indictment heretofore filed against you. For your said crimes on which you have been and now stand convicted Military Tribunal I sentences you, Joachim Mrugowsky, to death by hanging.

“HELMUT POPPENDICK, Military Tribunal I has found and adjudged you guilty of membership in an organization declared criminal by the judgment of the International Military Tribunal, as charged under the indictment heretofore filed against you. For your said crimes on which you have been and now stand convicted, Military Tribunal I sentences you, Helmut Poppendick, to imprisonment for a term of ten years, to be served at such prison or prisons, or other appropriate place of confinement, as shall be determined by competent authority.

“WOLFRAM SIEVERS, Military Tribunal I has found and adjudged you guilty of war crimes, crimes against humanity, and membership in an organization declared criminal by the judgment of the International Military Tribunal, as charged under the indictment heretofore filed against you. For your said crimes on which you have been and now stand convicted, Military Tribunal I sentences you, Wolfram Sievers, to death by hanging.

“GERHARD ROSE, Military Tribunal I has found and adjudged you guilty of war crimes and crimes against humanity, as charged under the indictment heretofore filed against you. For your said crimes on which you have been and now stand convicted Military Tribunal I sentences you, Gerhard Rose, to imprisonment for the full term and period of your natural life, to be served at such prison or prisons, or other appropriate place of confinement, as shall be determined by competent authority.

“VIKTOR BRACK, Military Tribunal I has found and adjudged you guilty of war crimes, crimes against humanity, and membership in an organization declared criminal by the judgment of the International Military Tribunal, as charged under the indictment heretofore filed against you. For your said crimes on which you

have been and now stand convicted, Military Tribunal I sentences you, Viktor Brack, to death by hanging.

"HERMANN BECKER-FREYSENG, Military Tribunal I has found and adjudged you guilty of war crimes and crimes against humanity, as charged under the indictment heretofore filed against you. For your said crimes on which you have been and now stand convicted, Military Tribunal I sentences you, Hermann Becker-Freyseng, to imprisonment for a term of twenty years, to be served at such prison or prisons, or other appropriate place of confinement, as shall be determined by competent authority.

"WALDEMAR HOVEN, Military Tribunal I has found and adjudged you guilty of war crimes, crimes against humanity, and membership in an organization declared criminal by the judgment of the International Military Tribunal, as charged under the indictment heretofore filed against you. For your said crimes on which you have been and now stand convicted, Military Tribunal I sentences you, Waldemar Hoven, to death by hanging.

"WILHELM BEIGLBOECK, Military Tribunal I has found and adjudged you guilty of war crimes and crimes against humanity, as charged under the indictment heretofore filed against you. For your said crimes on which you have been and now stand convicted Military Tribunal I sentences you, Wilhelm Beiglboeck, to imprisonment for a term of fifteen years, to be served at such prison or prisons, or other appropriate place of confinement, as shall be determined by competent authority.

"HERTA OBERHEUSER, Military Tribunal I has found and adjudged you guilty of war crimes and crimes against humanity, as charged under the indictment heretofore filed against you. For your said crimes on which you have been and now stand convicted Military Tribunal I sentences you, Herta Oberheuser, to imprisonment for a term of twenty years, to be served at such prison or prisons, or other appropriate place of confinement, as shall be determined by competent authority.

"FRITZ FISCHER, Military Tribunal I has found and adjudged you guilty of war crimes, crimes against humanity, and membership in an organization declared criminal by the judgment of the International Military Tribunal, as charged under the indictment heretofore filed against you. For your said crimes on which you have been and now stand convicted Military Tribunal I sentences you, Fritz Fischer, to imprisonment for the full term and period of your natural life, to be served at such prison or prisons, or other appropriate place of confinement, as shall be determined by competent authority."

XIII. PETITIONS

a. Introduction

Article XV of Ordinance No. 7 of Military Government for Germany (US) provides that the judgment of the Tribunal as to the guilt or innocence of any defendant shall be final and not subject to review. However, Article XVII provides that the Military Governor has the power to mitigate, reduce, or otherwise alter the sentence imposed by the Tribunal, but may not increase the severity thereof. The petitions on behalf of defendants seeking a revision of the sentences have ordinarily been called clemency pleas.

All 16 defendants found guilty by the Tribunal in case No. I petitioned for clemency to the Military Governor of the United States Zone of Occupation in accordance with Article XVII of Ordinance No. 7. Each of the condemned defendants, with the exception of the defendant Poppendick, also petitioned to the Supreme Court of the United States for a writ of habeas corpus and for a writ of prohibition against the proceeding or an order nullifying the trial and setting the defendants at liberty. Moreover, all defendants, with the exception of the defendant Becker-Freyseng, filed appeals of some kind with the Secretary of War. From these various types of petitions, six are set forth below in whole or in part as follows: petition of appeal to the Secretary of War for the defendant Karl Brandt, page 302; petition for a writ of habeas corpus and a writ of prohibition to the Supreme Court of the United States by the defendant Rose, pp. 303 to 306; extracts from the petition for a writ of habeas corpus and a writ of prohibition to the Supreme Court of the United States by the defendant Schroeder, pp. 307 to 308; petition for review to the Military Governor of the United States Zone of Occupation for the defendant Genzken, pp. 309 to 318; clemency plea to the Military Governor of the United States Zone of Occupation for the defendant Rudolf Brandt, pp. 319 to 321; and clemency plea to the Military Governor of the United States Zone of Occupation for the defendant Poppendick, pp. 322 to 326.

b. Selections from the Petitions to the Military Governor, the
Supreme Court of the United States, and to the
Judge Advocate General

FOR THE DEFENDANT KARL BRANDT

Nuernberg, 4 September 1947.

The
Secretary of War,
Judge Advocate General,
War Department,
Washington, D.C.,
United States of America.

Professor Dr. Karl BRANDT, Petitioner,
Defense Counsel Dr. R. Servatius, attorney-at-law, Cologne

vs.

United States of America

Petition of Appeal

No—————

As defense counsel of the defendant Professor Dr. med. Karl Brandt, I herewith lodge an appeal against the verdict of the Military Tribunal No. I at Nuernberg in Case I, of 19 and 20 August 1947, by which the defendant was sentenced to death. For justification of my appeal against the indictment on which the verdict is based, as well as the verdict itself, I refer to the following documents, copies of which are attached:

(a) Application for review, dated 28 August 1947, addressed to the Chief of Military Government for the American Zone of Occupation in Germany.

(b) Application for writ of habeas corpus, dated 28 August 1947, addressed to the Supreme Court of the United States of America.

It follows from these attached documents that the defendant Karl Brandt was unlawfully deprived of the possibility to lodge an appeal before a Military Tribunal consisting of medical experts.

A re-trial before a court of higher order is necessary in order to re-examine the errors committed by the Tribunal in ascertaining the facts of the case and applying the law.

I request:

(a) that the verdict of the Military Tribunal, dated 20 August 1947, be annulled.

(b) that a court of appeal be formed for a new trial of the case.

[Signature] DR. R. SERVATIUS

Attorney-at-law.

FOR THE DEFENDANT ROSE

Prof. Dr. med. Gerhard Rose Nuernberg, 4 September 1947

POW A/938984

Palace of Justice,
Nuernberg, Germany

Defense Counsel: Dr. Heinz [Hans] Fritz
 Attorney-at-law,
 Bavariaring 14,
 Munich, Germany

To the
Supreme Court of the United States of America
Washington, D.C.

Prof. Dr. med. Gerhard Rose, Petitioner

vs.

United States of America

Petition for Writ of Habeas Corpus

and

Petition for Writ of Prohibition

No. _____

I, the undersigned Prof. Dr. Gerhard Rose, was sentenced, in the verdict of the American Military Tribunal I in Nuernberg, Germany, that was announced on 19 and 20 August 1947, of Case I, United States of America *vs.* Karl Brandt and others, for war crimes and crimes against humanity, as defined in Control Council Law No. 10 of 20 Dec 1945, to life imprisonment.

I pray:

(1) that a writ of habeas corpus be issued by this Court, directed to Lieutenant General Lucius D. Clay, Commanding General, United States Army Forces, Germany, commanding him to produce the body of the petitioner before your Court or some member thereof at a time and place therein to be specified, then and there to receive and to do what your honorable Court shall order concerning his confinement and trial as an accused war criminal and that he be ordered returned to the status of, and internment as a prisoner of war in conformity with the provisions of Article 9 of the Geneva Convention of July 27, 1929, relative to the treatment of prisoners of war and of paragraph 82 of the Rules of Land Warfare [U. S. Field Manual 27-10], and

(2) that a writ of prohibition be issued by this Court prohibiting the respondent from proceeding with the trial and that the

petitioner be discharged from the offenses and confinement aforesaid,

(3) that the costs of the court shall not be levied, because I am a prisoner of war and my property has been confiscated by the Control Council for Germany.

As reasons for the above requests I offer the following:

The sentence imposed on me not only violates valid international law, but also legal principles whose observance by all the courts of the United States is guaranteed by the Constitution of the United States of America.

The basic principle that has been violated is that no one may be deprived of the judge [justice] provided for by law and that each defendant must be granted a regular trial.

The following violations are charged in particular:

The sentence was passed in violation of Article 63 of the Geneva Convention of 1929. I am a medical officer and was Generalarzt in the Reserve, which is equivalent to a brigadier general in the Medical Corps in the American Army. In May 1941 I was in the Luftwaffe hospital at Kitzbuehl in Austria and became a prisoner of war. Shortly afterwards I was flown to England and taken to Camp Latimer (Bucks), known as POW Camp 7. There I was registered as a prisoner of war in the middle of June 1945 and received the POW number A 938984. I was informed that I was a British prisoner of war. I am still a prisoner of war today, because I was neither discharged *de facto* nor was I ever given discharge papers or shown discharge papers that had been filled out. As a prisoner of war I have a right to have my case tried by a court martial, as would be correct in case an Allied medical officer of equal rank were to be indicted on the same charges. This Court must not only be an officers' court composed of judges holding corresponding rank, but it must also be a professional court, because it must be composed of medical officers. Since the American Military Tribunal I is not such a court, it was, for example, not in a position to correctly judge my activity as scientific consultant medical officer in relationship to that of a commanding officer.

Article 63 of the Geneva Convention of 1929 purposely makes no differentiation between crimes that a prisoner of war commits during his prisoner of war captivity and those which he committed before he became a prisoner of war. In accordance with the purpose and spirit of the Geneva Convention of 1929, the prisoners of war are to be protected by this provision from being

brought up before a special court or from any limitation of their legal rights.

(2) There is a violation of Article 64 of the Geneva Convention because the legal remedies that would be available to an Allied medical officer in a corresponding case cannot be used in the case of the sentence that has been imposed upon me, because Article 15 of Ordinance No. 7 of the American Military Government in Germany provides that the verdicts of the Military Tribunals are final and incontestable.

(3) There is a violation of Article 60 of the Geneva Convention, because Switzerland was not informed, as the protecting power for prisoners of war, of the criminal proceedings pending against me.

(4) The sentence imposed on me violates generally recognized legal principles. It is based on the Control Council Law No. 10, dated 20 December 1945, and the *ex post facto* definitions contained therein. The sentence has inflicted punishment on me for crimes against humanity, that is, on the basis of an act which was for the first time declared punishable by Control Council Law No. 10.

The suspension of this universally recognized legal principle by a new law cannot change justice itself. The validity of this special law must be tested by the court.

(5) The sentence violates the basic principle *nulla poena sine culpa*, because it punished me according to Article II, 2c and d of the Control Council Law. These parts of the Control Council Laws allow punishment for mere consent to an act and for a merely objective "connection" with the planning or execution of such act. These provisions represent new substantive law that has been created *ex post facto*.

(6) During the trial I was limited in my defense in an inadmissible way. My defense counsel, Attorney Dr. Fritz, twice requested, in the prescribed manner, that Prof. Dr. Blanc, a French citizen and director of the Pasteur Institute in Casablanca, Morocco, be summoned as an expert witness in the examination of the research work of Prof. Haagen. The medical research work of Prof. Haagen concerns such difficult medical problems that it cannot, in my opinion, be judged by judges who lack medical training, without the expert testimony of a capable specialist. However, the Court did not approve the requests. This is in my opinion the only reason that I was found guilty in connection with the research work of Haagen.

(7) It is further asserted that the principle of oral proceedings was violated. In the final stages of the trial the Court ordered a partly written procedure. Although the main trial had lasted many months and there was an extremely abundant amount of material to discuss, from a factual as well as a legal standpoint, my defense counsel was only allowed one hour for his closing speech. As for the remaining arguments he was advised to present a closing brief. In this way the protection of publicity was denied and the guarantee removed that the Court would really take cognizance of these written statements.

It was not possible for me to receive information concerning these written statements of my co-defendants in time to take action thereon.

The contents of the closing brief which my defense counsel submitted, and the contents of his rebuttal to the closing brief submitted by the prosecutor against me have obviously not been considered in the findings of the Court, although the Court described the closing brief which it demanded as the most important part of the defense. The English translations of the closing brief and rebuttal to the closing brief of the prosecution arrived so late that it seems impossible that the Court could have taken note of the contents before writing the verdict.

Several closing briefs which had been submitted by the defense counsels of my co-defendants were not even available at the time when the verdict was read.

I assume that the Court could not peruse the rebuttal of my defense counsels to the closing brief of the prosecution before writing the verdict, because the verdict, insofar as it pertains to my case, contains several obviously false statements of facts and furthermore does not even analyze these statements.

(8) The verdict does not have, according to the provisions of Military Government Ordinance No. 7, sufficient reasons to back it up. For instance, it is impossible to determine whether the Court investigated the possibility of duress that would preclude punishment.

Insofar as incompetency of the American Military Tribunal No. I is asserted in my case, I point to the fact that it was not possible for me to object earlier on account of Article II *e* of Ordinance No. 7.

I reserve the right to submit further statements and evidence later.

[Signature] DR. GERHARD ROSE.

FOR THE DEFENDANT SCHROEDER

To the
Supreme Court
of the United States of America
Washington
through the office of the General Secretary of the
U. S. Military Tribunal I
Nuernberg.

Oskar Schroeder, Petitioner

vs.

The United States of America

Oskar Schroeder, former Generaloberstabsarzt (Lieutenant General) of the Luftwaffe (German Air Force) at present in the prison of the Court in Nuernberg, Germany.

Counsel for the defendant: Dr. Hanns Marx at present at the Military Tribunal I Nuernberg, Roonstrasse 15.

Writ of Habeas Corpus and

Writ of Prohibition

* * * * *

Here too, the Court found that I am guilty merely because of the fact that contrary to duty I did not supervise my subordinates.

Finally the judgment found me guilty with regard to the responsibility for gas experiments. Here the judgment states:

“A certain Oberarzt Wimmer, a staff physician of the Luftwaffe worked with Hirt on the gas experiments throughout the period.

“We discussed the duty which rests upon a commanding officer to take appropriate measures to control his subordinates, in dealing with the case of Handloser. We shall not repeat what we said there. Had Schroeder adopted the measures which the law of war imposes upon one in position of command to prevent the actions of his subordinates amounting to violations of the law of war, the deaths of the non-German nationals involved in the gas experiments might well have been prevented.”

* * * * *

III

A further infringement against the habeas corpus is the fact that while I have been found guilty as being responsible for the Lost experiments, although I have never been indicted on this count.

The verdict of the Military Tribunal I states on page 11 the names of those defendants who have been accused of having borne special responsibility for the Lost (mustard) gas experiments. My name does not appear on that list.

On page 187 of the verdict, the Court describes the importance that this enumeration of defendants has in relation to the various individual counts of the indictment. It says:

“In preparing counts II and III of the indictment, the prosecution elected to frame its pleadings in such a manner [page 7 of the original] as to charge all defendants with the commission of war crimes and crimes against humanity, generally, and at the same time to name in each subparagraph dealing with medical experiments only those defendants particularly charged with responsibility for each particular item.”

The Court goes on to say:

“In our view this constituted in effect, a bill of particulars and was, in essence, a declaration to the defendants upon which they were entitled to rely in preparing their defenses, that only such persons as were actually named in the designated experiments would be called upon to defend against the specific items.”

As the Court repeatedly gave evidence during the course of the proceedings that it adhered to this view I did not defend myself, did not need to defend myself and could not defend myself against the accusation that I had participated in the Lost experiments.

Although the Court finds on page 187 of the verdict:

“We think it would be manifestly unfair to the defendant to find him guilty of an offense with which the indictment affirmatively indicated he was not charged,”

it has still found me guilty because of responsibility for the Lost experiment, so that in view of the Court's own statements as contained in the verdict, my sentence constitutes, insofar as it concerns this matter, a gross injustice.

I believe that the sentence of the Military Tribunal I violates a principle insofar as each defendant must be told clearly what crime he has been charged with, and that he must have opportunity to defend himself against these accusations.

It is this principle that is being violated in the findings of the Court against me. In my opinion, it infringes thus the principle of legal heading laid down in the habeas corpus. It is therefore obviously unjust, according to the wording of the verdict itself.

* * * * *

FOR THE DEFENDANT GENZKEN

Dr. R. Merkel

Defense Counsel of Defendant Dr. Karl Genzken

Nuernberg, 2 September 1947.

To the

American Military Governor for Germany

General Lucius D. Clay

via

the Secretary General of the

Military Tribunal I

Nuernberg.

Concerning: Confirmation of the sentence of Military Tribunal I, Nuernberg, of 19 August 1947.

Karl Genzken, defendant in Case I, defended by Attorney-at-Law Dr. R. Merkel, Nuernberg, by verdict of Military Tribunal I of 19 August 1947 was found guilty of war crimes, crimes against humanity, and membership in the SS—counts two, three, and four of the indictment—and was sentenced to life imprisonment.

I request that the sentence may not be confirmed, since the defendant is innocent of the punishable participation in the typhus experiments in Buchenwald with which he is charged.

The verdict of Military Tribunal I, Nuernberg of 19–20 August 1947 decided that Genzken in his official position was responsible for, cooperated in, and promoted the typhus experiments which were carried out on non-Germans against their will, and in the course of which, and as a result of which, cases of death occurred.

On the basis of the verdict it is certain that the defendant himself did not actively participate in the typhus experiments; he never entered the Buchenwald concentration camp during the war and never saw the typhus experimental station in Block 46.

The verdict is based on the presupposition—

(1) that Genzken before 1 September 1943—as superior of Mrugowsky, the Chief of the Hygiene Institute, and of Ding in his capacity as an assistant in this Institute—has had the command and thus the official supervision over the experiments in the typhus experimental station in Block 46 of the Buchenwald concentration camp,

(2) that Genzken before 1 September 1943 was acquainted with the kind and scope of the activity of Mrugowsky and Ding, who were supposedly subordinated to him in the field of typhus research, and

(3) that he nevertheless failed to make sure that this research work was carried out within legally permissible limits.

These statements of the verdict are not correct, since they do not take into account in any way the actual facts which emerged on the basis of the extensive evidence submitted by the prosecution and defense.

I

Genzken had no command and no official supervision over the typhus experiments in Block 46

The research for a new typhus vaccine for the Waffen SS was purely scientific research in the medical field. In contrast to the Chiefs of the Medical Services of the three Wehrmacht branches (Army, Air Corps, Navy) scientific research and planning did not belong to the tasks delegated to the Chief of the Medical Service of the Waffen SS. The official agency in charge of scientific research and planning for all the organizations of the SS and the police was rather exclusively Reich Physician SS and Police Professor Dr. Grawitz (pages 4-6 of closing brief of the defense).

Exhibit No. 39 of the prosecution proves that Grawitz in 1942 without success requested funds for the intended establishment of several research institutes. However, in view of the imminent pressing danger of typhus, Grawitz, at the order of Himmler, gave the command to establish a typhus experimental station in connection with and sharing the funds appropriated for Block 46 of the Buchenwald concentration camp and in December 1941 he appointed Dr. Ding of the Hygiene Institute of the Waffen SS head of Block 46. In reference to this Mrugowsky states: "Himmler did not order me to take charge of these experiments, but at the suggestion of Grawitz assigned these duties to Dr. Ding." (*p. 5067 of the English transcript.*) In the affidavit of S. Dumont, we read: "Mrugowsky told me that Grawitz will transmit Himmler's order direct to Ding" (*Document Mrugowsky 38, Exhibit 13, p. 50 Document book Mrugowsky I*). Finally Blumenreuther declares in his affidavit of 3 February 1947 (*Document Mrugowsky No. 26, Exhibit 6, p. 170 Document Book Mrugowsky I*) as follows: "In 1942 Grawitz brought about Himmler's order to establish in the Buchenwald concentration camp an experimental station for typhus research and appointed Dr. Ding to take charge of this experimental station." Thus Ding left the Hygiene Institute, when his research work began, and from this time on he was no longer a subordinate of Genzken, but as chief of the research department in Block 46 was directly, immediately, and exclusively subordinate to Grawitz. As oldest hygienic expert, Grawitz consulted his consulting hygienist Mrugowsky in the course of his researches concerned with typhus. This latter called himself "Reich Physician SS and Leading Police Hygienist" in his report of 5 May 1942 which was mentioned in the verdict (*Mrugowsky, Exhibit 20, p.*

86, *Doc. Book Mrug. I*). As a result of the shortage of hygienists, Mrugowsky, in his capacity as head of the only Hygiene Institute on the home front, was available also to the Reich Physician for his medical duties concerned with all the branches of the SS and for his scientific research tasks. As head of the Hygiene Institute and as head of Office XVI concerned with questions of group hygiene of the Waffen SS, Mrugowsky was subordinate to Genzken, not however in his capacity as hygienic consultant to the Reich Physician. In connection with these problems, to which belonged also the typhus vaccine research, Mrugowsky was subordinate only to Reich Physician SS Grawitz and not to Genzken. If, as the verdict presupposes, the relationship of giving orders had really been the following: Himmler-Grawitz-Genzken-Mrugowsky-Ding, then Genzken would have had to take orders from Grawitz and would have been called for conferences with Grawitz. This has not been established by the prosecution.

Through the examination of witnesses by prosecution and defense, it was established that there were two separate institutions in Buchenwald: the typhus research institute from December 1941 in Block 46 and the typhus vaccine manufacturing station from the fall of 1943 in Block 50 (*see page 35, Closing Brief of the Defense and Exhibit Genzken Exh. No. 5*). The manufacturing station in Block 50, and Ding as its head, would have been subordinate to Dr. Genzken as such if the manufacture of the new SS typhus vaccine had been started before 1 September 1943. However, this was definitely not the case; it was still in a preparatory state (*see page 46, closing brief of the defense*). If on page 96 (German text) of the verdict it is furthermore stated that the official channels were arranged in this manner: *Himmler-Grawitz-Genzken-Mrugowsky-Ding*, then this statement also is in obvious contradiction to the facts established in a clear and conclusive manner by the examination of witnesses.

Because, as far as the channels of command for the typhus experimental station are concerned, the following points prove that these channels of command ran *Himmler-Grawitz-Ding* for Block 46:

(1) Dr. Morgen states in his affidavit Mrugowsky Exh. 107 (*Doc. Mrug. 114, Doc. Book Mrug. Supplement II, p. 54*), that Grawitz gave *written* and direct order to Ding to carry out the typhus research without Genzken's participation. Ding showed Morgen the written order from Grawitz.

(2) The letterhead which Ding used before spring 1943, as head of the experimental station for typhus and virus research, read as follows: "Reich Fuehrer SS—Typhus-Experimental Station, Buchenwald" (*see Doc. Genzken No. 2, Genzken Exh. 8*).

(3) The prosecution witness Kogon confirms the fact that all reports went through Mrugowsky directly to Grawitz and not by way of Genzken.

(4) Genzken and Mrugowsky both testify under oath that Himmler and Grawitz gave the order for the establishment of the experimental station to Ding directly.

(5) In Exhibit 283 of the prosecution, Ding states "that Grawitz, in agreement with the leading physician of the concentration camp Dr. Lolling appointed Dr. Hoven as Ding's deputy in Buchenwald". The appointment, therefore, did not take place by way of Genzken.

The order channel, Himmler-Grawitz-Genzken-Mrugowsky-Ding, as stated in the verdict, is based exclusively on the affidavit of Dr. Hoven dated 24 October 1946, Prosecution Exh. No. 281. When he was interrogated, Hoven stated under oath that this channel of command was correct only for the manufacturing station in Block 50 and not for the research institute in Block 46 (*see p. 9913 of the English record*). When Mrugowsky was interrogated, he also stated under oath "that this command relationship referred solely to the vaccine *manufacture* in Block 50. This chain of command did *not* refer to Block 46, and insofar as it is touched by it, this channel of giving orders is not correct" (*see p. 46 closing brief of the defense*).

From all this evidence it follows conclusively that Hoven's statement cannot be used as supporting evidence for a conviction against Genzken. For he was not a station on this channel of giving orders and had never had anything to do about giving orders concerning the carrying out of the typhus experiments in Block 46 until 1 September 1943.

If, therefore, the verdict states that Genzken was responsible for the carrying out of the typhus experiments, then the verdict does not take into consideration the proven fact that not Genzken, but Grawitz was the one who gave the order to carry out research experiments in the concentration camp Buchenwald on concentration camp inmates. Only he who gives the order to carry out an action and who was a party to it in some other ways can be responsible for the act. Nothing of the sort has been proved against Genzken. If, as established by Document Mrug. Exh. No. 107, Grawitz gave the order to carry out typhus experiments to Ding, then it is impossible that Genzken too could have given such an order, if for no other reason, because he was never the competent authority for scientific research and projects. Furthermore on the basis of his testimony as a witness, it has been established that he never received an order to this effect by Grawitz,

and that Grawitz purposely excluded him from exerting any influence on the research projects in Block 46.

In Genzken Exhibit No. 3, Mrugowsky confirms "that Grawitz, in conversations with him, frequently emphasized that he—Grawitz—was the only one responsible for research and planning assignments within the SS, and that Genzken had nothing to do with them."

The assumption in the verdict is, therefore, not correct that Ding undertook typhus research "for" the Hygiene Institute (*page 97, German text of the verdict*). As already mentioned above and as proved beyond doubt during the trial, Ding did not undertake these typhus experiments for the Hygiene Institute of the Waffen SS, but exclusively for his employer and commander, Grawitz.

Genzken, therefore, was not responsible for the carrying out of the typhus experiments, since he neither commanded nor ordered those experiments.

If furthermore the Tribunal is trying to construe incriminating evidence against Genzken by claiming that Genzken provided the funds for Ding's expenses (*see page 97 and 99 of the German text*), this too is a mistake. Genzken expressly said under oath that he never provided any money for Ding's experiments, but that only for Ding's personal needs had funds been transferred to the Waffen SS through the medical office. In the Genzken Document No. 17, Genzken Exhibit No. 15, Rudolf Tonndorf says "that he never paid or ordered payment for the upkeep or provided other funds for scientific experiments or for institutions which served such purposes, because such scientific research work was not the concern of the medical office of the Waffen SS, but exclusively that of the office of the Reich Physician of the SS and Police, Dr. Grawitz."

In Genzken Exhibit No. 8, Barnewald states under oath "that the entire administrative care for Block 46 was the concern of the Buchenwald camp administration through the official channels via the patients' building of the concentration camp. The administration of the medical office of the Waffen SS had officially nothing to do with administrative matters concerning Block 46."

On page 6 of the Ding diary—Prosecution Exhibit No. 287—it says that Pohl, the Chief of the Main Administrative and Economic Office, gave the order for the enlargement of a block of stone buildings. On page 9 of that same document a conference between Ding and two representatives of the Main Administrative and Economic Office is mentioned (Barnewald and Schlesinger), who occupied themselves with the breeding of experimental animals for the experimental department.

Not Genzken, but the authorities competent for the economic

supply of the concentration camps, namely, the Main Administrative and Economic Office therefore carried through the financing of the typhus experiments via the camp administration of the concentration camp Buchenwald.

II

Genzken had no knowledge of the character and of the extent of the experiments carried out in the field of typhus research in Block 46

The statement in the verdict (page 105) "that Genzken knew that the prisoners were subjected to cruel medical experiments, in the course of which deaths were occurring," is not proved in any way.

The verdict itself (page 98) states that Genzken said "that he was aware of the fact that concentration camp inmates were subjected to experiments, and that he stated that he was *not* advised as to the *methods* of experimentation." In the cross-examination, Genzken emphasized that the number of the experimental persons, of the series of experiments, the number of dead, the cultures for infections, and the passages had only become clear to him through the trial, and that the names "Block 46" and "Block 50" had been entirely unknown to him up to the trial. As proved by the evidence it is clear, beyond doubt, that Genzken was not informed either by Grawitz, nor by Ding, nor by Mrugowsky about the details of the experiments. Grawitz who distrusted Genzken, consciously never informed Genzken about a single case of his many secret experiments upon human beings in which, according to the documentary evidence he participated. The defense has given sufficient evidence for this fact. Grawitz even prevented Mrugowsky from informing Genzken (*Document Genzken, Exhibit No. 3*): "This is none of Genzken's business."

It has also been made very clear by the defense that Ding had never given any oral or written information about the details of the experiments. The prosecution could not produce any evidence for such information.

The verdict speaks about a "warm personal friendship between Genzken and Ding" (page 97). Their relationship never was more than one of official comradeship. They did not use the intimate "Du" in addressing each other. Ding was never a guest at Genzken's house. Once Ding was presented to Frau Genzken. The two women did not know each other at all.

Ding's scientific reports concerning his research went directly to Grawitz via Mrugowsky. To the question whether it was not true that reports concerning the typhus experiments in Block 46 went to the office of the Reich Physician of the SS and of the Police Grawitz, the prosecution witness Kogon answered by say-

ing: "This is correct" (see p. 1290 of the *English Transcript*). Mrugowsky said in this connection:

"The reports were never presented to Genzken through me but in a new envelope went directly to Grawitz" (see p. 5366 of the *English Transcript*). Finally the witness Dumont in figure 7 of her affidavit (*Document Mrugowsky, Exhibit 13, page 51, Document Book Mrug. I*) declared: "The reports which Ding made concerning his experiments with prisoners were directed to Grawitz via the Hygiene Institute."

The verdict tries furthermore to base the fact that Genzken knew about the typhus experiments via stating that once a report by Mrugowsky of 5 May 1942 went to him and that besides this, he had been personally informed about everything by Mrugowsky. Both conclusions are also wrong and are in direct contradiction to the evidence.

The only document of the prosecution which, according to the distributor mentions the name of Genzken at all, is the report by Mrugowsky of 5 May 1942, mentioned in the verdict (*page 99 and following*). The conclusions which the Tribunal feels compelled to have to draw from this report to the prejudice of Genzken do not apply if only for the reason that this report was *never* made available to Dr. Genzken. Mrugowsky said in this respect: "This report was not presented to Genzken himself but was even later on, until the end, in the files of Amt XVI." (*See reply of the defense to the closing brief of the prosecution, p. 5*). Genzken cannot be made responsible for something he, as has been proved, never knew. If he never saw that report of Mrugowsky and if he never knew of its existence, it cannot serve as an incriminating evidence against him.

It is not correct, that before 1 September 1943 Mrugowsky gave regularly, on the average once a week, oral or written reports concerning the typhus experiments to Genzken. Mrugowsky only said that about once a week he reported to Genzken on the hygiene of the troops at the meeting of the Referenten * of the medical office. Mrugowsky did this in his capacity as leading hygienist of the medical office (Sanitaets-Amt). Mrugowsky never reported to Genzken about the typhus experiments, on the occasion of these weekly reports and meetings of Referenten (Heads of Referate, Departments in a Ministry), if only because of the fact that these experiments did not fall within the scope of the work of the medical office of the Waffen SS, and because, upon Grawitz order, they were to be kept strictly secret. Written reports were never made at all. The established fact that in the medical office there

* According to German terminology a "Referent" (plural: "Referenten") is an official with expert knowledge of a specialized subject in a government or private organization.

was not the slightest information about, nor was there ever any discussion of, typhus experiments or any other experiments upon human beings in concentration camps, in itself shows that on Mrugowsky's part, no oral or written reports were submitted to the medical office of the Waffen SS. Four participants in such meetings of the Referenten of the medical office have borne witness to this fact (*see p. 52 of the closing brief for the defense*).

The sole report of the spring of 1943 has been described in detail by Mrugowsky. His explanations were incorporated into the verdict word for word. The Tribunal thus considers them to be true and accurate. Mrugowsky and Genzken both stated under oath that Genzken had not seen that infection dates and incidents of death had been marked in the charts which were submitted to him. Mrugowsky stated literally as follows: "I had no cause to call his attention to these things expressly because actually I made no report to him concerning Ding's experimental series, but merely wanted to give him factual information concerning the protective effect of certain vaccines, which he as head of the medical office had to know."

On pages 25-26, the verdict states: "In Anglo-Saxon law, every defendant in a criminal proceedings for a crime of which he is accused is considered innocent until the prosecution has brought sound credible proof of his guilt, excluding all reasonable doubt. This assumption applies to the defendant throughout all the stages of the trial, until such proof has been brought. 'Reasonable doubt' is, as the name implies, doubt that is in keeping with reason, a doubt that a reasonable person would entertain."

These statements must be completely and entirely agreed to. But, when applied to this very case of defendant Genzken and especially to his alleged knowledge of the experiments, it can under no circumstances be said that the evidence brought by the prosecution is sufficient to provide the judge with a lasting conviction giving him the moral certainty the accusation is true. For Genzken did not see Mrugowsky's report, and the single report made by Mrugowsky presents, according to the latter's statement, no sound and conclusive proof of Genzken's knowledge.

The verdict holds Genzken responsible (*p. 103*) "for having nevertheless neglected to reassure himself that his experimental work was being carried out within permissible legitimate limits."

III

Genzken had no official supervisory power and no chance to intervene by giving orders and also no reason at all to reassure himself

As witness, Genzken himself stated that he had merely known

that a new typhus vaccine was to be produced in an institute at Buchenwald. Genzken had no knowledge whatsoever in this specialized field of hygiene, as well as no bacteriological training at all, and had never conducted scientific research work. He had no reason at all to assume that, in connection with this research, prisoners would be used in a criminal manner. He was merely of the opinion that the prisoners were brought in for purposes of checking the efficacy of the vaccine, in the form of experimental series which were generally customary in medical research. It was only during the course of the trial that he for the first time learned of deliberate infections and that there had been many deaths during the experimental series. He could not know anything about these facts, especially because the assignment of the prisoners was, as a concentration camp matter, completely outside of his sphere of duties. When, on page 103 (German text), the verdict implies that Genzken had undertaken no steps to reassure himself about the condition of the experimental subjects or of the circumstances under which they had been taken to the experimental block, this implication of the verdict is also incorrect, because the prisoners were not assigned by the medical office of the Waffen SS, but by the office in charge of the administration of the concentration camp in collaboration with the Reich Criminal Police Office. Until the trial, he had not even known that non-Germans were called in as experimental subjects. This and the fact that all experiments were kept strictly secret made it impossible for Genzken to institute investigations or to undertake steps to reassure himself about the condition of the experimental subjects. If, finally, on page 98 of the verdict, reference is made to Ding's diary in order to support the judgment, it must above all be stated that there are grave doubts as to the probative value of this document (*see p. 27 and the following of the closing brief for the defense*). The verdict asserts that Kogon kept the original diary. That is not in keeping with the facts; in any case it would have been impossible for the period from December 1941 to June 1943, because Kogon only became Ding's secretary on the latter date (*see p. 1259 of the English Transcript*). On page 99 of the verdict, the Tribunal itself makes the following statement in connection with the entry for 9 January 1943 referred to in order to incriminate Genzken: "if Ding's proven attempts at self-glorification are taken into account, one should not credulously accept this entry in its existing form." Thus in this connection the statements on page 25 and 26 of the verdict regarding the Tribunal's conviction apply in particular. If even the Tribunal, and quite rightly so, feels considerable doubts as to the correctness and significance of this entry, it is not permissible to use it in order

to the prejudice of the defendant. Besides, Genzken expressly declared as also confirmed by Kogon (*see p. 1228 of English Tr.*) that he never expressed his approval with regard to the department for typhus research, but that this entry would have to be interpreted as his consent to the change of name of the vaccine *production* laboratory. This intended change of name was not effected until after 1 September 1943, thus at a time when Genzken was no longer responsible. (*See p. 32 and following of the closing brief for the defense.*)

The verdict states at the end of the opinion for Genzken's sentence that he was responsible for the typhus experiments and that he assisted in them and furthered them.

In the face of all this, the result of the case in chief is once again to be summarized as follows:

Genzken had no responsibility, no authority to give orders, and no official supervisory power regarding the Typhus Experimental Station in Block 46 of the Buchenwald concentration camp. All these were in the hands of Grawitz. The latter gave direct orders for the experiments to be carried out to Ding who was his immediate subordinate. Ding's reports went directly through Mrugowsky to Grawitz and never to Genzken. The latter had no knowledge whatsoever of the criminal methods of the experiments. Genzken had no responsibility, no official supervisory power, and no possibility to interfere by an order; owing to his ignorance of the facts, he had no cause to reassure himself of the conditions under which the experiments took place. Therefore a sentence in connection with counts two and three of the indictment ought not to follow. I, therefore, ask that the verdict should not be confirmed on these points, as Genzken is not guilty of a war crime or of a crime against humanity as is clearly proved by the evidence.

With regard to his membership in the SS, this fact alone is not sufficient to bring about his conviction before the American Military Tribunal. In addition, it would be necessary that his knowledge of *criminal* experiments should have been proved as in the Poppendick case. However, in accordance with the above statements this is not the case.

Only the competent German Denazification Board could convict the defendant for his SS membership. I therefore propose that the case be referred to the Denazification Board competent for his home town Preetz/Holstein.

[Signature] DR. R. MERKEL,
Attorney-at-Law.

FOR THE DEFENDANT RUDOLF BRANDT

Dr. Kurt Kauffmann

Counsel for the Defense of the Defendant Rudolf Brandt

Nuernberg, 2 September 1947

To the Military Governor of the American Zone of Occupation in Germany.

Through the Secretary General at Military Tribunal No. I, Nuernberg.

As counsel for the defense of Rudolf Brandt, who has been sentenced to death, I herewith petition that the judgment of the American Military Tribunal No. I, dated 19-20 August 1947, not be confirmed.

It is perhaps the grandest task of a human being and counsel for the defense to intercede on behalf of another person and to commend him to the clemency of the mighty.

Clemency appeals to the understanding of the great for human weakness. Clemency is the opposite of pure criticism and spiteful anger.

For this reason I remain quiet in the face of the sentence pronounced; I do not raise any complaint because, in one point or another, the decision of the Tribunal does not perhaps entirely agree with my opinion of the course of events, of the position of the defendant at that time, and of his character.

This petition for clemency wants once more to go into the depths of the thoughts which basically were already the subject of my final plea.

One may well believe that at the beginning of the trial, after I had studied the case of Rudolf Brandt, I recognized that this task was hardly to be rewarded with success; nevertheless it seemed to me that it was worth my efforts to take over the defense, since I believed—then as well as now—that Rudolf Brandt is guilty to receive any kind of punishment but not the death sentence.

Not a few of the statements made in my final plea serve this idea. I must admit, however, that even I, as the counsel for his defense, arrived at this conviction only on the strength of the characterization of the personality of the defendant contained in my document book, as well as on the strength of my own judgment of him, which sees in Brandt a beast of burden which

dragged on day and night without really recognizing the contents of its burden; for the burden which it carried, together with the weights, which make this trial such a terrible one, were only a small fraction of the gigantic burden under which the bearer himself was not visible any more.

This comparison can be drawn without difficulty from the evidence presented by the defense.

I take the liberty—because it seems characteristic in this respect—to refer to some pieces of evidence which have already been submitted to the Tribunal, namely:

(1) the affidavit of Medizinalrat Felix Kersten of Stockholm (*Document Book Rudolf Brandt, page 8*).

(2) two affidavits from Schellenberg and Dr. Stuckart (*Document Book Rudolf Brandt, pp. 16-17 and pp. 23-24*).

(3) I once more refer to the final plea of Rudolf Brandt (*English transcript, pages 11330-35*).

(4) I attached two letters of the World Jewish Congress in Paris and Stockholm, addressed to the above-mentioned Felix Kersten, which had been rejected by the Tribunal as unessential pieces of evidence, which, however, throw a distinct light on the personality of Felix Kersten, who, on his part, defends so warmly Rudolf Brandt.

The fact that Rudolf Brandt did not make his own decisions but was under the command of Himmler can be found a mitigating consideration according to Law No. 10 of the Control Council, Article II 4 b.

I appeal to the generosity of the great to make use of this possibility to mitigate the sentence.

A sentence of imprisonment is also a heavy expiation.

The counsel for the defense again and again feels tempted to regret that these trials are too drawn out and through their long duration have a negative effect on the broad masses of the German people. If it is to be the goal of these trials to punish the main war criminals, these procedures should be shortened. The people are not interested any more in the course of these trials, apart from the trial against Goering and others during its first stages; one reason for this is, of course, the general plight; because the hunger of the people, the great mortality, the problem of the prisoners of war who are not returned to their families, the conditions in the East push everything else aside. Furthermore, the long duration of the trials causes even the most lively interest to slacken. But it also seems wrong to pronounce death sentences

after such a long duration of proceedings. In the case of the trial of the International Military Tribunal, the people were still able to connect the long duration of the proceedings with the sentences pronounced, because each proceeding was an individual event. The following trials, however, among them, therefore, the doctors' trial, are much too much drawn out with regard to German legal opinion. If such a drawn-out procedure closes with a death sentence, that death punishment seems hardly justified anymore. German trial procedure does not know such long drawn-out proceedings, the final result of which is a death sentence. The special peculiarities of the Anglo-American trial procedures are the cause for such trials that last for months and months. It has also to be remembered that the defendants in each case have been in custody for almost or more than two years when the trial finally began. Procedures ending with death sentences will have to be carried through much faster. It is in contradiction to one's reactions that death sentences are pronounced against defendants with whom not only counsel for the defense has worked together for many months, but who also for many months appeared daily in court and were respected by the court, since they are rightly considered innocent until their guilt is finally established.

Neither should one forget that the defendants themselves, after having been held in custody for inquiry for such a long time and having gone through such long drawn-out procedures, have already atoned more for their crimes than if there had been a quick procedure started immediately after the collapse of Germany.

If I may impose on the instance for clemency I beg to read some parts of my final plea; then, I don't have to repeat myself here. (*Cf. statements on page 14 V, 1; furthermore pages 18-20, 27, 43 C*).

[Signature] DR. KAUFFMANN.

FOR THE DEFENDANT POPPENDICK

Nuernberg, 1 September 1947

Georg Boehm, Attorney
Defense Counsel
Military Tribunal I
Nuernberg, 115 Zerzabelshofstrasse

The
Military Commander
of the U.S. Occupation Zone
Germany

Petition
of Attorney Georg Boehm, Defense Counsel at
Military Tribunal I, Nuernberg

for the defendant

Helmut Poppendick, at present in the courthouse prison at
Nuernberg, *concerning alteration of the sentence passed
by Military Tribunal I, Nuernberg*

The defendant Helmut Poppendick was acquitted of the charges of having committed war crimes and crimes against humanity (counts two and three) in the sentence of the Military Tribunal I at Nuernberg in Case I, United States of America against Karl Brandt *et al.*, on 19 August 1947, and found guilty only, as an SS member, of membership in an organization declared criminal by the International Military Tribunal (count four). On 20 August 1947, the defendant Helmut Poppendick was sentenced to 10 years' imprisonment merely on account of membership in the SS.

I. *The sentence exceeds the maximum penalty*

According to the recommendations of the International Military Tribunal (*The Trial of the Major War Criminals before the International Military Tribunal, Vol. I, p. 288*), inserted into the sentence of the Medical Case, a maximum penalty is provided for the punishment of members of organizations declared criminal. The IMT recommendation provides in detail that "in no case is the penalty, imposed on the basis of Law No. 10 upon a member of an organization or group declared criminal by the Tribunal, to be more severe than the one provided in the Denazification Law". The Denazification Law, dated 5 March 1946, valid for the U.S. Occupation Zone of Germany, referred to as a standard for comparison, provides the maximum penalty of 10 years in a labor camp. According to present penal regulations, 10 years' imprisonment is, however, a more severe penalty than being sent to a labor camp for the same period. *10 years' imprisonment*

exceeds, therefore, the penalty provided in the recommendation of the IMT. The sentence against Poppendick does not give any special reason for exceeding the maximum penalty.

II. *More lenient evaluation of the group of persons within the SS who only knew about crimes without, however, being involved in them*

The sentence of the International Military Tribunal declares punishable in the sense of the statute "the group composed of those persons who were officially admitted as members * * * in the SS, became or remained members of the organization knowing that use was made of them for committing acts declared punishable by Article 6 of the Statute, or who were involved in committing such crimes as members of the organization." According to a reasonable interpretation of this provision, if mere membership is punished, one has to differentiate between those persons involved in committing such crimes and those persons only knowing about the commission of such crimes within the SS. According to a sound sense of justice, the provided maximum penalty for membership in the SS cannot possibly be valid for both groups of persons. On the contrary, the group having only knowledge has to be punished more lightly than the group involved in crimes. A penalty *inferior* to the provided maximum penalty has, therefore, to be imposed on the first mentioned persons among the SS members called to account. The Tribunal clearly stated that the defendant Helmut Poppendick was not involved in the crimes of the SS and, in this way, made it clear that not even on account of his rank or official position was he able to prevent crimes. The Tribunal only tried to impute knowledge on the part of the defendant Poppendick of definite experiments specified in the indictment. *For this reason the maximum penalty should not be imposed in the case of the defendant Poppendick.*

III. *Knowledge of the defendant Poppendick*

The Tribunal imputed to the defendant Poppendick, who was Oberfuehrer of the Waffen SS and Obersturmbannfuehrer of the General SS: (1) knowledge of freezing experiments; (2) sulfanilamide experiments; (3) sterilization experiments; (4) incendiary bomb experiments; (5) phlegmon experiments, without, however, being criminally involved in them.

(1) Knowledge of freezing experiments is imputed to the defendant Poppendick because he was subsequently invited to participate in a conference between Grawitz and Dr. Rascher in January 1943. As Rascher was at that time an officer in the Luftwaffe and all his collaborators were not members of the SS, this series

of experiments (at least in January 1943) cannot be interpreted as a series of experiments within the SS and consequently as crimes of the SS. There is no proof of knowledge of such experiments after January 1943.

(2) The defendant Poppendick knew as much about Professor Gebhardt's sulfanilamide experiments as Professor Rostock who was acquitted by the same Tribunal, i.e., that prisoners sentenced to death were used for these experiments.

(3) Knowledge of sterilization experiments is imputed to the defendant Poppendick by means of a simple assumption, although the Tribunal pointed out in several passages of the judgment that a mere assumption of guilt, in our case of knowledge, is insufficient. Poppendick only worked in the Race and Settlement Office as a doctor dealing with hereditary questions for members of the SS and their families; as medical superintendent he had to supervise this activity and the social welfare doctors. These matters were purely internal SS affairs. If the Race and Settlement Office occasionally dealt, amongst other measures, with one of racial policy through its field offices, the doctors were not involved in any case, and there is not the least indication that Poppendick knew or ought to have known about such measures. Even the judgment itself reveals to what extent the real sterilization experiments were kept secret.

(4) On page 112 (German), the Tribunal points out, that in conferences concerning sterilization experiments (Poppendick never took part in such conferences) each participant had to undertake to maintain absolute secrecy. Neither the defendant Poppendick's statement nor the evidence submitted reveal that Poppendick had any knowledge of sterilization experiments, let alone of extermination measures.

(5) In the case of the phlegmon experiments it has not been proved that Poppendick had any knowledge of them. Here, too, the assertion that he had such knowledge is based on a mere assumption.

It has, however, nowhere been proved that defendant Helmut Poppendick knew about the experiments in such a way as to necessitate his realizing that non-Germans were being used for such experiments. In its verdict the Tribunal has consistently followed the principle that it must be proved that crimes were committed on non-German nationals (*see pp. 50, 51, 70, 91, 103, 131, 160, German text*). In contrast to this the Tribunal left open the question as to how far the state is entitled to carry out experiments on its own citizens; it stated when dealing with the question of guilt: "* * * whatever right a state may have concerning its own citizens" (*see pp. 114, 195, German*). The Tribunal,

therefore, in all essentials confined itself to the question of to what extent crimes were committed on non-Germans. *No conclusive evidence has been brought against defendant Helmut Poppendick in each single case to prove his knowledge of experiments carried out on non-Germans.* In reality, nothing is more suitable to explain under whatever point of view we have to look at defendant Poppendick's knowledge of experiments, than his words at the end of the trial: "As to medical experiments on prisoners, human experiments were nothing striking and nothing new to me. I knew that experiments were being conducted in hospitals. I knew that the triumphs of modern medicine had not been achieved without sacrifices. I admit I cannot remember that in experiments in hospitals, the voluntary participation of the experimental subjects had to be such an indispensable and obvious prerequisite, as it appears to be according to the argumentation heard in this trial. Furthermore, I know that some scientific questions can only be solved by serial experiments in an unchanging environment, and that, therefore, in all countries, experiments are often conducted, particularly on soldiers in camps. Under these circumstances I was not at all surprised that during the war serial examinations and experiments were also carried out by scientists in concentration camps. I had not the slightest reason to assume that these scientists in the camps went beyond what was usual everywhere else in the world of science. As far as I was concerned, what I knew about medical experiments in the SS had just as little to do with criminal acts as the experiments about which I knew from my internship before 1933."

IV. *Consequences for future jurisdiction arising from the penalties imposed by the sentence on Poppendick*

The sentence imposed on Helmut Poppendick for his membership in the SS is altogether the first sentence in the American Zone against an SS member of this kind. Therefore, it has to be regarded as a precedent for all military tribunals and possibly, later on, for German courts, whose task it will be to punish members of criminal organizations. To sum up its consequences, the sentence creates a precedent, that—

1. Every SS leader with a rank higher than Poppendick's, who knew of SS crimes committed on Germans and non-Germans, can, on principle, only be sentenced to the maximum penalty.

2. Every member of the SS involved in crimes can be sentenced up to this maximum penalty again only on account of his SS membership. What penalty can, for example, be inflicted on an SS Obergruppenfuehrer who saw how the gas chambers were run at Auschwitz, without, however, being otherwise involved in

the extermination of the Jews; a man thus having, so to speak, the highest degree of knowledge derived from SS membership? *It is obvious that such a sentence as the one passed on Poppendick deprives future tribunals of all latitude of discretion, transforms the maximum penalty into the average penalty, and in this way renders the recommendation of the IMT absurd.*

V. *Prevention of further possibilities of appeal*

The defendant Poppendick, whose domicile is in the British Zone, would consequently under normal circumstances have to be tried by a tribunal (Spruchgericht) set up in the meantime in consequence of the British Ordinance No. 69. Because he has been sentenced by a Nuernberg Military Tribunal as a member of an organization declared criminal *he loses the two further appeals provided for by Ordinance No. 69 and its implementation regulations for the British Zone. Therefore this is the only legal way still open to him to state his case.*

VI. *Personal Conditions*

I make the following application for reduction of penalty with even greater emphasis, because the defendant has already been amply punished for his SS membership. His family has lost all its property and has not a pfennig left. His wife must support her four little children aged 3 to 7 by the labor of her hands under the most primitive conditions, without having a chance during her husband's entire term of imprisonment to obtain the slightest financial assistance for herself and her children.

The defendant used his considerable abilities as a physician to help many people, both Germans and foreigners, during the long years of his medical practice, without ever even mentioning this during the trial, because it is a physician's duty to help suffering humanity. The defendant, who is not involved in the crimes dealt with by this Tribunal, suffers sufficiently under his outward discrimination as an SS member.

In view of all these circumstances and with the request for careful examination of the case, I make in conclusion the

Application

1. *For the sentence of imprisonment for ten years inflicted on defendant Helmut Poppendick to be reduced to a tolerable term of imprisonment, perhaps to be commuted into a shorter term of confinement in a labor camp, and at the same time*

2. *For the 2 $\frac{1}{4}$ years' detention already served by the defendant to be included in the then newly-determined term of imprisonment.*

[Signature] G. BOEHM,
Attorney-at-Law.

XIV. AFFIRMATION OF SENTENCES BY THE
MILITARY GOVERNOR OF THE UNITED
STATES ZONE OF OCCUPATION

OFFICE OF MILITARY GOVERNMENT
FOR GERMANY (U. S.)

Office of the Military Governor
APO 742

Berlin, Germany
22 November 1947

AG 013. 3 (LD)

SUBJECT: Petitions for Review and for Habeas Corpus in the
case of the *United States of America v. Karl Brandt
et al.*, Case 1, Military Tribunal I, Nuernberg, Ger-
many (Medical Case)

TO: Secretary General
Military Tribunals
APO 696-A, U.S. Army

1. Inclosed herewith you will find original orders denying peti-
tions for clemency submitted by the following persons convicted
in Case Number 1 before Military Tribunal I:

Karl Brandt	Siegfried Handloser
Oskar Schroeder	Karl Genzken
Karl Gebhardt	Rudolf Brandt
Joachim Mrugowsky	Helmut Poppendick
Wolfram Sievers	Gerhard Rose
Viktor Brack	Hermann Becker-Freyseng
Waldemar Hoven	Wilhelm Beiglboeck
Herta Oberheuser	Fritz Fischer

2. Please formally advise the petitioners through their respec-
tive attorneys of the action taken by the Military Governor upon
these petitions.

FOR THE MILITARY GOVERNOR:

[Signed] G. H. Garde
G. H. GARDE
Lieutenant Colonel, AGD
Adjutant General

Incls: a/s

Telephone BERLIN 42361

HEADQUARTERS, EUROPEAN COMMAND

Office of the Commander-in-Chief

APO 742

Berlin, Germany

In the Case of
The United States of America

Military Tribunal I
Case No. 1

vs.

Karl Brandt, et alii

Order with Respect to Sentence of Karl Brandt

In the case of the United States of America against Karl Brandt et alii, tried by United States Military Tribunal I, Case No. 1, Nuernberg, Germany, the defendant, Karl Brandt, on 20 August 1947, was sentenced by the Tribunal to death by hanging. A petition to modify the sentence, filed on behalf of the defendant by Dr. R. Servatius, his defense counsel, has been referred to me pursuant to the provision 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 that:

1. The sentence imposed by Military Tribunal I upon Karl Brandt be, and hereby is, in all respects, confirmed.

2. 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.

3. The defendant be confined until further order in War Crimes Prison No. 1, Landsberg, Bavaria, Germany.

[Signed] Lucius D. Clay

LUCIUS D. CLAY

General, U.S. Army

Commander-in-Chief, European Command
and Military Governor

HEADQUARTERS, EUROPEAN COMMAND

Office of the Commander-in-Chief

APO 742

In the Case of The
United States of America

vs.

Karl Brandt, et alii

Military Tribunal I
Case No. 1

*Order with respect to sentence of Siegfried Handloser **

In the case of the United States of America against Karl Brandt, et alii, tried by United States Military Tribunal I, Case No. 1, Nuernberg, Germany, the defendant Siegfried Handloser, on 20 August 1947, was sentenced by the Tribunal to life imprisonment. A petition to modify the sentence, filed on behalf of the defendant by Dr. Otto Nelte, 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 that:

a. the sentence imposed by Military Tribunal I, on Siegfried Handloser be, and hereby is, in all respects confirmed;

b. the defendant be confined in War Crimes Prison No. 1, Landsberg, Bavaria, Germany.

[Signed] Lucius D. Clay
LUCIUS D. CLAY
General, U.S.A.

Commander-in-Chief, European Command
and Military Governor

* The sentences imposed upon the remaining 14 defendants were confirmed in all respects by the Military Commander of the United States Zone of Occupation by identical orders.

XV. ORDER OF THE UNITED STATES SUPREME COURT DENYING WRIT OF HABEAS CORPUS

Monday, 16 February 1948

No. 286, Misc. Karl Brandt, petitioner, *v.* The United States of America;

No. 287, Misc. Viktor Brack, petitioner, *v.* The United States of America;

No. 288, Misc. Rudolf Brandt, petitioner, *v.* The United States of America;

No. 299, Misc. Wilhelm Bieglboeck, petitioner, *v.* The United States of America. The motions for leave to file petitions for writs of habeas corpus and prohibition are denied. Mr. Justice Black, Mr. Justice Murphy, and Mr. Justice Rutledge are of the opinion that the petitions should be set for hearing on the question of the jurisdiction of this Court. Mr. Justice Jackson took no part in the consideration or decision of these applications.*

[The execution of death sentences imposed on Karl Brandt, Rudolf Brandt, Karl Gebhardt, Joachim Mrugowsky, Viktor Brack, Wolfram Sievers, and Waldemar Hoven were ordered on 14 May 1948 by the Military Governor. Executions were carried out at Landsberg prison on 2 June 1948.]

* The motions for leave to file petitions for writs of habeas corpus and prohibition in the case of the other defendants were also denied.

APPENDIX

Table of Comparative Ranks

U. S. Army	German Army	U. S. Navy	German Navy	Medical Service *	SS	SA
2d Lieutenant	Leutnant	Ensign	Leutnant zur See	Assistenzarzt	Untersturmfuehrer	Sturmfuehrer.
1st Lieutenant	Oberleutnant	Lieutenant (junior grade)	Oberleutnant zur See	Oberarzt	Obersturmfuehrer	Obersturmfuehrer.
		See				
Captain	Hauptmann	Lieutenant (senior grade)	Kapitänleutnant	Stabsarzt	Hauptsturmfuehrer	Hauptsturmfuehrer.
Major	Major	Lieutenant Commander	Korvettenkapitän	Oberstabsarzt	Sturmabnuehrer	Sturmabnuehrer.
Lieutenant Colonel	Oberstleutnant	Commander	Fregattenkapitän	Oberfeldarzt	Obersturmbannfuehrer	Obersturmbannfuehrer.
Colonel	Oberst	Captain	Kapitän zur See	Oberstabsarzt	Standartenfuehrer	Standartenfuehrer.
					Oberfuehrer **	Oberfuehrer **.
Brigadier General	Generalmajor	Commodore	Konteradmiral	Generalarzt	Brigadefuehrer	Brigadefuehrer.
Major General	Generalleutnant	Rear Admiral	Vizeadmiral	Generalsabtsarzt	Gruppenfuehrer	Gruppenfuehrer.
Lieutenant General	General der Infanterie, der Artillerie, etc.	Vice Admiral	Admiral	Generaloberstabsarzt	Obergruppenfuehrer	Obergruppenfuehrer.
General	Generaloberst	Admiral	Generaladmiral		Oberstgruppenfuehrer	
General of the Army	Generalfeldmarschall	Admiral of the Fleet	Grossadmiral		Reichsfuehrer	Stabschef.

* Ranks for the Medical Service of the German Army and the German Air Force are identical. Ranks for the Medical Service of the German Navy differ somewhat but are for the most part immaterial here. Dr. Fikentscher held the rank of Admiraloberstabsarzt which is equivalent to that of Generaloberstabsarzt.

** Equivalent to a senior Colonel.

List of Witnesses in Case I

[Note.—All witnesses in this case appeared before the Tribunal. Prosecution witnesses are designated by the letter "P", defense witnesses by the letter "D", and the Tribunal witness by the letter "T". 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.]

	Name	Dates of testimony	Pages (mimeographed transcript)
P	ALEXANDER, Dr. Leo..	20 Dec 46.....	805-814; 832-838; 848-855; 864-869
D	AUGUSTINICK, Dr. Herbert.....	27, 28 Feb 47.....	3701-3737
	BECKER-FREYSENG, Hermann	19, 20, 21, 22, 23, 27, 28, 29 May 46.....	7774-8243; 8255-8292
	BEIGLBOECK, Wilhelm.	6, 9, 10, 11, 12, 17 Jun 46.....	8666-9028; 9326-9328
D	BLOCK, Maria Lotte....	16, 17 Apr 47.....	6002-6031
	BLOME, Kurt.....	13, 14, 17, 18, 19, 20, 21 Mar 47.....	4450-4811
D	BORKENAU, Franz.....	14, 15 Apr 47.....	5890-5908
	BRACK, Viktor Hermann.....	12, 13, 14, 15, 16, 19 May 47.....	7413-7772
	BRANDT, Karl.....	3, 4, 5, 6, 7 Feb 47.	2301-2661
	BRANDT, Rudolf.....	24, 25, 26 Mar 47.	4869-4994
P	BROEL-PLATER, Maria.	19, 20 Dec 46.....	785-804
P	BROERS, Constantyn Johan.....	30 Jun 47.....	10386-10406
D	CHRISTENSEN, Heinz..	24 Feb 47.....	3430-3454
D	DORN, Paul Friedrich..	5, 6 Jun 47.....	8574-8665
P	DZIDO, Jadwiga.....	20 Dec 46.....	838-848
P	EYER, Olga.....	15 Jan 47.....	1755-1779
	FISCHER, Fritz.....	10, 11, 12 Mar 47..	4266-4384
	GEBHARDT, Karl.....	4, 5, 6, 7, 10 Mar 47.	3931-4256
	GENZKEN, Karl.....	28 Feb; 3 Mar 47..	3773-3891
P	GRANDJEAN, Henri-Jean	6 Jan 47.....	1099-1105; 1119-1120

List of Witnesses in Case I, Cont'd

	Name	Dates of testimony	Pages (mimeographed transcript)
D	GUTZEIT, Kurt.....	7, 10 Feb 47.....	2692-2764
D	HAAGEN, Eugen.....	17, 18, 19, 20 Jun 47.....	9408-9712
P	HALL, Ferdinand.....	3 Jan 47.....	1048-1073
	HANDLOSER, Siegfried.	11, 12, 13, 18 Feb 47.....	2815-3104
D	HARTLENBEN, Hans...	19 Feb 47.....	3189-3231
D	HEDERICH, Karl Heinz.	8, 9 May 47.....	7262-7291
P	HENRI PIERRE, Henri.	18 Dec 46.....	708-722
D	HIELSCHER, Friedrich.	15, 16 Apr 47....	5926-5994
P	HIRTZ, Georg.....	8 Jan 47.....	1291-1300
P	HOELLENRAINER, Karl	27 Jun 47; 1 Jul 47.	10229-10234; 10508-10544
D	HOERING, Felix.....	17 Apr 47.....	6031-6078
D	HORN, Videslaw.....	31 Mar, 1 Apr 47..	5245-5333
	HOVEN, Waldemar....	21, 23, 24 Jun 47...	9761-10004
P	IVY, Dr. Andrew Conway.	12, 13, 14, 16 Jun 47.....	9029-9324
D	JAEGER, Rolf.....	28 May 47.....	8244-8255
D	JENTSCH, Werner.....	26 Feb 47.....	3582-3602
D	JUNG, Friedrich.....	26 Jun 47.....	10148-10154
D	KARLSTETTER, Maria.	25 Feb 47.....	3455-3461
P	KAROLEWSKA, Vladislava	20 Dec 46.....	815-832
P	KIRCHHEIMER, Fritz..	8, 9 Jan 47.....	1321-1348
D	KOCH, Ernst.....	26 Jun 47.....	10120-10144
P	KOGON, Dr. Eugen....	6, 7, 8 Jan 47.....	1150-1290
D	KOSMEHL, Dr. Herbert.	12 Mar 47.....	4387-4446
P	KUSMIERCZUK, Maria.	20 Dec 46.....	856-864
D	LAMMERS, Hans Heinrich.....	7 Feb 47.....	2661-2692

List of Witnesses in Case I, Cont'd

	Name	Dates of testimony	Pages (mimeographed transcript)
P	LAUBINGER, Josef.....	27 Jun 47.....	10198-10229
P	LEIBBRANDT, Werner.	27 Jan 47.....	1961-2028
P	LEVY, Robert.....	17 Dec 46.....	550-561
P	LUTZ, Wolfgang.....	12 Dec 46.....	266-308
P	MACZKA, Sofia.....	10 Jan 47.....	1430-1462
D	MAY, Eduard.....	14 Apr 47.....	5869-5889
D	MEINE, August.....	21, 24 Mar 47.....	4831-4867
D	METTBACH, Ernst.....	21 Jun 47.....	9714-9757
P	MENNECKE, Fritz.....	16, 17 Jan 47.....	1866-1946
P	MICHALOWSKI, Father Leo.....	21 Dec 46.....	871-886
	MRUGOWSKY, Joachim.	26, 27, 28, 31 Mar 47; 1, 2, 3 Apr 47..	5000-5244; 5334-5464
P	NALES, Gerrid Hendrick.	30 Jun 47.....	10409-10471
T	NEFF, Walter.....	17, 18 Dec 46.....	595-695
	OBERHEUSER, Herta..	3, 8 Apr 47.....	5478-5528
D	PFANNMUELLER, Hermann	9, 12 May 47.....	7291-7412
D	PIECK, Henry.....	20 Mar 47.....	4722-4755
	POKORNY, Adolf.....	25, 26 Jun 47.....	10007-10109
	POPPENDICK, Helmut..	8, 9 Apr 47.....	5530-5651
P	ROEMHILD, Ferdinand.	14 Jan 47.....	1627-1664
	ROMBERG, Hans Wolfgang.....	1, 2, 5, 6 May 47..	6764-7032A
	ROSE, Gerhard.....	18, 21, 22, 23, 24, 25 Apr 47.....	6081-6484
	ROSTOCK, Paul.....	20, 21, 24 Feb 47..	3258-3430
	RUFF, Siegfried.....	25, 28, 29, 30 Apr 47.....	6490-6739
	SIEVERS, Wolfram.....	9, 10, 11, 14 Apr 47.	5656-5869

List of Witnesses in Case I, Cont'd

	Name	Dates of testimony	Pages (mimeographed transcript)
	SCHAEFER, Konrad....	2, 4 Jun 47.....	8349-8399; 8494-8571
D	SCHMIDT, Bernhard....	19 Feb 47.....	3144-3188
P	SCHMIDT, Edith.....	9 Jan 47.....	1364-1383
P	SCHMIDT, Walter Eugen.....	16 Jan 47.....	1816-1863
	SCHROEDER, Oskar....	25, 26, 27 Feb 47..	3469-3582; 3602-3700
P	STOEHR, Heinrich Wilhelm.....	17 Dec 46.....	574-594
D	TOPF, Erwin.....	15 Apr 47.....	5908-5924
D	TRUX, Rudolf.....	26 Jun 47.....	10110-10120
P	TSCHOFENIG, Joseph..	17 Jun 47.....	9329-9363
P	VIEWEG, August Heinrich.....	13, 16 Dec 46.....	418-468
D	VOLLHARDT, Franz....	3 Jun 47.....	8400-8490
P	VORLICEK, Joseph.....	17 Jun 47.....	9383-9407
	WELTZ, Georg August..	6, 7, 8 May 47.....	7035-7254
D	WITT, Fritz.....	28 Feb 47.....	3740-3753
D	WUERFLER, Paul.....	18, 19 Feb 47.....	3104-3144

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NO-011	Pros. Ex. 188	Note from Himmler to Grawitz, 16 June 1943, concerning epidemic jaundice experiments at concentration camp Sachsenhausen.	I-504
NO-018	Pros. Ex. 404	Letter from Himmler to Brack, 19 December 1940, requesting that euthanasia station Grafeneck be discontinued and that motion pictures be shown to dispel rumors.	I-856
NO-035	Pros. Ex. 142	Letter from Pokorny to Himmler, October 1941, concerning a sterilization drug to be used against Germany's enemies.	I-713
NO-036	Pros. Ex. 143	Letter from Himmler, 10 March 1942, to Pohl (initialed by Rudolf Brandt) concerning a sterilization drug and suggesting further research on criminals.	I-714
NO-038	Pros. Ex. 147	Letter from Rudolf Brandt to Pohl, June 1942, transmitting an inquiry by Himmler as to the progress made with experiments for medical sterilization.	I-715
NO-039	Pros. Ex. 153	Letter from Gund to Himmler, 24 August 1942, concerning research in medical sterilization and development of sterilization drugs.	I-717
NO-046a	Pros. Ex. 148	Letter from Pohl to Himmler, 3 June 1942, concerning the development of a sterilization drug by the firm of Dr. Madaus and Co.	I-716
NO-046b	Pros. Ex. 149	Letter from Rudolf Brandt to Pohl, 11 June 1942, asking him on behalf of Himmler to set up a large hothouse for the development of a sterilization drug.	I-717

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NO-082	Pros. Ex. 7	Fuehrer Decree, 25 August 1944, concerning the appointment of a Reich Commissioner for Medical and Health Services, 1944.	I- 83
NO-085	Pros. Ex. 175	Letter from Sievers to Rudolf Brandt, 9 February 1942, and report by Hirt concerning the acquisition of skulls of Jewish-Bolshevik Commissars.	I-784
NO-086	Pros. Ex. 177	Letter from Sievers to Rudolf Brandt, 2 November 1942, requesting with Himmler's approval, 150 skeletons.	I-750
NO-087	Pros. Ex. 181	Letter from Sievers to Eichmann, (copy to Rudolf Brandt), 21 June 1943, concerning selection of subjects for a skeleton collection.	I-751
NO-098	Pros. Ex. 263	Memorandum from Sievers to Rudolf Brandt, 3 November 1942, concerning research in the Natzweiler concentration camp.	I-337
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NO-125Pros. Ex. 194.....	Letter from Haagen to Gutzeit, 27 June 1944, concerning epidemic jaundice experiments on human beings.	I-506
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NO-158Pros. Ex. 410.....	Letter from Hirche, administrator of the Mental Institution Bernburg, to camp commandant of the Gross-Rosen concentration camp, 19 March 1942, with list of inmates transferred from the concentration camp to Bernburg.	I-858
NO-177Pros. Ex. 133.....	Minutes of conference at the Reich Ministry of Aviation, 20 May 1944, concerning methods for making sea water potable.	I-448
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NO-183Pros. Ex. 136.....	Teletype from Rudolf Brandt to Grawitz, undated, concerning experimental subjects.	I-453
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"The Milch Case"

CASE NO. 2

MILITARY TRIBUNAL NO. II

THE UNITED STATES OF AMERICA

—against—

ERHARD MILCH

INTRODUCTION

The trial of Erhard Milch, formerly a Field Marshal in the German Air Force, is officially designated *United States of America vs. Erhard Milch* (Case No. 2), and was heard by Military Tribunal II in the Palace of Justice at Nuernberg. The proceedings lasted from 13 November 1946 to 17 April 1947, in the course of which period the Court convened 39 times. The prosecution consumed 8 and the defense 28 trial days. A chronological table of the trial follows:

Indictment filed	13 November 1946
Indictment served	14 November 1946
Arraignment	20 December 1946
Prosecution opening statement	2 January 1947
Defense opening statement	27 January 1947
Prosecution and defense closing statements	25 March 1947
Judgment	16 April 1947
Sentence	17 April 1947
Affirmation of sentence by Military Governor, U.S. Zone of Occupation	17 June 1947
Order of the U.S. Supreme Court denying writ of habeas corpus	20 October 1947

The prosecution introduced into evidence 161 written exhibits, some of which contained several documents. The defense introduced 51 written exhibits. The Tribunal heard the oral testimony of 3 witnesses who were called by the prosecution; 27 witnesses called by the defense were heard by the full court, and 3 before a commissioner. One witness was called by the Tribunal on its own motion. The defendant Milch testified at length in his own behalf.

The members of the Tribunal, and prosecution and defense counsel, are listed on the ensuing pages. Prosecution counsel were assisted in preparing the case by Walter Rapp, Chief of the Evidence Division, Norbert Barr and Bevenuto Selcke, interrogators, and Robert Blakeslie, Nancy Fenstermacher, and Tempa Altman Watson, research and documentary analysts.

The material selected for this volume was principally compiled by Mr. Paul H. Gantt as case editor, working under the general supervision of Mr. Drexel A. Sprecher, Deputy Chief Counsel and Director of Publications, Office, United States Chief of Counsel for War Crimes. Catherine W. Bedford, Henry Buxbaum, Emilie Evand, Gertrude Ferencz, Helga Lund, Gwendoline Niebergall, and Johanna K. Reischer 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

OFFICE OF MILITARY GOVERNMENT FOR GERMANY (U.S.)
APO 742

16 DECEMBER 1946

GENERAL ORDERS }
No. 85 }

PURSUANT TO MILITARY GOVERNMENT ORDINANCE NO. 7

1. Effective as of 14 December 1946, 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.

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

ROBERT M. TOMS	Presiding Judge
FITZROI D. PHILLIPS ¹	Judge
MICHAEL A. MUSMANNO	Judge
JOHN J. SPEIGHT	Alternate Judge

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

BY COMMAND OF LIEUTENANT GENERAL CLAY:

C. K. GAILEY
Brigadier General, GSC
Chief of Staff

OFFICIAL:
G. H. GARDE
Lieutenant Colonel, AGD
Adjutant General

SEAL:
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¹ OMGUS General Orders No. 5, 21 January 1947, corrected spelling to Fitzroy D. Phillips.



TRIBUNAL II—CASE TWO

F. Donald Phillips; Robert M. Toms, presiding; Michael A. Musmanno; John J. Speight, alternate.



Defendant Erhard Milch with his counsel, Dr. Friedrich Bergold.



Former Luftwaffe Field Marshal Mitch, seated in the defense counsel section of courtroom one, listens with his lawyer Dr. Bergold and his brother Werner as Tribunal II announces its verdict in his case.



Mr. Clark Denny, Chief Trial Counsel of Case II.

MEMBERS OF MILITARY TRIBUNAL II

ROBERT M. TOMS, Presiding

Judge of the Third Judicial Circuit Court, Detroit, Michigan

FITZROY DONALD PHILLIPS, Member,

Judge of the Superior Court for the 13th Judicial District of the State of North Carolina

MICHAEL A. MUSMANNO, Member,

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

JOHN JOSHUA SPEIGHT, Alternate,

Prominent member of the Bar of the State of Alabama

ASSISTANT SECRETARIES GENERAL

Judge RICHARD D. DIXON.....From 20 December 1946 to 25 March 1947

Major MILLS C. HATFIELD.....From 16 April 1947 to 17 April 1947

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* Brother of the defendant Milch.

I. 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 the defendant Erhard Milch with the commission of war crimes and crimes against humanity as defined in Control Council Law No. 10,* duly enacted by the Allied Control Council on 20 December 1945. The defendant Milch between 1939 and 1945 was State Secretary in the [Reich] Air Ministry (Staatssekretär im Reichsluftfahrt ministerium), Inspector General of the Air Force (Generalinspekteur der Luftwaffe), Deputy to the Commander in Chief of the Air Force (Stellvertreter des Oberbefehlshabers der Luftwaffe), and Member of the Nazi Party (Mitglied der NSDAP). The defendant Milch was also Field Marshal in the Luftwaffe (Generalfeldmarschall in der Luftwaffe) 1940-45, Aircraft Master General (Generalluftzeugmeister) 1941-44, Member of the Central Planning Board (Mitglied der "Zentralen Planung") 1942-1945, and Chief of the Jaegerstab 1944-1945. The war crimes and crimes against humanity charged herein against the defendant Milch include deportation, enslavement and mistreatment of millions of persons, participation in criminal medical experiments upon human beings, and murders, brutalities, cruelties, tortures, atrocities, and other inhumane acts.

COUNT ONE

1. Between September 1939 and May 1945 the defendant Milch unlawfully, wilfully, and knowingly committed war crimes as defined by Article II of Control Council Law No. 10, in that he was a principal in, accessory to, ordered, abetted, took a consenting part in, and was connected with plans and enterprises involving slave labor and deportation to slave labor of the civilian populations of Austria, Czechoslovakia, Italy, Hungary, and other countries and territories occupied by the German Armed Forces, in the course of which millions of persons were enslaved, deported, ill-treated, terrorized, tortured, and murdered.

2. Between September 1939 and May 1945 the defendant Milch unlawfully, wilfully, and knowingly committed war crimes as defined by Article II of Control Council Law No. 10, in that he was a principal in, accessory to, ordered, abetted, took a consenting part in, and was connected with plans and enterprises involving the use of prisoners of war in war operations and work having a direct relation with war operations, including the manufacture and transportation of arms and munitions, in the course of which

* See vol. I, this series, pref. pp. III thru XXVIII for basic papers.

murders, cruelties, ill-treatment, and other inhumane acts were committed against members of the armed forces of nations then at war with the German Reich and who were in custody of the German Reich in the exercise of belligerent control.

3. In the execution of the plans and enterprises charged in paragraphs 1 and 2 of this count, millions of persons were unlawfully subjected to forced labor under cruel and inhumane conditions which resulted in widespread suffering. At least 5,000,000 workers were deported to Germany. The conscription of labor was accomplished in many cases by drastic and violent methods. Workers destined for the Reich were sent under guard to Germany, often packed in trains without adequate heat, food, clothing, or sanitary facilities; other inhabitants of occupied countries were conscripted and compelled to work in their own countries to assist the German war economy and on fortifications and military installations. The resources and needs of the occupied countries were completely disregarded in the execution of the said plans and enterprises. Prisoners of war were assigned to work directly related to war operations, including work in munitions factories, loading bombers, carrying ammunition, and manning anti-aircraft guns. The treatment of slave laborers and prisoners of war was based on the principle that they should be fed, sheltered, and treated in such a way as to exploit them to the greatest possible extent at the lowest expenditure.

4. The defendant Milch from 1942 to 1945 was a member of the Central Planning Board which had supreme authority for the scheduling of production and the allocation and development of raw materials in the German war economy. The Central Planning Board determined the labor requirements of industry, agriculture, and all other phases of German war economy, and made requisitions for and allocations of such labor. The defendant Milch had full knowledge of the illegal manner in which foreign laborers were conscripted and prisoners of war utilized to meet such requisitions, and of the unlawful and inhumane conditions under which they were exploited. He attended the meetings of the Central Planning Board, participated in its decisions and in the formulation of basic policies with reference to the exploitation of such labor, advocated the increased use of forced labor and prisoners of war to expand war production, and urged that cruel and repressive measures be utilized to procure and exploit such labor.

5. During the years 1939-1945 the defendant Milch, as State Secretary in the Air Ministry, Inspector General of the Air Force, Deputy to the Commander in Chief of the Air Force, Field Mar-

shal in the Luftwaffe, Aircraft Master General, and Chief of the Jaegerstab, had responsibility for the development and production of arms and munitions for the German Air Force. The defendant Milch exploited foreign laborers and prisoners of war in the arms, aircraft, and munitions factories under his control, made requisitions for and allocations of such labor within the aircraft industry, and personally directed that cruel and repressive measures be adopted towards such labor.

6. Pursuant to the order of the defendant Milch, prisoners of war who had attempted escape were murdered on or about 15 February 1944.

7. The said war crimes constitute violations of international conventions, particularly of Articles 4, 5, 6, 7, 46, and 52 of the Hague Regulations, 1907, and of Articles 2, 3, 4, 6, and 31 of 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 TWO

8. Between March 1942 and May 1943 the defendant Milch unlawfully, wilfully, and knowingly committed war crimes as defined in Article II of Control Council Law No. 10, in that he was a principal in, accessory to, ordered, abetted, took a consenting part in, and was connected with plans and enterprises involving medical experiments without the subjects' consent, upon members of the armed forces and civilians of nations then at war with the German Reich and who were in the custody of the German Reich in the exercise of belligerent control, in the course of which experiments the defendant Milch, together with divers other persons, committed murders, brutalities, cruelties, tortures, and other inhumane acts. Such experiments included, but were not limited to, the following:

(A) *HIGH-ALTITUDE EXPERIMENTS.* From about March 1942 to about August 1942 experiments were conducted at the Dachau concentration camp for the benefit of the German Air Force to investigate the limits of human endurance and existence at extremely high altitudes. The experiments were carried out in a low-pressure chamber in which the atmospheric conditions and pressure prevailing at high altitudes (up to 68,000 feet) could be duplicated. The experimental subjects were placed in the low-pressure chamber and thereafter the simulated altitude therein was

raised. Many victims died as a result of these experiments and others suffered grave injury, torture, and ill-treatment.

(B) *FREEZING EXPERIMENTS*. From about August 1942 to about May 1943 experiments were conducted at the Dachau concentration camp primarily for the benefit of the German Air Force to investigate the most effective means of treating persons who had been severely chilled or frozen. In one series of experiments the subjects were forced to remain in a tank of ice water for periods up to 3 hours. Extreme rigor developed in a short time. Numerous victims died in the course of these experiments. After the survivors were severely chilled, rewarming was attempted by various means. In another series of experiments, the subjects were kept naked outdoors for many hours at temperatures below freezing. The victims screamed with pain as parts of their bodies froze.

9. The said war crimes constitute violations of international conventions, particularly of Articles 4, 5, 6, 7, and 46 of the Hague Regulations, 1907, and of Articles 2, 3, and 4 of 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 of Article II, of Control Council Law No. 10.

COUNT THREE

10. Between September 1939 and May 1945 the defendant Milch unlawfully, wilfully, and knowingly committed crimes against humanity, as defined by Article II of Control Council Law No. 10, in that he was a principal in, accessory to, ordered, abetted, took a consenting part in, and was connected with plans and enterprises involving slave labor and deportation to slave labor of German nationals and nationals of other countries in the course of which millions of persons were enslaved, deported, ill-treated, terrorized, tortured, and murdered. The particulars of these crimes are set forth in count one of this indictment and are incorporated herein by reference.

11. Between March 1942 and May 1943 the defendant Milch unlawfully, wilfully, and knowingly committed crimes against humanity as defined in Article II of Control Council Law No. 10 in that he was principal in, accessory to, ordered, abetted, took a consenting part in, and was connected with plans and enterprises involving medical experiments, without the subjects' consent, upon German nationals and nationals of other countries, in the course

of which experiments the defendant Milch, together with divers other persons, committed murders, brutalities, cruelties, tortures, atrocities, and other inhumane acts. The particulars of such experiments are set forth in count two of this indictment and are incorporated herein by reference.

12. The said crimes against humanity constitute violations of international conventions, the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all civilized nations, the internal penal laws of the countries in which such crimes were committed, and Article II of Control Council Law No. 10.

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

TELFORD TAYLOR
Brigadier General, USA
Chief of Counsel for War Crimes
Acting on Behalf of the United States of America

Nuernberg, 13 November 1946

II. ARRAIGNMENT*

THE MARSHAL: Military Tribunal No. 2 is now in session. God save the United States of America and this honorable Tribunal.

PRESIDING JUDGE TOMS: The Marshal will ascertain whether the defendant, Erhard Milch, is present in Court.

THE MARSHAL: May it please your Honors, the defendant is present in the Court.

PRESIDING JUDGE TOMS: Is counsel for the defendant, Dr. Bergold, also present?

THE MARSHAL: Dr. Bergold is also present in the courtroom.

PRESIDING JUDGE TOMS: Prosecution may proceed with the arraignment by reading the indictment.

[At this point Mr. Clark Denney read the indictment. See p. 360.]

PRESIDING JUDGE TOMS: The defendant will stand. You have heard the indictment just read?

ERHARD MILCH: Yes.

PRESIDING JUDGE TOMS: And it has been translated into the German language which you understand?

ERHARD MILCH: Yes.

PRESIDING JUDGE TOMS: For more than 30 days you have had in your possession a copy of this indictment translated into the German language?

ERHARD MILCH: Yes.

PRESIDING JUDGE TOMS: You have also had the benefit of Dr. Bergold's counsel for at least 30 days?

ERHARD MILCH: Yes.

PRESIDING JUDGE TOMS: Now then to this indictment how do you plead, guilty or not guilty?

ERHARD MILCH: Not guilty.

PRESIDING JUDGE TOMS: The Secretary General will enter upon the records of the Court the defendant's plea of not guilty. You may be seated.

The Tribunal has set Thursday, the second day of January 1947 for the commencement of the trial of this action. Will the United States be ready on that date?

MR. DENNEY: The Government will be ready at that time, your Honor.

PRESIDING JUDGE TOMS: Dr. Bergold, will you be ready to proceed with the trial on the second of January?

DR. BERGOLD: Yes.

* * * * *

* Tr. p. 7.

III. OPENING STATEMENTS

A. Opening Statement for the Prosecution¹

MR. DENNEY: May it please your Honors, this defendant is Erhard Milch, Field Marshal in the Luftwaffe, Inspector General of the Luftwaffe, State Secretary in the Air Ministry, General-luftzeugmeister, sole representative of the Wehrmacht on the Central Planning Board, Chief of the Jaegerstab,² and member of the Nazi Party.

This man is accused of war crimes and crimes against humanity in that he took part in the program for the enslavement and ill-treatment of the civilian population of vast territories conquered by the armed forces of Germany and in the employment of prisoners of war in tasks forbidden by the laws and customs of war. He is also accused of the torture and murder of concentration camp inmates and prisoners of war who were made the unwilling subjects of savage and fatal medical experiments.

The life of Erhard Milch is a story of personal and professional betrayal. A man of high intelligence, of great executive ability, he misused these talents to dedicate them to a scheme for conquest and a plan for the enslavement of the world. The 10 years of military service of the defendant from the age of 18 to 28 which took him through the First World War were a perfect preparation for the tasks to come. From 1915 to 1919, Milch was a scout, observer, adjutant and squadron leader in the German Air Force. At the very infancy of military aviation, the defendant began an association which was to last through his entire public career. It was at this time that he learned the needs and the problems of flying men, a knowledge which was to stand him in such good stead in his work as the founder of the Luftwaffe.

The defendant never dissociated himself from the aims and ideals of German militarism. He became one of the silent army of men who remembered, hated, and hoped; but unlike many others, this man did not sit idly by. He did not wait passively for Germany to rise again, he devoted his best efforts towards that end. In 1921, only 1 year after his discharge from the army, we find him working as chief of air operations [flights] in the new business of commercial aviation.

There is no necessity to fill out in detail the successive steps in the defendant's rise in civilian air transportation—a few broad strokes suffice. The next significant event in his career came in 1925 when he joined the state-sponsored Lufthansa which within 3 years he was to form into the nucleus of a new air force. It is

¹ Opening statement is recorded in mimeographed transcript.

² See section IV A3, p. 524 ff.

no euphemism that he was called the Father of German Air Transportation.

When Hitler came into power in 1933, Milch acceded to the requests of both Goering and Hitler and assumed the additional duty of State Secretary in the Air Ministry. It was understood from the start, and it was confirmed in 1937, that Milch would succeed Goering as Chief of the German Air Force in the event of the latter's death or withdrawal. By the time the new Luftwaffe had publicly emerged from such embryos as the Air Sport League, the Air Defense League, and the Flying [Flieger] Hitler Youth, the defendant had become a Generalleutnant (the equivalent of the American major general). The honors which followed: field marshal in the Luftwaffe in 1940, which was gained from 2 months' participation in the invasion of Norway; Generalluftzeugmeister in 1941; member of the Central Planning Board in 1942; Chief of the Jaegerstab in 1944, were proof alike of the evil genius of Erhard Milch and of his complete compatibility with the Nazi ambitions and methods.

This defendant became a member of the Nazi Party in May 1933. His work in the Party was important. He was indeed one of the little group of specialists of whom Mr. Justice Jackson, in his closing address before the International Military Tribunal, aptly said:

"It is doubtful whether the Nazi master plan could have succeeded without their specialized intelligence which they so willingly put at its command. They (speaking of Goering, Keitel, Jodl, and the rest) did so with knowledge of its announced aims and methods and continued their services after practice had confirmed the direction in which they were tending. Their superiority to the average run of Nazi mediocrity is not their excuse. It is their condemnation." *

Various Germans allowed themselves to be absorbed into the Nazi Party for a variety of reasons. Depression, financial and business betterment, ambition, discouragement with the previous political situation, and human weakness in the face of terrorism, all played their part in the recruitment of the Nazi machine. There were few cases in which a man made as clear, as deliberate, and as discreditable a choice of Nazism as did Milch.

The high esteem in which the defendant was held by Hitler and his position within the inner circle of Nazi militarists can be seen from the fact that he was one of a party of fourteen of Hitler's highest and most trusted officers who attended a conference in the new Reich Chancellory on 23 May 1939, at which Hitler made

* Trial of the Major War Criminals, vol. XIX, pp. 417-18, Nuremberg, 1947.

known to his military chiefs his plans and objectives. (L-79.)

All in all, two points stand out in even a quick survey of Milch's career: First, he never accepted the defeat of Germany in the First World War; his life between the wars was devoted to the work of placing Germany in a position to challenge the world in the matter of air supremacy; and second, he was a man who was unlikely to allow either difficulty or honor to stand in the way of the accomplishment of his purpose—the objectives of the Nazi Party. If these characteristics are borne in mind, much of the defendant's fanaticism and the unbelievable savagery with which he adhered to the Nazi plan for conquest at the expense of all values of human decency may be seen as the natural consequences of the acts of a man with his criminal philosophy.

We have then, at the outbreak of the war this man, already within the inner circle, already devoted to the Nazi scheme of things and quite essential to their fulfillment, with a record of organization and with the work of preparation behind him—poised with his companions for the kill. We see the air armadas, which were the labor of his love, helping to shatter Poland within 18 days, helping to reduce the Lowlands to smoking ruins within a few days' time, assisting in the subjugation of the French military machine and in driving the British from the continent in a period of a few weeks. We see the hordes of the Fatherland racing on and on with the air arm always overhead, preparing the way, until Germany had overrun a territory from the Normandy Coast to Moscow, and from the North Sea to El Alamein.

Then began the occupation, the next step in the plan of the Third Reich—an empire which was to last a thousand years. Over an entire continent there spread the deadly rigor of a "Pax Germanica" in which there was to be one citizen class, one race of supermen, and the balance, one class of slaves. At first the occupation overlords maintained the appearance of legality. They gave receipts for the property they plundered, they offered inducements to the laborers they shanghaied, they went through the mockery of signing contracts which were both illusory and fraudulent. But even this sham disappeared as the war went on, and as early as 1942, the German occupation appeared in public as the ugly thing it was, complete with armed recruiters, military escorts on deportation trains and prison camps for the workers brought into Germany. Mr. Justice Jackson, in his opening address on behalf of the United States of America before the International Military Tribunal,* vividly described the character and extent of the slave-labor program in the following words:

* *Ibid.*, vol. II, pp. 139-140.

“Perhaps the deportation to slave labor was the most horrible and extensive slaving operation in history. On few other subjects is our evidence so abundant and so damaging. In a speech made on 25 January 1944 the defendant Frank, Governor General of Poland, boasted, ‘I have sent 1,300,000 Polish workers into the Reich.’ (059-PS, p. 2.) The defendant Sauckel reported that ‘out of the 5 million foreign workers who arrived in Germany not even 200,000 came voluntarily.’ * * * Children of 10 to 14 years were impressed into service * * *.

“When enough labor was not forthcoming, prisoners of war were forced into war work in flagrant violation of international conventions (016-PS). Slave labor came from France, Belgium, Holland, Italy, and the East. Methods of recruitment were violent (R-124, 018-PS, 204-PS). The treatment of these slave laborers was stated in general terms, not difficult to translate into concrete deprivations, in a letter to the defendant Rosenberg from the defendant Sauckel, which stated:

* * * * *

“‘All the men’ (prisoners of war and foreign civilian workers) ‘must be fed, sheltered, and treated in such a way as to exploit them to the highest possible extent at the lowest conceivable degree of expenditure * * *’ (016-PS)”.

Working as we do every day with crimes of unbelievable enormity, we are apt to become quite deadened to the hideous nature of specific crimes. It is, therefore, well to stop and consider the particular offenses with which this man stands charged.

Crimes are best evaluated in terms of the rights they violate. The evil, slavery, which is the deprivation of another’s liberty, is best judged through a consideration of its opposite good, freedom. Freedom is, to an extent, properly regarded as the symbol of human progress, the measure of civilization. Much of man’s history can be expressed in terms of his fight for freedom. Man’s personal freedom is his most precious prerogative, the exercise of his free will is his distinctive function. The building of a legal structure to protect the freedom of the individual is the basic purpose of good government. Men have lived for freedom, worked for it, fought for it, and died for it.

It is precisely because of their destructive effects on the freedom of the individual that governments such as the Nazi German State are so hatefully and essentially evil. The Nazi rise to power is a story of duress which ripened into slavery, first for the people within Germany and then for those in the lands she conquered.

The enforced labor program was no expedient forced upon Germany by the exigencies of war. It was a basic concept of the Nazi scheme and the permanent destiny of those who would come under the German yoke.

It is most natural, therefore, that Control Council Law No. 10, which was enacted for the guidance of this and other tribunals which are set up for the trial of the principals in the crime of Nazi Germany, should deal in very severe terms with that most Nazi of all crimes—slavery. Article II, paragraph 1 (sec. *b*) specifically names among the enumerated war crimes the ill-treatment or deportation to slave labor of civilian populations from occupied territory and the murder or ill-treatment of prisoners of war. Paragraph 1 (sec. *c*) specifies as a crime against humanity, deportation of civilian populations. Article II, paragraphs 2 and 3 proclaim that anyone taking a principal or consenting part in these crimes, or belonging to a plan or enterprise for the commission of these crimes, is guilty of an offense for which the death penalty may be prescribed.

The prosecution will prove that Milch was a principal in the deportation into slave labor of civilian populations from occupied territories. It will show that he was involved in the murder and ill-treatment of prisoners of war. Evidence will be presented which will prove that he was engaged in plans and enterprises which directly involved the use of slave labor. We will show that this man was as much concerned with the employment of slave labor as was any man in Germany. In his positions as a member of the Central Planning Board, as Generalluftzeugmeister, and as Chief of the Jaegerstab, he had full opportunity to hear all the grim details of the exploitation of slave labor. He participated in decisions and formulated basic policies with reference to its use, and over and above all this he showed his personal animosity and his gratuitous fanaticism in constantly urging the most repressive and cruel measures in the procurement and exploitation of foreign workers.

During the course of this trial, an attempt will be made to distinguish among that which this defendant did as Generalluftzeugmeister, as Chief of the Jaegerstab, as State Secretary for Air, and as a member of the Central Planning Board. At times it will be difficult, if not impossible, to state in just which capacity he was acting at a particular time. We must emphasize now that it is not essential to the proof of this case that we should be able always to specify the exact capacity in which the defendant acted. The multiplicity of his connection with the slave-labor program is his greatest condemnation, and it is because he knew so much and did so much that there can be no excuse for him.

Erhard Milch operated at a policy level high in the chain of command above the work boss and the concentration camp guard. We need not show him driving the workers to their tasks or crowding them into the hovels in which they lived. We are not primarily concerned with the minute details of the slave-labor program which were carried out by minions who obeyed men like the defendant. We were dealing with a planner of a great crime, and it has not been difficult for the law to seek out and punish those who plan as well as those who obey. The law would indeed be derelict if only those were punished who pulled the trigger to kill, or, comparably speaking, ran a slave camp in which people worked an 84-hour week and dragged out a miserable existence under conditions from which death was welcome relief.

This defendant cannot plead in truth that he did not know that the use of slave labor was wrong. He cannot use even the technical excuse, so common among the Nazis, that this was not illegal because the Nazi law authorized it. Official sanction of slavery would have been a law so evil that even the Nazi masters dared not proclaim it. A search through the mass of decrees and pronouncements which passed for law during the regime of Adolf Hitler fails to reveal sanction for slavery of foreign laborers. On the other hand, certain prohibitory laws survived from a more respectable day.

Paragraph 234 of the German Criminal Law (published in 1942 in Munich and Berlin, pp. 364-365) provides that "whoever seizes another by ruse, threat or force in order to expose him in a state of helplessness, or to deliver him into slavery, bondage, or a foreign military or naval service shall be punished for kidnapping by confinement in a penitentiary." This law was in force during the Nazi regime and was published in the most recent edition of German Criminal Law which we have been able to find.

That maltreatment was commonplace in the course of the enforced labor program in Germany is well known; that starvation, murder, and all types of personal abuses took place is notorious. All of this was found as a fact in the decision of the International Military Tribunal. There can be no question of the responsibility of the defendant for the murders and privations which were the inevitable byproduct of the slave-labor program.

But we need not follow the crime of slave labor down to its last detail in order to show the defendant as the murderer he was. We can and will prove that he directly participated in crimes of which murder was often the intended and on numerous occasions the inevitable result.

The prosecution charges, and will prove, that he took an im-

portant, responsible, and essential part in the practice of experiments upon human beings carried out against their wills and in callous disregard of the lives of its victims.

Cut then to bare essentials the charges set forth in paragraphs 8 and 9 of count two of the indictment and in paragraph 11 of count three can be summarized by the statement that the defendant was officially connected with and took a consenting part in enterprises in which criminal medical experiments were performed upon involuntary subjects.

The nature and extent of these experiments and the fact that they were conducted for the specific benefit of the Luftwaffe will be shown in some detail. We will prove that the defendant was the responsible Luftwaffe officer with ultimate supervisory authority over the experiments. The Court will see that throughout the duration of these experiments, the defendant was constantly treated by all concerned as the ultimate authority within the Luftwaffe in control of the experimental equipment and in charge of certain personnel who were actively engaged in them.

Evidence will be presented which will prove that the defendant was thoroughly informed of the criminal activities of Dr. Rascher, the experimenter, and his associates. We will prove that a conference was held at the defendant's office, that films were shown there, that communications were sent to him from highest Nazi sources which specifically referred to opposition on the part of "narrow-minded doctors" to the experiments. A web of evidence will be adduced to portray the defendant, as he really was, an active partner in crime. We will show that the defendant authorized the initiation of freezing experiments and that he ordered an extension of the high-altitude experiments for a period of 2 months, during which extended period a number of experimental subjects died.

At the conclusion of the evidence with respect to the medical experiments upon human beings there will remain no doubt that Erhard Milch was a knowing, willing, and active participant in murder.

Throughout the trial the prosecution will place before the Court a number of statements which will portray him as a man who believed no tears should be shed for the victims of total war when German soldiers every day were making the ultimate sacrifice for the Fatherland. This man was not a hard-headed, single-minded production chief whose only problem was to get things done and whose rash statements were the impetuous remarks of an over-worked executive. Milch will be shown as a man who boasted of his responsibility in the hanging of prisoners of war, who urged that any effort on the part of foreign

workers to strike during enemy action should be met with rifle fire, who offered protection to slave supervisors who should mistreat their subjects. We will show that he was not too busy to inform himself fully of everything with which he was officially connected and that over and above this he went out of his way to learn the most minute details of matters with which he was very remotely connected.

And now a brief word about the type of evidence with which the prosecution will prove its case. It must be borne in mind that we are not concerned with a single localized incident or with a series of such incidents. The proof which we must show cannot be brought forth from the daily events of ordered society. It must be drawn from the cold ashes of a broken nation. The documents which will be brought into Court have been taken from all corners of a continent. They have one common feature which elevates them in the hierarchy of evidence to a place above the story of sincere but fallible eyewitnesses. These documents are official German records, some of them records of the defendant's own organizations. In some cases they bear the defendant's signature or his handwritten initials. In every case they are authentic records compiled by Germans, accurate because there was no reason for falsification or exaggeration, thorough because of a national fetish for attention to detail, reliable because they were made at times when the German fortunes of war were high and their scribes had no reason to fear that one day they would be confronted with their hand-made records of criminality.

It would seem that at this point there should be some discussion of the various organizations with which the defendant was connected.

We are concerned principally with that part of the OKW (Oberkommando der Wehrmacht), Supreme Command of the Armed Forces, known as the OKL (Oberkommando der Luftwaffe), the High Command of the German Air Force. The Chief of the OKL was Reich Marshal Hermann Goering. His Inspector General and State Secretary in the Air Ministry was the defendant Erhard Milch. As such, from July 1940, he held the rank of field marshal (comparable to the American rank of general of the armies).*

The other two branches of the OKW with which we are incidentally concerned were the OKH (Oberkommando des Heeres), High Command of the Army, and the OKM (Oberkommando der Marine), High Command of the Navy. The army

* See Table of comparative ranks, p. 331.

was commanded by Field Marshal von Brauchitsch until December 1941, at which time it was taken over by Hitler. The navy was commanded by Grand Admiral [Admiral of the Fleet] Raeder until 1943, thereafter by Grand Admiral Doenitz.

The Luftwaffe Medical Service came under this defendant in his capacity as Inspector General of the Luftwaffe. The Medical Service was headed by Dr. Erich Hippke until January 1944; thereafter it was headed by Dr. Oskar Schroeder.

There was an experimental institute in Berlin called the DVL which was a technical research institution for aero-research. This was subordinate to the defendant in his position as General-luftzeugmeister.

We now turn to the Central Planning Board. This was established by a Goering decree, pursuant to a Hitler order of 22 April, 1942. The Board consisted of Albert Speer, Erhard Milch, and Paul Koerner. Later, by a supplementary Goering decree, in September 1943, Walter Funk was added to the Board. Speer and Milch were the dominant members, and Koerner and Funk played comparatively minor roles. The Central Planning Board was, in effect, a consolidation of all controls over German war production. The Board was found by the International Military Tribunal to have "had supreme authority for the scheduling of German production and the allocation and development of raw materials. * * *" * Hand in hand with this goes the corollary of the procurement and allocation of labor. Reich Marshal Goering, in his decree of 22 April, 1942, stated in part—"It (the Central Planning Board) encompasses that which is fundamental and vital. It makes unequivocal decisions and supervises the execution of its directives". The Central Planning Board requisitioned labor from Sauckel with full knowledge that the demands would be supplied by foreign forced labor, and the Board determined the basic allocation of this labor within the German war economy. Sauckel was the servant of the Central Planning Board in the procurement of slave labor. There are records of some 50-odd meetings of the Board between the time of its establishment in 1942, and 1945. The defendant was present at all but a few of these meetings and on occasion his was the dominant voice. The International Military Tribunal found that the Central Planning Board determined the total number of laborers needed for German industry, and required Sauckel to produce them, usually by deportation from occupied territories.

It is worthy of note that Speer was appointed Reich Minister for Armaments and Munitions on 2 February 1942, Sauckel

* Trial of Major War Criminals, vol. I, p. 331.

was appointed Plenipotentiary General for Labor Allocation on 21 March 1942, and the Central Planning Board was created on 22 April 1942.

Turning now to the defendant's position as Chief of the Jaegerstab. The Jaegerstab was formed pursuant to a Speer decree of 1 March 1944, for the purpose of increasing the production of German fighter aircraft, which, because of effective and heavy raids by strategic air forces of Great Britain and America, had suffered a production decrease to a figure below 1,000 planes a month.

Because of this reduced production of fighter planes, Milch had requested Speer to establish a commission to deal with this most vital problem. The commission was created and Speer and Milch were joint chiefs. The Jaegerstab was actually a group of experts, drawn from the various phases of German industry and supplemented by representatives of the various Ministries concerned, such as Labor, Supply, Transportation, Power and Energy, Raw Materials, Health, Repairs, and so forth.

Meetings were held almost daily, in the beginning at the Air Ministry in Berlin and later at Tempelhof airfield in the same city. The Jaegerstab functions were these: the quick repair of plants damaged in bombing or strafing operations, the dispersal of German aircraft plants, and the construction of underground factories for aircraft production.

As it was with the Central Planning Board, so it was with the Jaegerstab, a major problem was the procurement of slave labor. The workers for the Jaegerstab were procured from the Sauckel Ministry, from occupied countries, and from the SS, who supplied concentration camp inmates and Hungarian Jews.

So successful was the work of the Jaegerstab that Speer decided to enlarge its functions to include other phases of armament and munitions production. Accordingly, on 1 August 1944, he issued a decree expanding the functions of the Jaegerstab and changing its name to Ruestungsstab.

The position of Generalluftzeugmeister was taken over by the defendant in 1941, following the death of Colonel General Ernst Udet. In this post the defendant was in charge of all technical research in the Luftwaffe and his was the over-all responsibility for all aircraft production. As such he spoke for the Luftwaffe in the meetings of the Central Planning Board and in conferences with Hitler. It is obvious that here again the procurement of labor was a primary consideration for one who had the complete responsibility for keeping the Luftwaffe in the air.

In the trial before the International Military Tribunal, it was

determined that 5,000,000 laborers were deported to Germany. Of these, 4,800,000 did not come voluntarily.

The evidence will show that the defendant's responsibility was as great, if not greater, than was Sauckel's. Erhard Milch raised his voice in demanding that foreign labor be procured by any methods and in advocating that cruel and repressive measures be taken by those in charge of these laborers. There is no record of any utterance by him, which can be offered as a mitigating circumstance to his complete complicity in the criminality of the slave-labor program.

The evidence on the altitude and freezing experiments will reveal him as a man completely without concern for the welfare and lives of the wretched, unwilling victims of the criminal tortures conducted for the benefit of the Luftwaffe.

The series of trials, of which this is one, if it is to serve its purpose in exposing and punishing the abuses of Nazidom, must strike hard at the cores of savage German militarism and its technical counterpart, industry for war. Erhard Milch is the foremost example of the union between German militarism and German heavy industry. What useful purpose is served by condemning these two and allowing their sponsors, men like Milch, to go unpunished?

We take it as a fundamental proposition that man is not the helpless product of his environment. Civilization is a lengthy chronicle of men who triumphed over difficulty. Its survival depends on the moral fibre of individuals who can use circumstance, not be determined by it. If society must answer for the actions of men, and not men for the course of society, then, indeed, governments are our masters and not our servants; then, indeed, law dictates but does not express justice. Erhard Milch lived during years of violence and in an evil environment but he was a man well able to overcome these factors and become a force for good. It was by his own free choice that he followed the line of least resistance and became one of the evil spirits who cast a dark shadow of war and crime over Germany and the world. He had a choice between the easy wrong and the hard right—he chose the former. Peace, order, and progress depend on men of sufficient courage to choose at times a hard, just path. Ours indeed is an exacting standard, but the rewards are great, and the alternative is chaos.

B. Opening Statement for the Defense *

DR. BERGOLD: May it please the Tribunal, I undertake now to present the evidence for the defense. The prosecution has painted the blackest possible picture of the man I am here to defend. It has pronounced a moral judgment on him, even for the period of his life, which, according to the indictment, is not to be judged by this Tribunal.

Because of the great difference between the American and the German people I have no knowledge of whether such a method of prosecution is customary in the United States of America. The good principles of law which were practiced in Germany before 1933 provided that even counsel for the prosecution should not reproach the defendant for anything that is not subject to examination by the Tribunal. The meaning of this is that defense counsel also should be in a position to express his views with regard to these charges. This, according to my opinion, seems to be a fair principle.

Therefore, if it please the Tribunal, it shall be my aim in the course of my submission of evidence to prove by witnesses who have been approved and by the defendant himself that the charges made by the prosecution are incorrect, and I shall aim to prove that also for the charges which are not contained in the indictment.

Erhard Milch has never in his life been a traitor, as a person or in his profession, not even at the end of the National Socialist rule when he himself was threatened as to his life and his honor. As a man of high intelligence and great talent for organization, he always tried to do his best for his people and for the world.

To say of him that he misused his talent and devoted his life to a plan for conquest and enslavement of the world is to have a completely wrong conception of reality. He was never a militarist in the bad sense of the word. Never did he arm secretly before 1933 nor make use of the peaceful instrument of the commercial air fleet for any sinister purposes. He, the man who wanted to devote himself only to the tasks of peace, the man who in his capacity as director of the German Lufthansa collaborated with many European air transport companies and who conceived this collaboration as almost a forerunner of a unified Europe; he, the man who in 1937 devoted all his efforts, together with a few wise and courageous statesmen, to the attempt to bring about a full understanding and a large scale collaboration between France, Belgium, and Germany (unfortunately, the high

* Opening statement is recorded in mimeographed transcript 27 January 1947. Tr. pp. 494-504.

Tribunal has not given me permission to furnish complete proof for this fact); he, Erhard Milch, truly never tried to enslave the world. If he had succeeded in his plans in 1937, then there would have been no 1938. And, all the more, there would not have been the horrible period of 1939 to 1945, the period in which the battle against intolerance became so hard and so complicated that we might think today that, as in an Arabian tale, this spirit of intolerance freed itself from the bottle and spread itself over so wide an area that, even today, it causes actions which one day must also be condemned by the just and the wise.

I shall prove that from the moment when this man tried, in 1937, to achieve his plans for peace he lost the confidence of his superiors. He never belonged to the intimate circle in which his superiors confided, even less so after 1937. They employed him unwillingly and only because they believed that they could not spare him because of his ability. It is cheap and easy to say now that this man should have denied his superiors the benefit of his talents. We shall prove that he tried to do so. But who can dare to judge with certainty what went on in the heart of such a man who was terribly aware of what dangers threatened his people, once the fateful step of starting the war had been taken? Neither did he want this step nor could he prevent it.

Should he really have chosen the path of revolt, this man who was brought up in a world in which, for all ages, military obedience had been an inviolate law, this man who had a passionate love for his people? How many human beings in any country are capable of breaking the chains of their education, and turn against the laws which have been inviolate for them ever since their childhood?

There is no punishable guilt, perhaps even no moral guilt in the fact that a man cannot free himself from the world of his education. Because it is the very essence of all education to give the man unbreakable laws and to create around him what philosophers call "the environment proper to his own nature." Therefore, he has not made himself guilty by doing what his education and the conceptions of his environment made him call his duty, in a war which he did not want, which he tried to prevent; and the stopping of which he advised again and again after it had started. This duty, he felt, was to do his work and to prevent the worst which he anticipated, namely, the terrible devastation of his fatherland and its complete and helpless collapse.

I shall prove that he always, even after the war had broken out, concerned himself with questions of defense only; that he wanted to strengthen the fighter force, a defensive weapon with

which he wanted to prevent the doom of the German cities. Perhaps, one day, the necessity for this doom will be judged differently. I shall prove that he condemned the attack against Soviet Russia as folly, and that he tried to prevent it. I shall show that in the spring of 1943 he submitted to Hitler detailed proposals for an immediate termination of the war and that he told him without reserve that the war was lost.

If it is true that from that moment onward he made efforts again and again to strengthen the fighter force, and that he took part in the creation of the Jaegerstab, who can reproach him with the intention to prolong the war if it will be proved that he knew that the enemy air forces would make a desert of Germany? Was it inhuman that he tried to prevent this total destruction even if the war was lost? He alone could not end the war. But he could try to prevent the inferno in Germany from becoming full reality. What true lover of his own country in any part of the world would not make the same attempt? Never can he be considered guilty on account of that, and even less so because of the fact that in other countries also voices have arisen and still arise which say that during the destruction of Germany many a thing happened which was not always compatible with military necessity.

Despite the pains he took, his superiors mistrusted him so much that both Goering and Hitler contemplated to have him put out of the way.

I shall show that he never endorsed the theory of the superman and of the master race; that he always remained humane and that he intervened on behalf of friends with disregard for his own security. He never was cruel. It may be that some of the minutes carry wild speeches about him which must strike your Honors who come from a different world and are used to different customs as terrible and incomprehensible. I shall prove to you that in the barracks yards, which made the first impress on the sensitive mind of young Milch, wild expressions were quite common and that in German barracks yards bombastic expressions were considered normal and truly militaristic style. Nobody in Germany did at any time take these expressions at face value. For this human element in particular, the old saying holds true that dogs which bark do not bite.

This man, however, was all the more inclined to use these shocking expressions due to the fact that in a number of accidents he had suffered severe concussions of the brain as a result of which he was more susceptible to fits of anger than other people; all the more so since he was overburdened with work and always frantic because time was too short. But witnesses will

appear before this Tribunal who will confirm that no one in his surroundings took these fits of wrath, these crazy words, seriously; that these expressions never went further than the circle of his intimates, and that they in no way had any effect. His raving and yelling would make so little impression that when people around him noticed he was about to have another fit of rage, one would hear the familiar quotation: "In a moment somebody will be hanged again and then nothing happens."

I shall show that this man knew nothing at all of the many abominable happenings which occurred out in the country, sometimes committed by persons who were under his command, and that, for example, the connection with the experiments at Dachau were so remote and incidental that he could not even surmise what the men there undertook to do. The sphere of his duties was so terrific, the burden of his work so great that he truly would have needed to be a superman if he were expected to have known all that the prosecution finds out today from records and from the examination of the offenders. It is appropriate to use a Latin quotation here with a little change: "*Quod est in actis, non semper est in munde.*" Not everything that the investigating mind uncovers at a later date and interconnects was so in actual fact. The poet says "Easy for him to speak who speaks last." This man is charged with letting prisoners be abused and killed. I shall prove that this was not so. I shall even prove that, for example, he did everything possible to protect so-called terror fliers from being lynched. He was a man who tried to attenuate verdicts pronounced by competent courts of justice and who never favored death sentences.

The prosecution charges him with the enslavement of the peoples of Europe. I shall prove that he never aspired to enslavement; that information on deportations and shanghaiing never reached him; and that, on the contrary, information reached him which was bound to confuse his judgment and which permitted him to engage in deeds which now are considered as wrong. Up to this day the opinion still prevails that everybody in Germany knew everything about all the cruelties. Slowly, however, the recognition comes through that this is not correct. In the "Neue Zeitung", the official organ of the military government, a German anti-Fascist by the name of Arnold Weiss Reuthel, whose book on the concentration camps is considered noteworthy by the newspapers, published an article "On the Psychological Causes." There he states literally:

"One would have termed anybody who informed the public of such happenings a scoundrel or a lunatic. This also explains

why people who did not see these things with their own eyes and did not suffer from them day after day, even today still refuse to believe that they actually happened. Yes, to me too it seems today often a dream and impossible when I think back and try to persuade myself that they really happened, the fearful excesses to which I was a witness during my 5 years in the concentration camp.”

Thus writes, be it noted, a man who suffered for years in a concentration camp himself. It has been proved again and again that the most painstaking secrecy was maintained regarding the atrocities. This is no hollow talk. This is the truth. The actual perpetrators dissembled, denied, lied, in a way that could not have been surpassed in cunning. The documents show you, Honorable Judges, that it was forbidden for Rascher to make reports without Himmler’s authorization. Himmler wanted to draw the veil of secrecy over everything. But even with a Hitler, Sauckel, for example, soft-pedalled all his doings in the procuring of the foreign workers. Regarding this, I will submit evidence.

I shall also show that the assignment of these workers was not a point in any program existing from the outset; that it was exclusively an emergency device which the exigencies of the war forced upon Germany. So at least all this had to appear to him, the man who did not belong to the innermost circle. That he could not think otherwise will be demonstrated to the Court, to the Tribunal.

It is misleading when the honorable representative of the prosecution in his opening speech points out that this man had more to do with the use of forced labor than any other man in Germany. The International Military Tribunal, in its judgment on Speer, whose position, as no one in this courtroom can doubt, was far more powerful and significant than that of this man here, has stated: ¹ “Speer’s position was such that he did not have to deal directly with the atrocities and the carrying out of the forced labor program.” On Sauckel, the International Military Tribunal says: ² “It is nevertheless established beyond all doubt that Sauckel had the over-all responsibility for the slave-labor program.” I shall offer evidence that Sauckel actually also had the sole power over the manner in which the people were recruited and brought to Germany, and over the urgent work for which they were required.

The prosecution submitted much evidence in Document Books No. IA and IB which contain the speeches and decrees of all

¹ IMT mimeographed German transcript p. 16614. See also Trial of Major War Criminals, vol. I, p. 332, Nuremberg, 1947.

² *Ibid.*, p. 16598. See also Trial of Major War Criminals, vol. I, p. 321.

kinds of persons and offices in Germany and in the territories formerly occupied. In my opinion, however, it never proved that the defendant knew of all these things, much less that he had anything to do with them. I shall prove that he knew nothing of all this and that it was all so far remote from his sphere of action that, logically speaking and considering his numerous tasks, he could know nothing about it.

I ask permission to remark here that in cases of this kind it is perhaps after all not in keeping with the rules of true justice to charge one person with everything that happened somewhere and was committed by someone among a people of eighty million. In my opinion the concept of conspiracy is in such a case inflated to the point of monstrosity. It was created for conditions of a narrower and smaller scope where it was within the framework of a man's possibilities to keep an over-all view of his associates and their deeds. But to extend the concept of conspiracy over an entire nation and, simultaneously, over numerous organizations with millions of members, that no longer can be commensurate with true justice. This would result in the creation of a conspirator to whom would be ascribed a Godlike stature. That, however, would be a distortion of an intelligent legal thought.

It must, therefore, be demanded that in the case of each document, of each act, with due consideration of the extent of the defendant's working sphere and, consequently, with due consideration for his working capacity, one should examine whether he could obtain knowledge thereof, whether he could humanly anticipate, examine any of them, and by reason of his authority, could somehow prevent them.

Finally, I shall prove to you that the documents submitted to you as official documents are not exact, not reliable; that they never were examined by the defendant and his associates, and that they contain inaccuracies, distortions, and wilful deceptions.

Regarding the powers and position held by the defendant, a number of witnesses and the defendant himself will attest that his powers were not so great nor so permanent as the prosecution assumes.

We will show that while the Medical Inspector of the Luftwaffe was subordinate to him in his capacity of Inspector General of the Luftwaffe, this subordination was more a formal than a practical one, that the staff of the Medical Service was not at all subordinate to him and that especially he did not have under his direction the DVL (German Experimental Institute for Aviation).

We shall further prove that even the Central Planning Board did not have the significance that the prosecution assumes, that

this agency was much more an advisory and information agency, that it was chiefly occupied with the allocation of raw materials and that only those decisions of the meetings were binding which were summarized in the so-called "Results."

Finally, we shall show that although, it is true, the defendant was one of the founders of the Jaegerstab, he was not its chief and that his importance in this connection was far less than it would appear on first consideration. The work of the Jaegerstab and of the defendant was aimed solely at the protection of Germany against bombing attacks, and Milch very soon lost all influence in this Jaegerstab.

In the presentation of all this evidence, I would ask the high Tribunal to have in mind one difficulty which, particularly in this case, is nearly insurmountable.

The documents submitted by the prosecution are only parts of a body of material the extent of which can be termed gigantic. When one considers that the Jaegerstab, for instance, from the time of its establishment held daily meetings and that from those meetings only these few stenographic records of a few sessions have been submitted that appear in the document books of the prosecution, then one realizes that not even five percent of the material pertaining to the Jaegerstab has been submitted.

Similar, although perhaps not equally striking, is the situation with reference to the minutes of the Central Planning Board. All these documents which were not submitted are not accessible to me at all. Does not, however, justice demand that the material in its entirety should be available to the defense counsel for examination? Already it has been possible for me to discover in the incriminating documents numerous passages which throw a different light on the indictment. Is it not highly probable, then, that numerous other passages may be found in all of the other material likely to extenuate to a high degree the guilt of the defendant, or which, in any case, might show many things in a better light?

In an ordinary trial with a considerably narrower scope it is much easier for a defendant to conduct his defense than here where material of such volume is at hand that even if he had the best of memories, it would be impossible for him to point out to me, his counsel, where and what kind of exonerating material can be found. That simply surpasses the capacity of the human memory, of the human ability to think.

In passing, I would say that probably in all of the armies which fought in this war the responsible men used strong language during meetings and discussions which, had they all gone down in records, would today cause the milder ones to shake their

heads. Wrath, impatience, worry, and anguish because of damages sustained frequently lead responsible persons to wild utterances. What counts is not whether such words are uttered but the deeds which come after such excitement dies away.

The prosecution had many long months to prepare its case. We, the defendant and I, received the real documents on the indictment only in January. It is beyond human capacity to examine everything within such a short period of time with the thoroughness which is necessary to assemble the required counter-evidence. The presentation of argument on the part of the defendant must therefore, be full of gaps. It is particularly difficult in this case because within the short time available for preparation it is impossible to study all the problems which are brought to light as a result of the Dachau experiments. This calls for special technical knowledge which a man such as the defendant, who never studied medicine, simply cannot possess. However, as this trial is held simultaneously with the trial on the Dachau experiments,* the danger exists that the important and exonerating facts brought to light there, through the defendant experts and their well-informed counsel, cannot be properly appraised in the present case, and in this way the cause of justice is endangered.

All of this I merely say in order to ask your Honors not to lose sight of these angles in judging this present case. Honorable Judges, please bear that in mind also when examining the documents which I shall submit and, giving ear to that extent to the voice of humanity and of justice, lend your assistance to a man who, cut off for so long and bitter a time from all his information and other aids to support his memory, has been called upon to defend himself before you. If at any time the fundamental principle of penal justice, which exists since the days of the wise Romans, should find application, "*In dubio pro reo*" (In case of doubt favor the accused), it should find strict application in this case. That is what I wanted to tell you as an introduction.

* United States vs. Karl Brandt, et al. See vol. I.

IV. SELECTIONS FROM THE DOCUMENTS AND TESTIMONY OF WITNESSES OF PROSECUTION AND DEFENSE

A. Slave Labor

I. GENERAL SLAVE LABOR PROGRAM IN GERMANY

Prosecution Documents

Doc. No.	Pros. Ex. No.	Description of Document	Page
L-79	3	Extract from minutes of Fuehrer conference, 23 May 1939.	387
EC-68	6	Letter from the Ministry of Finance and Economics of Baden, 6 March 1941, containing directives regarding the treatment of Polish farm workers.	389
3005-PS	7	Extracts from letter from the Reich Labor Ministry to presidents of regional labor offices, 26 August 1941, concerning the use of French and Russian PW's.	392
EC-194	8	Memorandum of Keitel, 31 October 1941, concerning the use of PW's in the armament industry.	393
1206-PS	9	Outlines of directives of Goering regarding the employment of PW's in the armament industry, 7 November 1941.	395
3040-PS	10	Extracts from secret order of Himmler, 20 February 1942, concerning the commitment and treatment of manpower from the East.	399
016-PS	13	Letter from Sauckel to Rosenberg, 24 April 1942, and extracts from report on Sauckel's labor mobilization program, 20 April 1942.	405
084-PS	16-A	Extracts from interdepartmental report of the Ministry for Occupied Eastern Territories, 30 September 1942, concerning the status of eastern laborers.	408
294-PS	19-A	Extracts from top secret memorandum, signed by Braeutigam, 25 October 1942, concerning effects of slave labor program.	411
L-61	20	Letter from Sauckel to the presidents of labor offices, 26 November 1942, concerning deportation and employment of Poles and Jews.	413
1063-D-PS	21	Extract from order of Mueller, 17 December 1942, concerning prisoners qualified for work to be sent to concentration camps.	415

Doc. No.	Pros. Ex. No.	Description of Document	Page
1526-PS	25	Extracts from letter from German-appointed Ukrainian main committee to Frank, February 1943.	416
407-V-PS	30	Extracts from letter from Sauckel to Hitler, 14 April 1943, concerning labor questions.	418
407-IX-PS	33	Letter from Sauckel to Hitler, 3 June 1943, concerning foreign labor situation.	420
3000-PS	34	Extracts from report rendered to Riecke, Ministerialdirektor in the Ministry of Agriculture, 28 June 1943, on experiences in political and economic problems in the East.	422
265-PS	35	Extracts from report by Leyser to Rosenberg, 30 June 1943, on conditions in the district Zhitomir.	423
204-PS	39	Extracts from memorandum of a conference, 18 February 1944, concerning the release of indigenous labor for purposes of the Reich.	424
R-103	40	Extracts from a letter from the (German-appointed) Polish main committee to the General Government of Poland on the conditions of Polish workers in Germany, 17 May 1944.	426
208-PS	55	Report by Sauckel, 7 July 1944, on the accomplishments of labor mobilization in the first half of 1944.	428
3819-PS	56	Minutes of a conference on 11 July 1944 attended by Milch, concerning the labor problem.	430

Defense Documents

Doc. No.	Def. Ex. No.	Description of Document	Page
R-124	1	Extract from report on Fuehrer conference attended by Milch on 19 February 1942.	438
R-124	32	Extract from the Fuehrer conference minutes, 21 and 22 April 1942.	438
R-124	2	Extract from the Fuehrer conference minutes of 3, 4, 5 January 1943.	439
407-II-PS	8	Report from Sauckel to Hitler, 10 March 1943, concerning difficulties originating from the draft of manpower in former Soviet territories.	439
R-124	33	Extract from report on Fuehrer conference of 30 May 1943.	441
R-124	4	Extract from report of Fuehrer conference of 11-12 September 1943.	442
R-124	34	Extract from Fuehrer conference of 1-4 January 1944, concerning Speer's report on the French labor situation.	443

TRANSLATION OF DOCUMENT L-79 *
PROSECUTION EXHIBIT 3

EXTRACT FROM MINUTES OF FUEHRER CONFERENCE, 23 MAY 1939

Top Secret

To be transmitted by officer only

Minutes of a Conference on 23 May 39

Place: The Fuehrer's Study, New Reich Chancellery.

Adjutant on duty: Lt.-Col. (GSC) Schmundt.

Present: The Fuehrer, Field Marshal Goering, Grand Admiral [Admiral of the Fleet] Raeder, Col. Gen. [General] von Brauchitsch, Col. Gen. Keitel, Col. Gen. Milch, Gen. (of Artillery) [Lt. General] Halder, Gen. Bodenschatz, Rear-Admiral Schniewind, Col. (GSC) Jeschonnek, Col. (GSC) Warlimont, Lt.-Col. (GSC) Schmundt, Capt. [Army] Engel, Lt. Comdr. Albrecht, Capt. [Army] v. Below.

Subject: Indoctrination on the political situation and future aims.

The Fuehrer defined as *the purpose of the conference*:

1. Analysis of the situation.
2. Definition of the tasks for the armed forces arising from the situation.
3. Exposition of the consequences of those tasks.
4. Ensuring the secrecy of all decisions and work resulting from these consequences.

Secrecy is the first essential for success. The Fuehrer's observations are given in systematized form below.

Our present situation must be considered from two points of view: (1) the actual development of events between 1933 and 1939; (2) the permanent and unchanging situation in which Germany lies.

In the period 1933-1939, progress was made in all fields. Our military situation improved enormously.

Our situation with regard to the rest of the world has remained the same.

Germany had dropped from the circle of Great Powers. The balance of power had been effected without the participation of Germany.

* The basic importance of this Hitler conference on 23 May 1939 was emphasized by the IMT Judgment. See Trial of Major War Criminals, vol. I, pp. 188 and 200, Nuremberg, 1947.

For translation of entire document see Nazi Conspiracy and Aggression, vol. VII, pp. 847-854, U.S. Government Printing Office, Washington, 1946.

This equilibrium is disturbed when Germany's demands for the necessities of life make themselves felt, and Germany reemerges as a Great Power. All demands are regarded as "Encroachments". The English are more afraid of dangers in the economic sphere than of the simple threat of force.

A mass of 80 million people has solved the ideological problems. So, too, must the economic problems be solved. No German can evade the creation of the necessary economic conditions for this. The solution of the problems demands courage. The principle by which one evades solving the problems by adapting oneself to circumstances is inadmissible. Circumstances must rather be adapted to aims. This is impossible without invasion of foreign states or attacks upon foreign property.

Living space, in proportion to the magnitude of the state, is the basis of all power. One may refuse for a time to face the problem, but finally it is solved one way or the other. The choice is between advancement or decline. In 15 or 20 years' time we shall be compelled to find a solution. No German statesman can evade the question longer than that.

We are at present in a state of patriotic fervor, which is shared by two other nations—Italy and Japan.

The period which lies behind us has indeed been put to good use. All measures have been taken in the correct sequence and in harmony with our aims.

After 6 years the situation is today as follows:

The national-political unity of the Germans has been achieved, apart from minor exceptions. Further successes cannot be attained without the shedding of blood.

The demarcation of frontiers is of military importance.

The Pole is no supplementary enemy. Poland will always be on the side of our adversaries. In spite of treaties of friendship, Poland has always had the secret intention of exploiting every opportunity to do us harm.

Danzig is not the subject of the dispute at all. It is a question of expanding our living space in the East and of securing our food supplies, of the settlement of the Baltic problem. Food supplies can be expected only from thinly populated areas. Over and above the natural fertility, thorough German exploitation will enormously increase the surplus.

There is no other possibility for Europe.

Colonies: Beware of gifts of colonial territory. This does not solve the food problem. [Remember]—blockade!

If fate brings us into conflict with the West, the possession of extensive areas in the East will be advantageous. Upon record

harvest we shall be able to rely even less in time of war than in peace.

The population of non-German areas will perform no military service, and will be available as a source of labor.

The problem "Polish" is inseparable from conflict with the West.

Poland's internal power of resistance to Bolshevism is doubtful. Thus Poland is of doubtful value as a barrier against Russia.

It is questionable whether military success in the West can be achieved by a quick decision; questionable too is the attitude of Poland.

The Polish government will not resist pressure from Russia. Poland sees danger in a German victory in the West, and will attempt to rob us of the victory.

There is therefore no question of sparing Poland, and we are left with the *decision*:

To attack Poland at the first suitable opportunity.

* * * * *

TRANSLATION OF DOCUMENT EC-68
PROSECUTION EXHIBIT 6 *

LETTER FROM THE MINISTRY OF FINANCE AND ECONOMICS OF
BADEN, 6 MARCH 1941, CONTAINING DIRECTIVES REGARDING
THE TREATMENT OF POLISH FARM WORKERS

49-7

Copy

III B 5 C (in pencil)

Karlsruhe, 6 March 1941

Minister of Finance and Economics of Baden
Provincial [Land] Food Office Dept. A.
(Provincial Farmers Association)

Confidential Only for Official Business

To all District Farmers Associations [Kreis]

Subject: Directives regarding the treatment of foreign farm
workers of Polish nationality.

The agencies of the Reich Food Estate, Provincial Farmers

* When the prosecution introduced this document in evidence, the following colloquy ensued (Tr. p. 49):

JUDGE SPEIGHT: Do you establish a chain between all of these documents which you read and the defendant?

MR. DENNEY: If your Honor please, the prosecution, in presenting these documents, has in mind to give an over-all picture of the way slave labor was treated in Germany, going back to the early days showing that this defendant knew because of attendance at the May 1939, conference that slave labor was going to be employed. Then as Air Ordnance Master General, later as Chief of the Jaegerstab, and later as a member of the Central Planning Board, we will connect him with enterprises involving slave labor.

JUDGE SPEIGHT: Very well.

Association of Baden, have received the results of the negotiations with the Higher SS and Police Leader in Stuttgart on 14 February 1941, with great satisfaction. Appropriate memoranda have already been turned over to the District Farmers Associations. Below, I promulgate the individual regulations, as they have been laid down during the conference and how they are not to be applied accordingly:

1. Fundamentally, farm workers of Polish nationality no longer have the right to complain, and thus no complaints may be accepted any more by any official agency.

2. The farm workers of Polish nationality may not leave the localities in which they are employed, and have a curfew from 1 October to 31 March from 2000 hours to 0600 hours, and from 1 April to 30 September from 2100 hours to 0500 hours.

3. The use of bicycles is strictly prohibited. Exceptions are possible, for riding to the place of work in the field, if a relative of the employer or the employer himself is present.

4. The visit of churches, regardless of faith, is strictly prohibited, even when there is no service in progress. Individual spiritual care by clergymen outside of the church is permitted.

5. Visits to theaters, motion pictures or other cultural entertainment are strictly prohibited for farm workers of Polish nationality.

6. The visit of restaurants is strictly prohibited to farm workers of Polish nationality except for one restaurant in the village, which will be selected by the Rural Councillor's Office, and then only one day per week. The day, which is determined as the day to visit the restaurant, will also be determined by the Rural Councillor's Office. This regulation does not change the curfew regulation, mentioned above under No. 2.

7. Sexual intercourse with women and girls is strictly prohibited, and wherever it is established, it must be reported.

8. Gatherings of farm workers of Polish nationality after work is prohibited, whether it is on other farms, in the stables, or in the living quarters of the Poles.

9. The use of railroads, buses, or other public conveyances by farm workers of Polish nationality is prohibited.

10. Permits to leave the village may only be granted in very exceptional cases, by the local police authority (mayor's office). However, in no case may it be granted if he wants to visit a public agency on his own, whether it is a labor office or the District

Farmers Association, or whether he wants to change his place of employment.

11. Arbitrary change of employment is strictly prohibited. The farm workers of Polish nationality have to work daily so long as the interests of the enterprise demand it, and as it is demanded by the employer. There are no time limits to the working time.

12. Every employer has the right to give corporal punishment to farm workers of Polish nationality, if instructions and good words fail. The employer may not be held accountable in any such case by an official agency.

13. Farm workers of Polish nationality should if possible be removed from the community of the home, and they can be quartered in stables, etc. No remorse whatever should restrict such action.

14. Report to the authorities is compulsory in all cases when crimes have been committed by farm workers of Polish nationality which are to sabotage the enterprise or slow down work, for instance, unwillingness to work, impertinent behavior; it is compulsory even in minor cases. An employer who loses his Pole who must serve a longer prison sentence because of such a compulsory report will receive another Pole from the competent labor office on request with preference.

15. In all other cases, only the state police is still competent.

For the employer himself, severe punishment is contemplated if it is established that the necessary distance from farm workers of Polish nationality has not been kept. The same applies to women and girls. Extra rations are strictly prohibited. Noncompliance of the Reich tariffs for farm workers of Polish nationality will be punished by the competent labor office by the taking away of the worker.

In any case of doubt, the Provincial Farmers Association—IB—will give information.

Forwarding in writing of the above agreement to the farm workers of Polish nationality is strictly prohibited.

These regulations do not apply to Poles who are still prisoners of war and are thus subordinated to the armed forces. In this case, the regulations published by the armed forces apply.

Heil Hitler!

BY ORDER:

[Signed] DR. KLOTZ

PARTIAL TRANSLATION OF DOCUMENT 3005-PS
PROSECUTION EXHIBIT 7

EXTRACTS FROM LETTER FROM THE REICH LABOR MINISTRY TO
PRESIDENTS OF REGIONAL LABOR OFFICES, 26 AUGUST 1941,
CONCERNING THE USE OF FRENCH AND RUSSIAN PW'S

Vol. 78-L

Annex 1 to the Decree of the Reich Minister of Armament
and Munitions

THE REICH MINISTER OF LABOR

Va 5135/1277

Nr. 371-4770/41 secret 216/985

Berlin, SW 11, 26 August 1941

Special Delivery

To the Presidents of Regional Labor Offices
(including Nuernberg Branch Office)

Subject: Use of Russian PW's.

Reference: Circular of 14 August 1941—*Va 5135/1189*—.

Upon personal order of the Reich Marshal [Goering], 100,000 men are to be taken from among the French PW's not yet employed in armament industry, and are to be assigned to the armament industry (airplane industry). Gaps in manpower supply resulting therefrom will be filled by Soviet PW's. The transfer of the above-named French PW's is to be accomplished by 1 October. Russian PW's can be utilized only in larger concentrated groups under the well-known, tougher employment conditions. In the civilian field the regional labor offices will have to determine immediately those work projects where French prisoners of war can be withdrawn and replaced by Soviet groups. For the time being, no additional assignment of Soviet prisoners of war can be considered. Initially all replacement possibilities must be completely exhausted. Similarly, all French PW's no longer needed are not to be channeled into agriculture and forestry any more, but exclusively into armament industry (aircraft industry).

All branches of economic life employing French PW's, with the exception of armament industry and mining, are to be encompassed in determining those work projects where exchanges are feasible. The absolute necessity that Soviet PW replacements be employed in larger concentrated groups, requires, among other things, special checking of all larger construction projects of any kind (including construction of the Reich railroads, navigational

and cultivation projects). Reich Minister Dr. Todt has already consented to the exchange of French PW's employed by the Reich super highways. In agriculture the exchange can naturally be effected only in the case of large estates (especially estates with outlying farms).

Exchange of PW's will frequently encounter resistance. The factories concerned will be reluctant to exchange the trained and proven French PW's for Soviet PW's. In such cases the labor offices have to draw the factories' attention to the necessities of state, and to the directive of the Reich Marshal.

As soon as the regional labor offices have determined the work projects affected by the exchange, they will inform the Service Commands Headquarters, indicating how many French PW's are being made available and how many Soviet PW's will be needed to replace the French PW's. Without my express consent not more than 120 Soviet PW's may be requested for each 100 French PW's made available. Since the determining factors in the allocation of Soviet PW's are military and counter-intelligence considerations, final decision about the exchange rests with the Service Commands [Military Districts] Headquarters.

* * * * *

The first 100,000 French prisoners of war shall be channeled into the aircraft industry. * * *

* * * * *

TRANSLATION OF DOCUMENT EC-194
PROSECUTION EXHIBIT 8

MEMORANDUM OF KEITEL, 31 OCTOBER 1941, CONCERNING THE
USE OF PW'S IN THE ARMAMENT INDUSTRY

Copy

Fuehrer Headquarters, 31 October 1941

The Chief of the Supreme Command of the Armed Forces

Secret

WFSt/Abt. L (II Org/IV Qu [sic])

No. 0 2588/41 Secret

Subject: Use of prisoners of war in the war industry.

The lack of workers is becoming an increasingly dangerous hindrance for the future German war and armament industry. The

expected relief through discharges from the armed forces is uncertain as to extent and date. Its possible extent will by no means correspond to expectations and requirements in view of the great demand.

The Fuehrer has now ordered that also the working power of the Russian prisoners of war should be utilized to a great extent by large scale assignment for the requirements of the war industry. The prerequisite for production is adequate nourishment. Also very small wages are to be planned for the most modest supply with a few consumers' goods for every day life, and perhaps rewards for production.

For labor utilization [Arbeitseinsatz], the following may be considered as examples:

I. *Armed Forces.*

a. Clearing and construction units of all kinds in the occupied eastern territories.

b. Work and construction battalions in the other occupied territories and in Germany.

c. Large scale employment in units to relieve soldiers in labor service.

II. *Construction and Armament Industry.*

a. Work units for construction of all kind, particularly for the fortification of coastal defenses (concrete workers, unloading units for essential war plants).

b. Suitable armament factories which have to be selected in such a way that their personnel should consist in the majority of prisoners of war under guidance and supervision (perhaps after withdrawal and transfer to other employment of the German workers).

III. *Other War Industries.*

a. Mining as under II b.

b. Railroad construction units for building tracks, etc.

c. Agriculture and forestry in closed units.

The utilization of Russian prisoners of war is to be regulated on the basis of above examples by:

To I. The armed forces.

To II. The Reich Minister of Armament and Munitions and the Inspector General for the German road system, in agreement with the Reich Minister of Labor and the Supreme Command of the Armed Forces (Economic Armament Office).

Commissioners of the Reich Minister of Armament and Muni-

tions are to be admitted to the prisoner of war camps to assist in the selection of skilled workers.

To III. The Reich Minister of Labor. Limitations are—

1. The securing of guards to protect the German people from dangers.
2. Housing in closed camps.
3. Securing adequate nourishment.

The observance of the counter-intelligence regulations which apply for the use of prisoners of war will be supervised by military counter-intelligence agencies as until now.

OKW (AWA)* will furnish the Reich Minister of Labor with blueprints based on professional selection for the appropriate use of labor and will also permanently provide workers for assignment to the labor utilization [Arbeitseinsatz].

Furthermore, the Commander in Chief of the Army is asked to take the necessary measures for the recruiting of voluntary labor in the eastern operational zone in cooperation with the Reich Minister of Labor.

[Signed] KEITEL

Distribution:

* * * * *

TRANSLATION OF DOCUMENT 1206-PS
PROSECUTION EXHIBIT 9

OUTLINES OF DIRECTIVES OF GOERING REGARDING THE
EMPLOYMENT OF PW'S IN THE ARMAMENT INDUSTRY,
7 NOVEMBER 1941

Draft

Rue (IV)

Berlin, 11 November 1941

Top Secret

6 Copies—6th Copy

NOTES ON OUTLINES LAID DOWN BY THE REICH MARSHAL [GOERING] AT THE MEETING OF 7 NOVEMBER 1941 IN THE REICH AIR MINISTRY [RLM]

Subject: Employment of laborers in war industries

The Fuehrer's point of view as to employment of prisoners of

* Allgemeines Wehrmachtamt of the Oberkommando der Wehrmacht. See case of United States vs. Wilhelm von Leeb, et al., vols. X, XI.

war in war industries has changed basically. So far, a total of 5 million prisoners of war—employed so far 2 million.

Directives for employment:

- Frenchmen: Individual employment, transposition into the armament industry. [Rue-Wirtschaft.]
Belgians: Individual employment, transposition into the armament industry. [Rue-Wirtschaft.]
Serbs: Preferably agriculture.
Poles: If feasible, no individual employment.

Output of Russian armament industry surpasses the German one. Assembly line work, a great many mechanical devices with relatively few skilled workers.

Readiness of Russians to work in the operational area is strong. In the Ukraine and other areas discharged prisoners of war already work as free labor. In Krivoi Rog, large numbers of workers are available due to the destruction of the factories.

Employment of Russian PW's

As a rule, employment in groups [geschlossener Arbeitseinsatz]; no individual employment, not even in agriculture. Guard personnel, not only soldiers but also foremen, at least during the working time proper. As a rule soldiers in the camp.

One has to distinguish between *employment in*:

1. Operational area,
2. Reich Commissariats (occupied territories in the East),
3. General Government, and
4. Interior and Protectorate.

To 1: In the *operational area* take preferably into consideration:

- a. Railroads.
- b. Highway construction.

Very important that in the Ukraine some roads be built with increased speed, not by German skilled labor but by Russian PW's.

- c. Clearing work.
- d. Agriculture.

The Ukraine being conquered, we now finally have to secure the feeding of the German people. If necessary Frenchmen and Belgians are to be used for directing the work of the Russian farm workers in the eastern area. If farm machinery is lacking, employ masses of workers. Transfer of German farmers only where actual success can be expected.

- e. Railroad-repair-factories, etc.

Best supervision: "Field kitchen". Quick evacuation from operational area necessary. Losses during transport very heavy (escaping and joining with partisan and robber bands).

Barbed wire hard to get. (Discarding of barbed-wire fences in East Prussia desirable.)

Leave Asiatic people in operational area if possible.

From construction battalions 69,000 workers have been transferred to the armament industry: replacement by prisoner-of-war battalions.

Again and again skilled workers are being found in the construction battalions (machine [wood or metal] operators). Investigation by army desirable. Express will of the Fuehrer, that every skilled worker is used in the proper place. If necessary, repeated checking should be instituted.

To 2: The same applies to employment in *Reich Commissariats*.

To 3: The above is also applicable to the *General Government*.

Attention is to be paid to avoiding of unnecessary transport of machinery, as thereby often the available manpower in the General Government is not fully utilized and, on the other hand, the machinery cannot be made use of for a long time in other places.

To 4: In the *Interior and the Protectorate* it would be ideal if entire factories could be manned by Russian PW's except the employees necessary for direction. For employment in the Interior and the Protectorate the following are to have priority:

a. At the top, *coal mining industry*.

Order by the Fuehrer to investigate all mines as to suitability for employment of Russians. At times manning the entire plant with Russian laborers.

b. *Transportation* (construction of locomotives and cars, repair shops).

Railroad repair and industry workers are to be sought out from the PW's. Railroad is most important means of transportation in the East.

c. *Armament industries*.

Above all factories producing tanks and guns. Possibly also construction of parts for airplane engines. Suitable complete sections of factories to be manned exclusively by Russians. For the remainder, employment in columns. Use in factories of tool machinery, production of farm tractors, generators, etc. In emergency, erect in individual places barracks for

occasional workers which are used as unloading details and similar purposes. (Reich Minister of the Interior through communal authorities.)

The General Armed Forces Office of the Supreme Command Armed Forces [OKW/AWA] is competent for *transporting* Russian PW's, employment through "*Planning Board for Employment of all PW's*". If necessary, offices of Reich Commissariats.

No employment where *danger to people* [*fuer Menschen*] or their supply exists, i.e., factories sensitive to explosions, waterworks, powerworks, etc. No contact with German population, especially no "solidarity". German worker as a rule is foreman of Russians.

Food is a matter of the Four Year Plan. Supply their own food (cats, horses, etc.).

Clothing, billeting, messing somewhat better than at home where part of the people live in caverns.

Supply of shoes for Russians, as a rule wooden shoes; if necessary install Russian shoe repair shops.

Examination of *physical fitness*, in order to avoid importation of diseases.

Clearing of mines as a rule by Russians, if possible by selected Russian engineers.

Employment offices for *civilian workers* to be kept separate from those for PW's. In this respect the wage problem is to be considered. Furthermore, families in Russia have to share the support. As a rule employment in groups [*geschlossener Einsatz*].

Some aspects for labor utilization [*Arbeitseinsatz*] in general.

Rather employ PW's than *unsuitable foreign workers*. Draft Poles, Dutchmen, etc., if necessary as PW's, and employ them as such, if work through free contract cannot be obtained. Strong action.

General employment of all *German women* repudiated by the Fuehrer.

Where Russians can be employed, *labor service* is not to be used. Labor service to be used where greatest effect is produced, even if the principle of education through labor service is curtailed thereby. War situation to be taken into consideration.

As a matter of principle, central interests precede local interests, therefore no resistance from Reich Commissioners and other local authorities against labor utilization [*Arbeitseinsatz*] in the homeland.

Savings in wages are to be offset by compensatory contributions [to the Reich] by the respective management.

Express order by the Fuehrer. Under no circumstances may the

wage level in the East be raised or assimilated to the wages in western Germany. Strong action is imperative against recruiting agents who offer high wages.

It is intended to issue a basically new regulation of wages for foreign workers.

Foreigners not to be treated like German workers, on the other hand do not provoke inferiority complex in foreigners by posters.

The welfare installations of the German Labor Front [DAF] are under no circumstances to be used by PW's or eastern workers.

All agencies are to promote maximum utilization of Russian manpower.

Employment of Russians not to be improvised, but first to be thoroughly organized in the operational area. Speed is necessary, as the mass of manpower is decreasing daily by losses (lack of food and billets).

Make provisions to decrease the excessive number of escaping prisoners. Especially in and around Berlin, strictest guarding is essential.

[illegible initials]

Distribution:

* * * * *

PARTIAL TRANSLATION OF DOCUMENT 3040-PS *
PROSECUTION EXHIBIT 10

EXTRACTS FROM SECRET ORDER OF HIMMLER, 20 FEBRUARY 1942,
CONCERNING THE COMMITMENT AND TREATMENT OF
MANPOWER FROM THE EAST

GENERAL COLLECTION OF DECREES [ALLGEMEINE
ERLASSAMMLUNG (AES)]

Part 2

Secret

Printed by RSHA (Reich Security Main Office) I Org

Section 2 A III f

Commitment of Manpower from the East. Circular Decree of the Reich Fuehrer SS and Chief of German Police in the Reich Ministry of the Interior dated 20 February 1942—S IV No. 208/42 (foreign workers).

Enclosed I am sending you general regulations concerning the recruiting and the committing of manpower from the East for your information and careful attention.

I have the following additional directives for the Security Police and the SD [Security Service]:

* For more complete translation of document see Nazi Conspiracy and Aggression, vol. V, pp. 744-754, U.S. Government Printing Office, Washington, 1946.

A. MANPOWER FROM THE ORIGINAL SOVIET RUSSIAN TERRITORY

I. General security measures.

1. The commitment of manpower in the Reich from the original Soviet Russian territory results in greater dangers than any other employment of foreigners in spite of the special standards of their way of living, since a complete separation from the German and other foreign laborers and a strict supervision will frequently, in practice and especially at the place of work, scarcely be effected. The Security Police is charged with the responsibility for preventing the danger and it must do everything to accomplish its tasks; that is, to diminish the possibilities of danger to a minimum. Since enforcements cannot be counted on, it is the special task of the inspectors and state police administrative offices to urge the other administrative offices, charged with the commitment of the manpower, to take over the affairs of the Security Police within the sphere of their jurisdiction.

* * * * *

III. Combatting violations against discipline.

1. According to the equal status of the manpower from the original Soviet Russian territory with prisoners of war, a strict discipline must be exercised in the quarters and at the working place. Violations against discipline, including work refusal and loafing at work, will be fought exclusively by the Secret State Police [Gestapo]. The smaller cases will be settled by the leader of the guard according to instruction of the state police administration offices with measures as provided for in the enclosure. To break acute resistance, the guards shall be permitted to use also physical power against the manpower. But this may be done only for a cogent cause. The manpower should always be informed about the fact that they will be treated decently when conducting themselves with discipline and accomplishing good work.

2. In severe cases, that is in such cases where the measures at the disposal of the leader of the guard do not suffice, the state police office has to act with its means. Accordingly, they will be treated, as a rule only with strict measures, that is, with transfer to a concentration camp or with special treatment.

3. The transfer to a concentration camp is done in the usual manner.

4. In especially severe cases special treatment is to be requested at the Reich Security Main Office, stating personal data and the exact history of the act.

5. Special treatment consists of hanging. It should not take place in the immediate vicinity of the camp. A certain number of the manpower from the original Soviet Russian territory should attend the special treatment; at that time they are warned about the circumstances which led to this special treatment.

6. Should special treatment be required within the camp for exceptional reasons of camp discipline, this is also to be requested.

* * * * *

IV. Subversive activities against the Reich.

Anti-Reich activities, especially dissemination of communist ideology, propaganda of disunity, sabotage acts, are to be fought against with the strictest measures. The care in obtaining information shall not suffer through quick arrests, in order to catch the whole group of perpetrators. Anti-Reich conduct is, as a rule, to be punished by special treatment, in slighter cases a transfer to a concentration camp may be considered.

V. Criminal violations [Kriminelle Verfehlungen].

1. As a matter of principle, criminal violations—regardless of whether committed inside or outside the camp—shall be punished by state police measures. * * *

2. Criminal offenses [Kriminelle Delikte] are generally to be punished as violations against discipline, that is, the state police measures provided for, shall take place in cases of smaller violations, and special treatment shall take place in cases of crimes—such as, murder, homicide, and robbery.

3. Concerning capital crimes against German persons, punishment by criminal court procedure may, however, in an individual case appear suitable. If the (superior) state police agency considers this opportune, it can transfer the case to the prosecuting attorney, under the provision that pursuant to the criminal laws, one can safely count on the death penalty for the perpetrator.

VI. Sexual Intercourse.

Sexual intercourse is forbidden to the manpower of the original Soviet Russian territory. Because of their closely confined quarters they have no opportunity for it. Should sexual intercourse occur nevertheless—especially by the individually employed manpower on the farms—the following is directed:

1. For every case of sexual intercourse with our German countrymen or women [deutschen Volksgenossen oder Volksgenos-sinnen] special treatment is to be requested for male manpower

from the original Soviet Russian territory, transfer to a concentration camp for female manpower.

2. When exercising sexual intercourse with other foreign workers, the conduct of the manpower from the original Soviet Russian territory is to be punished as severe violation of discipline with transfer to a concentration camp.

VII. Measures against fraternization with manpower from the original Soviet Russian territory.

1. Special attention is to be paid to the fundamental segregation of manpower from the original Soviet Russian territory from the German population. It is important to prevent a penetration of communistic ideology into the German population by cutting off every contact not directly pertaining to the work and, if possible, to avoid every solidarity between German people and the manpower from the original Soviet Russian territory. Against Germans who act to the contrary, steps are to be taken by the state police according to the situation of the individual case.

2. If German countrymen or women should exercise sexual intercourse or commit indecent acts with manpower from the original Soviet Russian territory, transfer to a concentration camp is to be requested.

3. The intercourse between other foreign workers employed in the Reich and the manpower from the original Soviet Russian territory also brings great dangers to be dealt with by the Security Police; therefore, it should also be fought with measures against the foreign workers. As a rule, the transfer to a correction camp (deportation for Italians) will be proper; this also applies to cases of sexual intercourse.

VIII. Search.

* * * * *

2. When caught, the fugitive must receive special treatment.

* * * * *

B. MANPOWER FROM THE BALTIC COUNTRIES AND FOREIGN MANPOWER, NOT OF POLISH ORIGIN, FROM THE GENERAL GOVERNMENT AND FROM THE ANNEXED EASTERN TERRITORIES

I. General.

1. This manpower is to be treated uniformly in the Reich by the state police. In view of the political attitude of these nations,

or ethnic groups [Volksstaemme] toward the Reich on the one hand and their position in the East on the other hand, they are to be governed by the regulations valid for foreign manpower in general, but are subject to special limitations in their way of living.

2. These limitations consist essentially in a conspicuous separation of this manpower from the German people. Since the employment and housing of this manpower is not closely confined and guarded, it is the task of the Secret State Police to be especially watchful about the observation of the mentioned principle. The Secret State Police has to inform the offices charged with the employment of foreigners through constant communication, that this principle will be considered in all measures of work employment. Settlement of these persons in the Reich, individual billeting in spite of existing collective quarters, position superior to that of a German worker, etc., must not be tolerated. As far as these people themselves violate the established principle, and act unlawfully against Germans by insubordination and acts of violence, such a conduct will be met with state police measures.

3. This manpower must, however, by no means be put on the same level as the Poles or the manpower from the original Soviet Russian territory, on account of their nations' fundamental antagonism toward the Polish people and Bolshevism. Nevertheless, special attention should be paid to them—especially by the establishment of an active intelligence service among this manpower—since their rather receptive attitude toward the German nation might change into the opposite, but at least could stiffen, because too high political expectations are not fulfilled.

* * * * *

III. Fighting against breach of labor contract.

1. The fight against breach of labor contract of this manpower is principally the duty of the Secret State Police.

2. This does not mean, of course, an interference with the activity of the Reich trustee of labor, with the means at his disposal in the regulation and settlement of industrial difficulties as long as no active intervention is necessary. If more stringent measures are necessary, the Reich trustee of labor will transfer the proceedings to the Secret State Police.

3. In every case, however, it is the task of the (superior) state police agency to check whether the violation of the working duty by this manpower is not caused by the plant through breach of contract as well as general bad treatment. If the conduct of the

concerned manpower appears justified through the fault on the part of this plant, the state police is not to interfere, since this is free manpower.

4. In any other case, however, immediate action is necessary and, in case of a breach of contract on part of this manpower, the transfer to a correction camp is to be ordered, as a rule. In cases of severe repetition the transfer to a concentration camp can also be requested. In the cases of breach of contracts handled by the state police, the Reich trustee of labor has to be informed each time about the decision.

IV. Criminal violations.

* * * * *

3. * * *. Crimes against decency, acts of violence, and acts of sabotage are to be punished, as a matter of principle, by state police measures (special treatment); however, I have no objection against a transfer of the inquiry proceedings to the competent public prosecutor if, pursuant to the criminal laws, one can safely count on the death penalty for the perpetrator. In these cases it is to be ascertained what the outcome of the trial is; should, against expectations, a death sentence not be passed, a report has to be made to me, attaching copy of the judgment.

Inquiry proceedings concerning other offenses are, as a rule, to be transferred to the competent public prosecutor. If a strong increase of crimes is noted in certain spheres, then there are no objections at all against punishing purely criminal acts, as a deterrent example, by state police measures.

* * * * *

VI. Sexual intercourse with Germans.

1. The sexual intercourse of the manpower from the Baltic states as well as of the foreign manpower of non-Polish origin from the General Government and from the annexed eastern territories with Germans is punishable by severest penalties. (Changed by Circular Decree dated 23 October 1943.) The workers will be thoroughly instructed through the attached orientation sheet (enclo. 3) [not reproduced] in the foreign languages when they report upon their arrival at the local police offices. An instruction of the German population will be effected through the Party administration offices.

2. The district [Kreis] police offices have received instructions to arrest without delay workers who violate this regulation and to report them to the competent (superior) state police agency.

3. For male manpower who had sexual intercourse with Germans, special treatment is to be requested, for female manpower,

transfer into a concentration camp. The directives issued for the special treatment of Polish civil workers are valid correspondingly; this is also applicable for the treatment of the involved German persons.

* * * * *

TRANSLATION OF DOCUMENT 016-PS *
PROSECUTION EXHIBIT 13

LETTER FROM SAUCKEL TO ROSENBERG, 24 APRIL 1942, AND
EXTRACTS FROM REPORT ON SAUCKEL'S LABOR
MOBILIZATION PROGRAM, 20 APRIL 1942

The Plenipotentiary for the Four Year Plan
The Plenipotentiary General for Labor Allocation
G B A

Berlin W. 8, 24 April 1942
Mohrenstrasse 65
(Thuringia House)
Phone: 126571

[Stamp]

Bureau of Ministry [Ministerbuero]
received 27 April 1942, No. 0887 Min. 28/v
Dr. K.P. has been informed

Very esteemed and dear Party Member Rosenberg:

Enclosed please find my program for the mobilization of labor. Please excuse the fact that this copy still contains a few corrections.

Heil Hitler!

Yours,

[Signed] FRITZ SAUCKEL

5 copies

copy for Mr. Wittenbacher.

[Signed] WACHS
Chancellory 1 May 1942
[Kanzlei]
[Stamp] MISCHKE
read: ILFL/KS 4.5.42
filed: 1-5, 5/5 42 Pg

To The Reich Minister for the
Occupied Eastern Territories,
Party Member Rosenberg
Berlin

* For complete translation of document, see Nazi Conspiracy and Aggression, vol. III, pp. 46-59, U.S. Government Printing Office, Washington, 1946.

20 April 1942

Schl./We.

The Labor Mobilization Program

* * * * *

The aim of this new, gigantic labor mobilization is to use all the rich and tremendous sources, conquered and secured for us by our fighting armed forces under the leadership of Adolf Hitler, for the armament of the armed forces and also for the nutrition of the homeland. The raw material as well as the fertility of the conquered territories and their human labor power are to be used completely and conscientiously to the profit of Germany and their allies.

* * * * *

VII. * * * Should we succeed with the help of the Party to convince all the German intellectual and manual workers of the great importance of the labor mobilization for the outcome of the war, and succeed to take good care of and keep up the morale of all the men, women, and the German youths who work within the labor mobilization program under extraordinarily strenuous circumstances, as far as their physical and mental capabilities of endurance are concerned and should we furthermore be able, also with the help of the Party, to use the prisoners of war as well as civilian workmen and women of foreign blood not only without harm to our own people but to the greatest advantage to our war and nutrition industries, then we will have accomplished the most difficult part of the labor mobilization program.

The Task and its Solution

(No figures are mentioned because of security reasons. I can assure you, nevertheless, that we are concerned with the greatest labor problem of all times, especially with regard to figures.)

* * * * *

B. The Solution:

* * * * *

3. The armament and nutrition tasks make it vitally necessary, not only to include the entire German labor power but also to call on foreign labor.

Consequently, I immediately tripled the transport program which I found when I took charge of my mission.

The main effort of that transport has been advanced into the

months of May-June in order to assure in time and under any circumstances the availability of foreign labor power from the occupied territories for an increased production, in view of coming operations of the army, as well as of agricultural labor in the sector of the German food economy.

All prisoners of war, from the territories of the West as well as of the East, actually in Germany, must be completely incorporated into the German armament and nutrition industries. Their production must be brought to the highest possible level.

It must be emphasized, however, that an additional tremendous number of foreign labor has to be found for the Reich. The greatest pool for that purpose is the occupied territories of the East.

Consequently, it is an immediate necessity to use the human reserves of the conquered Soviet territory to the fullest extent. Should we not succeed in obtaining the necessary amount of labor on a voluntary basis, we must immediately institute conscription or forced labor.

* * * * *

Prisoners of War and Foreign Workers

The complete employment of all prisoners of war as well as the use of a gigantic number of new foreign civilian workers, men and women, has become an indisputable necessity for the solution of the mobilization of labor program in this war.

All the men must be fed, sheltered, and treated in such a way as to exploit them to the highest possible extent at the lowest conceivable degree of expenditure.

It has always been natural for us Germans to refrain from cruelty and mean chicaneries towards the beaten enemy, even if he has proved himself the most bestial and most implacable adversary, and to treat him correctly and humanely, even when we expect useful work of him.

As long as the German armaments industry did not make it absolutely necessary, we refrained under any circumstances from the use of Soviet prisoners of war as well as of civilian workers, men or women, from the Soviet territories. This has now become impossible and the working capacity of these people must now be exploited to the greatest extent.

* * * * *

Therefore, I want to impress most cordially but also most emphatically upon all the men and women who participate decisively in this war in the labor mobilization program, the necessity to comply with all these necessities, decisions and measures, according to the old National Socialist principle:

Nothing for us, everything for the Fuehrer and his work,
that is, for the future of our Nation!

[Signed] FRITZ SAUCKEL

[Stamp]

(The Plenipotentiary for the Four Year Plan
The Plenipotentiary General for Labor Allocation)

TRANSLATION OF DOCUMENT 084-PS *
PROSECUTION EXHIBIT 16-A

EXTRACTS FROM INTERDEPARTMENTAL REPORT OF THE MINISTRY
FOR OCCUPIED EASTERN TERRITORIES, 30 SEPTEMBER 1942,
CONCERNING THE STATUS OF EASTERN LABORERS

Berlin NW 7, Hegelplatz 2, 30 September 1942

Central Office for Members of Eastern Nations
Ih (ZO)

Subject: Present situation of the Eastern Labor Problem

* * * The manner and method by which the problems created through the importation of millions of members of the eastern peoples into the Reich are being solved is relevant with respect to two big tasks:

1. the development of the *war situation*,
2. the enforcement of the German *claim for leadership in the East* after the end of the war.

* * * * *

* * * The facts which, by the fall of 1942, have been changed only partially or incompletely, are, among other, as follows:

1. The *definition* of workers from the occupied territories of the USSR was narrowed down to the legal labor and social labor concept of "Eastern workers"; thereby, a particular "employment relationship of a special type" was created among "foreigners"—something which had to be looked upon, by those affected, as degrading.

2. The *drafting* of eastern male and female workers often occurred without the necessary examination of the capabilities of those concerned, so that 5 to 10 percent sick and children were

* For complete translation of document, see *Nazi Conspiracy and Aggression*, vol. III, pp. 130-146, U.S. Government Printing Office, Washington, 1946.

transported along. On the other hand, in those places where no volunteers were obtained, instead of recruiting them pursuant to labor conscription law, coercive measures were used by the police (imprisonment, penal expeditions, and the like).

3. The *allocation* to enterprises was not undertaken by considering the occupation and previous training but according to the chance assignment of the individual to the respective transports or transient camps.

4. The *billeting* did not follow the policies for other foreigners, but was done like for civilian prisoners, in camps which were fenced in with barbed wire and were heavily guarded and which they were not permitted to leave.

5. The *treatment* by the guards was, on the average, without intelligence and cruel so that the Russian and Ukrainian workers, in enterprises with foreign laborers of different nationalities, were exposed to the ridicule of the Poles and Czechs, among other things.

6. The *food* was so bad and insufficient in the camps for the eastern laborers employed in industry and mining that, on the average, the good capability of the camp members dropped quickly and many sicknesses and deaths occurred.

7. *Payment* was carried out in the form of a ruling in which the industrial worker would be left on the average with 2 or 3 RM each week, and the farm laborers with even less, so that the wage transfer to their homes became illusory, not to mention the fact that no procedure was as yet developed for such transfer.

8. The *postal service* with their families was not feasible for months because of the lack of preparatory measures, so that instead of factual reports, wild rumors arrived in their countries—among others, by way of emigrants.

9. The *promises* which had been made time and time again in the areas of enlistment were in gross contradiction with the facts mentioned under 3 to 8.

Apart from the natural impairment of morale and working capacity resulting from these measures and conditions, the result was that the *Soviet propaganda* seized upon this matter and exploited it carefully; for this, an ample basis was provided not only by the actual conditions and the letters which reached the home country [of the workers] in spite of the initial blockade, as well as by stories of fugitives and such, but also by the clumsy publications in the German press about the respective legal regula-

tions. As early as April 1942, Commissar of Foreign Affairs, Molotov, in his *note* to the enemy powers referred to this, especially in section III of that note in which among other things it is stated:

“The German administration is stamping under its feet the long recognized laws and customs of warfare by ordering its troops to take into captivity the male civilian population, in many places even the women, and to apply to them the kind of regime, which the Hitlerites have introduced for the prisoners of war. This does not only mean *slave labor* for the captured peaceful inhabitants but in most cases also inescapable death by starvation or death through sickness, corporal punishment, and organized mass murders.

“The deportation of peaceful inhabitants to the rear which has been very widely practiced by the German-Fascist Army at the time of its advance is taking on a mass character; it is carried out at direct orders of the Supreme Command of the German Armed Forces (OKW) and its effects are especially cruel in the immediate rear areas during the retreat of the German Army. In a series of documents which have been found by units of the Red Army at the staffs of destroyed German units, there is a reference to the Order of the High Command under No. 2974/41 of 6 December 1941 which orders the deportation of all grown men from the occupied places to prisoner of war camps. * * *

“Sometimes, all the inhabitants were deported, sometimes the men were torn away from their families, or mothers were separated from their children. Only the smallest number of these deported people have been able to return to their homes. *These returnees report about unheard-of degradations, heaviest forced labor, enormous numbers of deaths among inhabitants because of starvation and tortures, about the murder by the Fascists of all the weak, wounded, and sick.*”

* * * * *

The effects of this large-scale radio, press, and leaflet propaganda which is based on documentary evidence, a propaganda operating even into German-administered territories, must be considered as one of the main reasons for this year's stiffening of the Soviet resistance as well as the threatening increase of guerilla bands up to the borders of the General Government.

In the meantime, after a *betterment of the condition of the eastern laborers* had been insisted upon, not only by the Main Office for Politics in the Reich Ministry for the occupied eastern

territories, which has been able to find support in the repeated requests by the High Command of the Armed Forces, but also by the gentleman charged with the responsibility for all labor employment as well as the Department of Labor Employment in the German Labor Movement, which has the supervision of the eastern laborers—those previously existing legal and police rulings have been mitigated and the conditions in the 8–10,000 camps in the Reich have, on the whole, been improved. * * *

In spite of the improvements mentioned as well as others, which in many cases can be traced back to the personal intervention of the Plenipotentiary General of Labor Allocation, the *total situation* of the eastern laborers (sampling date: 1 October 1942) must still be considered *unsatisfactory*, * * *.

There remains such a *quantity of grievances and problems* that it would be impossible to relate now.

* * * * *
[Signed] GUTKELCH

TRANSLATION OF DOCUMENT 294-PS¹
PROSECUTION EXHIBIT 19-A

EXTRACTS FROM TOP SECRET MEMORANDUM, SIGNED BY
BRAEUTIGAM,² 25 OCTOBER 1942, CONCERNING
EFFECTS OF SLAVE LABOR PROGRAM

Copy

Top Secret Matter of State [Geheime Reichssache]

[handwritten:] II 1 1161/44 g Rs.

Memorandum

In the East, Germany is carrying on a threefold war: a war for the destruction of Bolshevism, a war for the destruction of the Greater Russian Empire, and finally a war for the acquisition of colonial territory for colonizing purposes and economic exploitation.

* * * With the instinct characteristic of the eastern peoples, even the primitive person has soon found out that for Germany, the slogan "liberation from Bolshevism" was merely a pretext, in order to enslave the Slavic peoples of the East in her own manner. But lest any doubts at all exist as to this German war aim,

¹ For complete translation of document, see *Nazi Conspiracy and Aggression*, vol. III, pp. 242–251, U.S. Government Printing Office, Washington, 1946.

² Otto Braeutigam, member of the Economic Political Department of the Foreign Office. As of May 1941 detached by the German Foreign Office to Rosenberg's Agency, the Eastern Ministry (Ost-Ministerium).

the German public is, to an ever increasing extent, unabashedly pointing at this intention. Not only for Germany is the conquered territory publicly being claimed as colonization area, but even for Germany's bitter enemies, the Dutch and Norwegians. * * *

* * * * *

Of primary importance, the treatment of prisoners of war should be named. It is no longer a secret from friend or foe that hundreds of thousands of them literally have died of hunger or cold in our camps. Allegedly there were not enough food supplies on hand for them. It is especially peculiar that the food supplies are deficient only for prisoners of war from the Soviet Union, while complaints about the treatment of other prisoners of war, Polish, Serbian, French and English, have not been heard of. It is obvious that nothing was so suitable for strengthening the resistance of the Red Army as the knowledge that in German captivity a slow miserable death is to be met. To be sure, the Main Department for Politics has succeeded here by unceasing efforts in bringing about a material improvement of the fate of the prisoners of war. However, this improvement is not to be ascribed to political insight, but to the sudden realization that our labor market must be supplied with laborers at once. We now experienced the grotesque picture of having to recruit millions of laborers from the occupied eastern territories, after prisoners of war have died of hunger like flies, in order to fill the gaps that have formed within Germany. Now the food question suddenly no longer existed. With the usual unlimited abuse of the Slavic humanity, "recruiting" methods were used which probably have their model only in the blackest periods of the slave trade.

A regular manhunt was inaugurated. Without consideration of health or age, the people were shipped to Germany, where it turned out immediately that many more than 100,000 had to be sent back because of serious illnesses and other incapacities for work. It need not be emphasized that these methods would of necessity have their effect on the resistance of the Red Army; of course, these methods were used only in the Soviet Union, and in no way remotely resembled this form in enemy countries like Holland or Norway. Actually we have made it quite easy for Soviet propaganda to augment the hate for Germany and the National Socialist system. The Soviet soldier fights more and more bravely in spite of the efforts of our politicians to find another name for this bravery. Valuable German blood must flow more and more, in order to break the resistance of the Red Army. Obviously, the Main Department for Politics has struggled unceasingly to place the methods of acquiring workers and their treatment within

Germany on a rational foundation. Originally it was thought in all earnestness to demand the utmost efforts with a minimum of food. Here, as well, not political insight, but merely the most primitive biological knowledge has led to an improvement. Now 400,000 female household workers from the Ukraine are to come to Germany, and already the German press announces publicly that these people have no right to free time and may not visit theaters, movies, restaurants, etc., and may leave the house at the most three hours a week, except for duty purposes.

In addition, there is the treatment of the Ukrainians in the Reich Commissariat itself. With an unequalled arrogance, we put aside all political knowledge and, to the happy surprise of all the colored world, treat the peoples of the Occupied Eastern Territories as whites of class 2, who apparently have only the task of serving as slaves for Germany and Europe. Only the most limited education is suitable for them, no social services must be given them. Their sustenance interests us only insofar as they are still capable of labor, and, in every respect, they are given to understand that we regard them as of minute value.

* * * * *
Berlin, 25 October 1942

[Signed] BRAEUTIGAM

TRANSLATION OF DOCUMENT L-61
PROSECUTION EXHIBIT 20

LETTER FROM SAUCKEL TO THE PRESIDENTS OF LABOR OFFICES, 26
NOVEMBER 1942, CONCERNING DEPORTATION AND
EMPLOYMENT OF POLES AND JEWS

Copy

The Plenipotentiary for the Four Year Plan
The Plenipotentiary General for Labor Allocation

Berlin S.W. 11, Saarlandstr. 96
26 November 1942

Va 5431/7468/42 g

To the Presidents of the Landes
Labor Offices (excl. Labor
Office Brandenburg)

Special-delivery letter
Secret

Subject: Employment of Jews. *Specif*: Replacement of Jews in
war-essential jobs by Polish labor.

In agreement with the Chief of the Security Police and the

Security Service, Jews still employed will now be evacuated from the territory of the Reich and replaced by Poles, who are being deported from the General Government.

The Chief of the Security Police and the Security Service has informed me on 26 October 1942, that it is anticipated that during the month of November the evacuation of Poles in the Lublin district will begin, in order to make room there for the resettlement of Germans.

Poles slated for evacuation, as a result of this measure, will be committed to concentration camps and put to work insofar as they are criminal or asocial elements. The remaining Poles, if fit for labor, will be transported without their families to the Reich, particularly to Berlin; there they will be put at the disposal of the labor allocation offices to serve as replacements for Jews to be eliminated from armament factories.

The Jews who will become available as a result of the employment of Polish labor will be deported *at once*. This will apply first to Jews engaged in unskilled labor since they can be exchanged most easily. The remaining so-called "qualified" Jewish laborers will be left in the industries until their Polish replacements have been made sufficiently familiar with the work processes by a period of apprenticeship to be determined for each case individually. Loss of production in individual industries will thus be reduced to the absolute minimum.

I reserve the right to issue further instructions. Please inform the labor offices concerned accordingly.

To the President of the Landes Labor Office Brandenburg, Berlin W. 62

I transmit the foregoing copy for your information. Insofar as the removal of Jews allocated for work concerns your district, too, I request that you take the necessary measures in cooperation with the competent offices of the Chief of the Security Police and of the Security Service.

[Signed] FRITZ SAUCKEL

TRANSLATION OF DOCUMENT 1063-D-PS *
PROSECUTION EXHIBIT 21

EXTRACT FROM ORDER OF MUELLER, 17 DECEMBER 1942,
CONCERNING PRISONERS QUALIFIED FOR WORK
TO BE SENT TO CONCENTRATION CAMPS

Berlin, 17 December 1942

The Chief of the Security Police and the Security Service
B. Nr. IV 656/42 Secret

Secret

Distribution—Secret:

All Commanders of the Security Police and the Security Service
All Inspectors of the Security Police and the Security Service
All Commandants of the Security Police and the Security Service
All Chiefs of State Police Headquarters

For information:

The Chief of the SS Economic and Administrative Main Office,
SS Obergruppenfuehrer [Lt. Gen.] Pohl
All Higher SS and Police Chiefs
The Inspector of Concentration Camps

For reasons of war necessity, which need not be specified here, the Reich Leader SS and Chief of the German Police has ordered on 14 December 1942 that at least 35,000 prisoners fit for work are to be committed to the concentration camps before the end of January 1943.

In order to reach this number, the following measures are required:

1. As of now (and for the time being, until 1 February 1943) eastern workers or such foreign workers, who have been fugitives, or who have broken contracts, insofar as they do not belong to allied, friendly, or neutral states, are to be brought by the quickest means to the nearest concentration camps under observance of the simplest formalities listed under No. 3. In order to eliminate or forestall complaints by outside public offices, explanations will be furnished, if required, stating that the measures are essential for reasons of public security on the basis of the facts in the individual cases.

2. The commanders and the commandants of the Security Police and the Security Service, and the Chiefs of the State

* For more complete translation of document, see Nazi Conspiracy and Aggression, vol. III, pp. 778-9, U.S. Government Printing Office, Washington, 1946.

Police Headquarters will make immediate checks, applying especially rigorous and strict standards, on (a) prisons, and (b) labor correction camps. All prisoners fit for work, if at all possible physically and from a humanitarian aspect, will be committed at once to the nearest concentration camp, according to the following instructions, even if criminal procedures have already been or will be instituted in the near future. Only such prisoners who are to remain in solitary confinement, for investigation purposes, may be left.

* * * * *

By order:

[Signed] MUELLER

Certified correct.

[Signed] HELLMUTH

Chief Secretary of Police

[Seal of Secret State Police]

PARTIAL TRANSLATION OF DOCUMENT 1526-PS *
PROSECUTION EXHIBIT 25

EXTRACTS FROM LETTER FROM GERMAN-APPOINTED UKRAINIAN
MAIN COMMITTEE TO FRANK, FEBRUARY 1943

Copy

Prof. Dr. Wolodymyr Kubijowytych,
Chairman of the Ukrainian Main Committee

Krakow, February 1943

To the Governor General,
Reich Minister Dr. Frank.

Your Excellency:

Complying with your request I am sending you this letter, in which I should like to state briefly the critical conditions and the distressing incidents which are creating an especially grave situation for the Ukrainian population in the General Government. * * *

* * * * *

II. Measures of labor procurement.

The general nervousness is enhanced yet by the wrong methods to obtain labor, which have been used increasingly in recent months.

The wild and ruthless manhunt carried on everywhere in

* For more complete translation of document, see *Nazi Conspiracy and Aggression*, vol. IV, pp. 79-93, U.S. Government Printing Office, Washington, 1946.

towns and country, in streets, public squares, railway stations, even in churches, as well as in homes at night, has badly shaken the sense of security of the population. Everybody is exposed to the danger of being seized anywhere and at any time by the police, suddenly and unexpectedly, and being taken into an assembly camp. The family does not know what has happened to him, until weeks or months later one or the other gives news of his fate by a postcard.

I beg to mention some instances with their respective proofs:

a. During such a drive a schoolboy in Sokal lost his life and another was wounded (App. 2).

b. 19 Ukrainian workers from Galicia, all provided with identity cards, were assigned in Krakow to a transport of "Russian prisoners of war" and delivered into a punishment camp in Graz (App. 3).

c. 95 Ukrainians from Galicia, recruited for work in Germany by the labor office in the middle of January, were sent via East Prussia to Pskov in Russia, where most of them died as a result of the very severe conditions (App. 4).

d. Seizure of workers under pretext of military recruitment (Zalesczyki); kidnapping schoolboys from classes (Biala Podlaska, Wlodawa, Hrubieszow) (App. 5).

* * * * *

III. Question of Personal Security.

Of a much worse character are the mass executions of absolutely innocent persons * * *.

* * * * *

Appendix 12

* * * * *

As this holiday is celebrated by the Ukrainians with great piety, the shootings of these innocent people on this holy day caused great indignance and embitterment. These events depress the Ukrainian population. The view is current that now the shootings of the Jews are coming to an end those of the Ukrainians begin. The case of Ustrzyki is commented upon as follows: The Germans do not care about any non-German sanctity and holidays, they even shoot Ukrainians on the Ukrainian "Schtschedryj Wetschir" (the case in Ustrzyki).

The Ukrainian population is suspicious of all orders given by the German authorities and even keep away from the communal kitchens, for fear that those in need may be considered as beggars and shot.

* * * * *

TRANSLATION OF DOCUMENT 407-V-PS
PROSECUTION EXHIBIT 30

EXTRACTS FROM LETTER FROM SAUCKEL TO HITLER, 14 APRIL 1943,
CONCERNING LABOR QUESTIONS

G.B.A.

April 14th, [1943]

Sckl./We.

Forwarded We.

[in ink] April 15th

To the Fuehrer
Obersalzberg

My Fuehrer,

As Gruppenfuehrer Bormann has already informed you, I am going to the eastern areas on the 15th April in order to secure 1 million workers from the east for the German war economy in the coming months.

The result of my last trip to France is that, after exact fulfilment of the last program, another 450,000 workers from the western areas, too, will come into the Reich by the beginning of the summer.

With the addition of about 150,000 workers who furthermore may be obtained from Poland and from the other territories, it will then be possible by summer again to put 5-600,000 workers at the disposal of German agriculture and 1,000,000 workers at the disposal of the armament and other war industries.

I ask for your approval to have the new French workers come into the Reich under conditions similar to those of the last group. I have taken contact with the High Command of the Wehrmacht (OKW).

Since the largest part of the Belgian civilian workers and prisoners of war perform very satisfactorily, I ask you to agree that a similar statute to that which was granted to the French be made for some 20,000 Belgian prisoners of war. This very great concession by you has made a very deep impression upon Laval and the French Ministers. Laval has repeatedly asked me to transmit his sincerest thanks for this to you, my Fuehrer.

1. After one year's activity as Plenipotentiary for the Allocation of Labor, I can report that 3,638,056 new foreign workers have been added to the German war economy from 1 April of last year to 31 March this year.

As a whole, these forces have produced satisfactory performances. Their feeding and housing is secured, their treatment so

indisputably regulated that, in this respect too, our National Socialist Reich presents a shining example compared to the methods of the capitalist and bolshevist world. However, it is naturally inevitable that mistakes and blunders still occur here and there. I will continue to endeavor with the greatest energy to reduce them to a minimum.

In addition to the foreign civilian workers, 1,622,829 prisoners of war are also employed in the German economy.

2. The 3,638,056 workers are distributed amongst the following branches of the German war economy:

Armament	1,568,801
Mining industry	163,632
Building	218,707
Transportation	199,074
Agriculture and forestry	1,007,544
Other branches of the economy.....	480,298

In addition to the foreign workers, 5 million male and female German workers were channelled into the German war economy proper through transfer from enterprises unimportant to the war effort, to war-essential industries, etc.

* * * * *

Yours faithfully and obediently,

[Signed] FRITZ SAUCKEL

The following persons received a copy of the above version:

Reich Marshal Goering
Reichsleiter Bormann
Reich Minister Dr. Lammers
Reich Minister Dr. Goebbels

Additional text on the original letter to the Fuehrer.

Since I will be in the eastern territories on April 20th, I ask you, my Fuehrer, to accept in advance my most sincere congratulations along with those of my district [Gau] and my family.

Let me assure you that the district [Gau] of Thuringia and I will serve you and our dear people with all our strength.

It is the most fervent wish that you, my Fuehrer, may always enjoy the best of health and that we ourselves can serve you to your complete satisfaction.

Faithfully and obediently yours

[Signed] FRITZ SAUCKEL

TRANSLATION OF DOCUMENT 407-IX-PS
PROSECUTION EXHIBIT 33

LETTER FROM SAUCKEL TO HITLER, 3 JUNE 1943, CONCERNING
FOREIGN LABOR SITUATION

The Plenipotentiary for the Four Year Plan
The Plenipotentiary General for Labor Allocation
1751/43 [pencilled]
forwarded on 6 June 1943

Berlin W 8, 3 June 1943

To the Fuehrer of Greater Germany
The Fuehrer's Headquarters.

My Fuehrer,

I beg to be permitted to read to you [a report] on the situation of the labor allocation for the first 5 months of 1943.

The following number of new foreigners and prisoners of war was for the first time put at the disposal of the German war industry:

January 1943	120,085
February 1943	138,354
March 1943	257,382
April 1943	160,535
May 1943	170,155
TOTAL	846,511

I may remark that it was possible to reach this figure of 850,000 only under great difficulties which had not existed during the previous year and only because all labor allocation agencies, particularly also in the occupied territories, approached their task with the greatest devotion.

Unfortunately, quite a number of our officials and employees became victims of assassination, attack, and the like, by partisans.

In addition to the labor forces put at the disposal of the economy within the Reich, several hundred thousand laborers were made available within the occupied territories by the agencies of the Labor Allocation Administration to the Organization Todt as well as to the enterprises working for the German war economy in the East and the West. Furthermore, it was possible to assign to the Wehrmacht, in addition to a large number of laborers, some considerable numbers of labor volunteers.

Moreover, by virtue of the order concerning compulsory regis-

tration, dated 27 January 1943, the following number of men and women are made available.

	Men	Women	Total
February	14,594.....	163,012....	177,606
March	45,606.....	494,931....	540,537
April	19,315.....	269,374....	288,689
May	11,485.....	186,683....	198,168
TOTAL	91,000.....	1,114,000....	1,205,000

However, approximately 600,000 of these persons are available only for less than 48 hours of work per week.

Altogether German war industry recruited 2,000,000 laborers during 5 months of 1943.

Furthermore, as regards wage control and increase of the output of the laborers in the various European territories, especially in France, negotiations were conducted as well as arrangements made and regulations issued, which enabled us to keep the wage system in the occupied European territories in order to secure, as far as possible, the living conditions of laborers working for German interests, in spite of the difficult conditions created by the war, and to increase production by means of wage regulations also in these territories. The coordination of these measures was achieved through agreements with the respective armament and agricultural agencies, as well as with the Reich Commissioner for Price Control.

Heil!

Yours faithfully and obediently,

[Signed] SAUCKEL

PARTIAL TRANSLATION OF DOCUMENT 3000-PS
PROSECUTION EXHIBIT 34

EXTRACTS FROM REPORT RENDERED TO RIECKE, MINISTERIAL-
DIREKTOR IN THE MINISTRY OF AGRICULTURE, 28 JUNE 1943,
ON EXPERIENCES IN POLITICAL AND ECONOMIC
PROBLEMS IN THE EAST

Freitag, Chief of Main Office III
with the Commissariat General in Minsk

Minsk, 28 June 1943

Secret!

[stamp]

Main Group Food and Agriculture
Rec'd. 14 July 1943; no encl.
III E 733/43 Secret

To Ministerialdirektor Riecke
in Berlin

Subject: Report on experiences in political and economic prob-
lems in the East, particularly the Commissariat General
White Ruthenia.

* * * * *

* * * The task of the military agencies and, subsequently,
of the German administration, is: "Exploitation of the region
for the German war economy," and the motto: "Everything you
do for Germany is right, everything else is wrong!"

* * * * *

* * * The recruitment of labor for the Reich, however neces-
sary, had disastrous effects. The recruitment measures in the
last months and weeks were absolute manhunts, which have an
irreparable political and economic effect * * * From * * * White
Ruthenia, approximately 50,000 people have been obtained for the
Reich so far. Another 130,000 are to be obtained. Considering the
total population of 2.4 million, these figures are impossible * * *.

* * * * *

* * * Due to the sweeping drives [Grossaktionen] of the SS
and police in November 1942, about 250,000 acres of farmland
are left unused, as the population has gone and the villages
have been razed.

* * * * *

[Signed] FREITAG

TRANSLATION OF DOCUMENT 265-PS *
PROSECUTION EXHIBIT 35

EXTRACTS FROM REPORT BY LEYSER TO ROSENBERG, 30 JUNE 1943,
ON CONDITIONS IN THE DISTRICT ZHITOMIR

The Commissioner General

Zhitomir, 30 June 1943

Secret

Oral report on the situation in the general district [General-bezirk] Zhitomir, by Commissioner General Leyser, delivered at a conference with Reich Minister Rosenberg, in Vinnitsa, on 17 June 1943.

Mr. Reich Minister,

* * * * *

The symptoms created by the *recruiting of workers* are, no doubt, well known to the Reich Minister through reports and his own observations. Therefore, I shall not report them. It is certain that a recruitment of labor, in the sense of the word, can hardly be spoken of. *In most cases, it is nowadays a matter of actual conscription by force.* The population has been stirred up to a large extent and views the transports to the Reich as a measure which does in no way differ from the former exile to Siberia, during the Czarist and Bolshevik systems.

* * * * *

To date, almost 170,000 male and female workers have been sent to the Reich from the general district Zhitomir. It can be taken for granted that, during the month of June, this number is going to rise to approximately 200,000.

* * * * *

The struggle which has to be carried on is hard and full of sacrifices. But it will and must be carried through. Enormous moral forces have been mobilized in the personnel of the civil administration in their daily efforts. The successes which they were able to achieve so far are impressive, particularly with regard to the resistance encountered. May I, therefore, be permitted at the conclusion of this report to thank all my co-workers for their excellent work. They know that they are practically on the front. I can promise your Excellency, that we all shall do our duty now, and in the future, as our Fuehrer has ordered.

[Signed] LEYSER

* For more complete translation of document, see *Nazi Conspiracy and Aggression*, vol. III, pp. 234-238, U.S. Government Printing Office, Washington, 1946.

PARTIAL TRANSLATION OF DOCUMENT 204-PS
PROSECUTION EXHIBIT 39

EXTRACTS FROM MEMORANDUM OF A CONFERENCE, 18 FEBRUARY
1944, CONCERNING THE RELEASE OF INDIGENOUS LABOR
FOR PURPOSES OF THE REICH

The City Commissioner in Kaunas.

Kaunas, 18 February 1944.

*PROCUREMENT OF INDIGENOUS WORKERS FOR
PURPOSES OF THE REICH*

Numerous drives for the purpose of recruiting indigenous workers for the Reich have taken place since the entry of German armed forces into the general district [Generalbezirk] Lithuania in June 1941. A few weeks after the entry of the German troops, thousands of Lithuanian male and female farm workers were recruited at the instigation of the military administration, to work for 6 months on large estates in the Gau East Prussia. *Unfortunately, the promises made then were not kept.* These farm workers were not released after 6 months nor after 12 months; their families remaining behind were left without any support for months; they were for a long time refused a short vacation in Lithuania, and now it is even considered to transfer these farm workers, recruited in 1941 for 6 months, to the armament industry in the Reich.

The second major drive was started by the armed forces in the spring of 1942 and concerned the *collecting of approximately 7,000 male workers as so-called transport helpers.* The action, which was rushed into without sufficient propaganda preparation, was greatly handicapped by unwise measures on the part of the nervous armed forces command. Thus for instance, the Lithuanians, ordered to the official agencies "only for registration", were not allowed to return home and were taken away under military escort to the local barracks, leaving them no way of either saying good-by to their families or putting in order their most important personal affairs. No wonder that the enemy propaganda exploited this "blemish" with avidity comparing the procedure with the deportation methods used barely a year ago by the Soviets.

Until most recent times, numerous additional drives have been undertaken for the purpose of obtaining volunteers for the armed forces, the police and the Reich Labor Service, or for obtaining workers for the armament industry in the Reich. * * *

* * * * *

Finally it must be recalled that the indigenous administration

in its present form and since its inception *has completely failed* in the question of procuring workers for the Reich. * * *

* * * * *

3. Gauleiter Sauckel requested that *30,000 indigenous workers for the Reich* be recruited at short order and be shipped to Germany. At a conference between the Commissioner General and the First Councillor General [Ersten Generalrat] on 7 September 1943, the latter offered to assume the entire responsibility for the execution of this drive for the native administration and to recruit and ship the specified number of 30,000 workers by 7 November 1943.

* * * * *

4. In the meantime, Gauleiter Sauckel made an *additional demand* to the effect that the general district Lithuania had to furnish *100,000 native workers* (instead of the 30,000 demanded up until now) *for the Reich*. At a conference with all the general councillors on 24 January 1944, the commissioner general did not leave any doubts as to the fact that this number would have to be furnished regardless of any consideration, even at the risk of leaving many work projects in the general district unfinished and permanently removing workers needed on jobs in the country. The responsibility for the execution of this new drive lies again in the hands of the local administration, and, with the consent of the commissioner general, indigenous conscription commissions have been formed with all district chiefs and all chiefs of judicial and local districts. The total number to be made available has been divided up into contingents, and the quota to be furnished by every mayor or district chief was exactly determined. This is the way the matter looks in the district of the City of Kaunas:

New quota, to be supplied.....	7,000 workers
20 percent addition.....	1,400 workers
TOTAL.....	<u>8,400 workers</u>

In the district of the City of Kaunas, according to the records of my labor office on 1 February 1944, there were 7,000 unfilled jobs in industry and the agencies of the armed forces, police, etc., so that to all intents and purposes 15,400 workers would have to be found in the city of Kaunas alone, in order to comply fully with the demands of the Reich and the local economy. *And all that with a total indigenous population of only a little over 130,000.*

* * * * *

PARTIAL TRANSLATION OF DOCUMENT R-103 *
PROSECUTION EXHIBIT 40

EXTRACTS FROM A LETTER FROM THE (GERMAN-APPOINTED) POLISH
MAIN COMMITTEE TO THE GENERAL GOVERNMENT OF POLAND ON
THE CONDITIONS OF POLISH WORKERS IN GERMANY, 17 MAY 1944

Polish Main Committee
5 Vischer Street, Krakow

Krakow, 17 May 1944

To the Administration of the General Government,
Main Department Internal Administration,
Dept. Population and Welfare,
13 University Street, Krakow

No. Pa 1/724
6699/44

Subject: Situation of the Polish Workers in the Reich.

The living conditions of about 2 million Polish male and female workers in the Reich have given rise to shortcomings which are largely lowering the will and the capacity to work of many workers, endanger their health and even their lives, and also have a strong influence on the situation of their families within the General Government, thus directly affecting the sphere of our own work.

These bad conditions are felt with particular intensity by those groups of workers who have been assigned for work in factories and have been lodged in large camps [Massenlagern]. With regard to workers on the land, they occur as individual cases and are more easily dealt with. * * *

* * * * *

Food relief allotments—We receive letters from the camps for eastern workers and their large families, beseeching us for food. The quantity and quality of camp rations mentioned therein—the so-called fourth category of rations—is absolutely insufficient to maintain the energies spent in heavy work. 3.5 kg. bread weekly and a thin soup at lunch time, cooked with swedes or other vegetables without any meat or fat, with a meager addition of potatoes now and then, is a hunger ration for a heavy worker.

Sometimes punishment consists of starvation, which is inflicted e.g., for refusal to wear the badge "East". Such punishment has

* For more complete translation, see *Nazi Conspiracy and Aggression*, vol. VIII, pp. 104-107, U.S. Government Printing Office, Washington, 1946.

the result that workers faint at work (Klosterteich Camp, Gruenheim, Saxony). The consequence is complete exhaustion, an ailing state of health, and tuberculosis. The spread of tuberculosis among the Polish factory workers is a result of the deficient food rations meted out in the community camps, because energy spent in the heavy work assigned to them cannot be replaced.

* * * * *

The quantities of bread and [other] food fixed for Polish children in the camps is thoroughly insufficient for building up substance for growing and developing their bodies. In some cases children up to the age of 10 and even more are allotted 200 grams of bread daily, 200 grams of butter or margarine and 250 grams of sugar monthly, and nothing else (factory in Zeititz, near Wurzen, Saxony). * * *

* * * * *

Care of Children—* * * An indication of the awful conditions this may lead to is given by the fact that in the camps for eastern workers (camp for eastern workers "Waldlust", Post Office Lauf, Pegnitz) there are cases of 8-year-old, weak and undernourished children put to forced labor and perishing from such treatment. * * *

Health Care—The fact that these bad conditions dangerously affect the state of health and the vitality of the workers is proved by many cases of tuberculosis found in very young people returning from the Reich to the General Government unfit for work. Their state of health is usually deteriorated past hope of recovery.

The reason is that a state of exhaustion resulting from overwork and malnutrition is not recognized as a disease condition until the illness manifests itself in high fever and fainting spells.

* * * * *

Protection of the Family—Grave depression is caused among the eastern workers by the order forbidding marriage among them within the borders of the Reich. * * * No less suffering is caused by the separation of families when wives and mothers of small children are torn away from their families and sent to the Reich for forced labor.

* * * * *

Religious Care—If under these bad conditions there is no moral support such as is normally provided by regular family life, then at least such moral support which the religious feeling of the Polish population require should be maintained and increased. The elimination of religious services, worship, and religious care from the life of the Polish workers, the prohibition of church attendance

at a time when there is a religious service for other people, and other measures show a certain contempt for the influence of religion on the feelings and outlook of the workers. * * *

* * * * *

[Stamp] THE POLISH CENTRAL COMMITTEE

[Signed] [name illegible]

President

TRANSLATION OF DOCUMENT 208-PS
PROSECUTION EXHIBIT 55

REPORT BY SAUCKEL, 7 JULY 1944, ON THE ACCOMPLISHMENTS
OF LABOR MOBILIZATION IN THE FIRST HALF OF 1944

Plenipotentiary of the Four Year Plan
Plenipotentiary General for Labor Allocation

Berlin W8, 7 July 1944
65 Mohren Street
Thuring House

Secret

NR 520/44/g Dr. ST/Ka

Special Delivery Letter

To: All Top Reich Authorities
The Reich Leader of the NSDAP
All Top Army Agencies
All Gauleiters

Subject: Accomplishments of the Labor Mobilization in the first half of 1944.

Enclosed I am submitting the total figures on additional manpower placed at the disposal of the German war effort by the German Labor Offices in the first half year of 1944. They represent only such manpower that was not previously employed in the German war effort.

According to the quota of 4,050,000 laborers set for this year, 2,000,000 new workers would have had to be secured in the first half of the year. Because of increased difficulties in Italy and in the occupied Western countries, regrettably one-half million less than that were found. If despite the known difficult situation it was possible to mobilize 1,500,000 people in the first half of the year, it is solely due to the exertion of all available energy.

Since the Proclamation of 17 February 1944, around 62,000

women have reported for "Voluntary Honorary Service," and 52,000 of them have already been assigned to work.

Heil Hitler!

[Signed] FRITZ SAUCKEL

Plenipotentiary of the Four Year Plan
Plenipotentiary General for Labor Allocation

Berlin, 7 July 1944

*New Manpower Placed at the Disposal of the Economy
between 1 January and 30 June 1944*

A. Entire Economy:

Total	1,482,000
Of these were: Germans.....	848,000
Foreigners	537,400
War prisoners	96,600

B. Breakdown of allocation of [the persons listed under] A:

Agriculture and Forestry.....	231,000
Of them, foreigners.....	156,000
Mining	46,000
Of them, foreigners.....	34,000
Metal industry.....	415,000
Of them, foreigners.....	250,000
All other [branches of] economy.....	790,000
Of them, foreigners.....	194,000

C. Origin of foreign labor:

Occupied Eastern Territories.....	284,000
General Government.....	52,000
Protectorate	23,000
France, excluding Northern France.....	33,000
Belgium, including Northern France.....	16,000
Netherlands	15,000
Italy	37,000
Rest of Europe.....	77,400

TRANSLATION OF DOCUMENT 3819-PS 1
PROSECUTION EXHIBIT 56

MINUTES OF A CONFERENCE ON 11 JULY 1944 ATTENDED BY MILCH,
CONCERNING THE LABOR PROBLEM

*LIST OF ATTENDANCE FOR THE CONFERENCE IN THE
REICH CHANCELLERY ON 11 JULY 1944 1600 HOURS*

Name	Official capacity	Agency
Dr. Kuehne	Chief of Mil. Adm.	[illegible]
² Warlimont	General of Artillery [Lt. Gen.]	OKW
Dr. Kohlhaase	Director of Labor	Section of the Supreme Com- missioner, Adriatic Coast, Trieste
Dr. Landfried	State Secretary, Chief of Mil. Adm.	Italy
³ Walter Funk and Albert Speer		
Milch		[illegible]
⁴ Krosigk		
⁴ Steengracht	State Secretary	Foreign Office
Abetz	Ambassador	German Embassy in Paris
Hanel [?]	Major General	Armaments Commissioner Staff, France
von Linstow	Colonel, GSC	Military Commander, France
Sass	Colonel, GSC	General [Plenipotentiary] for Italy
Franssen	Major General	Armaments Inspector, Belgium
Waeger	Major General	Armaments Office
Sarnow	Ministerialdirektor	Gen. Staff of Army, QM Section
Koegel	Lieut. Col., GSC	Gen. Staff of Army, QM Section
Reeder	Chief of Mil. Adm.	Brussels
Heider	Chief of General Staff	Brussels

¹ For more complete translation, see *Nazi Conspiracy and Aggression*, vol. VI pp. 760-772, U. S. Government Printing Office, Washington, 1946.

² *United States vs. Wilhelm von Leeb, et al.* See vols. X and XI.

³ *Trial before International Military Tribunal.* See *Trial of Major War Criminals* vols. I-XIII, Nuremberg, 1947.

⁴ *United States vs. Ernst von Weizsaecker et al.* See vols. XII, XIII and XIV.

Name	Official capacity	Agency
¹ Ley	.....
² Sauckel	.....Labor Plenipotentiary	.....Berlin
H. Backe	.....Minister	.....Reich Food Ministry
Marrenbach	.....Chief [of Dept.]	.....German Labor Front
Leyers	.....Armaments Plenipotentiary	Italy

Also present:

Ministerial Direktor Klopfer (Party Chancellery)

Ministerialrat Froehling

Ambassador Rahn

Dr. Huber

³ Chief of Police, Dr. Kaltenbrunner

General Labor Fuehrer Kretschmann

Colonel Meixner (OKW)

Berlin, 12 July 1944

To Rk. 5815 C

Subject: Stepped-up Procuring of Foreign Manpower

Executive Conference, 11 July 1944

Note

Participating in the executive conference were the departmental chiefs and representatives indicated in the attached list of those present. No guarantee can be given for the completeness of the list, as not all participants signed the register.

*Reich Minister Dr. Lammers*⁴ reported by way of introduction on the various proposals on hand by the Plenipotentiary General for Labor Allocation calculated to bring about the increase in labor in Germany which is absolutely essential for winning the final victory. He limited the theme of the discussion by saying that all possibilities were to be examined by which the present deficit of foreign manpower could be offset, for example, the question of the reestablishment of an acceptable price and wage differential between the Reich and non-German territories. But the primary consideration will have to remain the solution of the question whether and in what form greater compulsion could be exerted to accept work in Germany. In this connection it must be examined how the police agencies, regarding the inadequacy of

¹ Trial before International Military Tribunal. See Trial of the Major War Criminals, vols. I-XLII Nuremberg, 1947.

² Ibid.

³ Ibid.

⁴ United States vs. Ernst von Weizsaecker, et al. See Vols. XII, XIII, XIV.

which the Plenipotentiary General for Labor Allocation has serious complaints, could be strengthened, on the one hand, through bringing influence to bear on the foreign governments and, on the other, through reorganizing the indigenous police forces by an increased use of the Wehrmacht, the police or other German agencies. Reich Minister Dr. Lammers then gave the floor to the Plenipotentiary General for Labor Allocation, Gauleiter Sauckel.

Gauleiter Sauckel stated that the present deficit of the half-year program for 2,025,000 foreign workers, to be filled by 30 June of the current year, totals 500,000. Of the total of 1,500,000 workers procured up to now, no less than 865,000 were Germans, of whom half were apprentices and women, two categories which cannot be regarded as full-fledged workers. Of the 560,000 foreigners put to work, three-fourths came from the East alone. This result was a scandal considering that the German people now are mobilized for work to the fullest extent and it represents the complete bankruptcy of German authorities in Italy and France, where hundreds of thousands of workers were still idling. In mobilizing the manpower we did not exert the necessary severity and, in particular, we were unable to achieve the necessary unity of the German authorities. It was quite improper for German authorities to interfere irresponsibly in the tasks of the GBA [Plenipotentiary for Labor Allocation]. He had to have much greater freedom of action, just as was the case in 1942. With the present methods of recruitment for voluntary employment we would not make any progress, for one thing because any volunteers still available exposed themselves to danger to life and limb from reprisals by their own fellow countrymen. If, on the other hand, they were forcibly hired and decently treated at their jobs, they would do completely satisfactory work. Attention to the wage and price questions connected with the subject was desirable, but in the present situation no longer so important. If no effective action were taken now, our manpower mobilization program would fail, with the consequence that the combat troops would no longer receive the weapons they need.

State Secretary von Steengracht, Foreign Office, stressed that the Reich Foreign Minister from the beginning had favored the same standpoint as the Plenipotentiary General for Labor Allocation. The Foreign Office, however, could do nothing except press the foreign governments more or less urgently to meet German demands, and this has been done consistently up to the present. The police power was handled by others who, therefore, would now have to voice their opinion on the subject of the conference.

The Deputy for the Chief of the OKW, General Warlimont, referred to a recently issued Fuehrer order, according to which all

German forces had to put themselves at the disposal of the task to secure manpower. Wherever the Wehrmacht was not employed exclusively in essential military duties (as, for example, in the construction of the coastal defenses), it would be available, but it could not actually be *assigned* for the purposes of the GBA [Sauckel]. General Warlimont made the following practical suggestions:

a. The troops employed in fighting partisans are to take over the additional task of securing manpower in the partisan areas. Everyone who cannot fully show cause for his presence in these areas is to be seized for labor;

b. When large cities, due to the difficulty of providing food, are wholly or partly evacuated, the population suitable for labor commitment is to be put to work with the assistance of the Wehrmacht;

c. The seizing of labor recruits among the refugees from the areas near the front is to receive special attention with the assistance of the Wehrmacht.

Gauleiter Sauckel accepted these suggestions with thanks and said that he expected that a certain measure of success would no doubt be achieved by these means.

On behalf of the *Military Commander of Belgium and Northern France*, the *Chief of the Military Administration, Reeder*, put up for discussion the possibility of expanding the Military Police, now totaling only 70, and of the Civilian Searching Service [Fahndungsdienst] consisting of Flemings and Walloons (1,100 strong). If the Military Police were increased to 200, appreciable results could be achieved. Upon inquiry by Reich Minister Dr. Lammers, General Warlimont promised on behalf of the OKW that the searching service would be reinforced.

On further inquiry by Reich Minister Dr. Lammers, as to whether the population suitable for work could not be taken along as the troops withdrew from an area, *Colonel Saas* ([*Plenipotentiary*] *General for Italy*) stated that Field Marshal Kesselring had already directed that the population in a zone of 30 kilometers' depth behind the front was to be "captured". This measure, however, could not be extended to areas extending farther behind the lines, because of the most severe shock that would be inflicted on the whole structure of these areas, especially in regard to the industry still in full production.

Gauleiter Sauckel was of the opinion that widest circles of the Wehrmacht saw something disreputable in the labor recruiting

program. There had been actual instances where German soldiers had endeavored to protect the population from being taken away by German labor recruiting agencies. Therefore it was essential to explain to the front troops the extraordinary importance of labor recruiting. In contrast to the much too mild German method, it was part of the Bolshevik conception of war for the fighting troops, on occupying a new territory, to put the entire population to work at once. The question for the administration thus was not one of mass recruiting, but of being consistent. It would be necessary to establish a few object lessons, and the passive resistance would quickly change into active cooperation. Nor ought one to shrink from proceeding drastically against the administrative heads [Behoerdenleiter] themselves who sabotage the labor recruitment. Not the small refractory offenders should be punished, but the responsible administrative heads. In addition to these compulsory measures, other means too must be applied. Thus it would be advisable to remove a large part of the exceptional Italian crops in order to improve the rations of the German and foreign workers. A special problem was presented by the entirely insufficient rations for the Italian military internees who were almost starving. The Fuehrer should be asked to have the statute for these military internees gradually altered. This would release a not inconsiderable labor potential.

Reich Leader Dr. Ley underscored these statements and suggested the establishment of a searching service made up by all German forces in the non-German territories, that would carry out the ruthless recruiting in large areas.

These proposals were countered by the following objections:

Reich Minister Funk holds that ruthless raids would entail considerable disturbances in the industries of the non-German territories. The same opinion is held by the *Chief of the Military Administration of Italy, State Secretary Dr. Landfried*, who believes that the German forces making up the executive body are too weak, and fears that the Italian population would escape seizure in great numbers and flee to uncontrollable areas.

Reich Minister Speer states that he had an interest in both promoting increased labor recruiting for the Reich and maintaining the production in the non-German territories. Up to the present, 25 to 30 percent of the German war production was furnished by the occupied Western territories and Italy, with Italy alone supplying 12½ percent. The Fuehrer had recently decided that this production must be maintained as long as possible, in spite of the difficulties already existing, especially in the field of transportation. The Military Administration, in the opinion of Reich

Minister Speer, was easily capable to seize sufficient foreign workers at its present strength, as only a relatively small police force was needed for that purpose. The chief need was for stricter orders, but violent measures or large-scale round-ups were not to be carried out. Rather it would be advisable to proceed gradually with clean methods.

On behalf of the *Military Commander in France, Chief of Military Administration Dr. Michel*, referred to the statements of State Secretary Dr. Landfried and stated that the situation in France was similar. The calling up of entire age groups was being prepared in France, but had not yet begun as the German military authorities had not yet been able to give their consent. The good will of the highest French authorities could not be doubted, but it was lacking partly at the lower and middle levels. The friendly administrators and individuals willing to work and showing cooperativeness toward the German authorities, exposed themselves to reprisals by the French population.

Ambassador Abetz confirmed these statements. The application of severe measures, such as the shooting of French functionaries, was of no avail. Such a policy only served to drive the population into the Maquis. In these territories, where there were large German armed forces, it would no doubt be possible to obtain a few more ten-thousands of workers. Then these same German forces could be employed in police duty, which would also turn up large numbers of workers. In Paris, the evacuation of which was being considered, 100,000 to 200,000 workers could be seized. In this connection it might be possible to transfer the manpower of entire industries in a body.

The *Chief of the Security Police, Dr. Kaltenbrunner*, declared himself willing, if asked by the GBA, to place the Security Police at his disposal for this purpose, but pointed out their numerical weakness. For all of France he had only 2,400 men available. It was questionable whether entire age groups could be seized with these feeble forces. In his opinion, the Foreign Office must exercise a stronger influence on the foreign governments.

State Secretary von Steengracht, Foreign Office, commented to the effect that the agreements made with the foreign governments were entirely sufficient. The governments had always been willing, upon requests of the Foreign Office, to issue the necessary orders. If these orders were not carried out, this was due to the inadequate police power of the foreign governments themselves. In France, it had been reduced to a minimum for political reasons. In Italy an executive power was no longer extant. The Foreign Office was willing at any time, he said, to exercise stronger pressure on the foreign governments, but did not expect too much

from that. State Secretary von Steengracht asked Ambassador Rahn to comment on this for Italy.

Ambassador Rahn believes that there is still a sufficient number of workers in Italy, so that in theory 1 million could still be taken out, although 2/3 of the Italian territory and population had been lost. He had always been in favor of the system of drafting age classes. This was generally successful until the fall of Rome, as could be seen from the fact that it was possible to seize 200,000 Italians for military service. Since that time the situation in Italy had become extremely difficult, however, as the fall of Rome was an enormous shock to the Italian people. The German authorities had done what they could to neutralize these effects and to that end had merged all executive power in the person of Marshal Graziani. At present, however, the use of violent methods on a large scale was impracticable because it would cause complete disorder and disrupt production. The best example for this is the retaliatory action ordered by the Fuehrer because of the strikes in Turin, when 10 percent of all factory labor forces were to be conscripted because they were shirkers. A force of 4,000 Germans was brought together for that purpose. The result was that the food and power supply of Turin was cut off by the resistance movement so that 250,000 workers had to stop working. This could not be tolerated in view of the substantial contribution of the Italian armament industry to the war effort. Field Marshal Kesselring declared that continuation of forced recruitment would cause not only the loss of the armament production in the upper Italian area, but the loss of the entire theater of war. In the face of this statement the hardiest political will must keep silent. The only thing which could be done was the execution of the forced recruitment in the rebellious area proper. Ambassador Rahn believes the following practical suggestions could be carried out:

a. The recruitment of volunteers is to be continued.

b. To a limited extent, plants are to be transferred to the Reich with machinery and workers.

c. The transfer of wage savings of the Italian workers in Germany to their homeland, which is not functioning well, is to be ensured. For this purpose an automatic procedure is to be introduced which Ambassador Rahn had already proposed in another connection.

d. The system of the induction of age classes will be resumed when the German military authorities consider the time ripe.

In answer to the reported remark of Field Marshal Kesselring, *General Warlimont* (OKW) commented that this remark was unknown to the OKW. The OKW's approval of this standpoint could therefore not yet be assumed.

Gauleiter Sauckel declared that all these proposals were inadequate since they were not suited to mobilize the masses of manpower which he needed. The execution of all these proposals had already been tried in practice since the labor mobilization authorities had at no time limited themselves to any single method. He still had to name as seriously damaging to the execution of the labor mobilization plan the fact that his far-reaching jurisdiction and powers had been made the subject of discussion. What he needed, as already said, was "elbow room".

At the suggestion of Reich Minister Dr. Lammers, *Gauleiter Sauckel* declared himself willing to set up several programmatic demands on which he would consult with the interested parties and which then would be submitted to the Fuehrer with a request for endorsement and translation into law. A written formulation will follow. For the time being the Plenipotentiary General for Labor Allocation presents his demands as follows:

a. The proposals of General Warlimont will be discussed directly among the interested parties and will be carried out jointly.

b. The Plenipotentiary General for Labor Allocation receives permission to establish local security and recruiting machineries for labor recruitment, which will operate on the basis of his orders and directives without interference by other offices.

c. The regulations on recruitment of labor for Germany promulgated by French and Italian authorities are to be given solid foundations by concrete implementation orders which guarantee the most active collaboration of foreign authorities in the acquisition of manpower.

After these statements were made Reich Minister Dr. Lammers closed the meeting, pointing out that he would leave the further handling of the problem to those concerned, as proposed.

[Initialed] L. [LAMMERS]

PARTIAL TRANSLATION OF DOCUMENT R-124
DEFENSE EXHIBIT 1

EXTRACT FROM REPORT ON FUEHRER CONFERENCE ATTENDED
BY MILCH ON 19 FEBRUARY 1942

*POINTS OF DISCUSSION ON VISIT TO FUEHRER HEAD-
QUARTERS ON 19 FEBRUARY 1942*

* * * * *

16. Upon recommendation of Field Marshal Milch, the Fuehrer decides that the 6-month contracts for foreign workers should be dropped and that tax regulations, which stand in the way against this measure, are to be rescinded. Rather, contracts are to be introduced which would provide, in the event of employment of longer duration (exceeding six months), a single lump sum compensation of some kind—also in view of the fact that there would be a corresponding saving of the cost of travel back and forth.

PARTIAL TRANSLATION OF DOCUMENT R-124
DEFENSE EXHIBIT 32

EXTRACT FROM THE FUEHRER CONFERENCE MINUTES,
21 AND 22 APRIL 1942

*POINTS OF DISCUSSION FROM THE FUEHRER CON-
FERENCE OF 21 AND 22 APRIL 1942*

* * * * *

SPEER:

20. The Fuehrer explains clearly in an elaborate form that he does not approve the bad food dispensed to the Russians. The Russians must absolutely be given sufficient food, and Sauckel has to see to it that this food will now be guaranteed by Backe.

21. The Fuehrer is surprised that the civilian Russians are kept like prisoners of war behind a barbed wire fence. I told him that this was due to a decree issued by him. The Fuehrer knows nothing of such a decree. I request the documents pertaining thereto to be included in the forthcoming Fuehrer file and at the same time to see to it that Sauckel will arrange to have the civilian Russians no longer treated like prisoners of war.

PARTIAL TRANSLATION OF DOCUMENT R-124
DEFENSE EXHIBIT 2

EXTRACT FROM THE FUEHRER CONFERENCE MINUTES
OF 3, 4, 5 JANUARY 1943

Berlin, 8 January 1943

*POINTS OF DISCUSSION AT THE FUEHRER CONFERENCE
OF 3, 4, 5 JANUARY 1943*

* * * * *

SPEER:

55. The Fuehrer demands unequivocally that in no case must it be permitted that France be less burdened than Germany. Germany must sacrifice her blood for this war. We must insist that France intensify her economic contribution. Any French workers on that job showing signs of resistance will be deported, if necessary, as civilian internees. At the slightest attempt of sabotage the most rigorous measures must be taken. Any maudlin humanitarianism is out of place.

TRANSLATION OF DOCUMENT 407-11-PS *
DEFENSE EXHIBIT 3

REPORT FROM SAUCKEL TO HITLER, 10 MARCH 1943, CONCERNING
DIFFICULTIES ORIGINATING FROM THE DRAFT OF
MANPOWER IN FORMER SOVIET TERRITORIES

Teletype

10 March 1943

To the Fuehrer
Fuehrer Headquarters

*With the urgent request to be submitted to the Fuehrer in person
immediately for decision*

Subject: Difficulties originating from draft of manpower in former
Soviet territories.

My Fuehrer,

You may be assured that the labor assignment is being pushed

* After Dr. Bergold read this document into the record he made the following statement (Tr. pp. 520-521):

"Which proves that until March 1943, the commanders in the conquered territories were opposed to the labor conscription, and that it was Sauckel who demanded that this opposition be removed, because he was of the opinion that foreign people had to produce the same as the German people. It is further important that he didn't declare that to the Fuehrer alone but also to the defendant [witness] Speer and the defendant Milch. Accordingly, the defendant [witness] Speer later on will attest that never before have foreigners been treated so fairly. In other words, he lied to the men who were to work with him."

by me with fanatical will but also with circumspection and with due consideration for economic and technical as well as human necessities and conditions.

Replacement for soldiers who will be relieved and the stockpiling of additional labor needed for the armament programs can and will be carried through, notwithstanding the fact that especially during the last two winter months the greatest difficulties had to be overcome. Yet it was possible to make 258,000 foreign workers available to the war economy for January and February alone despite the fact that in the East transports practically ceased. The employment of German men and women is in full progress.

Inasmuch as the difficulties of the winter months will now gradually disappear, and as preparations were made by me, also the transports from the East can again be resumed in full measure. Although the yield of the registration and employment of German men and women is excellent, the employment of the strongest and most efficient foreigners who are used to work cannot be neglected.

Unfortunately, some of the commanding generals [Oberbefehlshaber] in the East have prohibited the compulsory enrollment of men and women in the conquered Soviet territories for—as Gauleiter Koch * informs me—political reasons.

My Fuehrer, in order to enable me to carry out my assignment, I ask that these orders be rescinded. I consider it entirely impossible that the population of former Soviet nationality could be accorded a greater measure of consideration than our German people on whom I have been forced to place very drastic measures. Should it no longer be possible to enforce the compulsion to work in the East, nor to draft labor, then the German war economy and agriculture will likewise no longer be able to fulfil their tasks in full measure.

I myself am of the opinion that under no circumstances should the commanders of our armies give credence to the Bolshevik propaganda of atrocities and defamation. After all, it is to the interest of the generals themselves that replacements for the troops be made in opportune time.

I take permission to point out that—without wishing to discredit their best will—it is impossible to put German women—entirely inexperienced in work—into the place of hundreds of thousands of excellent workers who now have to go to the front as soldiers. It must be possible for me to replace them with people from the Eastern territories.

* 1180-PS. See *Nazi Conspiracy and Aggression*, vol. III, pp. 797-799, U.S. Government Printing Office, Washington, 1946.

I myself report to you that all foreign nationals who are working with us are being treated satisfactorily according to humane standards; that they are being treated correctly and fairly; they are being fed, housed, yes, even clothed. Because of my own experience in the service of foreign nations, I am even bold enough to claim that never before have foreign workers been so decently treated anywhere in the world as is being done by the German people during this the hardest of all wars.

I therefore ask you, my Fuehrer, to cancel orders which prevent the enrollment of foreign male and female workers and to kindly advise me whether my concept of the assignment as laid down herein still is correct.

I ask your permission to report to you in person on several important points of the labor recruitment early next week, possibly on Tuesday.

In lasting gratitude, loyalty and obedience, yours,

[Signed] FRITZ SAUCKEL

PARTIAL TRANSLATION OF DOCUMENT R-124
DEFENSE EXHIBIT 33

EXTRACT FROM REPORT ON FUEHRER CONFERENCE OF 30 MAY 1943

Obersalzberg, 1 June 1943

Fuehrer Conference on 30 May 1943

* * * * *

SPEER:

[Marginal Note] Schieber, Pleiger, Sauckel, Backe, Keitel, Waeger.

19. The coal situation causes the Fuehrer to call a meeting with Pleiger, Sauckel, Backe, and Keitel.

At this meeting will be discussed the allocation of sufficient labor for the coal district, the removal of Russian prisoners of war from farming and small war industries (insofar as they are employed as unskilled labor) and their replacement by other workers from the Ukraine, Poland, etc.

Furthermore it is intended, if possible, to raise the food rations of the German miners, even above present levels. The Russians are to get plentiful additional rations, which will be individually allotted by plant managers on the basis of efficiency.

Additionally the German workers—and particularly also the Russian prisoners of war—will receive bonuses for higher production in the form of tobacco and similar items.

The details are to be discussed in a preliminary conference so as to establish uniform data as regards quantities, etc., for submission to the Fuehrer.

On no account must we capitulate to existing conditions on the coal question. Coal is *the* critical basis for maintaining our production and the entire domestic economy.

[Marginal Note] Saur, Kippung, Milch, Dornberger.

20. The Fuehrer desires that in areas which are certainly recurrent targets of enemy air attacks (Ruhr District, Krupp-Essen) about 100 to 200 rocket projector batteries be installed, which experimentally are to fire a steady stream of rockets set for the computed altitude of the enemy formations.

Some of these rockets will, on detonating, loose wire coils. The Fuehrer expects, after all, significant and not only psychological effects from massed, unaimed fire against concentrated air attacks on these targets.

Milch and Dornberger are to state their views on the subject.

PARTIAL TRANSLATION OF DOCUMENT R-124
DEFENSE EXHIBIT 4

EXTRACT FROM REPORT OF FUEHRER CONFERENCE OF
11-12 SEPTEMBER 1943

14 September 1943

FUEHRER CONFERENCE OF 11-12 SEPTEMBER 1943

* * * * *

DETHLEFFSEN:

16. The Fuehrer brings up the question of air force matériel production and the discussion with Messerschmitt, and asks for my personal intervention with the Reich Marshal [Goering] and Field Marshal Milch to cut down appreciably on the number of aircraft types.

17. The Fuehrer approves Messerschmitt's recommendation that a monthly conference be held on questions pertaining to developments and productions for the Luftwaffe, on the introduction of new types and modifications with the participation of construction designers and production experts. This is to be discussed with Field Marshal Milch.

MILCH:

18. The Fuehrer is displeased that the long-range Messerschmitt plane had not yet been taken up by the Luftwaffe. M. is said to have been unable to obtain the support of the Luftwaffe for it.

PARTIAL TRANSLATION OF DOCUMENT R-124
DEFENSE EXHIBIT 34

EXTRACT FROM FUEHRER CONFERENCE OF 1-4 JANUARY 1944,
CONCERNING SPEER'S REPORT ON THE FRENCH
LABOR SITUATION

6 January 1944

FUEHRER CONFERENCE OF 1-4 JANUARY 1944

* * * * *

[Marginal Note] Kehrl, Waeger.

The Fuehrer has been informed of the differences of opinion with the Plenipotentiary General for Labor Allocation. According to my arguments, the principal thing is to exploit the industry of France for Germany to a larger extent, in order to be able to locate there about 1 million additional workers. However, Sauckel is of the opinion that first of all workers have to be brought to Germany.

The Fuehrer explains that in his view the transfer to France is of extreme importance, be it only on account of the possibility to increase the production of iron connected therewith. In spite of this, in his opinion, one cannot do without bringing additional French labor to Germany. It must, therefore, be attempted to find a happy union of both things. In this connection he proposes to designate protected works in France, in order to induce the French to work in these plants just through the pressure of allocation of labor for Germany. Upon my statement that the protected plants have already been established, he affirms again the importance of this institution and the necessity to create here a basis of long-range confidence. He thinks that it is my affair whether I will be able to do without French labor or not; Sauckel could be only happy if I would do without them.

Upon my reply that this is not the only problem, but that also the question of the *executive power* is involved, since otherwise a loss of prestige for Germany and a disorder in the allocation of French labor would be inevitable, the Fuehrer declares that this is, of course, one of the most important bases for further discussions. I then told him that on 3 January there will be a meeting between Himmler, Keitel, Sauckel, and myself (Kehrl) (is the Foreign Office to be included?), at which these problems will be discussed. Subsequently there shall be a meeting with him, at which the possibility of executive power in France, as far as the allocation, and the transport of French workers to Germany is concerned, will be laid before him. (Kehrl to do advance work, that we also make a claim for executive power for the protection of the factories in France against terror bands.)

2. THE CENTRAL PLANNING BOARD

*EXCERPT FROM THE STATEMENT OF THE PROSECUTION REGARDING MILCH'S ACTIVITY IN THE CENTRAL PLANNING BOARD, 6 JANUARY 1947 **

MR. DENNEY: We come now to the part of the proof which places the defendant in the very center of the Slave Labor Program.

We have shown that from the outset of the war and prior thereto, he was thoroughly informed of the Nazi plan for total war, which contemplated the full use of all human material resources within the homeland. We will show he was active in the formation and announcement of decisions of the Central Planning Board. We will show the Board exercised jurisdiction in the matter of procurement, allocation, and use. He carried out the master plan for requisition, allocation, and use of human raw material for the war machine. There are words we will have by necessity to repeat as we introduce the documents—requisition, allocation, and use.

Our evidence will show that Milch, a member of the Central Planning Board, belonged to an organization—and here again we have another important word “belong”. He was one of two most essential men in the Planning Board that guided the decisions of that organization.

We will present to the Court excerpts from the minutes of some 12 conferences at every one of which Milch was present, starting with the first held in April 1942 and ending with the fifty-eighth held in May 1944. Actually, he was at all but eight conferences, and we use the figure “eight” advisably. We are not sure, he may have been in some of those. There is no question that he was in every one of those meetings which we introduce here. On occasions when Speer was not present Milch presided. We will show he actively participated when the Central Planning Board arrived at decisions with respect to the request, allocation, and use of this labor.

We will show he was active in the formation of the announcement of decisions of the Central Planning Board. We will show the Board exercised jurisdiction in the matter of procurement, allocation, and use of labor. And all of them were prisoners of war and were allocated to the German war effort. Requisition, allocation, and use were the dominating voice. Decisive influence, active participation, forced labor, illegal occupation—these are the words with which we are concerned, and these are the things with which he concerned himself.

* Tr. pp. 161-162.

Evidence

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TRANSLATION OF DOCUMENT R-124
PROSECUTION EXHIBIT 48-B

STENOGRAPHIC RECORD OF THE FIRST CONFERENCE OF THE
CENTRAL PLANNING BOARD ON 27 APRIL 1942

Berlin, 27 April 1942

Secret

*"THE CENTRAL PLANNING BOARD" IN THE
FOUR YEAR PLAN
1ST CONFERENCE*

Present:

The three members:

Reich Minister Speer,
Field Marshal Milch,
State Secretary Koerner.

Furthermore:

State Secretary Dr. Schulze-Fielitz, Ministry of Munitions,
Ministerialrat von Normann, Four Year Plan.

Result:

I. The *Central Planning* in the Four Year Plan (Decree of the Reich Marshal of Greater Germany of 22 April 1942—VP 6707 g) is a task for leaders. It encompasses only principles and executive matters. It makes unequivocal decisions and supervises the execution of its directives. The Central Planning does not rely on anonymous institutions difficult to control, but always on individuals and fully responsible persons who are free in the selection of their work methods and their collaboration as far as there are no directives issued by the Central Planning.

II. *Discussion of the situation in iron*

A. The objective is to reach a production of 2,2 million tons per month. In the first place it has to be established whether, after taking into account the excessive requests which were certainly made and of the difficulties confronting an increase of production (coal, transport) the present figures are sufficient (2 million tons). For the distribution in the third quarter these 2 million tons have to serve in any case as a basis.

B. The principles of distribution and the new quotas will be discussed in a subsequent conference with a wider circle of participants (see special protocol).

C. The *iron-producing industry* will be organized into a Reich association. It is to be established and made to operate as soon as possible. The creation of an interimistic liaison organization

(Planning Group Iron) has, therefore, been abandoned. The task of the Reich Association ends with the production of iron and before the distribution of the iron.

D. For the position of president of the Reich Association Iron, Generaldirektor Voegler and Geheimrat Roechling* are suggested. Roechling was chosen, the appointment of whom would be approved by the Fuehrer, according to Reich Minister Speer. State Secretary Koerner will submit the proposal to the Reich Marshal [Goering].

III. The reorganization of the Upper Silesian Territory with the object of the highest and best utilization for war economy in mind is urgent. The selection of locations and the determining of capacities in this territory has to be expedited with regard to raw material, transport, and labor.

PARTIAL TRANSLATION OF DOCUMENT R-124
PROSECUTION EXHIBIT 48-B

LETTER OF 20 OCTOBER 1942 TRANSMITTING THE STATUTES
OF THE CENTRAL PLANNING BOARD

The Plenipotentiary for the Four Year Plan.
Central Planning Board.

Z. P. 1

Berlin, October 20, 1942

Enclosed I send you, for your information, the statutes of the Central Planning Board with the request to support the office of the "Central Planning Board" in every possible way in its work, and to direct, more particularly, your section chiefs and reporters to forward all information requested orally or by writing, in the shortest possible time. By this collaboration of your section chiefs and reporters, the building up of a larger apparatus in the framework of the "Central Planning Board" is to be avoided.

BY ORDER:

[Typewritten] WALTHER SCHIEBER

Certified: SCHWINGE
Ministerialregistrator

[Stamp of the Plenipotentiary for the Four Year Plan.]

Distribution to—

- a. The highest Reich authorities.
- b. The Reich Protector.
- c. The Governor General.
- d. The executive authorities in the occupied territories.

* Defendant in case of Government of France vs. Hermann Roechling. See Vol. XIV.

STATUTES OF THE CENTRAL PLANNING BOARD

1. The Central Planning Board, created by the Fuehrer and the Reich Marshal in order to unify armament and war economy, deals only with the decision of basic questions. Professional questions remain the task of the competent departments, which in their fields remain responsible within the framework of the decisions made by the Central Planning Board.

2. In order to have the conferences properly prepared and to have the execution of the decisions supervised, the Central Planning Board appoints an office. This office consists of the deputies appointed by each of three members of the Central Planning Board; one of these three deputies shall be appointed chief of the office.

[Handwritten marginal note on left side of the document: "To be forwarded".]

3. In accordance with the attached Table of Organization [not reproduced], the office appoints reporters. These reporters are at the disposal of all members of the Central Planning Board. The office appoints one reporter to keep the record.

4. Office and reporters have to see to it, above all, and to draw the attention of the Central Planning Board, if necessary, to the required measures, that—

a. All decisive tasks of war economy are achieved quickly, without red tape, and ruthlessly, by mutual adapting of all composing branches.

b. All such work as is obviously without importance for winning the war, be discontinued.

5. *Tasks of the office*

a. The office prepares the meetings of the Central Planning Board in such a manner that the members of the Central Planning Board have the agenda and the material of discussion 24 hours in advance. For this purpose the office conducts preliminary talks with the competent departments, etc.

b. On the strength of the record made by the reporter, the office sees to the execution of the decisions of the Central Planning Board by the competent agencies, and sees to it that the deadlines fixed are complied with.

c. The members of the office keep the members of the Central Planning Board informed between the sessions.

6. The distribution of work, dealing with incoming mail, etc., is arranged by the office itself. The members of the office sign: "By order" of the Central Planning Board.

7. Tasks of the reporters

Reporters have to keep in constant touch with the departments, with regard to the sectors of work they are in charge of. In the regular sittings of the office they report on the progress made and on the measures which are required for the carrying on of the war economy, especially for the increase in production, for other improvements in the supply with raw materials, and for necessary changes in distribution. They do the preliminary work for the meetings of the board (see also 5 a) and in their working sector they are primarily responsible for the execution, within the established time limits, of the decisions of the Central Planning Board.

Berlin, 20 October 1942.

[Typewritten] MILCH
[Typewritten] SPEER
[Typewritten] KOERNER

[Stamp]
Berlin 6-11-1942
No. L 16-501

Copy to the State Secretary for his information.

[Typewritten] DR. SCHATTENMANN

Certified: Schulz, Reg. Sekr.

PARTIAL TRANSLATION OF DOCUMENT 1510-PS PROSECUTION EXHIBIT 58

EXTRACTS FROM DECREE OF 16 SEPTEMBER 1943, DEFINING THE DUTIES OF THE PLANNING OFFICE OF THE CENTRAL PLANNING BOARD

Berlin, 16 September 1943

DECREE OF 16 SEPTEMBER 1943 OF THE PLENIPOTEN- TIARY GENERAL FOR ARMAMENT TASKS WITHIN THE FOUR YEAR PLAN AND OF THE REICH MIN- ISTER FOR ARMAMENT AND WAR PRODUCTION CONCERNING THE TASK OF THE PLANNING OFFICE

The Reich Marshal of the Greater German Reich has established a Planning Office in my department by decree of 4 September 1943 for the purpose of concentrated handling of all fundamental questions of war economical planning.

In this connection I order:

I

1. The Planning Office prepares the decisions of the Central Planning Board and supervises their execution.

2. In this connection it will especially prepare the distribution to consumers of basic materials (for instance, iron, metals, coal, mineral oil, nitrogen, and other important raw materials).

3. As a working basis for Central Planning Board, the Planning Office has to draw up plans for production and distribution for the entire war economy, the demand schedules being based on the demands of the entire German sphere of power. In this connection imports and exports are to be considered. The entire planning is to be synchronized in advance with the participating departments and specialist offices, taking into account production requisites. The Planning Office will constantly have to summarize and to evaluate the necessary statistical material.

4. The Planning Office will have to submit to the Central Planning Board for decision the proposed assignment of manpower to the individual big sectors of employment (trade industry for war effort [gewerbliche Kriegswirtschaft], traffic, foodstuffs, etc.). It also has to evaluate statistically the carrying through of the assignments.

* * * * *

6. The Planning Office will have to advocate towards the Reich Ministry of Economics the requirements of war industry in connection with the establishment of import and export quotas.

It has to report constantly to the Central Planning Board about the state of imports essential for war economy.

* * * * *

II

* * * * *

4. The Planning Office has to evaluate statistically the industrial and war production existing within the power sphere of Greater Germany or of the states allied with the Reich; it has to develop out of that evaluation proposals for a common exchange of production in order to increase the initial war production.

* * * * *

[Signed] SPEER

The Reich Minister for Armament and War Production

Plenipotentiary General for
Armament Tasks within the Four Year Plan

PARTIAL TRANSLATION OF DOCUMENT 3721-PS
PROSECUTION EXHIBIT NO. 41-A *

TESTIMONY OF FRITZ SAUCKEL, 22 SEPTEMBER 1945, REGARDING
THE JURISDICTION OF THE CENTRAL PLANNING BOARD

TESTIMONY OF FRITZ SAUCKEL TAKEN AT NUERNBERG, GERMANY,
1030 HOURS TO 1210 HOURS ON 22 SEPTEMBER 1945, BY JOHN
J. MONIGAN JR., MAJ., CAC, OUSCC

MAJOR MONIGAN: Principally, what I am interested in are the functions and responsibilities of the Central Planning Board in their relationship to your office and their relationship to industry.

SAUCKEL: I believe that this Central Planning Board was founded about three months after my taking over my office. The Board was founded in accord with a law by the Fuehrer or just upon an agreement between the Fuehrer and Speer and Goering, I don't know which. The leader and chairman of this Central Planning Board was Speer himself. It was founded to transfer the work from the Four Year Plan to Speer, I think, because Goering was already ill at that time, and there also were difficulties about which I am not informed. Speer always took on the job of making great changes in production and put it under his own direction. Constant members of this Central Planning Board were the State Secretary and Field Marshal Milch, and State Secretary Koerner. These three were responsible for the decisions of the

* Dr. BERGOLD, Milch's defense counsel, objected as follows (*Tr. p. 184*): "May it please the Tribunal, I would like to make a final objection against the introduction of the exhibit just submitted by prosecution, namely 41-A, for the following reason: this is an interrogation of Sauckel, who, in conformance with the sentence passed upon him, was executed. I am of the opinion that such an interrogation cannot be used as evidence here, for, since Sauckel was executed, I have no possibility whatsoever to ask him to appear here before the Tribunal as a witness and to cross-examine him concerning his statements. In this statement there are certain things which are not correct, and, due to the fact that the person who made them is dead, they cannot be corrected. The International Military Tribunal frequently ruled that statements made by witnesses and affidavits can only be introduced when it is possible for the defense counsel to hear these persons as witnesses, and to ask prosecution to produce these people for cross-examination. This is absolutely impossible in the case of Sauckel, and I should like to ask the Tribunal to issue a ruling on whether or not these statements can be used as evidence here.

The Court ruled as follows (*Tr. p. 194*):

PRESIDING JUDGE TOMS: The Court has determined that under the Charter and the Ordinance this exhibit is admissible. Its weight, however, in view of the peculiar circumstances attending it, is, of course, still for the Tribunal to determine. This ruling is made after conference with the judges of Tribunal I, who had a similar problem presented, and who made the same ruling as this Tribunal now makes.

MR. DENNEY: If your Honors please, that question will come up again, because we have interrogations and affidavits from other defendants in the first trial, who have since either been executed or have taken their own lives.

PRESIDING JUDGE TOMS: The Tribunal feels that the very broad scope of the section of the Charter and the Ordinance dealing with the admission of evidence justifies the admission of this exhibit.

Central Planning Board and for internal matters and they went through this office if they were worked out by other people inside the office. I was only called to this Central Planning Board when my task was discussed, and the demands were put before me and my agencies by Speer, the Four Year Plan [Office], as well as by Milch. The Fuehrer himself told me to fulfil these demands without question. In other words, if Speer asked me for a certain amount of workers, for instance, several thousand, I could not refuse him. The particular minister had to give the number to the Central Planning Board and that was the only place where the number of workers could be discussed. In the Central Planning Board it was decided how many workers I was able to supply to these various sections like Milch and Speer, agriculture, and so on. If it came to an argument, these discussions were brought before the Fuehrer and he then decided himself.

Q. Would the Central Planning Board, in their outline of workers to be provided for agriculture and for Speer and for Milch's industries, etc., just give you the numbers of workers which they required, or would you get the final destination of the workers too, say panzers [tanks] and machine guns, and so on, from the Central Planning Board?

A. In general, I always got the numbers for the sections in large, except for Speer who always demanded individual allocations of workers to agriculture or mining; in other words, Speer always demanded a certain number of workers for a certain kind of work.

Q. Except for Speer, they would give the requirements in general for the broad field, but in Speer's work you would get them allocated by industry, and so on. Is that right?

A. The others only received whatever was left over, because Speer told me once in the presence of the Fuehrer that I am here to work for Speer and that I mainly am his man, he mentioned it very often, without reference to the countries involved. It was very unnatural, that process of doing these things. These smaller plants, instead of ordering their workers from the next higher echelons, gave their orders to the very highest, to Speer, who in turn handed them down to the lower ones and to me, and this was the reason for the Rotzettel (red slip) system which had to be fulfilled by me without question. In practice it came to this that if a factory actually didn't need any workers but Speer demanded them for that factory I had to supply these workers without being able to discuss or to tell him that it would be a waste of manpower; I just had to do it because Speer had complete domination.

Q. When it was determined in the Central Planning Board that say a thousand workers would be required by Speer, how did these

workers find their way from all over Germany and Europe into the Krupp factory, for instance?

A. The orders were given from higher echelons down to lower echelons; for instance, the transports were either turned over from one office to another or the lower echelons in Berlin, for instance, got orders to transfer certain men from one factory which happened to be in Berlin to another factory which was also in Berlin. This happened also through the cooperation among the various offices who were headed by Hildebrand. The orders were discussed in a so-called daily schedule of trains which was decided upon in all these meetings.

Q. Well, as I understand it, you would get a requirement for say a thousand workers for panzers, say; now, in Germany certain factories would be making tread, some would be making turrets, and some would be making other things. Now, of that thousand workers needed for tank production some would be working on treads and some would be working on other things. How did they get into the particular factories which were making the specific products?

A. This was accomplished by giving orders recklessly through the various offices. A factory, for instance, got an order to send 20 or 30 men to another place, and they were just ordered to go there. This was the reason for the Notdienstverordnung [Emergency Service Decree] where the workers were forced by a decree to obey any order which was given to them.

Q. After the workers were conscripted inside the Reich and outside, they would be worked according to certain skills and technical specialties, would they not?

A. As far as possible, they were used according to the profession they had been trained in.

Q. And the local Gau labor offices, etc., would have a list of all the workers according to their skills, would they not?

A. Yes, there were detailed files about this. This was the basic principle: There were various offices which only were concerned about a certain kind of trade or skill.

Q. So, when you got the request from the Central Planning Board for a hundred thousand men for tank production, would you, through your ministry, tell the various offices that you needed so many welders and so many machine tool people, etc., and then tell them how many of each specialty you wanted?

A. When I got these orders my assistants were always present and they in turn took down the individual numbers required for this kind of work. I also received rosters which pointed out in detail how many people were needed for certain productions and how many were needed in a certain place. There was also, be-

sides the red-slip system, another one, which was a system used after the red-slip system. We called this the Dringlichkeitsstufen—that means the priority system for workers. These Dringlichkeitsstufen, which were divided according to place and kind of work, were given to me in the presence of my assistants and they in turn worked out these plans. The influence of Speer was so great that sometimes he specifically asked for certain specialists from a certain factory to be turned over to another place. It also happened that we were not even told about these things. If we were not able to supply him with workers from inside Germany, we had to take them from the other departments or from foreign countries. There was always a reserve of something like 500,000 people who went to schools where they were trained for the armament production.

Q. That was 500,000 German and foreign workers?

A. Yes.

Q. When a requirement was fixed for Speer or for Milch in the Central Planning Board and they called you in and said we need 500,000, or some number of workers, would they give at that time the breakdown of what kind of workers they wanted, or would they give a blanket request for 500,000 without the listing of specialties?

A. Naturally, they gave a detailed breakdown. For instance, they only asked for miners, but they also asked for specialists in that kind of work.

Q. The requirements would be stated in detail for the kind of work, not only whether it should be a mine worker, but, for instance, a locomotive engineer in a mine, or something like that, would they not?

A. Naturally, since there are many kinds of professions; I, for instance, put in charge of the mining President Dr. Gaertner who was always oriented about the different jobs which were required in that field of work.

Q. Then after you got the detailed specification of the qualifications of the workers desired, would you also get a statement as to what places they would work in, and so on?

A. This was just the remarkable thing about it, especially from Speer; factories were always mentioned and they were also mentioned by priority; for instance, the ones that always were working on the so-called Fuehrer orders had priority over the others. Speer actually controlled the small places, not step by step, but directly from the highest echelon.

Q. So that you would be informed at the Central Planning Board, at least for Speer's factories, about the specialists and the place to which they were supposed to be sent, is that right?

A. The Central Planning Board determined only the numbers for a certain time, three months or so. These orders were then forwarded to the individual offices, who were working for me, from all kinds of industries; the Central Planning Board met only every two weeks or so.

Q. The Central Planning Board would decide that Speer would get so many hundred thousand and Milch would get so many hundred thousand, and that the agricultural program would get so many hundred thousand. Then, that was agreed upon, if they all agreed upon it among themselves in the Central Planning Board, and had no disputes regarding the number. But if there were disputes, then the Fuehrer would decide?

A. Yes.

Q. Then, after they decided a hundred thousand for Speer, then the section chiefs (in the rings for tank treads, and machine guns, etc.) would meet with your section later and say we need so many hundred thousand, we need 10,000 who are welders and 10,000 who are metal workers, etc., is that right?

A. Yes. A daily conference was held among the different offices where it was decided how many workers were needed for the individual industries. It did not occur that when a factory asked for a certain amount of men, it was like that: Speer said this factory has to be supplied with so and so many workers. In peacetime it was different.

Q. And the requirements of Speer were met as a matter of priority among all the other industries; first Speer and then the others?

A. Yes.

PARTIAL TRANSLATION OF DOCUMENT NI-1098
PROSECUTION EXHIBIT 63

EXTRACTS FROM AFFIDAVIT OF FRITZ SAUCKEL, 22 SEPTEMBER 1946,
REGARDING THE JURISDICTION OF THE
CENTRAL PLANNING BOARD

A. 1. I, Fritz Sauckel, born in Hassfurt-Unterfranken on 27 October 1894 was honorary Obergruppenfuehrer of the SS and SA, Reich Governor [Reichsstatthalter], Commissioner for Reich Defense and Gauleiter of Thuringia. Since 1942 I was Plenipotentiary General for Manpower and from 1933 on I was a member of the Reichstag. I state upon oath the following facts which are known to me personally:

* * * * *

L. 1. The Central Planning Board intervned in the problem of

foreign workers to the extent of determining priorities and in representing and demanding the requirements of the economics branches consolidated in the Central Planning Board. It also transmitted these demands to the Fuehrer. The competent gentlemen of the Central Planning Board at the same time of course represented their ministries as heads. Thus I am not in a position today to say whether Speer, for instance, spoke in one or the other capacity in connection with any special matter. At any rate the Central Planning Board determined the total labor requirements. In practice I only obtained labor for them.

2. I attended sessions of the Central Planning Board only when questions concerning the mobilization of labor were involved. Sometimes only my representatives, Dr. Timm, Landrat Berk, Stothfang, or Dr. Hildebrand, attended.

3. The competent gentlemen from Speer's Ministry also attended. Speer had a labor mobilization department where the requirements of industry were collected and confirmed.

4. Milch produced the figures for aviation. The same was done by Speer in his sphere of activity. Speer and Milch, however, also exerted influence on the allocation of workers. How far this came within their capacity as members of the Central Planning Board I cannot say; in any case they did this in their ministerial capacity.

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PARTIAL TRANSLATION OF DOCUMENT R-124
PROSECUTION EXHIBIT 48-A

EXTRACTS FROM REPORT ON THE ELEVENTH CONFERENCE
OF THE CENTRAL PLANNING BOARD, 22 JULY 1942

Berlin 24 July 1942
Dr. Goe/W

Reich Minister Speer
Minister's Office

Secret

*REPORT ON THE 11TH CONFERENCE OF THE "CENTRAL
PLANNING BOARD" ON 22 JULY 1942*

Present:

Reich Minister Speer
Field Marshal Milch
State Secretary Koerner

Kommerzialrat Roechling	Reich Association Iron
Dr. Rohland	Reich Association Iron
Von Bohlen und Halbach	Reich Association Iron
Dr. Langen	Reich Association Iron
Bergassessor Sohl	Reich Association Iron
Gauleiter Sauckel	Plenipotentiary General for Labor Mobilization
State Secretary Backe	Reich Food Ministry
General Director Pleiger	Reich Association Coal
Dr. Fischer	Reich Association Coal
Major General Gablenz	Reich Air Ministry
Colonel Sellschopp	Reich Air Ministry
Ministerial Director Gramsch	4 Year Plan
Ministerial Advisor Normann	4 Year Plan
Dr. Schieber	Reich Ministry for Arma- ment and Munitions
Dr. Stellwaag	Reich Ministry for Arma- ment and Munitions
Major Wagner	Reich Ministry for Arma- ment and Munitions
Brigadier General Becht	Reich Ministry for Arma- ment and Munitions
Lieutenant Colonel Nicolai	Reich Ministry for Arma- ment and Munitions
Ministerial Advisor Dr. Wissmann	Reich Ministry for Arma- ment and Munitions
Schlieker	Reich Ministry for Arma- ment and Munitions
Dr. Goerner	Reich Ministry for Arma- ment and Munitions

* * * * *

Securing of food. A net influx of 1 million foreign workers is counted on. This number was not reached in the past months. Even with an influx of more than 1 million in the coming months, the 1-million peak will actually not be surpassed in view of current departures of workers. Food for this 1 million is secured.*

To what extent an improvement of the food situation, through a sharper hold on the production outside of Germany, could be accomplished.

* * * * *

Every day a train load of the forces recruited in the East will be directed to the coal mines until the figure of 6,000 is achieved. Prisoners of war are being obtained, at present, from camps in

* Defense introduced this paragraph as Defense Exhibit 5. See pp. 509-10.

the General Government. 51,000 prisoners of war in the Senne Camp. In the district east of the General Government there are 74,000 prisoners of war available. Up till now an elimination quota of 50 percent of unemployable people has been reckoned with in the allocations to coal mining. It is considered necessary that not too high demands should be placed on the choice of prisoners of war. The Miner's Union doctors [Knappschaftsaerzte] are to be informed that a different standard is to be established for the prisoners of war than for German miners.

For the consecutive order in which the prisoners of war are to be put to work, it will be laid down, that before the metal workers are chosen, the coal mining in the first place and requirements for the loading and unloading commands in the second place are to be considered.

Field Marshal Milch undertakes to accelerate the procuring of the Russian prisoners of war from the camps.

[Typewritten] DR. ING. GOERNER

PARTIAL TRANSLATION OF DOCUMENT R-124
PROSECUTION EXHIBIT 48-A

EXTRACTS FROM REPORT ON THE SEVENTEENTH CONFERENCE
OF THE CENTRAL PLANNING BOARD, 28 OCTOBER 1942

Berlin, 30 October 1942

The Plenipotentiary General for the Four Year Plan
Central Planning Board

*REPORT ON THE 17TH CONFERENCE OF THE CENTRAL
PLANNING BOARD ON 28 OCTOBER 1942, 0930 HOURS*

Increase of Coal Production

Allocation of Labor

Coal production in the Ruhr district has increased to 390,000 tons per day. Any further increase depends on whether the requirements for labor are being met. About 104,000 men are required. Furthermore 7,800 men—originally 16-17,000 requirements having been brought down by rationalization—are needed for the supplying industry, 6,800 of these for the machine industry. 5,000 more unskilled workers are furthermore required to secure the transport of mine-timber which is essential for reason of variety [Sortimentsgruenden].

The intake capacity of the mining industry for the month of

November is 44,000 prisoners of war, of whom 25,000 are for the Ruhr district, and 12,600 eastern workers, 7,500 of whom are for the Ruhr district. Total requirements so far amount to 191,000 laborers of whom 90,700 were wanted by the Ruhr District. Up to 24 October a total of 123,000 was allocated. These numbers are still to be checked up by the Reich Association Coal (RVK) and Mr. Sauckel.

According to the Plenipotentiary for Labor Allocation, the following number of prisoners of war is at present at hand.

Within the Reich (on the way and in camp).....	30,000
Remainder of prisoners of war (outstanding from a total of 150,000 and promised up to the beginning of December)	60,000
At camps in the General Government.....	15,000

Of these the following can be regarded as available up to 1 December:

Within the Reich	15,000
Of the remaining prisoners of war.....	10,000
From the General Government.....	7,500
	32,000
	Total about....

Therefore, as compared to the required 44,000, there is a deficit of about 12,000. Moreover, 10,000 civilian laborers from the East can be put up by exchanges from the agricultural sector which is 2,000 less than required so that the November deficit amounts to 14,000 and, in comparison with the total requirements of the mining industry of 104,000, there is a deficit of 62,000. The deficit increases by the smaller number of prisoners of war the size of which is still to be ascertained by the Commissioner of Labor.

The mining industry is in a position to use any amount of eastern labor instead of prisoners of war. Therefore, it is to get preference at the combing-out of the agricultural sector. There is no objection to a temporary accommodation of eastern labor at prisoner-of-war camps (without barbed wire, etc.).

The requirements of the supply industry are to be met by the Red Label method [Rotzettelverfahren]. Constructors are to be provided by canvassing at the French prisoner-of-war camps for officers.

[Typewritten] DR. STEFFLER

* * * * *

Present:

Reich Minister Speer	
Field Marshal Milch	
State Secretary Koerner	Reich Ministry for Armament and Munitions
Staatsrat Schieber	Reich Ministry for Armament and Munitions
Brig. Gen. Becht.	Reich Ministry for Armament and Munitions
Lt. Col. v. Nicolai.	Reich Ministry for Armament and Munitions
Herr Schlieker	Reich Ministry for Armament and Munitions
Oberberghauptmann Gabel	Reich Economic Ministry
Colonel Dr. Krull.	Reich Economic Ministry
Oberbergrat Otto	Reich Economic Ministry
State Secretary Ganzenmueller.	Reich Traffic Ministry
Staatsrat Heinberg	Reich Traffic Ministry
Min. Dir. Gramsch	Four Year Plan
Min. Rat Steffler	Four Year Plan
Min. Dirig. Timm	Plenipotentiary for Labor Al- location
Oberreg. Rat Hildebrand	Plenipotentiary for Labor Al- location
Gen. Dir. Pleiger	Reich Association Coal
Dr. Sogemeier	Reich Association Coal
Dr. Fischer	Reich Association Coal
Dir. Winkaus	Plenipotentiary for Mining Re- quirements

PARTIAL TRANSLATION OF DOCUMENT R-124
PROSECUTION EXHIBIT 48-A

EXTRACTS FROM STENOGRAPHIC MINUTES OF TWENTY-FIRST
CONFERENCE OF CENTRAL PLANNING BOARD, 30 OCTOBER 1942

*EXCERPT OF STENOGRAPHIC MINUTES OF THE 21ST
CONFERENCE OF THE CENTRAL PLANNING BOARD*

Re: Labor supply and direction of labor held on 30 October 1942,
afternoon, at the Reich Ministry of Armament and Munitions.

Berlin, Pariser Platz 3

* * * * *

SAUCKEL: There is but one possibility, and that is, that the
moment the Wehrmacht takes prisoners in operational territory,

they are to be immediately turned over to us. We will move them away much faster than the Wehrmacht.

MILCH: The correct thing to do would be to have all Stalags transferred to you by order of the Fuehrer. The Wehrmacht takes prisoners and as soon as it relinquishes them, the first delivery goes to your organization. Then everything will be in order.

SAUCKEL: Yes, but we do not have sufficient personnel for guarding the prisoners.

(MILCH: The Wehrmacht should have to provide you with that!)

SAUCKEL: As soon as prisoners of war are taken, they should be placed at our disposal and we would then allocate them in a fair manner. However, with the present method we get nothing or only a fraction of what the Wehrmacht had promised us, although the prisoners had been taken by the Wehrmacht.

TIMM: We can hardly hope to achieve that, since this might have something to do with the convention concerning the treatment of prisoners of war.

MILCH: The man who acts there for you can wear a uniform all right and be a soldier. Only his superior will not be Herr Reinecke but Herr Sauckel.

For psychological reasons emphasis should be placed on first of all covering the requirements of the Wehrmacht branches, without other considerations. The feeling, we don't get it anyway, has gradually permeated our whole air force industry—and I heard the same about the army. I will admit that these gigantic allocations are completely misjudged. For example, in the Luftwaffe where from an original allocation of 480,000, a balance of 150,000 was left over [per Saldo uebrig]. The plants always look only at the balance [Saldo]. However, there are many plants also who have suffered an actual decrease in manpower, especially in a young industry like ours, which is occupied with the manufacture of very special products. This industry has many young people, of whom many again have been drafted into the Wehrmacht. This drafting is done in such an idiotic way that one actually has to feel ashamed. All three experimenting engineers working on a development which may have an important bearing on the outcome of the war are simply drafted. They are not sent to the front or into training but sit around in the back somewhere and are guarding some camp. No consideration whatsoever is given to individual cases. Of course the plants then call for replacements. The masses cannot fill these breaches, and qualified replacements we cannot supply at all. Herr Dr. Werner, for example, writes a letter to Herr Schieber of which he forwards a

copy to me and which states that production figures established in the delivery schedules can no longer be met, owing to the fact that for weeks partially even for months, no manpower has been allocated, and that even current withdrawals cannot be replaced by the labor offices [Arbeitsaemter]. The fact, that we can no longer meet the demands of the rising production, that backlogs are increasing more and more, fills him with rising apprehension. He then goes into details, but always reverts to the same conclusion: everything might be accomplished, we could even get the necessary material; in the final analysis we fail, however, in one important aspect in connection with our whole armament program—the allocation of manpower. If only we had, if only we had—thus it goes all day and in every conference.

I am convinced that many people are beginning to put in fake requests and exaggerate their requirements. There is only one way to straighten out this affair. In my department, I do it this way: if for months a spare part cannot be found, the entire front begins to hoard this article; so, for instance, the tail skid of a Ju 52. Then we proceeded to manufacture triple the amount of the expected requirements, yet no tail skids were available. Ordnance stock piles were filled with it; but they did not issue any. I then said: We will now manufacture nothing but tail skids until we hear shouts not to send any more. Thus, an affair like that gets finally straightened out. And here likewise we must say for once: We will supply the required laborers to the industry, if necessary by depriving other fields. Agriculture, at the moment can spare laborers; it does not need them from 15 November to 15 March of next year. It is just a waste to have to feed them. Only a small number will be needed for the procurement of wood. Thus we are able to generously help industry and later on again replenish agriculture. At the same time we have the advantage of getting fairly well-fed people. As Herr Timm recently explained, prisoners of war from the Ukraine would not serve our purpose; they could not regain their physical strength on what they get to eat in the industry. Even supplying them with better food than we give to our own people would not be sufficient to get them beyond a still weakened condition. In agriculture they get additional food. Don't muzzle the mouth of a beast when food lies all around it. This is also of advantage to prisoners of war and workers from the East.

However, we have to finally do away with the general feeling: we have nothing and we want yet anything; we have been forsaken by God and the Fuehrer; constantly more and more is demanded of us; how can we still believe in this great program? We can only carry it out if we have such faith in it, as is spoken

of in the Bible. In January we started with a monthly production of 2,000 engines; today we have reached 4,000, and in a year and a half I must reach 14,000. That of course is a gigantic achievement for a month. Every engine has at least 1,200 h.p. If in measurements of horsepower I compare the present with the former World War, then the present achievement is 40 times as great. What an immense amount of manpower was available at that time for an industry so totally different from ours! Yet today we must come up to more than three times that, which we have already done. That means, that in airplane engines alone we have to achieve 135 to 140 times as much as we did in the World War. Dr. Werner who is responsible for the engine industry proposed how this can be done. He said: We must apply a mass production scale everywhere, or else we will not accomplish it. He has very progressive ideas in this field. With the airplane engine, it can be done for sure. Crankshafts and connecting rods, etc., we can produce on a mass-production scale. Today we manufacture 40,000 connecting rods. However, we still have no machines today that assemble these products individually on the assembly line. The Americans have such machines. We are lacking about 10 construction engineers and 5 mechanics; they just simply cannot be procured. One must for once satisfy the needs of the people again. I have always put them off until November and told them that Sauckel would produce the necessary labor from agriculture.

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SPEER: We must also discuss the slackers. Ley has ascertained that the sick list decreased to one-fourth or one-fifth in factories where doctors are on the staff who are examining the sick men. There is nothing to be said against SS and police taking drastic steps and putting those known as slackers into concentration camps. There is no alternative. Let it happen several times and the news will soon go around.

* * * * *

SAUCKEL: We talked of taking the waiters out of the restaurants in Germany. But in this respect we have absolutely an abundance in France, the General Government and the Protectorate. As long as we have not skimmed that off, we could not take the responsibility towards the German people for such a measure. Again a cable of the Foreign Minister has burst into my recent negotiations in France stating that under no circumstances should the Ministry Laval be put into peril. The Fuehrer has said: If the French show no good will, then I shall retake the 800,000 French PW's. If they show good will, then the French wives can follow their husbands to Germany and work there. Of course, he said,

I have an interest that Laval remains in power. The Ministry Laval will remain, it depends only on us. And Laval cannot go back after he has reproduced in his speech and spoken before the French passages which he has taken verbally out of my appeal. Only Petain could bring him to fall. I wish to draw your attention to the fact, however, that in France there is a surplus of young men all of whom we could use in Germany. If we expect our people to accept severest restrictions then we cannot admit such luxuries in Paris as, e.g., small restaurants with bands of 25 musicians and two waiters per table. I am firmly convinced, if we are brutal also against the others then we can extract quite a considerable number of men out of the General Government—I sent an efficient man, President Struwe, over there—and of the Protectorate. This need not interfere with the armament industry over there. There is, therefore, no fear that the demand could not be met.

PARTIAL TRANSLATION OF DOCUMENT R-124
PROSECUTION EXHIBIT 48-B

EXTRACTS FROM STENOGRAPHIC MINUTES OF THE TWENTY-THIRD
CONFERENCE OF THE CENTRAL PLANNING BOARD,
3 NOVEMBER 1942

Secret

*STENOGRAPHIC MINUTES OF THE 23D CONFERENCE OF
CENTRAL PLANNING BOARD*

*Concerning the fixing of iron quotas, on 3 November 1942, 1600
hours in the Reich Ministry for Armament and Munitions,
Berlin, Pariser Platz 3*

* * * * *

PLEIGER: * * * For the physical strain on the miners, who practically work two Sunday shifts each month, is such that they could not stand it for another six months. In other words—this is the important point—the quota of approximately 95,600 men is still lacking and must be assigned to work now at last; it was promised to me at one time. The gentlemen of the Ruhr tell me: We have our huts ready. Some of them are not completely furnished, and I reproached the people for it. They answered, however: But you promised us workers for about half a year. We have always been ahead with our huts. How can you reproach us now, our huts were not ready. The workers assigned to us will be taken care of. I would be very thankful if Sauckel would be induced to assign to us the quota of workers.

SPEER: He received the instruction in the last conference of the Central Planning Board to assign workers first of all to the coal-mining industry as well as to the iron-producing industry, for you the amount of 44,000 plus 12,000, plus 7,500 for the feeder industry, plus 5,000 for pit props. The same holds true for Mr. Rohland.

PLEIGER: In our conferences it must always be taken as a basis that the Reichsbahn, with regard to the allocation of cars, is at least in the same position as they were last year.

(SPEER: That's pretty bad.)

—No, it allocated over 80,000 cars in December.

* * * * *

SPEER: Can you give me by name any smelters or other people which could be taken out?

(ROHLAND: Yes.)

This would still be another 50 or 100, I guess.

ROHLAND: I figure about 40 men per Martin furnace. If we take away 20 or 15—let's say 20—as trained Martin furnace smelters, we would have 300 men. 300 smelters could help us a lot. But when will they come?

SPEER: Then we could deceive the French about the industry in such a way, as if we would release among the prisoners of war the rollers and smelters—they have—if they give us their names.

ROHLAND: We opened our own office in Paris. In other words, you mean the French should report the smelters who are prisoners of war in Germany?

MILCH: I would simply say: You will get two people for one of this kind.

SPEER: The French firms know exactly who is a smelter among the prisoners of war. There you should make it appear, as if they would be released. They give us the names and then we take them out. Try it.

ROHLAND: That's an idea.

MILCH: We in the Luftwaffe and airplane industry will also try to find out: Who is a roller, smelter, or furnace mason.

ROHLAND: But by the time the people arrive, the quarter of the year will be over.

PARTIAL TRANSLATION OF DOCUMENT R-124
PROSECUTION EXHIBIT 48-A

EXTRACTS FROM STENOGRAPHIC MINUTES OF THE THIRTY-THIRD
CONFERENCE OF THE CENTRAL PLANNING BOARD,
16 FEBRUARY 1943

Secret!

Top Secret State Matter

*STENOGRAPHIC MINUTES OF THE 33D CONFERENCE *
OF THE CENTRAL PLANNING BOARD*

*Concerning Labor Supply on 16 February 1943 at 1600 hrs. at the
Reich Ministry for Armament and Munitions 3,
Pariser Platz, Berlin*

* * * * *

TIMM: I should like to say something about the labor supply possibilities. Perhaps you will permit me to emphasize the negative side a little. The greatest difficulties result from the fact that the supply of labor outstanding could not be fully dispatched from the East, but came in in ever diminishing numbers. One may say that they have almost become completely exhausted. Eastern laborers during the last six weeks arrived only in smaller numbers than in former times, so that they can hardly be included to an appreciable amount on the credit side of the supply account. In any case their numbers are small. The foremost reason is that in former months most transports were dispatched from the Ukraine while the main recruitment areas were those which in the meantime have become operational areas, or even are no longer in our hands. The forecasts we made applied to a large extent to the transport of people from the Caucasus district, the Kuban, from areas like Stalingrad. We prepared measures which should enable us to draw more eastern workers again during the following months. I venture to think that we should be able, on a conservative calculation, to transfer during the month of March between 150,000 and 200,000 laborers from the East to the West.

(SPEER: Including or excluding those needed for agriculture?) Including those needed for agriculture. But in my opinion it will be necessary to apply much pressure, since just those districts are concerned which have been pacified to a certain extent, and for the same reason will not be very much inclined to release

* Another portion of the minutes of this meeting was introduced by the defense as Defense Exhibit 8. See pp. 511-15.

labor. This is calculated on the assumption that some labor has to be released also from the eastern and northern parts of the East.

The second area, capable of releasing a considerable amount of labor is the General Government and that for the January estimate which has been drawn up with particular caution as I again wish to emphasize. We expect that the figures will be surpassed rather than not reached. I think we can expect a number of 40,000, of which, it is true, a part will have to be given to agriculture, if we intend no more than to cover the losses which we had to inflict last autumn.

Beyond this it ought to be possible in my opinion to employ within the Reich, and especially for the mining industry, part of the Polish Building Service. I venture to think one ought to enlarge this organization in such a way that more age groups than so far are called up for it, since this procedure is functioning. The younger age groups which in fact are especially suited for mining could be dispatched to the Reich. In this case the supervisors who are provided for the greatest part by the Building Service, will be needed only in very small numbers in the Reich.

The next area would be the Protectorate on which I cannot make a final statement today. We have been promised for the month of March about 10,000 laborers. But I am of the opinion that some loosening-up is possible. The Plenipotentiary will soon in a personal visit take in hand the possibility of this loosening-up.

France is included in the account with 100,000 laborers for March. Messages which I received permit us to hope that this number will be increased in the middle of March. Belgium is included with 40,000, Holland with 30,000, Slovakia with 20,000, who, it is true, are exclusively suited for agriculture, since their share of individual workers has been completely delivered. This item consists exclusively of agricultural laborers, owing to a state treaty. For the remaining part of the foreign areas I included another 10,000. This amounts altogether to 400,000 laborers who should arrive in March. One might be entitled to add for the last month altogether 10,000 prisoners of war. These are men to be drawn from the East. It can be expected that this number might under certain conditions be surpassed, since the High Command intends especially for operational reasons, to take the prisoners of war back to the Reich, particularly from the areas threatened by the enemy.

A former item concerns the fluctuation of labor which certainly amounts to about 100,000 laborers. Then there are items which at the moment cannot be estimated—the yield from the threatened areas and from the “Stoppage-action”. Here I cannot

venture to name final figures, but I hope to be able to do so next month.

SAUCKEL: Of course, we regret very much that last autumn we were unable to recruit as much as we would have liked in the areas which now are again in enemy hands. This is partly due to the fact that we were not assisted in the degree we had expected. Moreover we were not able to effect the removal of the civil population which had been planned. These events are an urgent reminder of the fact that it is necessary to employ foreign laborers at once and in great numbers in Germany proper and in the actual armaments industry. You may be certain that we wish to achieve this. We have not the slightest interest in creating difficulties for an armaments office, even for those working for German interest abroad, by taking labor away from them to an unreasonable extent. But on this occasion I should like to ask you to try and understand our procedure. We Germans surely have sent to the front between 50 and 75 percent of our skilled workers. A part of them has been killed while the nations subjugated by us need no longer shed their blood. Thus they can preserve their entire capacity with regard to skilled workers, inasmuch as they have not been transferred to Germany which is the case only for a much smaller percentage than all of us supposed, and in fact they do use them partly for manufacturing things which are not in the least important for the German war economy. If we proceed energetically against this abuse, I ask you to give me credit for so much reason that I do not intend to damage the foreign interests of the German armaments industry. The quality of the foreign worker is such that it cannot be compared with that of the German worker. But even then I intend to create a similar proportion between skilled and workers trained for their job, as it exists in Germany by force of tradition, since it has come about that we had to send men to the front in much larger numbers than we requested France or any other country to do. Moreover we shall endeavor increasingly to bring about on a generous scale the adaptation of the French, Polish, and Czech workers. I do not see for the moment any necessity for limiting the use of foreign labor. The only thing I ask for is that we understand each other, so that the immense difficulties and friction between the respective authorities disappear and the program drawn up by us will by no means be frustrated by such things.

There are without a doubt still enough men in France, Holland, Belgium, the Protectorate, and the General Government to meet our labor demands for the next months. I confess that I expect more success from such a procedure with respect to heavier work

or for work where shifts of 10 or more hours are customary, than from relying on the use of German women and men exclusively. We shall have better success by proceeding this way provided the foreign workers still obey, which remains a risk we always run, than by using weaker German women and girls as labor in places of very important armament work, where foreigners may be used for security reasons. * * *

* * * The situation in France is this; after I and my assistants had succeeded after difficult discussions in inducing Laval to introduce the Service Act this act has now been enlarged, owing to our pressure so that already yesterday three French age groups have been called up. We are now, therefore, legally and with the assistance of the French Government entitled to recruit laborers in France from three age groups, whom we can use in French factories in the future, but of whom we may choose some for our use in Germany and send them to Germany. I think in France the ice is now broken. According to reports received they now have begun to think about a possible break-through by the Bolshevists and the dangers which thereby threaten Europe. The resistance which the French Government has hitherto shown is diminishing. Within the next days I shall go to France in order to set the whole thing into motion, so that the losses in the East may be somewhat balanced by increasing recruitment and calling-up in France.

If we receive comprehensive lists in time, we shall, I think, be able to cover all demands by dispatching in March 800,000 laborers.

SPEER: Recruitment abroad as such is supported by us. We only fear very much that the skilled workers extracted from the occupied countries do not always reach the appropriate factories in Germany. It might certainly be better if we acted in such a way that the parent firms of Germany which work with the French and Czech factories would comb out the foreign workers more than before for their own use.

SAUCKEL: We made an agreement with Field Marshal Milch. You will get the factories which are urgently needed for your airplane motors, etc.; these will be completely safeguarded. In the same way I promised Admiral of the Fleet Doenitz * today that the U-boat repair firms proper are absolutely safeguarded. We shall even be able to provide our own armament factories on French soil with labor extracted from French factories, in the main from the unoccupied territory where there still are metal

* Defendant before International Military Tribunal. See Trial of the Major War Criminals, vols. I-XLII, Nuremberg, 1947.

works which have their full complement of skilled workers without even having been touched so far.

HILDEBRAND: May I point out at this point that we have to figure that we shall be deprived of the Italian workers this year. This according to present discussions, concerns 300,000 men altogether, or 15 to 20,000 a month. If we deduct the first installment, the remaining ones to a great part are just highly skilled metal workers.

SAUCKEL: This is a request of the Fuehrer, but he has not yet finally decided.

HILDEBRAND: But we have been told to be prepared to lose these men.

SPEER: We ourselves quite support the combing-out abroad. On the other hand we must be entitled—and this was agreed—to exclude or prefer particular kinds of work, e.g., the armor factories. In France we are more and more turning towards giving up finishing processes and stressing the subcontracting. It is the foundries and similar works, e.g., for the use of the aluminum industry, which we wish to use to capacity. We could force the production of Opel, so that in this case Peugeot who manufacture the forged parts for Opel, the parent firm, might demand more labor for this while the rest of their workers would be taken over by Opel.

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PARTIAL TRANSLATION OF DOCUMENT R-124
PROSECUTION EXHIBIT 48-A

EXTRACTS FROM STENOGRAPHIC MINUTES OF THE THIRTY-SIXTH
CONFERENCE OF THE CENTRAL PLANNING BOARD,
22 APRIL 1943

Dr. Jaenicke/
Secret

Top Secret State Matter

*STENOGRAPHIC MINUTES OF THE 36TH CONFERENCE
OF THE CENTRAL PLANNING BOARD*

*Concerning 1943-44 coal economy plan. Held on Thursday, 22
April 1943, 1550 hours at the Festival Hall at the Zoo, Jebenstr.*

* * * * *

SPEER: Throughout the winter we have seen that in the last instance it is coal which provides the basis for all plans we wish to execute in other respects, and most of you are also aware of our intention to increase the manufacture of iron. Here also it will again be coal which in the last instance will tip the scales, whether or not we shall be able to accomplish this increase of iron production. Seen from the Central Planning Board, we are of the opinion that the demand for coal as well as the demand for iron ought to be coordinated in a separate plan, and that this plan ought to receive about the same degree of urgency as the Krauch plan, and that with regard to labor, the conditions required for the execution of that plan must be established. Perhaps Mr. Timm will be able to state how he expects the question of the miners to be developed; unfortunately the miners cannot be taken from the German reservoir, in their place we shall have to use very strong foreigners.

TIMM: At the moment, 69,000 men are needed for hauling that coal. We want to cover this by finding within the Reich 23,000 men, viz., healthy prisoners of war, etc., who are especially suitable for mining—and by dispatching 50,000 Poles from the General Government. Out of these about 30,000 men have been supplied up to 24 April, so that about 39,000 men are still outstanding for January to April. The demand for May has been reported to us at 35,700. The difficulties existed especially with regard to recruitment in the General Government, since in every district surrounding Germany there is an extraordinary resistance to recruitment. In all countries we have to change over more or less to registering the men by age groups and to conscripting them in age groups. They do appear for registration as such, but as soon as transport is available, they do not come back so that the dispatch of the men has become more or less a question for the police.

Especially in Poland the situation at the moment is extraordinarily serious. It is well known that vehement battles occurred just because of these actions. The resistance against the administration established by us is very strong. Quite a number of our men have been exposed to increased dangers, and it was just in the last two or three weeks that some of them were shot dead, e.g., the head of the labor office in Warsaw who was shot in his office, and yesterday another man again. This is how matters stand presently, and the recruiting itself even if done with the best will remain extremely difficult unless police reinforcements are at hand.

* * * * *

SPEER: These [women] we can use in the Reich. There are a great number of Russian PW's and laborers who are employed at places where they need not be employed. There can be an exchange. The only thing is to do this with unskilled workers, and not to take the workers from the industry where they were trained with difficulty.

KEHRL: Where we are late in completion of a task, or where we lose an opportunity, we can make up for it. But any coal which we cannot haul at once is definitely lost for use in this war. This is why we cannot do enough to force the allotment to the pits.

SPEER: But not by forcible actions in smashing what we toil-somely built.

(KEHRL: We need not do that!)

You ought to add the conscripted labor.

TIMM: We must endeavor to get German men for working at the coal-face.

KEHRL: We subsist on foreigners who live in Germany.

TIMM: These men are concentrated within a very small area. Otherwise there might be trouble in this sector.

SPEER: There is a specified statement showing in what sectors the Russian PW's have been distributed, and this statement is quite interesting. It shows that the armaments industry only received 30 percent. I always complained about this.

TIMM: The highest percentage of PW's are Frenchmen, and one ought not to forget that it is difficult to employ them at the coal-face. The number of Russians living within the Reich is small.

ROHLAND: In the mines one should exclusively use eastern people, not western ones.

SPEER: The western men collapse!

* * * * *

SPEER: In any case we ought to force the coal production with all our power. I now have here a statement on the distribution of the Soviet prisoners. There are 368,000 altogether. Of these are: 101,000 in agriculture; 94,000 in the mining industry—who are not available in any case; 15,000 in the building materials industry; 26,000 in iron and metal production where they cannot be extracted either; 29,000 in the manufacture of iron, steel, and metal goods; 63,000 in the manufacture of machines, boilers, and cars, and similar appliances, which means in armaments industry; and 10,000 in the chemical industry. Agriculture has received by far the most of them, and the men employed there could in the course of time be exchanged for women. The 90,000 Russian PW's employed in the whole of the armaments industry

are for the greatest part skilled men. If you can extract 8-10,000 men from there, it would already be the limit.

KEHRL: Would it not be possible to add Serbians, etc.?

SOGEMEIER: We ought not to mix too much.

ROHLAND: For God's sake, no Serbians! We had very bad experiences with mixing.

* * * * *

SPEER: Everything depends on the amount of the influx from abroad.

SCHIEBER: If anyway nothing arrives, the mines certainly will get nothing.

TIMM: Gauleiter Sauckel is perfectly convinced that the transports will be on their way within a short time. Now the front has been consolidated at last.

SCHIEBER: We ought to be grateful that the weather has allowed the farmer to keep things going in some way despite the little labor being available to him. For the farmer, the coal supply is just as important as for the whole of the armaments industry. When we discuss tomorrow the nitrogen problem we shall see the same; our first need is coal.

KOERNER: On 1 April we had in agriculture a deficit of about 600,000 laborers. It had been planned to cover it by supplying labor from the East, mainly women. These laborers will first have to be supplied until other laborers are released from agriculture. We are just entering the season where the heaviest work in the fields has to be done, for which many laborers are necessary. Much labor is needed for the hoeing of the fruits, and it is to be hoped that this year the harvest can be started early which would be rendered much more difficult if an exchange of labor would have to take place.

* * * * *

MILCH: We ought to except certain areas of the Protectorate to which the orders are being directed, and extract nothing there until a surplus is found out subsequently. For the time being it cannot be ascertained. There are enough other areas of the Protectorate which are not affected by the industry plan and some labor could be extracted from them at once. We ought to name the places which are excepted from our action.

TIMM: In this the authorities on the other side ought to participate; they are in the best position to tell the places from where nothing must be extracted.

MILCH: If one proceeds as I proposed, and Timm agreed to it, no damage can be done. This ought to be done in any case. For the rest I completely agree; we must now supply the mines

with labor. The greatest part of labor which we can supply from the East will indeed be women. But the eastern women are quite accustomed to agricultural work, and especially to the type of work which has to be done these coming weeks, the hoeing and transplanting of turnips, etc. The women are quite suitable for this. One thing has to be considered: first you must supply agriculture with the women, then you can extract the men, laborer for laborer. It is not the right thing if first the men are taken away and the farmers are left without labor for 4 to 6 weeks. If the women arrive after such time they arrive too late.

SPEER: Beyond this we are prepared to release from all parts of the war economy, in exchange for women, any Russian PW's or other Russian who is employed as auxiliary laborer.

* * * * *

PARTIAL TRANSLATION OF DOCUMENT R-124
PROSECUTION EXHIBIT 48-A

REPORT OF THE FORTY-SECOND CONFERENCE OF THE CENTRAL
PLANNING BOARD, 23 JUNE 1943

The Plenipotentiary for the Four Year Plan
Central Planning Board
Z.P. 148

Berlin W 8, 24 June 1943
Leipziger Strasse 3

24 copies, 17th copy

Top Secret State Matter

REPORT ON THE 42D CONFERENCE OF THE CENTRAL
PLANNING BOARD ON 23 JUNE 1943, 1600 HOURS

Coal situation

The manpower situation in the coal mining industry, particularly in the hard coal mining industry, is still unsatisfactory, and necessitates an extension of the measures decided upon at the 36th Conference of the Central Planning Board, held on 22 April 1943.

The intensive discussion yielded as the most expedient solution the use of Russian prisoners of war to fill the existing vacancies. The more homogeneous character of the shifts will bring about the necessary higher output resulting both from an increased

capacity of such shifts and particularly from a restriction of fluctuations.

1. The present drive, which is to be carried out throughout the German economy proper, aims both at freeing Russian labor, fit for work in the mining industry and actually not employed as semi-skilled workmen, and at replacing it by additionally imported labor consisting of eastern workers, Poles, etc. Thus, about 50,000 workmen are expected to be made available up to the end of July 1943. This drive is to be accelerated.

Furthermore as an immediate measure it should be suggested to the Fuehrer—RVK [Reich Association Coal] and GBA [Plenipotentiary General for Labor Allocation] submitting the necessary figures for the statement to the Fuehrer—that 200,000 Russian prisoners fit for the heaviest work be made available from the Wehrmacht and Waffen SS through the chiefs of the army groups [Heeresgruppenchefs]. The prisoners will be selected on the spot by medical officers of the mining industry and officials of the office of the Plenipotentiary General for Labor Allocation will take charge of them there and then. Provisions are to be made for an extension of this program in order to satisfy any demand for manpower, which will have accumulated up to the end of the year 1943.

The manpower needed by the mining transport industry [Bergbau-Zubringer-Industrie] and by the iron-producing industry may be supplied from that same source provided that the necessities of the coal mining industry have previously been adjusted.

The performance of the Soviet Russians so employed is to be raised by a premium system. For this purpose, the present pay restrictions are to be lifted and the manager [Betriebsfuehrer] be allowed to distribute amongst the workers, according to his discretion, one Reichmark per head per day as premium for particular services rendered.

Furthermore, care will be taken that workmen can exchange these premiums, which will be paid out in camp money [Lagergeld] for goods. It is intended to put at their disposal various provisions (e.g., sunflower seeds, etc.) beer, tobacco, cigarettes and cigars, small items for daily use, etc.

The Reich Food Ministry in conjunction with the Reich Association Coal and the Reich Ministry of Economic Affairs will clarify the question whether, beyond that, something else can be changed as far as rations are concerned.

2. Equally, in occupied countries, labor is to be tied more securely to the various factories by means of the distribution of additional ration cards as premium for good services. This refers

in particular to the General Government and the occupied territories in the East. The output demanded of the General Government is to be fixed at the proposed amount, and the additional rations for armament workers may then be rated accordingly.

[Typewritten signature] DR. GRAMSCH

Present:

Reich Minister Speer

Field Marshal Milch

Staatsrat Schieber

Reich Ministry for Armament
and Munitions

Oberbuergermeister Liebel

Reich Ministry for Armament
and Munitions

Major General Waeger

Reich Ministry for Armament
and Munitions

Dr. Ing. Groener

Reich Ministry for Armament
and Munitions

Praesident Kehrl

Reich Economic Ministry

Min. Dir. Gramsch

Four Year Plan

Min. Dirig. Timm

Plenipotentiary General for
Labor Allocation (GBA)

Staatsrat Pleiger

Reich Association Coal (RVK)

Dr. Sogemeier

Reich Association Coal (RVK)

Dr. Rosenkranz

Reich Association Coal (RVK)

PARTIAL TRANSLATION OF DOCUMENT R-124
PROSECUTION EXHIBIT 48-A

EXTRACTS FROM STENOGRAPHIC MINUTES OF THE FIFTY-THIRD
CONFERENCE OF THE CENTRAL PLANNING BOARD,
16 FEBRUARY 1944

Secret!

*STENOGRAPHIC MINUTES OF THE 53D CONFERENCE
OF THE CENTRAL PLANNING BOARD*

*Concerning Supply of Labor held on 16 February 1944, 10 o'clock,
in the Reich Air Ministry*

Present: Milch (for Central Planning Board), Kehrl, Backe, etc.

MILCH: The armament industry employs foreign workers to a large extent, according to the latest figures—40 percent. The new allocations of the Plenipotentiary General for Labor Allocation consist mostly of foreigners and we lost a lot of German personnel which was called up. Specially the air industry being a young industry employs a great many young people who should be called up. This will be very difficult as is easily seen if one deducts those working for experimental stations. In mass production the foreign workers by far prevail. It is about 95 percent and higher. Our best new engine is made 88 percent by Russian prisoners of war and the other 12 percent by German men and women. 50-60 Ju 52's which we now regard only as transport planes are made per month. Only 6-8 German men are working on this machine, the rest are Ukrainian women who have beaten all the records of trained workers.

* * * * *

The list of the shirkers should be entrusted to Himmler's trustworthy hands who will make them work, all right. This is very important for educating people and has also a deterrent effect on such others who would likewise feel inclined to shirk.

* * * * *

* * * It is, therefore, not possible to exploit fully all the foreigners unless we compel them by piece work or have the possibility of taking measures against foreigners who are not doing their bit. But if the foreman lays hands on a prisoner of war or smacks him, at once there is a terrible uproar, the man is put into prison, etc. There are sufficient officials in Germany who think it their most important duty to stand up for human rights instead of war production. I, too, am all for human rights.

But if a Frenchman says, "You fellows will all be hanged and the chief of the factory will be beheaded first", and if then the chief says, "I am going to hit him", then he is in a mess. He is not protected, but the "poor fellow" who said that to him is protected. I have told my engineers, "I am going to punish you if you don't hit such a man; the more you do in this respect the more I shall praise you. I shall see to it that nothing happens to you." This is not yet sufficiently known. I cannot talk to all plant leaders. I should like to see the man who stays my arm because I can take care of anybody who does so: If the little plant leader does that he is put into a concentration camp and runs the risk of losing the prisoners of war. In one case two Russian officers took off with an airplane but crashed. I ordered that these two men be hanged at once. They were hanged or shot yesterday. I left that to the SS. I expressed the wish to have them hanged in the factory for the others to see. * * *

* * * * *

PARTIAL TRANSLATION OF DOCUMENT R-124
PROSECUTION EXHIBIT 48-B

REPORT ON THE FIFTY-THIRD CONFERENCE OF THE CENTRAL
PLANNING BOARD, 16 FEBRUARY 1944

[Marginal notes] St. 10-44 VII Top Secret

The Plenipotentiary for the Four Year Plan

Central Planning Board

Z.P. 7 g. Rs.

Pl. 030053

Berlin, 18 February 1944

W 8, Leipziger Strasse 3

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31 copies, 3d copy

[Milch's initial]

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REPORT ON THE 53D CONFERENCE OF THE CENTRAL
PLANNING BOARD ON 16 FEBRUARY 1944,
ON LABOR ALLOCATION 1944

The purpose of this conference is to determine the labor needs and resources for the 1st quarter and the whole year of 1944. The session is opened by the discussion of the data submitted by the planning office (see enclosures 1-9). On the basis of the planning office's estimate of the requirements (enclosure 9) these turn out, after discussion with the individual allottees, to be the following:

	First Quarter-44	Second- Fourth Quarter-44 in 1000's	Total
Agriculture	70 ¹	70 ²	140
Forestry and Timber Industry..	40 ³	.. ⁴	40
Armament and War Production.	544 ⁵	3,000 ⁶	3,544
Air Raid Damages.....	100	50	150 ⁷
Communications	85 ⁸	265	350
Distribution .....	..	..	..
Public Administration	62 ⁹	..	62
Wehrmacht Administration ...	130	..	130
	1,031	3,385	4,416

¹ Not including the 200,000 of whom 100,000 each will flow back from industry and forestry.

² Not including the demand for seasonal workers amounting usually to 62,000.

³ 25,000 for forestry and 15,000, including 8,000 women for the timber industry, as against a peacetime requirement of 150,000 male and 40,000 female seasonal workers, although now considerably increased production (1943:70 million cubic meters; 1944:80 million cubic meters) and particularly heavy combing-out through draft.

⁴ Starting autumn 1944, the usual necessary transfer from agriculture.

⁵ Found to be a priority requirement for February with the Plenipotentiary for Labor Allocation.

⁶ Starting March, 200,000 monthly as compensation for fluctuations—2 million for period March to December 1944. Plus compensation for return to agriculture 100,000 (cp. note 1) including 30,000 retrained workers who perhaps will have to be covered by an over-all exchange system and about 900,000 as replacement for draftees, as reserves for increased programs, etc., making about 3 million men all told for the period from March to December 1944.

⁷ 150,000 is the minimum requirement in addition to the hitherto assigned 70,000 OT, 100,000 GB construction and 118,000 workmen to the local and district assignments and 42,000 workers centrally assigned. The mobile formations are to be increased and sometimes to be reinforced by local help, particularly by people unemployed through bombings.

⁸ Including 75,000 for the Reichsbahn, 1,000 for inland navigation, 7,000 for motor traffic, 2,000 for minor railways.

⁹ Including 27,000 for the Reichspost and 35,000 for the Red Cross.

In this estimate, real fluctuation (departure from work) as well as fictitious fluctuation (change of work location) are taken into account. Fictitious fluctuation is still to be variously estimated in the various branches. For the armament section it is estimated at 50 percent of the total fluctuation (cp. note 6). The total requirements of approximately 4,4 million would thus de-

crease by up to 1 million. The above estimate of requirements ought, therefore, in no case to exceed the requirements determined at the Fuehrer's conference on 4 January 1944, comprising only the real fluctuation and amounting to 4,05 million namely:

1. Maintenance of the status of activity in the whole of the war economy including agriculture, taking into account the replacement of deficiencies due to drafts into the Wehrmacht, deaths, illness, expiration of contract, etc. (real fluctuation)	2,5 million
2. For additional armament tasks and removal of bottleneck situations in armament plants....	1,3 million
3. Air raid defense constructions, etc.....	0,25 million
	<hr/>
Total	4,05 million

Kehrl is charged with the task of ascertaining the magnitude of real and fictitious fluctuation, and as a basis thereto, on behalf of the Central Planning Board, together with the competent offices, to determine the concepts, "real and fictitious fluctuation," furthermore the concepts, assignment, reserves [Aufstockung], etc., in a uniform terminology which will be binding for all agencies concerned.

The following resources are the GBA's [Sauckel's] estimated coverage of the requirements:

1. With the utmost efforts, other workers can be mobilized from German domestic reserves (getting hold of labor unemployed as result of enemy air raids, compulsory registration, shutting down, combing out measures)	500,000
2. Recruitment of Italian labor numbering at the rate of 250,000 a month from January to April—1,000,000 and 500,000 from May to December..	1,500,000
3. Recruitment of French labor at equal monthly rates, from 1 February to 31 December 1944 (approx. 91,000 per month)	1,000,000
4. Recruitment of labor from Belgium.....	250,000
5. Recruitment of labor from the Netherlands....	250,000
6. Recruitment of labor from the eastern territories, occupied former Soviet territories, Baltic states, and General Government	600,000
7. Recruitment of workers from other European countries	100,000
	<hr/>
Approximately	4,2 million

In addition, the following possibilities are seen for the mobilization of more reserves: Intensification of employment of women (in England, 61 percent of women between 14 and 65 are conscripted for the war economy, in Germany only 46 percent) especially in agriculture (more stringent application of the Goering ordinance), reduction in number of domestic assistants, reduction of the idle classes (Sauckel-Kehrl-Himmler, in this respect regional round-ups are to be carried out separately for foreigners, men and women) improvement of the sanitary system (saving up to 3 percent), working out of equitable contractual wages with incentive wage premiums. The planning office undertakes in common with the GBA [Sauckel] the examination of these possibilities for an intensified mobilization. Kehrl is moreover commissioned to make a general examination of the question of an improvement of industrial labor assignment. Everyone concerned will transmit their data on faulty assignment of workers to the planning office. If necessary, this question will be handled at a special session of the Central Planning Board.

For the 1st quarter of 1944 the following resources (including a fictitious fluctuation of about 50,000 per month) are given by the estimate of the GBA [Sauckel]:

Assignments in January	145,000
Assignments February-March	500,000
	650,000
Approximately	650,000

The adjustment of requirements and coverage will be effected at another session of the Central Planning Board.

[Signed] STEFFLER

Present:

Field Marshal Milch	
State Secretary Koerner	
President Kehrl	
Ministerial Councillor Steffler	
Maj. Gen. Waeger	Ministry for Armament and Munitions
Teuscher	Ministry for Armament and Munitions
KVV Chief Bosch	Ministry for Armament and Munitions
Ministerial Councillor Wissmann	Ministry for Armament and Munitions

Lt. Col. Schaede	Ministry for Armament and Munitions
Provincial Counsellor Berk	Plenipotentiary for Labor Allocation
State Secretary Hayler	Reich Economic Ministry
General of Engineers Sellschopp	Reich Air Ministry
Staff Engineer Kaufmann	Reich Air Ministry
Staff Secretary Ganzenmueller	Reich Transport Ministry
Ministerial Director Hassenpflug	Reich Transport Ministry
Ministerial Councillor Hennig	Reich Transport Ministry
State Secretary Backe	Reich Food Ministry
State Secretary Alpers	Reich Office for Forestry
Prof. Abetz	Reich Office for Forestry
State Secretary Gutterer	Propaganda Ministry
Mayor Ellgering	Propaganda Ministry
Gen. Weidemann	OKW
Major Koch	OKW

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Pla. 160/ 11.2.

List of persons invited to the Conference of the Central Planning Board on 16 February 1944:

Chairman: Field Marshal Milch

Participants:

Reich Minister of Economy Funk
State Secretary Koerner
State Secretary Dr. Backe
General Forester Dr. Alpers
State Secretary Dr. Ganzenmueller
State Secretary Dr. Gutterer
President Kehrl
Maj. Gen. Waeger
Ministerial Manager Dr. Timm (crossed out and replaced by
Provincial Councillor Berk)
Military Government vice-regent Dr. Bosch
Ministerial Councillor Dr. Steffler

PARTIAL TRANSLATION OF DOCUMENT R-124
PROSECUTION EXHIBIT 48-A

EXTRACTS FROM THE STENOGRAPHIC MINUTES OF THE
FIFTY-FOURTH CONFERENCE OF THE CENTRAL PLANNING
BOARD, 1 MARCH 1944

*STENOGRAPHIC MINUTES OF THE 54TH CONFERENCE *
OF THE CENTRAL PLANNING BOARD*

Re: Labor Supply on Wednesday, 1 March 1944, 10 o'clock, at the
Ministry for Air Transport

SAUCKEL: Field Marshal [Milch], Gentlemen, it goes without saying that we shall satisfy as far as possible the demands agreed upon by the Central Planning Board. In this connection I wish to state that I call such deliveries as can be made by the Plenipotentiary for Labor Allocation "possible" by stressing every nerve of his organization. Already on 4 January I had to report to the Fuehrer with the greatest regret that for the first time I was not in a position to guarantee delivery of the grand total of 4,050,000 men then calculated in the Fuehrer's Headquarters for the year 1944. In the presence of the Fuehrer I emphasized this several times. In the previous years I was able to satisfy the demands, at least with regard to the number of laborers, but this year I am no longer able to guarantee them in advance. In case I can deliver only a small number, I should be glad if those arriving would be distributed by percentage within the framework of your program. Of course, I shall readily agree if I am now told by the board: Now we have to change the pro-

* Another portion of the minutes of this meeting was introduced by the defense as Defense Exhibit 31. See pp. 517 to 523.

gram; now this or that is more urgent. It goes without saying that we will satisfy the demands whatever they may be, to the best of our ability, with due regard to the war situation. So much about figures!

We have no reason to contest the figures as such, for we ask nothing for ourselves. We are not even able to do anything with the laborers we collect; we only put them at the disposal of industry. I only wish to make some general statements and ask for your indulgence.

In the autumn of last year the supply program, inasmuch as it concerns supply from abroad was frustrated to a very great extent; I need not give the reasons in this circle; we have talked enough about them, but I have to state: the program has been smashed. People in France, Belgium, and Holland thought that labor was no longer to be directed from these countries to Germany because the work now had to be done within these countries themselves. For months—sometimes I visited these countries twice within a month—I have been called a fool who against all reason travelled around in these countries in order to extract labor. This went so far, I assure you, that all prefectures in France had general orders not to satisfy my demands since even the German authorities quarreled over whether or not Sauckel was a fool. If one's work is smashed in such a way, repair is very, very difficult. * * *

* * * * *

* * * Today I am able to report that we stopped that decrease. According to most accurate statistics, which I had ordered, we have today again including foreign workers and prisoners of war, the same number of 29.1 million which we had in September. But we have added nothing since that time. Thus we dispatched to the Reich in those two months no more than 4,500 Frenchmen which amounts to nothing. From Italy only 7,000 civilians arrived. This, although from 1 December until today, I have had no hour, no Sunday, and no night for myself. I have visited all these countries and travelled through the whole Reich. My work was terribly difficult, but not for the reason that no more workers are to be found. I wish to state expressly, in France and in Italy there are still men galore. The situation in Italy is nothing but a European scandal, the same applies to a certain extent to France. Gentlemen, the French work badly and support themselves at the expense of the work done by the German soldier and laborer, even at the expense of the German food supply, and the same applies to Italy. I found out during my last stay that the food supply of the northern Italians can-

not suffer any comparison with that of the southern Italians. The northern Italians, viz., as far to the south as Rome are so well nourished that they need not work; they are nourished quite differently from the German nation by their Father in Heaven without having to work for their bread. The labor reserves exist but the means of touching them have been smashed.

The most abominable point made by my adversaries is their claim that no executive had been provided within these areas in order to recruit in a sensible manner the Frenchmen, Belgians, and Italians and to dispatch them to work. Thereupon I even proceeded to employ and train a whole batch of French male and female agents who for good pay, just as was done in olden times for "shanghaiing", went hunting for men and made them drunk by using liquor as well as words in order to dispatch them to Germany. Moreover I charged some able men with founding a special labor supply executive of our own, and this they did by training and arming, with the help of the Higher SS and Police Leader, a number of natives, but I still have to ask the Munitions Ministry for arms for the use of these men. * * *

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* * * Especially the protected factories in the occupied countries make my work more difficult. According to reports received within the last days these protected factories are to a great part filled to capacity, and still labor is sucked up into these areas. This strong suction very much obstructs our desire to dispatch labor to the Reich. I wish to emphasize that I never opposed the use of French labor in factories which had been transferred from Germany to France. I am still sound of mind, and as recently as last summer I charged Mr. Hildebrand with an inquiry in France which had the following result: It would be easy to extract from French medium and small factories—80 percent of all French factories are small enterprises with only 36-40 working hours—1 million laborers for use in the transferred factories, and 1 million more for dispatch to Germany. To use 1 million within France should be quite possible unless the protected factories in France artificially suck up the labor completely and unless their number is continually increased, as happens according to my reports especially in Belgium, and unless new categories of works are continually declared protected, so that finally no labor is left which I may use in Germany. I wish here and now to repeat my thesis: A French workman, if treated in the right way, does double the amount of work in Germany that he would do in France, and he has here twice the value he has in France. I want to state clearly and fearlessly—

the exaggerated use of the idea of protected factories in connection with the labor supply from France in my submission implies a grave danger for the German labor supply. If we cannot come to the decision that my assistants, together with the armament authorities, are to comb out every factory, this fountain of labor too in the future will remain blocked for the use of Germany, and in this case the program prescribed to me by the Fuehrer may well be frustrated. The same applies to Italy. In either country there are enough laborers, even enough skilled workers; only we must have enough courage to step into the French plants. What really happens in France, I do not know. That a smaller amount of work is done during enemy operations in France, like in every occupied country, than is done in Germany seems to me evident. If I am to fulfill the demands which you present to me, you must be prepared to agree with me and my assistants, that the term "protected factory" is to be restricted in France to what is really necessary and feasible by reasonable men, and the protected factories are not, as the Frenchmen think, protected against any extraction of labor from them for use in Germany. It is indeed very difficult for me to be presented to French eyes as a German of whom they may say, Sauckel is here stopped from acting for German armament! * * * On the other hand, I have grounds for hoping that I shall be just able to wiggle through, first by using my old corps of agents and my labor executive, and secondly by relying upon the measures which I was lucky enough to succeed in obtaining from the French Government. In a discussion lasting 5-6 hours I have exerted from M. Laval the concession that the death penalty will be threatened for officials endeavoring to sabotage the flow of labor supply and certain other measures. Believe me, this was very difficult. It required a hard struggle to get this through. But I succeeded and now in France, Germans ought to take really severe measures, in case the French Government does not do so. Don't take it amiss, I and my assistants in fact have sometimes seen things happen in France that I was forced to ask, is there no respect any more in France for the German lieutenant with his 10 men. For months every word I spoke was countered by the answer: But what do you mean, Mr. Gauleiter, you know there is no executive at our disposal; we are not able to take action in France! This I have been answered over and over again. How then, am I to regulate the labor supply with regard to France. There is only one solution—the German authorities have to cooperate with each other, and if the Frenchmen despite all their promises do not act, then we Germans must make an example of one case, and, by reason of this law, if necessary put prefect or

burgomaster against the wall, if he does not comply with the rules; otherwise no Frenchman at all will be dispatched to Germany. During the latter quarter the belief in a German victory and in all propaganda statements which we were still able to make has sunk below zero, and today it is still the same. I rather expect the new French ministers, especially Henriot [French (Vichy) Minister of Propaganda] will act ruthlessly; they are very willing and I have a good impression of them. The question is only how far they will be able to impress their will on the subordinated authorities. Such is the situation in France.

In Italy the situation is exactly the same, perhaps rather worse. * * *

Moreover, I am offended, and this grieves me most, by the statement that I was responsible for the European partisan nuisance. Even German authorities reproached me thus, although they were the last ones who have the right to make such statements. I wish to protest against this slander, and I can prove that it is not I who is responsible. * * *

* * * Numerous German authorities, even such as had no connections with economics and labor supply, inquired of me, why do you fetch these people to Germany at all? You make trouble for this area and render our existence there more difficult. To which I can only reply: It is my duty to insist on it that labor supply comes from abroad. There is no longer a German labor supply. That the latter is exhausted I already proved by my ill-famed manifesto of April of last year. But I am not able to transfer the German soil to France. Nor can I transfer the German traffic to France nor the German mines. Nor can I transfer the German armament works which still have to release part of their workers, if fit for war service, nor their machines. Here alone 2,500,000 men are in question as has been calculated in the Fuehrer conference. It is the flower of German workers who go to the front and must go there. I have always been one of those who says: If only energetic measures are applied in fetching labor from abroad, then we want to release in God's name everybody from armaments work whom we can, in order to strengthen our companies. The 1st and 7th Armored Divisions from Thuringia are frequently mentioned in the armed forces report, I can only tell you that the number of soldiers killed in battle in some Thuringian villages has surpassed for some time already the number of soldiers killed in the World War [I] by twice that amount. This I mention in my capacity as Gauleiter. It is for this reason that we have to do our duty. The best kind of German men, and men in the prime of life, have to go to the front, and German women of more than 50 years of age cannot replace

them. Therefore I have to continue to go to France, Belgium, Holland, and Italy, and there will be a time again when I shall go to Poland and extract workers there as fit and as many of them as I can get. In this circle I only wish to urge that you spread it around that I am not quite the insane fellow I have been said to be during the last quarter of a year. Even the Fuehrer has been told so. It goes without saying that just this slander has had the effect that I was unable to deliver in the last quarter at least 1½ million workers whom I would have been able to deliver as long ago as last year, had the atmospheric conditions been better. It was due to that "artificial atmospheric screen", that they did not arrive. I am aware that they simply have to arrive this year. My duty to the Fuehrer, the Reich Marshal, Minister Speer, and towards you, Gentlemen, and to agriculture is apparent, and I shall fulfill it. A start has been made, and as many as 262,000 new workers have arrived, and I hope and am convinced to be able to deliver the bulk of the order. How the labor is to be distributed will then have to be decided according to the needs of the whole of German industry, and I shall always be prepared to keep the closest contact with you, Gentlemen, and to charge the labor exchanges and the district labor exchanges with intimately collaborating with you. Everything is functioning if such collaboration exists. * * *

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MILCH: * * * I now proceed to the important question, where are we still able to get greater amounts of laborers from you, and without a doubt the answer is, from abroad. I have asked Mr. Schieber to make a short appearance here in order to give his opinion on Italy. I agree with your statement, Gauleiter, that it is only the bad organization of our work abroad which is responsible for the fact that you can't do your job. Too many people meddle in your work. If someone tells you, there is no executive in France and Italy, I consider it an impudence, a foolish and stupid lie uttered by people who either are unable to think or consciously state an untruth. This kind of person is not interested in giving a clear lead in this respect and in analyzing the situation, probably because they are not smart enough. In this way, however, your work is rendered more difficult or frustrated, and all armament work at the same time. For we have it before our eyes what close relations exist between the situation in the occupied countries and that in the armaments industry. A more foolish policy can hardly be conceived. In case the invasion of France begins and succeeds only to a certain degree, then we shall experience a rising by partisans such as we have never

experienced either in the Balkans or in the East, not because this would have happened in any case, but only because we made it possible by not dealing with them in the right manner. Four whole age groups have grown up in France, men between 18 and 23 years of age, who are, therefore, at that age when young people moved by patriotism or seduced by other people are ready to do anything which satisfies their personal hatred against us—and of course they hate us. These men ought to have been called up in age groups and dispatched to Germany; for they present the greatest danger which threatens us in case of invasion. I am firmly convinced and have said several times, if invasion starts, sabotage of all railways, works, and supply bases will be a daily occurrence, and then it will be really the case that our forces are no longer available to survey the execution of our orders within the country, but they will have to fight at the front, thereby leaving in their rear the much more dangerous enemy who destroys their communications, etc. If one had shown the nailed fist and a clear executive intention, a churchyard peace would reign in the rear of the front at the moment the uproar starts. This I have emphasized so frequently, but still nothing is happening, I am afraid. For if one intends to start to shoot at that moment, it will be too late for it; then we have no longer the men at our disposal to kill off the partisans. In the same way, we are aware of the fact that their supply of arms in the West is rather ample since the English are dropping them from planes. I consider it an idiotic statement if you, Gauleiter, are accused of having made these men into partisans. As soon as you arrive the men run away to protect themselves from being sent to Germany. Then they are away, and since they do not know how to exist, they automatically fall into the hands of the partisan leaders; but this is not the consequence of the fact that you wish to fetch them, but of the fact that your opposite number, the executive is not able to prevent their escape. You simply cannot act differently. The main crux of the problem is the fact that your work is made so extremely difficult, and this is why you cannot deliver the 4,050,000 workers. As long as it is feasible for these men to get away and not be caught by the executive, as long as the men are able not to return from leave and not to be found out on the other side, I do not think, Party Comrade Sauckel, that you will have a decisive success through employing your special corps. The men even then will be whisked away unless quite another authority and power is on the watch, and this can only be the army itself. The army alone can exercise effective executive. If some say they cannot do this kind of work, this is incorrect for within France there are training forces stationed

in every hole and corner town and every place which could all be used for this work. If this would be done in time, the partisan nuisance would not emerge, just as it would not have done in the East if one had only acted in time. Once I had this task at Stalingrad. At Taganrog there were then 65,000 men of the army, and at the front one lieutenant and 6 men were actually available for each km. and they would have been only too glad if they had 20-30 for their assistance. In the rear there were great masses of men who had retreated in time and squatted down in the villages, and who now were available neither for fighting at the front nor for fighting the partisans. I am aware that I am placing myself in opposition to my own side, but I have seen such things happen everywhere, and can find no remedy but that the army should assert itself ruthlessly. You, Gauleiter Sauckel, the Reich Marshal, and the Central Planning Board ought to report on this question to the Fuehrer, and then he ought to decide at the same time on the duties of the military commanders. There ought to be orders of such lucidity that they could not be misunderstood, and it is then that things will be in order. It never can be too late to do so, but these duties and this work will be more difficult to perform with every passing day. The same applies to Italy as well.

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SAUCKEL: I wish to insist on combing out the protected factories in the future also for the protected factories are working like a suction pump; and since it is known everywhere in Italy and France that every worker if he works in a protected factory is protected against any attempt of mine to extract him, it is only too natural that the men are pouring into these factories. How difficult my task becomes thereby is proved by the following fact. I intended to extract from Italy a million workers within the quarter ending 30 May. Hardly 7,000 arrived in the two months which expired so far. This is indeed the difficulty. The bulk enters the protected factories, and only the chaff remains for my purpose to send them to Germany. At least I hope to accomplish that with regard to larger enterprises as the number of protected factories is restricted in Italy, i.e., the number of protected factories, will not be further increased.

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SAUCKEL: This indeed is the decisive question, the one we are dealing with now. If half of the program for 4 million workers to be brought to Germany—in other words 2 million—cannot be fulfilled, the employment of labor in Germany will fall off this year. The more useful workers, however, are in France, and of

course in Italy too, employed in the protected factories. Therefore if I am not to touch the protected factories which are situated in these countries, this will have the effect that the less valuable workers instead of the more valuable type will arrive in Germany. And here we have to ponder about what is in fact more important and expedient. If we give up using these people in Germany, where we effectively rule the factories, where moreover we keep to a different labor discipline and reach better labor results than in France proper, then we give up the valuable kind, and then I shall only be able to transport to Germany the less valuable kind of people who still can be found on the streets of France or Italy, or people like waiters, hairdressers, small folk from tailor shops, etc.

MILCH: What is the percentage of protected factories in Italy compared with the whole of Italian labor?

SCHIEBER: I think 14 percent, but I don't have the figures here.

MILCH: Would not the following method be better: We could take under German administration the entire food supply for the Italians and tell them: Only he gets any food who either works in a protected factory or goes to Germany.

SAUCKEL: True, the French worker in France is better nourished than the German worker is in Germany, and the Italian worker too, even if he does not work at all, is better nourished in the part of Italy occupied by us than if he works in Germany. This is why I asked the German food authorities over and over again to improve also the food of the German worker introducing the "factory sandwich". When I am in Paris, of course, I go to Maxim's. There one can experience miracles of nourishment. The Fuehrer still thinks that in these countries only very rich men who can go to Maxim's are well provided with food. Thereupon I sent my assistants to the Paris suburbs, to the estaminets and lunch restaurants and was told that the Frenchmen who eat there did not feel the shortage caused by the war to any degree comparable with what our nation has to experience. The average French citizen too can still buy everything he wishes.

(Interruption: This is still more so in small places!)

Yes. Moreover, the Frenchman can pay for what he can get. Therefore he has no reason for wishing to go to Germany in order to get better food. This unfortunately is the case.

MILCH: Is there nothing we can do? True, we might not be able to control the distribution to the customer, but we ought to be able to intervene at an earlier stage of distribution.

KOERNER: We have requested from France really immense

amounts of food; these requests have always been fulfilled; often after some pressure, but they have been fulfilled.

MILCH: But there is a simple remedy, let us cease supplying the troops from Germany, but tell them to provide the food for themselves from France. Then in a few weeks they will have everything eaten up, and then we can start distributing the food to the Frenchmen.

KOERNER: In France there still is for the time being a rationing system. The Frenchmen had his ration card on which he receives the minimum. The rest he provides in other ways, partly by receiving food parcels which we cannot touch at all. Every year we increase our food demands to the French Government who always satisfied them, though very frequently yielding to pressure, and in proportion to the harvest results, were they good or bad. In Italy the situation is that food is not rationed at all. The Italian can buy and eat what he wants, and since an Italian always has money and deals in the black market, he is in a much better situation than our German worker who practically has nothing but what he gets on his card.

MILCH: But don't we even send food to Italy?

KOERNER: We are exchanging certain goods.

SAUCKEL: Moreover we are now at the point that the families of French and Italian workers are no longer in a better position owing to the money transfer if their bread-winning members are working in Germany than if they remain abroad; now nothing remains to induce them to go to Germany.

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MILCH: Unfortunately, Reich Minister Speer is not present today. He certainly must have had an opinion about the whole system. His agreement with Bichelonne was to activate an additional labor supply in France itself for our armament with the aid of existing French capacities. We cannot compute the result here of what was achieved by that action. Whether the result he dreamed of has been achieved cannot be decided just yet; that is, have the S-plants given us an increase of armaments which is greater than what we would have achieved if the people had worked in Germany? I would propose that Minister Speer himself one day clarify this problem again. Because if only a negative result had been achieved, he would automatically change his point of view too.

The first question is: Is the percentage of trained people in the S-plants so great that all the others are to be regarded as rubbish? And the second question is: Is it possible at all, with the lack of so-called executive power and differing opinions on this question, to seize and transfer to Germany the remaining 80 percent who

are not in the S-plants? So, in view of the general political and organizational conditions in France, would you be able to transfer some 10-15 percent of the best of these 80 percent?

SAUCKEL: I'll have to get them.

MILCH: Can you do it at all?

SAUCKEL: Today I cannot promise anything. Today I can only do my work.

MILCH: I mean, in reference to the other 80 percent, if your hands are not tied by different circumstances, that first, there is nothing to attract these people to Germany; that second, they reckon with Germany's defeat in a short time; that third, they are attached to their families and to their country; and that fourth, they shun work because they can still exist, and without it they look on the whole period as a period of transition. On the other hand you have the fact that the army does not assist you and that the German authorities are hostile to each other, a fact which is very cleverly utilized by the French.

SAUCKEL: That has changed since my last visit. All German authorities, the Military Commander, Field Marshal von Rundstedt, Field Marshal Sperrle, have supported me considerably in these affairs.

(MILCH: I refer to the smaller authorities, the executive ones.) That has been spoiled—pardon me if I have to bring this up—because all departments, even armaments over there, were of the opinion up to 4 January, that my claims and, especially, my figures, were crazy.

(MILCH: But only people who could not understand such figures.)

Up to 4 January it was the same everywhere, from the military commander to the German Ambassador and the German armament departments. Up to then all the agencies in France had in general held the opinion: it has not been decided yet by any means, Sauckel's figures are not correct, so we have to take it easy here. And that penetrated naturally down to the lower ranks of French authorities too.

MILCH: That is just what I mean about the differences of opinion between you and Minister Speer. You say: The best thing for me is to approach the protected industries; Speer says: Leave those people alone, take 80 percent away from the others. And if one is neutral, one has to say, always with the provision that these 20 percent in the S-plants really achieve something for us, Speer is right when he says: Please do not touch my 20 percent; there are enough among the 80 percent for your use. And now I say: Why do you not take the others? Is it so difficult to approach them?

SAUCKEL: No. I need the people as well. The fact is that Speer's plants are filling up nowadays. For instance, I received the information the day before yesterday that the urge to work for the protected industries is especially strong in France just now and so the supply of skilled workers to Germany is practically cut off. Skilled workers can only be found in these plants.

KEHRL: May I explain briefly the opinion of my Minister? Otherwise the impression might be created that the measures taken by Minister Speer had been unclear or unreasonable, and I want to prevent this. Seen from our viewpoint, the situation is as follows: Up to the beginning of 1943 manufacturing for Germany was done in France only to a relatively modest extent, since generally only such work was transferred for which German capacity did not suffice; these were some few individual products, and moreover some basic industries. During all this time a great number of Frenchmen were recruited and voluntarily went to Germany.

(SAUCKEL: Some were recruited forcibly.)

The drafting started after the recruiting no longer yielded adequate results.

SAUCKEL: Out of the five million foreign workers who arrived in Germany, not even 200,000 came voluntarily.

KEHRL: Let us forget for the moment whether or not some slight pressure was used. Formally, at least, they were volunteers. After this recruitment no longer yielded satisfactory results, we started drafting according to age groups, and with regard to the first age group the success was rather good. Up to eighty percent of the age group were registered and sent to Germany. This started about June of last year. Following developments in the Russian war and the hopes raised thereby in the western nations, the results of this calling-up of age groups became considerably worse, as can be proved by the figures noted; viz., the men tried to dodge this call-up for transport to Germany, partly by simply not registering at all, partly by not arriving for the transport or by leaving the transport en route. When they found out through these first attempts during the months of July and August that the German executive either was not able or was not willing to catch these shirkers and either to imprison them or take them forcibly to Germany, the readiness to obey the call-ups sank to a minimum. Therefore, relatively small percentages were caught in individual countries. On the other hand, these men, moved by the fear the German executive might after all be able to catch them, did not enter French, Belgian, or Dutch

factories, but took to the mountains where they found company and assistance from the small partisan groups there.

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MILCH: Another question. Since now through the transfer of various industries so much is covered by French labor, as in the textile industry, etc., a corresponding number of German workers would necessarily become free as a result of that.

KEHRL: Then they will not be requisitioned here, though they would have been formerly.

TIMM: Nobody is going to be released. Probably other requests will be sent to the same factories.

SAUCKEL: In this respect I must also draw attention to the fact that the German factories which were shut down were much more up to date and probably worked with less personnel than the French factories.

MILCH: But we want all the factories to work for armaments.

KEHRL: That would also result in spreading the risk in case of air warfare.

MILCH: I believe the system to be good, as a still more severe commitment of workers for Germany would have the effect of making a considerable part of them remain over there for good. I wish you had something to back you up so you can have enough power to get it done. I do not think that anyone in France will enforce it.

SAUCKEL: But they will all right, if Germany goes at this thing the right way. It is not the insignificant French workman who should be punished, but the French policeman, who, instead of supplying people to Germany, goes to them beforehand and says: I'm coming tomorrow; you'd better get out. The French subordinate and intermediary authorities have to be punished.

MILCH: Even if Bichelonne and Laval have the best intention there will be resistance from the mayors, the gendarmes, and the prefects, just because these people are afraid that, first, they will be called to account afterwards for it, and, second, because of their patriotism, which makes them say: We must not work for the enemy of our country. Therefore, I would like to have an authority in our administration which would force these people to do it, because then the French could say: If you force us, we will do it, but voluntarily we will not do it. The same applies to Italy. There they say: Who knows who will win, whether it will be Mussolini or Badoglio or the King; only, if you force us, we are ready to do it. Therefore, we have to have something on our side which will exercise this pressure. I don't see at all why big divisions should be necessary for this. The existing forces should be sufficient to accomplish it.

TIMM: I have the feeling that we are sticking too closely to the figures and are neglecting the qualitative side of the question. The present development may permit us to fulfill our programs with regard to figures, but in the demands made by the factories the important thing for them is to have so many metal workers, etc. Then we practically have to say: You will only get unskilled workers.

KEHRL: We realize that. The plants are getting unskilled workers, at the utmost it may be possible to obtain skilled workers by transferring plants from Italy to Germany.

SAUCKEL: Then in the course of the year the factories will declare: We cannot use these workers. And over against this you have the fact that in France we have a reservoir of unused skilled workers.

MILCH: I am not worrying about that. Naturally our plants will say: We want skilled workers. But they also need a certain number of unskilled workers.

TIMM: Will it not happen that the officers making the demands say one day: But we know that in the French plants there is an excess of skilled workers which cannot be justified?

MILCH: That should be discussed again later with Speer himself. First, Speer must have the proper perspective to see what has happened as the result of all his agreements.

I can imagine that first the *numerus clausus* is introduced at once, so that the extent of the output in the S-plants is fixed, and that secondly it is decided later on that if a part of the S-plants has not worked properly after a certain period, they lose their protection again and the people from these plants can be transferred as a unit. I can foresee already now that in air armaments, part of the plants will turn out such bad production that I shall not be interested in keeping them up. So, protection for certain plants will simply be discontinued. And this will have a positive effect on the other plants, too, because they will say: If we don't do our work properly, we shall be transferred. Now during the transfer it is necessary to see that people really do arrive and do not run away before or during the transfer. If a transport has left a town and has not arrived, 500 to 600 persons from this place must be arrested and sent to Germany as prisoners of war. Such a thing is then talked about everywhere. If actions like this and other similar ones are carried out often, they would exert a certain pressure. The whole thing would be made easier if we had control of food. The stuff offered by the black market has to come from a certain depot, and there we ought to cut in.

KEHRL: That is difficult. The transport of food by parcel post has taken on extraordinary proportions in France.

MILCH: If I were military commander, I would simply confiscate the whole of the parcel post!

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PARTIAL TRANSLATION OF DOCUMENT R-124
PROSECUTION EXHIBIT 48-D

EXTRACTS FROM THE REPORT ON THE FIFTY-SIXTH CONFERENCE
OF THE CENTRAL PLANNING BOARD, 4 APRIL 1944

The Plenipotentiary for the Four Year Plan
Central Planning Board
Z.P. 18 Secr. St. Papers Pl. 030056

Berlin, 8 April 1944
[Signed] DR. GOERNER

Top Secret State Matter

REPORT ON THE 56TH CONFERENCE OF THE CENTRAL
PLANNING BOARD ON 4 APRIL 1944

Building Allocation 1944

* * * * *

The *Jaegerstab* is to get a quota of 550 million including 150 million definitely pledged from the reserve and the *air administration* is to have a quota of 200 million; both are to be checked against each other. Regarding the air administration quota, precise details (as to specific amounts, number of workers required, quantities of material, etc.) are to be submitted, building projects for the supplying industry (optical glass) are to be transferred to the office of armament supplies, trial projects are to be discussed between the commissioner of building and air H.C., the remaining demands are to be cleared between air chief administration and the Chief of the General Staff.

* * * * *

The quota recipients will be informed of their respective quotas as of guiding figures within the limits of which the commissioner of building may give assignments. The quota recipients themselves are, on the basis of these guiding figures, to re-plan their projects by concentrating on priority issues and to report which of their building projects will have to fall out including the resulting figures. Field Marshal Milch will report to the Fuehrer on the total situation of building. Reports on the quotas Air Ministry, Navy, Army, and Reichsbahn are to be sent to Field Marshal Milch forthwith.

Demands of labor, building materials, etc., as resulting from the quota allocations are to be discussed with the planning office by the quota recipients taking into account such amounts of the quota as were already used up for building purposes since 1 January 1944.

[Typed signature] STEFFLER.

Present:

Field Marshal Milch
Reich Minister Funk
State Secretary Koerner¹
President Kehrl¹
Dr. Ing. Goerner
Min. Rat Steffler

[follow names of 27 others who attended, including Under Secretary Ohlendorf,² Lt. Gen. (Artillery) Von Leeb,³ and Professor Krauch.⁴]

[Signed] STAATSRAT SCHIEBER

TRANSLATION OF DOCUMENT NOKW-287
PROSECUTION EXHIBIT 49

LETTER FROM MILCH TO SAUCKEL, 8 APRIL 1943, CONCERNING
THE PROTECTION OF INDUSTRY

Copy

The Reich Air Minister and Supreme Commander of the Air Force
St/GL

Secret

File note: 16m 10 No. 220/43 secret (GL/A-W Wi 3 II)

Berlin W 8, 8 April 1943
7 Leipziger Street
Tel. 12 0047, Ext. 5530

To the Plenipotentiary for the Four Year Plan
Plenipotentiary General for Labor Allocation
Berlin SW 11
96 Saarland Street

Subject: Protection of Industry.

The continuously increasing drafting of German workers from the production as well as from the security teams (plant protection and plant fireguards) make it necessary to assign more and

¹ Defendants in case of United States *vs.* Ernst von Weizsaecker, et al. See Vols. XII, XIII, XIV.

² Defendant in case of United States *vs.* Otto Ohlendorf, et al. See Vol. IV.

³ Defendant in case of United States *vs.* Wilhelm von Leeb, et al. See Vols. X, XI.

⁴ Defendant in case of United States *vs.* Carl Krauch, et al. See Vols. VII, VIII.

more foreign labor to the factories of the armament industry. This assignment of foreign labor faces the plants of the armament industry with special tasks of security, which cannot be guaranteed with the forces at present at the disposal of the industry. According to what I have found out the statistics of 31 December 1942 have already shown an unfulfilled demand of 15 percent in plant protection personnel. Moreover, the extension of the air force industry brings about a further increase in the requirements for plant protection personnel, an increase which up to now has not been covered by the labor offices.

An investigation I made in a number of plants of the air force industry a short while ago has shown that even after the introduction of the compulsory labor law most of the labor offices could not make the necessary forces available for protection and fireguard tasks, while other labor agencies could not entirely satisfy the needs. The labor office of Halberstadt has even refused to deal with this requirement because these men were required for organizations without productive value.

In the field of the air force industry I already ordered, at the beginning of the war, the 84-hour week for these sectors. So that no further increase can be made with these working hours, for otherwise, there would be an increase of illness which would bring about a further unwarranted weakening in the numbers of the personnel. Even the decree for the securing of the necessary forces of protectory guards, issued by you on 29 December 1942, (File note: Va 5550.917) has not yet shown any results up to now in the field of the armament industry.

Therefore, you are urgently requested to direct the labor offices to place at the disposal of the armament plants, upon their request as quickly as possible the competent forces for plant protection and fireguards, because otherwise normal security in the plants does not seem to be guaranteed any longer.

In the field of air force industry, this would involve approximately 2,500 to 3,000 men.

We ask you to kindly inform us about the steps taken.

Copy, for information, to:

OKW W Stb [Economic Staff of the Armed Forces]

BY ORDER:

MILCH [Typewritten]

PARTIAL TRANSLATION OF DOCUMENT R-124
PROSECUTION EXHIBIT 48-A

SPEER'S MINUTES OF A CONFERENCE WITH HITLER ON 8 JULY 1943

Top Secret State Matter

Berlin, 10 July 1943

CONFERENCE WITH THE FUEHRER, 8 JULY 1943

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17. The Fuehrer laid down in the coal discussion that 70,000 Russian prisoners of war fit for mining work should be sent each month to the mines. He also pointed out that an approximate minimum of 150,000-200,000 fit Russian prisoners of war must be earmarked for the mines in order to obtain the required number of men suitable for this work.

If the Russian prisoners of war cannot be released by the army, the male population in the partisan infested areas should without distinction be proclaimed prisoners of war and sent off to the mines.

At the same time the Fuehrer ordered that prisoners of war not fit for the mines should immediately be placed in the iron industry, in manufacturing and supply industries, and in the armament industry.

The Fuehrer further ordered that he should receive a monthly report giving (a) the total number of Russian prisoners of war, and (b) the number of Russian prisoners of war fit for mining, made available for the mines and a report addressed to Field Marshal Keitel as to why the remainder could not be used.

The joint report of Sauckel and Pleiger is also to be sent to me.

[Signed] SPEER

PARTIAL TRANSLATION OF DOCUMENT R-124
PROSECUTION EXHIBIT 48-A

EXTRACT FROM THE REPORT BY SAUR OF THE CONFERENCE
WITH THE FUEHRER, 5 MARCH 1944

Top Secret State Matter

Berlin, 6 March 1944

*POINTS FROM THE CONFERENCE (SAUR) WITH THE
FUEHRER ON 5 MARCH 1944*

*Jointly with Field Marshal Milch, Lt. Gen. of the Air Force
Bodenschatz, Colonel von Below*

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18. Told the Fuehrer of the Reich Marshal's wish for the future utilization of the productive capacity of prisoners of war by giving the direction of the Stalag to the SS, with the exception of the British and Americans. The Fuehrer considers the proposal a good one and has asked Colonel von Below to arrange matters accordingly.

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(Prepared by Saur)

(Seen by Speer)

EXCERPTS FROM THE TESTIMONY GIVEN BY DEFENSE WITNESS
ALBERT SPEER * BEFORE COMMISSION ON 19 FEBRUARY 1947

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EXAMINATION

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JUDGE MUSMANN: Herr Speer, I would like to understand the machinery by which labor was brought into Germany beginning with the request by any particular department for any particular number of workers. Let us suppose that someone appeared before the Central Planning Board and said, "I will need fifty thousand men for a factory that I am about to construct." Now please tell us just what happened. Would you issue an order to somebody? Would he then in turn order someone else and how did these workers finally then arrive in Germany?

WITNESS SPEER: If somebody on the Central Planning Board requested labor, the Central Planning Board did not issue an order that these workers must be supplied, but the Central Planning Board agreed that those workers can be supplied. An order by the Central Planning Board, Sauckel would not have accepted. That is a definite fact.

* Complete testimony is recorded in mimeographed transcript, 17 Feb. and 4 Mar. 47, pp. 1136-1186, 1445-1457.

It is quite clear that the requests for labor did not occur in these long intervals between the meetings of the Central Planning Board, but this had to happen in much shorter intervals and in a constant collaboration with the people concerned, for the enemy air raids and changes in programs which became necessary because of the military situation made these changes very often necessary. Therefore, for the whole of our armament industry and also for certain branches of production outside armament that were in my ministry, we decided on so-called framework contingents, and priority lists were drawn up. I do not know whether you are interested in that part.

Q. Well, not particularly. I want very succinctly a statement as to the steps which ensue after the declaration of someone before the Central Planning Board that he needed a certain number of workers. Who was informed of this request? Who authorized the call for the workers? Who submitted the demand? Who then at the other end gathered the workers? Not in detail—I just want the steps in movement from the Central Planning Board until the men actually arrived.

A. The Central Planning Board did not deal with that matter anymore afterwards. Let us say the request of labor, say, of the coal mining industry—

Q. Yes.

A. —was reported to Sauckel by the coal mining industry itself. Therefore, one could call a meeting of the Central Planning Board as a statement for Sauckel that such labor is very important for the coal mining industry, and that as far as possible he has to supply them. That is necessary within the framework of economic planning, but beyond that the Central Planning Board did not pursue the matter any further or was not even in a position to do so.

Q. Well, did you know there at the fountainhead of labor—because if you made the request originally, that is what started the machinery in motion—did you not know that bringing in workers forcibly from occupied territories to work in the war operation constituted a violation of international convention? Weren't you aware of that right at the very source?

A. What I say now is not meant to be an excuse. I really did not know it. Up to the beginning of my trial here, the regulations of international law were unknown to me, and nobody ever drew my attention to the fact that such regulations exist; but I want to say once more, I don't say this in order to excuse myself, here, but it is a fact that it was like this.

Q. Well, you were certainly quite aware from the decision of

the International Military Tribunal just how illegal and improper that was.

A. I took note of it there, and, after all, I received my punishment for it now.

Q. Well, could you not have followed the same line of reasoning adopted by the Tribunal, which, after all, was based upon international convention? You were a man of education, a man of great cultural attainments and of great technical ability, and it was because of these attributes that you were chosen by Hitler to become the Minister of Armaments. Could you not have reasoned that out by yourself? Wasn't it very clear and obvious?

A. I believe that the general knowledge of the principles of international law can only be brought to the knowledge of a wider circle of legal laymen if after a war legal offenses committed during the war will be revealed by a public trial, and thereby a more general knowledge of offenses against international law becomes known. You know that I was an architect and that such knowledge as I had in the field of law I merely received from newspapers, and I knew, for instance, all about various legal commitments of architects which are fairly extensive as far as construction of buildings goes.

I would say that a great mistake has been committed here by omitting after the First World War to establish international legal conditions by trials, and at the same time to adjust it to the developments of technical warfare instead of which, after the First World War, the whole question of the deportation of labor, for instance, was decided by the highest German courts, and as far as I know, the decision of that court was not particularly lucid. This is how the basis of ignorance is laid in the field of international law, and I believe that many a mistake and many a violation in this war could have been avoided or at least mitigated if a general knowledge of international law had been prevalent.

Q. Would you say that had there been, following the First World War, trials such as those we are now conducting, that you then would have been aware of the illegality of the practices in which you were engaged; or rather, you would have been aware of the illegality of such practices and you then would not have participated in them?

A. I am of the opinion that trials against the responsible men for the First World War after its conclusion would have enlightened the public and myself on the tenets of international law. I do not wish to go as far as to say that I would not have committed these breaches of law, for it is very difficult to excuse one's self after the event by saying one committed the act only

through ignorance of international law. Nevertheless, I should say that the observance of international law would have been possible without losing much momentum in my armament drive. Of course only that part of international law is meant here which deals with the recruiting of labor, whereas the other factor, the so-called legal looting of occupied territories as it is called, there is no doubt that that would have been necessary for an increased output of armaments. Violations of international law as far as the assignment of labor was concerned were in my opinion not only unnecessary, but unreasonable. We would have achieved more if we had observed international law. This is a very complicated topic; I do not know whether you are interested why this should be so.

Q. Well, I merely want you to enlighten me, if you care to, on this specific angle. You are considered a specialist. Now, had there been an international trial following the First World War, and the decision in that trial had been very clear and specific—as was the decision in this trial—you would have then known the limitations very specifically on the conduct of war; and having then known that you couldn't do certain things, would you then have refused to participate as you did in this World War as a specialist? Having been put on notice that you cannot take labor from other countries forcibly and throw them into the armament industries—knowing all that, would you then have refused to give your services to Hitler in the prosecution of this war?

A. As to the first part of the question I wish to say if a trial and a clear decision had been handed down after the First World War, then certainly somebody would have put the international laws and regulations on my desk; that is to say, he would have informed me of it. The second question—it is not possible to give a simple answer to the second part of the question for when I started my office in 1942 the war in all its aspects had already departed from all existing international regulations. Please don't misunderstand me if I point out here that economic warfare was waged by the British and Americans with extreme concentration on bombing warfare, which was not a matter of national reprisal because it hit industries in occupied territories. On the other hand the war with Russia had gone beyond the normal limits, if I can call it that. It is difficult for me to say who was the guilty party.

Q. I do not refer to the time after the war had reached such a state that there were no restrictions. I am speaking of the period before the war started. I would like to know whether a man of your education could have been enlisted in a practice

which you knew and would then have known was entirely illegal and contrary to international law as well as the precepts and dictates of humanity.

A. I would not have participated if I had known the whole documentary material which became known in our first big trial. If I had known that Hitler since 1938 had prepared for war and had tied the fate of his people to his own to such an extent that his end was the end of his own nation——

Q. I didn't intend to enter into such a long discussion on this. All I had in mind was that if those in your classification, as specialists, would have observed international law, and would have known clearly what international law was—the restrictions, the limitations and so on—and if we assumed that these specialists were men of character, then, even though Germany had at the helm a navigator who had become mad, he could not have run the ship on to the rocks for the simple reason that you and the other specialists who assisted in the present shipwreck, would have refused to ship on a venture which was so obviously bound for the rocks, internationally speaking. Is that true or not?

A. That is so without a doubt.

Q. And would you go so far as to say that had there been an international trial of the proportions of the one we have just had, and these which are now following, after the First World War, and the knowledge resulting from decisions handed down would have become well-known because of the punishments which would have been inflicted, would you say that that might have served as a bar against a Second World War?

A. I do not wish to say that it could have stopped and Hitler——

Q. If Hitler had not had specialists, Hitler could not have wrecked the world himself. Hitler had to have a Speer and had to have the others who were condemned in the first International Military Tribunal. He could not have done it alone.

A. That's quite clear, but these specialists were taken into their part of the war without realizing what the connections were and an international trial is not a wholly certain method to prevent a new war; but I think it's a very essential contribution toward that aim. I am unable to answer your question by saying that Hitler would have been unable to find collaborators if, after the First World War, these trials had been held, but I do wish to say it would have been much more difficult for him, also because our specialists were not very intimately connected with the Party circles.

Q. Well, I think that's a point I wanted to find out; that, if the specialists had refused to collaborate, knowing that the contribu-

tion of their service meant a completely illegal undertaking, then Hitler could not have conducted a war by himself and therefore there could not have been a war?

A. In technical warfare the specialists are decisive factors for the conduct of war, but the specialists are not to be regarded as being the parties principally responsible. They do not have the necessary knowledge of the background, the political background—essential in view of Hitler's untruthfulness—to see where he is taking the ship.

Q. The ship could go nowhere without you specialists. That's all.

A. I thank you.

JUDGE MUSMANN: Do you have any questions, Dr. Bergold?

DIRECT EXAMINATION

DR. BERGOLD: Yes, sir, I have. Witness, his Honor has asked you how it would be if a factory, for instance, would need and would request 50,000 workers, which way and in which channel would take this request up to the point in foreign territories where 50,000 foreigners would have been gathered and taken to Germany for that purpose. Isn't it correct that such a proposal of bringing 50,000 workers to this factory did not mean that 50,000 foreign workers would be brought but meant only that 50,000 workers altogether were brought? That meant German workers as well as foreign workers which were actually already in Germany and employed there and also new recruits? That included all that, did it not?

SPEER: I was deflected from my answer in that particular case and I did not really give an answer to the question. If 50,000 workers were requested for a certain branch in our industry the request gave a figure which did not show how many of them were Germans and how many of them were foreign workers. The bigger part of the workers which were supplied came from what was called fluctuation. Fluctuation meant the transfer of workers from one plant to another. It's quite clear that production is in a constant development. One always follows the other and in some cases one orders particular workers and then it loses that importance for military reasons. The plan is that some workers available are constantly released and sent on to different plants or industries. A second source was the newly mobilized German workers, I mean the women workers, and a third source was the sending of foreign workers already in Germany, and a fourth source the prisoners of war who were also sent on from one branch to the next, and the fifth source consisted of some that came in from foreign countries. How these various workers from these various

sources were distributed among branches, neither my offices nor the factories who had requested workers could find out. That was a matter which had to be decided by the labor exchanges because it took an enormous amount of work to find the proper workers for the proper branches. * * *

Q. Thank you. Witness, do you know that when the French Government, which at that time existed in Paris, had issued an order for the calling up of labor did that mean compulsory labor?

A. These details became known to me during the trial. My tasks were enormous and at that time I did not bother much about details. I cannot say anything about this from my knowledge.

Q. Witness, you must know this; at the time when you had discussions with Mr. Bichelonne, French Minister, I should think that the existence of compulsory labor service in France should have been discussed at that time.

A. Perhaps I misunderstood you. I said quite clearly last time that I knew about the fact that in occupied territories workers were taken to Germany against their free will. The various districts, etc., are not known to me.

Q. No. I mean if such a decree had been issued at all. That's what I am speaking of.

A. I had to assume that but I wasn't actually informed about it.

Q. Did you consider the French Government, which at that time was in Paris, France—did you consider it a regular government?

A. This is the same sort of question which his Honor put to me too. I had no basis to find out whether the French Government was legal or not, because these are problems of international law which are beyond me as a layman.

Q. Witness, do you not know that the Government of Pétain had been recognized and was recognized by the American Government, and that the American Government had an ambassador, if I recall correctly—and I am not sure I can pronounce his name—at that time, Mr. Leahy, Admiral Leahy?

A. I know that, but I must say frankly that I did not spend my time thinking about whether the French Government was legal or not.

Q. Thank you. I have no further questions.

JUDGE MUSMANN: Herr Speer, what I was endeavoring to elucidate, or have you elucidate for us, was not whether you knew if a government was legal or not, if it was recognized internationally or not. I wanted to draw your attention to something quite more fundamental, and that was the employment against its will of population in a war activity, all of which was prohibited

by international law. And if you and all the specialists in the Hitler regime knew of the limitation and were thoroughly aware, and the knowledge was so widespread that you couldn't help but know that it was illegal and that you would be punished if you did it, that is, to bring in workers from another country and put them into war operations—if that were a matter of such general knowledge that every college man and every person that was well read would know of it, would Hitler not have had difficulty in obtaining such a crew to run a ship, regardless of what he may have had in mind as to the illegal port which he hoped to attain by that voyage?

SPEER: I can only speak about the time in which I worked, that is to say, from 1942 onwards. In that time, I am sure that if these legal matters had been made quite clear a large number of technicians or industrial leaders would not have collaborated to the extent they did if they had realized the illegality and the possible punishment.

I would like to stress this particularly for the period from 1943 onwards. From that time onwards, many intelligent people realized that the war had been lost, and from that time onwards it would have made a great impression if in former trials heavy punishment was meted out. Not everybody would have been impressed; certain people would have followed the old line, but the majority of so-called specialists, certainly—

Q. —would have recognized the illegality of what they were asked to do. I understand you to say that the majority of the specialists would have recognized the illegality of what they were asked to do and would have refused. That is what I understand you to say.

A. Yes, that is what I wanted to say.

JUDGE MUSMANN: Very well. Thank you very much.

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PARTIAL TRANSLATION OF DOCUMENT R-124
DEFENSE EXHIBIT 5

EXTRACT FROM THE STENOGRAPHIC REPORT OF THE ELEVENTH
CONFERENCE OF THE CENTRAL PLANNING BOARD,
22 JULY 1942

REPORT OF THE 11TH CONFERENCE OF THE CENTRAL
PLANNING BOARD ON 22 JULY 1942 *

[page 2 of original]

Safeguarding of Food Supplies

A net increase of one million foreign workers is anticipated.

* Prosecution introduced other portions of this report as Prosecution Exhibit 48-A. See pp. 457-59.

This figure has not been reached during the past months. Even if more than one million workers are brought here during the months to come, the limit of one million will actually never be exceeded due to continued losses. Food for this number of workers is guaranteed.

PARTIAL TRANSLATION OF DOCUMENT R-124
DEFENSE EXHIBIT 6 *

EXTRACT FROM THE STENOGRAPHIC MINUTES OF THE
TWENTY-SECOND CONFERENCE OF THE CENTRAL
PLANNING BOARD, 2 NOVEMBER 1942

*STENOGRAPHIC MINUTES OF THE 22D CONFERENCE
OF THE CENTRAL PLANNING BOARD CONCERNING
ASSIGNMENT OF LABOR, MONDAY, 2 NOVEMBER
1942, 12:00 O'CLOCK IN THE REICH MINISTRY
FOR AVIATION*

* * * * *

MILCH: In my opinion agriculture has to be provided with its labor. If, theoretically, agriculture could have been given 100,000 more men, there would be 100,000 fairly well-fed men, while those we get now, particularly the prisoners of war, are not exactly fit for work. If agriculture will get them in time, they will again be able to feed these people up again. However, it will not be very happy about it. * * *

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PARTIAL TRANSLATION OF DOCUMENT R-124
DEFENSE EXHIBIT 7

EXTRACT FROM THE STENOGRAPHIC MINUTES OF THE
THIRTY-SECOND CONFERENCE OF THE CENTRAL
PLANNING BOARD, 12 FEBRUARY 1943

*STENOGRAPHIC MINUTES OF THE 32D CONFERENCE
OF THE CENTRAL PLANNING BOARD—THE FOUR
YEAR PLAN ON 12 FEBRUARY 1943*

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MILCH: Everybody sticks to his old methods until he is literally beaten away from them. However, one must not only beat, one

* Prosecution also introduced this document.

must give advice, too. They must be good experts who will tell people: You will do that this way or that; it is not necessary that you use just this sum. Who does such a thing will never give in and say, I can do with less. Mining has been partly beaten¹ into iron by saying we cannot give you anything but iron on account of the shortage of lumber.

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PARTIAL TRANSLATION OF DOCUMENT R-124
DEFENSE EXHIBIT 8²

EXTRACT FROM THE STENOGRAPHIC MINUTES OF THE
THIRTY-THIRD CONFERENCE OF THE CENTRAL
PLANNING BOARD, 16 FEBRUARY 1943

*STENOGRAPHIC MINUTES OF THE 33D CONFERENCE³
OF THE CENTRAL PLANNING BOARD*

Subject: Assignment of Labor, 16 February 1943, 16 o'clock, in the Reich Ministry for Armament and Munitions, Berlin.

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SPEER: We are in complete agreement. You will not receive any list from us for this action but the whole armament industry including the anticipated deliveries will be devoted to this action. The administrations too must be served at the same time. But the authorities including army, air and navy shall not get a single person from the action. This must be adhered to. You know what

¹ Defense counsel, Dr. Bergold, explained (*Tr. p. 523*):

"This document shows that the defendant liked to use strong language. It refers merely to the allocation. He speaks of 'beating', yet he does not mean this literally but figuratively. The high Tribunal will remember at one time he spoke of whips being used to force certain people to use suggested methods. That is not what he meant."

² Dr. Bergold stated (*Tr. p. 530*): "This document is submitted to show that Field Marshal Milch was very much endeavouring to leave the French workers in France with their own firms and only to transfer orders over there. The International Military Tribunal has accounted as exonerating circumstances in the case of Speer that he established in France the protected plant system (Speer Betriebe); so far as Milch is concerned, we wish to point out that he did the very same thing for the airplane industry and that he tried to act in a reasonable way. I also wish to say that the man always had in mind reasonable economic propositions. Finally the document proves that individual remarks made were of no consequence whatsoever, that they were only verbal flourish which did not lead to any results. For instance, in the case of anti-aircraft batteries, the conference passes that point over, which is shown by the last words of Speer and Milch. It is simply a marginal remark. I will also prove that he did not say that on this occasion and that the minutes were changed, because he had difficulties with Goering. I shall show that this passage, criticizing Goering, was taken out of the report because at that time serious difficulties arose between him and Goering."

³ Another portion of the minutes of this meeting was introduced by the prosecution as Prosecution Exhibit 48-A. See pp. 467-71.

the Reich Minister Dr. Lammers said: That he must therefore have some new women typists at the Reich Chancellery at once. That makes no sense.

MILCH: Where France is concerned, there exists in France an industry which makes aircraft motors and parts, all complete. We have transferred there all the things which can be made there without endangering secrecy in any way. These are training aircraft, transport aircraft, etc. However, since we want to make the most of the production in other ways, we have moved away part of it to a large extent. As a whole these things must be kept secret from the French but in every part subject to secrecy there are only a few parts which are real secret. The bulk consists of other parts. These have also gone there to a great extent just as we engaged aircraft builders in France to a great extent. We now currently have work waiting in France for several thousand aircraft builders. At the moment the industry working for us there needs, according to its claims, some 20,000 men, who are asked of us, in order to be able to keep to the program. The production is still far behind that which was agreed upon with you in the program. Whereas we in Germany fully carry out our program, only 30 percent of it is carried out in France. In fact it has only begun to function in the last weeks and months after we have been more active there. In principle, we have excluded the State from this whole cooperation with industry and set the German firms to work with the French firms.

Sponsor firms have been appointed so as to make the affair operate. This system is not yet fully completed but has been favorably initiated everywhere and indeed brings quite other returns to some extent. The reproach is always made to us that nearly all Europe is at our disposal. The production we draw from France, with the exception of motor cars, is minute as regards the army. The whole French production potential is not yet fully exploited by us or only to a quite small proportion. If it were necessary for us to produce in France, because in Germany the capacity, space machine tools, etc., which are not convenient for removal are lacking, if the accommodation of the people were not so difficult, etc., we would in fact be reduced to the point of taking everything to Germany and have the work done here. But this would entail too great a decrease in the production in our own country, not to mention the reluctance of the people.

We came to an agreement yesterday. I am very thankful that this matter is now, thanks to yourself, Gauleiter Sauckel, together with Gen. v. d. Heyde and Col. Brueckner, to be settled on the spot. It is difficult to induce Frenchmen to come over here.

An official agency alone cannot either appreciate or realize this, only a sponsoring firm can realize it. I therefore suggest that sponsor firms be called upon to cooperate, precisely because in France the sub-contract system is very widespread.

Behind the factory which actually organizes the thing, there are other factories which belong to the semi-finished goods and preparatory industry. This industry, however, can be supervised by our sponsor industries. We should have to assign to our people the task of investigating the individual firms and find out which people are working for our program. All others we annex ourselves. When we have got hold of them and annex them in German industry, that is, only those people who are really necessary to us, it will be possible to utilize them in the right way.

The proportion of specialist workers there is higher than in this country. We have indeed drained a certain number of them into our factories last year because they were the easiest to get. The Frenchmen must work with more specialists than we. We must work with more specialists than the Russian, and the Russian must have still more specialists than the American. In America they can place any simpleton before any machine, he will put it right in a flash. Only the installation requires a specialist. The man need only have arms; a head is a superfluous luxury.

In France the system is quite different. The Frenchman has adapted himself to it and has always indeed had unemployment. A labor organization as we conceive it does not exist. With the same number of Frenchmen and all other installations, facilities, etc., being the same, one will only obtain, as compared with German personnel, half at the most or only one-third of the production, even if the personnel have all good will and zeal. It is a matter of system. This system we cannot simply alter, neither can the sponsor firms, but we must try in this way to obtain from them to a certain extent the additional resources which we need for our industry and armament. By proceeding thus, we can put things right. I believe the sponsor firms have an obvious interest in this. If industry has too many specialist workers there working for us, let us draw upon them ourselves, because we are suffering a great shortage of them. This resource should be left to our firms after this extensive drain on specialist workers has been suffered. We want to raise our armament.

Now to another point. I have today ordered in my jurisdiction that an extensive action should take place; today, when we are counting upon obtaining a great number of women in virtue of the obligatory service whose age limit we hope to see extended to 55. The British have extended obligatory service to the age of 65. The additional 10 years are a trifle exaggerated. Women are

not able to go to the machines immediately and perform heavy work. The few days that are necessary for them to instruct the personnel are immaterial. We can still spare that much time if it were not that it would convey to the population an impression to the following effect: Now that we have reported for work, it is months before we are called up. I have ordered, within my jurisdiction, that the women should as much as possible be employed in offices where men are now to be found, for instance in the wage offices, etc. In these, women and elderly men can be easily trained, as they will be able to do without further difficulty. In this way, men in the commercial offices, etc., should be released for the accountancy offices and similar offices. This involves, in the case of industry, over 20,000 individuals and there are other branches besides.

It amounts to quite a considerable number consisting solely of people who, in view of the war economy, are unfortunately necessary now. These men must now be placed at our machines insofar as they are not drafted, that is to say, are not soldiers. These people are more likely to be able to render better service at the machines or in the factories than the women now assigned, insofar as women are disposed to go to the machines. Of course, there will be women who have done such work before and who are now willing to turn to this work but who have not reported for work so far because they have not found it necessary to work for a living on account of the dole.

Where the assignment of women is concerned, I should suggest that, in the process of the action, only those women be assigned for whom work at the machine is not involved if a man is thereby released.

TIMM: The danger lies in this that the draftees were partly to be released without replacement having actually been forthcoming.

FIELD MARSHAL MILCH: That is quite another matter. When female auxiliaries of the Signal Corps are assigned, it is not additionally but only in the proportion that soldiers are released thereby. There are indeed several 100,000 men in the signal corps of the army and air force. In our department, 250 to 300,000 have been such. Whether there are so many now, I do not know. They are all young men fit for combat. I have always campaigned against this and said: one ought to assign women preferably so as to release soldiers. If that is done now, it will really release a large number, it does not matter whether for the workshop or for the front. Of course, there is a front somewhere in the East too. This front will be maintained for a certain time. The only useful thing the Russian will inherit from the territories

evacuated by us will be the people. It might be better in principle to withdraw the population in time as far as 100 km. behind the front. The whole civilian population will move back to 100 km. behind the front. Nobody will now be assigned to trench [digging] work.

TIMM: We tried to withdraw the population of Kharkov. 90 to 120,000 people were required by the fortress commandant of Kharkov for trench work alone so that in some cases we had to organize whole convoys.

WEGER: Actual demolitions were even carried out.

FIELD MARSHAL MILCH: But that is done by the engineer corps. There is definitely no more hope that more prisoners of war will come from the East.

SAUCKEL: The prisoners taken are used there.

FIELD MARSHAL MILCH: We have made the request that there should be a certain percentage of Russians with us in the anti-aircraft artillery. 50,000 altogether are expected. 30,000 are already there as gunners. It is a funny thing that Russians must operate the guns. The other 20,000 are still missing. I received a letter from the High Command of the Army yesterday saying: We can no longer turn over a single one, we have too few ourselves. So this thing will not turn out so successfully for us.

SPEER: It would be advisable to make the draft of women somewhat clearer in the press.

FIELD MARSHAL MILCH: That would primarily have to be placed in the foreground. In this respect the question is whether I will receive the accounts from our industry in time. The matter is bound to be settled some time. There will be no deception. People who want to deceive also deceive now, whether they have this personnel or not, whether their accounts are up to date or not. The other people are honest. The mass has not engaged in deception. Whether we are a little backward in checking prices will not be very important. The most important thing is to work. We know what is produced abroad, having now received the figures. The Russian actually makes 2,000 aircraft a month in the way of front-line aircraft. This figure is far higher than ours. This must not be forgotten. We must get to the assembly line and produce quite other figures.

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PARTIAL TRANSLATION OF DOCUMENT R-124
DEFENSE EXHIBIT 9

EXTRACT FROM STENOGRAPHIC MINUTES OF THE THIRTY-NINTH
CONFERENCE OF THE CENTRAL PLANNING BOARD,
23 APRIL 1943

*STENOGRAPHIC MINUTES OF THE 39TH CONFERENCE
OF THE CENTRAL PLANNING BOARD*

Subject: Food Situation and Armament Industry.

*Held on Friday 23 April 1943, 9:30 A.M. in the Festival Barrack
near the Zoo, Jebenstrasse*

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MILCH: I am convinced that there are more Russian prisoners of war. At that time 4,000,000 were captured. A large part of them died, however the number of those who are still living is higher than we are told now. We reckon here with hundred thousand Russian prisoners of war in the agriculture. Altogether, we have 300,000 of them in the Reich. During the First World War I had 200 Italian prisoners of war with me. These prisoners were to be turned over, however, we kept ours by reporting them dead in order to keep them. And these people also wanted to stay in spite of the fact that we told them that they would be reported dead even to their families. We dragged these prisoners around with us till the end of the war.

KEHRL: If the food supplies of the labor brought in from abroad are taken from the German rations then, while we think that we are very rich for having these people, the German rations are in reality reduced, and the decrease in the working capacity of our own workers does more harm than the good done by the new people.

SPEER: But from the figures of this incoming labor we have to deduct those who leave the country because of expired foreign agreements, and the others which we lose because of cases of death or illness. On the whole the increase of labor in our total war economy is not at all so very important. (Interpolation: the more labor we fetch from the East, the more this total figure will increase.)

BACKE: But there is a limit, too, in the number of men we can absorb. At that time we were told that one million was to be taken into the country, from the East. Now we have already got several millions.

MILCH: You cannot count that way. Before all these measures in the second year of the war, the air force had 1.8 million men and

today it has less than two million. The whole air armament which is a considerable part of the total war armament, in the course of the war or in the last 2½ years of the war has not even increased by 10 percent. In reality the total increase in this field amounts to about 125,000 to 150,000 men. We are always looking for those people. That is our main problem.

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PARTIAL TRANSLATION OF DOCUMENT R-124
DEFENSE EXHIBIT 31

EXTRACTS FROM THE STENOGRAPHIC MINUTES OF THE
FIFTY-FOURTH CONFERENCE OF THE CENTRAL PLANNING
BOARD, 1 MARCH 1944

*STENOGRAPHIC MINUTES OF THE 54TH CONFERENCE *
OF THE CENTRAL PLANNING BOARD*

Re: Labor Allocation on Wednesday, 1 March 1944, 1000 hours,
at the Reich Air Ministry.

SAUCKEL: * * * I have a Gau armament supervisor in Thuringia and I have just been inspecting the plants in Thuringia. At the railroad car factory in Gotha I have set things going so that within a few days it will be turning out 20 percent of its production again. Everything has been done. But one thing you must bear in mind: Labor allocation as an institution must be independent and must remain so. Furthermore I must ask you not to support constantly the opinion of the armament inspectors: Sauckel must be put under the control of the Ministry then everything will be better. Gentlemen, please see to it that that does not happen this year. As a National Socialist of long standing I am determined to cooperate unreservedly with you, the Minister for Armament and Production, indeed with all those gentlemen, but, in consideration of the difficulty in this sphere of work I must be given the amount of freedom to make decisions of my own which was guaranteed me by the Fuehrer's decrees and those of the Reich Marshal. I would never have taken on the task without these decrees, because I know it cannot be accomplished without them. I beg you therefore, to create such an atmosphere as is necessary among the lower ranks too so that the Gau labor offices in the

* Another portion of the minutes of this meeting was introduced by the prosecution as Exhibit 48-A. See pp. 484 to 498.

first place may be recognized as organizations which are entrusted to me and put at my disposal for keeping the labor commitment in order on the lower levels. * * *

* * * * *

SAUCKEL: I would like to insist on the fact that, in the future also, the S-plants be checked; for the S-plants form a suction pump, and, since it is known all over Italy and France, that whoever works in the S-plants is protected from any interference on my part is proved by the following fact. During the first three months I wanted to take out of Italy 1 million people before 30 May. In these two months hardly 7,000 men have come. That is just the difficulty. The bulk goes to the S-plants, and only the dregs are left for employment in Germany. I would like to achieve yet, that for the important plants in Italy, at least the number of S-plants be restricted, that is that the number of S-plants be not increased.

SCHIEBER: In Italy for every protected plant there is an agreement made. Over, beyond the situation on 15 February or 10 February, S-plants are established only with the approval of the services under me. We have them registered, and only when we aim at an agreement are they declared protected plants.

SAUCKEL: Now the question arises: If in such a protected plant there are more hands than are needed according to German standards, could they be handed over?

SCHIEBER: They are to be combed through but the people combed through are to be put only in other protected plants. Down there in Italy in your services there is a demand for 7,000 hands and more. The gentlemen are right to laugh at us saying: What does that mean, you want people, but at the same time our great task must be the transfer of people! I spoke with Leyers on Sunday and told him that I wished to have a conversation with the Gauleiter about this matter: If the labor offices state that there is still a certain surplus of hands employed, a commissioner appointed by General Leyers must then visit the respective plant together with a commissioner of Gauleiter Sauckel's; they must examine the situation, and these two gentlemen must then come to an agreement, as to the people they remove from plants. * * * Besides these promises concerning nutrition have not been kept to the extent we wished. The extra food, as we had planned it has not yet appeared at all so that there is no incentive felt; apart from this certain inner evolutions are influencing industry at present in Italy, with the result that especially the leading workmen who are so valuable for us partly fail to come to the factory any more. They wait patiently until, during the next

three or four weeks, the elections and convocations in the factories concerning socialization and the introduction of commissars, etc., are over. * * *

SAUCKEL: In Italy, it seems, things are going on smoothly in general, but not yet in France.

MILCH: When workmen are transferred how are their families ensured?

SAUCKEL: Automatically.

SCHIEBER: That is quite easy. If it is possible in any way, we shall have the whole personnel transferred to another factory. * * *

* * * * *

SAUCKEL: Years ago we made an investigation like this in France and saw that in German armament production, corresponding to districts A and B, some 600,000 workers were occupied out of the total of some 2½ to 3 million metal workers we had anticipated. Therefore there must still be some more metal workers hidden in France, people who were formerly in metal trades.

MILCH: So 75 percent are still free, and 25 percent are tied up in the S-industries.

SAUCKEL: We have to deduct the prisoners of war who are now in Germany. But there are hundreds of thousands of skilled workers who, according to the agreements made, have returned to France and Belgium month after month.

* * * * *

SAUCKEL: In reply to that I must ask you the following: What do you want to do now in Germany? In Germany you now have plane construction, the manufacture of highly expensive apparatus, complicated engine construction, you have here in general the most complicated manufactures in the world. If I brought the scum of French manpower to Germany for you what would you get as regards production? We of the Labor Allocation were always of the opinion in the French industries we must under all circumstances maintain a certain level of the trained workers and a certain degree of production. And we wanted to compel these French industries to lower their level of a hundred percent skilled personnel for the benefit of the German industries which have been bled of their skilled hands.

As Plenipotentiary General for the Allocation of Labor I considered my task to be not the transfer to Germany of the scum of Europe, but the bringing of efficient manpower. But a part

of your gentlemen in France, and in your Ministry too, had no understanding for this. That I must say quite plainly. It would be mere child's play for me to bring you the refuse of Europe if you would be satisfied with it. I would simply grab all the whores and gigolos in Paris and put them at your disposal, then I would not have to touch your armament industries. But if I have to provide you with real workers who will prove efficient in Germany, then in France—and that was just my program—we must do the same as we did in every German plant and in every German enterprise: when a German company is split in two, some of the good workers and some of the bad ones had to be given up and not just the bad workers. And French armaments never were harmed thereby. It is a fact, is it not, that a French worker of quality produces the double amount if he is put in a German factory under German discipline, with German supervision and German welfare?

If we agree to re-examine all S-plants—and that is all I ask—and if we take out all superfluous expert workers and assistant workers, then we put them at the disposal of the other French enterprises which need them, to the extent that they need them, and when they are satisfied, I have to request that if I am to carry out my program, then from these plants too, workers must be transferred to Germany. If that is not approved of and it is insisted that the severe formula be observed: S-plants are out of question for labor commitments to Germany, then, according to my experience, this program of January 4 can hardly be achieved. Then you are responsible for the decision of what was better at the end of this year, to have these people in France or in Germany. That is the responsibility you have to bear and which I shift from my shoulders. I was told: Why did you not take the Russian workers away in time, now they are in the Russian regiments. Exactly the same would happen here. My opinion is that the introducing of S-plants was altogether a great mistake which is damaging to the general interests of Germany. The French government jumped to that with the greatest cleverness. * * * That is the way we did it the first year, and up to 700,000 Frenchmen came to the Reich according to the program. These were all decent French workers. From the fall of this year on this came to an end. No more skilled French workers came, nor any others either. It was the entire collapse of the labor allocation built up on the slogan: From now on no worker needs to go from France to Germany.

* * * * *

KEHRL: The consideration which originated at that time with Minister Speer and which led to the arrangement with Bichelonne was the following: If I cannot transfer the people by force from France to Germany to the extent necessary, which is shown, by developments now, and if at the same time I run the danger of having the people leave the plants in which they are now working for fear of being taken by force, then it is a lesser evil for me to try and put these people to work in France and Belgium, in which case I do not have to use German force to get them across the frontier. Then at least I am sure that the people are not running away from the plants in the first place and secondly that additional employment will be brought there.

He sent an invitation to Minister Bichelonne. The conferences took place between the 16th and 18th September. The question was put to Bichelonne to what extent the shifting of industries would be possible, and what additional productions he could place, etc. This caused a change in the policy of production. So far Minister Speer had chiefly shifted to France all the urgent armament productions in those fields in which the German capacity was insufficient. Now he said: I will not only shift this to France, but I will also shift really important war production, which is carried out at present in Germany with German labor, so that I can release German labor in Germany and have this production carried out in France, Belgium, and Holland. There is sufficient capacity in this field in France and labor is also available in sufficient numbers. Therefore a large part of the work can be accomplished there and I can release the people in Germany. Thereby I am serving two ends: in the first place I am setting free German labor and secondly I am utilizing the French workers who are not working at all now because industry is at standstill. And there is still a third factor, that Frenchmen will be ready of their own accord to carry out such production as serves the welfare of the civilian population, because with such work they are no longer in danger of air raids and they are not working directly for the war. So that they will not be considered as traitors to their country, but are working for the advantage of their own country.

This development has been encouraged in the meantime. The time is still too short to make any definite statement as to the results. In some fields the results are already quite exceptional. In some instances we have transferred up to 50 percent and more of the total German requirements to the West and the manufacturing is done there. The transfer figures are rising rapidly from month to month. The coal and power questions are of course great obstacles. We hope, however, to overcome them in the course of

this year, because by the middle of the year we shall have increased 25 percent of the power supply in France by water power, the necessary constructions for which will be finished by them, and by the end of 1944 hydroelectric stations will be ready and they will be equal to 50 percent of the present French power production.

The idea in fact is this: to carry out there the work which up to now has been done here and to release thereby German labor. There is yet another reason for this. It has been pointed out by you time after time, Gauleiter, that in these sections of industry, it is not easy to change the workers. According to the Field Marshal's description of the situation, there is especially a lack of managers and supervising personnel in the works and only German workmen can be considered for such, and every worker, even if technically he is not so suitable, will serve for purposes of management supervision and will lend some backbone to the plant.

As regards the question of the S-plants, Minister Speer put the following question to Minister Bichelonne: Are you in a position to provide the labor for such an extensive shifting program, which involves a certain risk? To which Bichelonne, from his standpoint quite rightly replied: If the people are not running away into the woods for fear of being deported to Germany I shall get them to work in French plants. From this discussion there resulted the idea of protected plants which, as you said, were supposed to represent a protection against Sauckel. Whoever is there is working for Germany and may not be deported to Germany. You said that these plants worked like a suction pump. That is just what they were meant to do. Labor was to be drawn in with a suction process so that the plants were full to capacity and could work for us. The existence of the S-plants cannot and may not be undermined. It is backed by the German promise which was given in all solemnity and which was supported by the signature of my Minister.

* * * * *

SAUCKEL: May I again draw attention to the matter of volunteers and to the entire process of the allocation of French labor. There was never any program carried out in France on a voluntary basis, but the programs have been carried out for the Todt Organization the building of fortresses in France, on the one hand, and for the assignment in France to the plants working for Germany and also to the plants working for transferred industries according to concrete agreements which I made with the French government, on the other hand. The French government

fulfilled these conditions last year. It appointed people for the western fortifications and for the Atlantic fortifications, it appointed people for the plants and it appointed people for Germany. In the fall of last year, towards the end of summer, Laval declared for the first time that he was not going to send any more people to Germany and from then on only very few Frenchmen arrived in Germany.

* * * * *

TIMM: Will it not happen that the offices making the demands say one day: But we know that in the French plants there is an excess of skilled workers which cannot be justified?

MILCH: That should be discussed again later with Speer himself. First Speer must have a survey of what has happened as the result of all his agreements.

* * * * *

3. THE JAEGERSTAB¹

EXCERPT FROM STATEMENT OF THE PROSECUTION REGARDING MILCH'S ACTIVITY IN THE JAEGERSTAB, 13 JANUARY 1947²

MR. KING: If your Honors please, the prosecution begins now the presentation of that phase of its case dealing with the defendant Milch's participation in the Jaegerstab. I might add that that has to do with the slave labor phase of the Milch case.

First, I wish to say a few words about the background of the Jaegerstab. The Jaegerstab was formed on 1 March 1944 by decree of Albert Speer issued pursuant to an order of Adolf Hitler. Our evidence will show, however, that it was the defendant Milch who conceived and instigated the formation of the Jaegerstab.

The purpose of the Jaegerstab was increased production of fighter aircraft. Fighter plane production had suffered severe set-backs due to British and American air attacks. Defendant Milch and his Luftwaffe had also suffered in the battle for new raw materials.

Fighter aircraft were Germany's principal defense against bombing raids. Early in 1944 the defendant Milch had concluded that without adequate fighter protection the entire German armament industry would soon be destroyed. After repeated urgings, Milch was finally successful in his efforts to create a special commission of top officials from various ministries to undertake a special effort in the field of fighter production.

The Jaegerstab, therefore, was actually a concentration of experts drawn from various ministries. Our evidence will show that the defendant Milch and Speer were designated as the joint chiefs of the Jaegerstab with Karl Adolf Saur acting as Chief of Staff.

The methods adopted by the Jaegerstab in the execution of its tasks were (1) transfer of German aircraft industry underground, (2) the decentralization of German aircraft industry, (3) quick repair of bombed-out plants.

Our proof will show that the labor for this program, which was the decisive consideration in the discussions of the Jaegerstab, was obtained from three sources: (1) Sauckel Ministry, (2) concentration camps, (3) direct recruitment from occupied countries.

¹ A group of experts, drawn from various phases of German industry and supplemented by representatives of the various ministries.

² Tr. pp. 300-1.

Evidence

Prosecution Documents

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R-12448-EExtracts from the minutes of discussions between Saur and the Fuehrer, 6 and 7 April 1944.	539
NOKW-24761Appointment of Field Marshal Milch as Goering's plenipotentiary for the intensification of air force armament.	540
F-82457Order of Field Marshal von Kluge regarding compulsory recruitment of labor in the West, 25 July 1944.	542
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NOKW-33712Excerpts from the stenographic minutes of the Jaegerstab Conference on 6 March 1944 in the Reich Air Ministry.	561
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NOKW-36515Extract from the stenographic minutes of the Jaegerstab Conference, 12 April 1944.	563
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NOKW-44221Extract from the stenographic minutes of the Jaegerstab Conference, 5 May 1944.	565
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PARTIAL TRANSLATION OF DOCUMENT NOKW-017
PROSECUTION EXHIBIT 54

EXTRACTS FROM THE MINUTES OF THE CONFERENCE WITH AIR
FORCE ENGINEERS AND CHIEF QUARTERMASTERS UNDER
CHAIRMANSHIP OF MILCH, 25 MARCH 1944

[Handwritten note]

To my files

Mi.

Secret

*MINUTES OF THE CONFERENCE WITH AIR FORCE ENGI-
NEERS AND CHIEF QUARTERMASTERS UNDER
THE CHAIRMANSHIP OF FIELD MARSHAL
MILCH ON SATURDAY, 25 MARCH 1944,
AT 10 O'CLOCK*

Dr. Koppert/Lm.
25 March 1944

FIELD MARSHAL MILCH: Gentlemen! I welcome you. I have called you together here in order to discuss with you questions of importance for our German defense.

Beginning with the year 1942, the Luftwaffe put special emphasis upon a considerable increase in the number of fighter planes produced each month which at that time amounted to 200 to 220. It was possible, by July of last year, to exceed the figure of one thousand as the norm, in accordance with our program. Then the heavy raids, especially against our armament industry, began first against the preliminary industry [Vorindustrie] in the Ruhr, then against our fighter and airplane industry itself. The enemy enumerated 65 completely destroyed fighter factories and factories producing parts for fighters in his lists. Beginning in the middle of 1942 we undertook extensive evacuations, and did so to small localities above ground, smaller places, and the like. In so doing, about 4½ million square meters of factory space, productive space, were evacuated. That was the maximum that could be accomplished with the means at our disposal. We were lacking in transport space, we were lacking in machine tools, and primarily we were lacking in skilled workers and managerial forces, more of whom are of course needed in a dispersed system of manufacture than in a centralized system. The extraordinary drafting into the Wehrmacht and just at the end also the SE 3-drive deprived the Luftwaffe armament industry of its key personnel. We have in our employ today approximately 60 percent foreigners and 40 percent Germans, whereby one has to take into

consideration that the women work in the factories only half a day. Therefore, the ratio of Germans to foreigners becomes considerably more unfavorable. The ratio is gradually approaching 90 percent foreign with 10 percent German supervising them. The rest of the Germans are concentrated in development factories and the like.

The enemy has now adopted a definite plan—as you as soldiers know yourselves and learn constantly from foreign news—of destroying aircraft production first, and mainly the production of fighter planes and night fighters, in order to be able to deal with Germany as he pleases. The enemy believes that this stage has almost been reached now. There is, however, still some confusion in his news reports. One day he expresses his amazement that the German fighter planes did not appear. Then again the newspapers receive a secret directive: “Unpleasant surprises do occur, so do not emphasize so strongly that the enemy has already disappeared from the air.” On the whole, however, the enemy hopes that it has come to the point where Germany’s backbone has been broken or that at least that stage has almost been reached where the enemy has been granted the possibility of dealing with Germany as he pleases.

Another plan our Western enemies have concerns the questions surrounding the concept of the invasion. The invasion and its success would of course also be favorably influenced by a destruction of German anti-air raid defenses.

We of the Luftwaffe armaments have been asking for over a year already that a strong home defense in the air be set up. We have made efforts to establish the prerequisites necessary for this, namely, the providing of sufficient planes to serve as day and night fighters. * * * Being fully aware that the strength of the Luftwaffe alone is insufficient both as regards quotas and with respect to the workers, etc., in order to bring about an extensive change in the field of air armaments, we applied to Minister Speer and his colleagues to undertake a common special effort in this field. The establishment of a Ruhr staff served as an example for us; it was established at the time when the industry in the Ruhr area seemed to be entirely put out of commission by the continuous raids. At that time the Ruhr staff was set up and the necessary quotas, buildings, etc., were put at its disposal. Thereby the entire situation was changed. Minister Speer and his colleagues, fully aware that without air armaments and without air defense the rest of the armament industry would very soon be destroyed and become useless, agreed to this plan enthusiastically and with initiative. Thus it came about that a definite proposal was made to the Reich Marshal and the Fuehrer:

the Jaegerstab was created. The order of the Fuehrer provides clearly that the fighter plane program which the Jaegerstab is starting has priority over all other fields of armament, which means, to be sure, that other important armaments are not to be infringed upon by it. * * *

* * * * *

The Jaegerstab is made up as follows: the direction is in the hands of Reich Minister Speer and myself. Deputy for both of us, and at the same time our chief of staff, is Hauptdienstleiter Dipl. Ing. Saur, who is sitting on my left. Saur is the man who carried out the large-scale armament program for the army and the navy in the Speer Ministry in recent years in an exemplary manner. Saur again and again during the past year and a half succeeded in raising the production figures in all important fields and sometimes even in multiplying them.

Further, I name only the leaders of the Jaegerstab. We have put the question of over-all planning in the hands of Dr. Wegener. Construction matters will be directed by Dipl. Ing. Schlempp. The evacuation underground will be in the hands of SS Gruppenfuehrer Kammler. The supply, one of the most essential factors, and everything in the way of semi-manufactured material that comes to our factories for completion, will be taken care of by Director Schaaf, deputy to Staatsrat Dr. Schieber, the chief of the armament supply office [Ruestungslieferungsamt] in Speer's Ministry. Dr. Schmelter will take care of labor commitment. Sites suitable for dispersal, confiscations, etc., will be in the hands of Ministerialrat Speh of the armaments supply office. Gruppenfuehrer Nagel of the Organization Speer will be in charge of transportation. The supply of power will be in the hands of General Director Fischer. Engineer Lange will be in charge of machinery, Mr. Nobel of repairs. Reich railroad questions will be in the hands of the President of the Reich railroad, Pueckler. Post Office: Oberpostrat Dr. Zerbel. Health matters: Dr. Poschmann. Social welfare: Dr. Birkenholz. Special problems for Me 262 and steel power units: Captain Dr. Krome. Raw materials and quota system. Dr. Stoffregen. Questions of technical simplification, etc.: Oberstabsing. Klinker. Office manager: Petri.

* * * On the spot the individual gentlemen are then told, supported by the combined authority of the state, the Wehrmacht, and the Party, that is, Saur and me—Speer is unfortunately still on sick leave, otherwise he would also be present—what it is all about. That takes ten minutes. After ten minutes the individual members of the Jaegerstab disappear and get together with the men from the factory who are competent for their sphere of

activity. Thus, all pertinent questions are dealt with in the conferences about the commitment of labor, and all competent men, who have anything to do with the commitment of labor meet, especially the president of the competent Provincial Labor Office. Thus it is determined on the spot, in the individual spheres, what the factory lacks. If the circumstances require it, it is immediately demonstrated to the factory that their requests are nonsense. Unreasonable demands and excessive claims are revised. Well-founded demands are immediately filled. While the discussions are still going on, telegrams are sent to the different offices, and the people are already set to work. In general, the people arrive in 24 hours. Unfortunately there are exceptions, for which the Wehrmacht sector is responsible. The Wehrmacht does not work as smoothly and beautifully as civilian offices. It is an error to believe that civilian offices are more bureaucratic than military offices. On the basis of my continuous and extensive experience I can assure you exactly the opposite is true.

* * * * *

* * * Our entire German ball-bearing industry, and that outside Germany, was eliminated one hundred percent by the enemy in a, I must say, brilliant attacking operation: Erfurt, Schweinfurt, Frankfurt on the Main, Stuttgart, Italy. We were faced with the question whether without ball bearings we could produce new planes at all, new tanks, or whether we had to capitulate as an armament industry. For ball bearings are an indispensable factor in modern armament industry. One finds and needs them everywhere, even in places where one does not think of them at first. Now it became apparent, thank God, that the branches of the Wehrmacht had hoarded ball bearings and roller bearings in such large masses that we got along for three months with the hoarded material alone. In this case it was lucky that we still had so much, that so many ball bearings had been hoarded. I have to admit that. But that is not the normal way. It is certain that in the whole period up to now too many spare parts have been requested just in order to gather such hoards. And this in spite of the fact that not everything has been attained by far, but only very large stocks. I should like to say that with the material you have, 20 to 30,000 planes could be newly built or newly equipped without further ado. That is how much material you have! And this does not concern large parts; for in that field I was always strict—it concerns rather all the accessories and apparatus. In considering these figures one has to know that about 52 percent of the total man-hours are spent in equipping a plane and only 48 percent in building the aircraft frame and the engine. Only then

does one realize fully the importance for us of all that small junk that is lying around all over. It is not necessary that the troops always take along all their spare parts. * * *

Gentlemen, in this connection I may call your attention to another important point. If I visit an office and find out that something is being hidden there, then I ask for the death penalty for such a crime today! That is fraud! That is sabotage of the German armament industry!

* * * * *

Then there is still the human factor. We often had considerable difficulty with the human factor. The fluctuation there is very considerable. The quota of the Luftwaffe in the distribution of manpower is constantly lowered. The foreigners run away. They do not keep to any contract. There are difficulties with Frenchmen, Italians, Dutch. The prisoners of war are partly unruly and fresh. These people are also supposed to be carrying on sabotage. These elements cannot be made more efficient *by small means. They are just not handled strictly enough.* If a decent foreman would sock one of those unruly guys because the fellow won't work, then the situation would soon change. *International law cannot be observed here.* I have asserted myself very strongly, and with the help of Saur I have very strongly represented the point of view that the prisoners, with the exception of the English and the Americans, *should be taken away from the military authorities.* Soldiers are not in a position, as experience has shown, to cope with these fellows who know all the answers. I shall take very strict measures here and shall put such a prisoner of war before my court martial. If he has committed sabotage or refused to work, I will have him hanged, right in his own factory. I am convinced that that will not be without effect.

Anyhow, the strangest things occur in the treatment of the workers. It is said that the people collapse, and then one has to find out that they have a furlough of three or four days every eight weeks. That is dirty business of the first order and treason to the country! Then perhaps a construction battalion arrives and is supposed to be put to work. The commanding officer, perhaps some overfed grade-school teacher, declares that the men must drill and must take part in sports! Damn it, the fellows are there to work so that the maximum amount of work will result. One has to act very strictly here. A construction battalion was ordered to Regensburg. The commanding officer was one of those scholars who said he could not billet the men in peacetime conditions and, therefore, he refused to start work. Such a guy should be convicted by a court martial and hanged. I would be grateful if the

gentlemen would proceed in that manner. As with me in industry, so every stupidity is possible everywhere else also. As chief, one has to take up these matters. I know what kind of obstacles become apparent. There is bureaucracy. It is not easy to go against bureaucracy. But we have to cut through that also, and if you, Gentlemen, proceed with the right attitude here, then we are already assured of success.

* * * * *

* * * In saying this I do not even consider the fact that the workshops have first-class personnel, whereas we in the Luftwaffe armament industry have Russians, French prisoners of war, Dutch, and members of 32 other nations. Obtaining interpreters alone presents a big difficulty there.* * *

A further question concerns the efforts for housing the machines. That is very important, and I would be very grateful if you would think this matter over also. In this manner you would not only facilitate the question of spare parts but also the scarce supply of materials. Each fighter plane contains about one ton of aluminum. Every small bomber contains four tons of aluminum; and a larger bomber, seven to eight tons. The captured bombers contain eleven to twelve tons of aluminum. There are in any case tremendous amounts of material involved here. Let us take twelve tons as normal for an American heavy bomber, or let us say only ten tons, and let us assume that we actually shoot down 500 such American bombers a month and that we can salvage them over our own territory; that alone means 5,000 tons of aluminum, 5,000 tons: that is 25 percent of the aluminum quota at the disposal of the Luftwaffe. You can see how important these questions are, too. We can certainly count on more Americans being shot down in the future because we will have more fighter planes.

* * * * *

I further ask for support by the Luftwaffe physicians. With all the rabble that we have among the foreign workers there is of course a lot of shirking. At the moment the Russians—that is, the Russian prisoners of war—are feigning a lot of fatigue and illness. The incidence of sickness of one-and-a-half to two percent which we have had up to now has at least doubled and in some factories it has been increased to eight, nine, and ten percent. That is, of course, done by previous agreement. There the official physicians must undertake an examination and if the physicians, who have to be very strict, find out that it is not true, then we return the fellows to work by means of the whip. Then the whip serves as cure.

A further request which is very important from the point of

view of leadership! Sometimes we do not know in case of an alert what orders we want to give for our factories. If a factory knows that it is about to be attacked, and it has a few trench shelters but does not have a bomb-proof shelter or the like, then the people simply run away from the factory, automatically at each raid, after the first one, and they usually cannot be caught the next day, either. That applies particularly to the foreigners. We have, therefore, now issued the following order, and have equipped the superiors accordingly with weapons and pistols: as soon as a factory which has already been attacked a few times can count on the raids being aimed at that particular factory again, then the personnel leave the factory; but in closed groups by shops, under the leadership of the man in charge of the shop, and, to the extent that they are German personnel, they leave singing military songs. The people are led away from the factory to a distance of 1,000 or 1,500 meters. There they have to lie down in slit trenches and watch their factory from there, so that they can immediately rush to it after the raid in order to help and to save what can be saved. That is the only correct way to do it. * * *

* * * * *

Gentlemen, you come from the fronts, and some of you were perhaps surprised to see how Berlin looks. I recommend to you, if you still have time today, to drive around in a bus and see Berlin. The center still looks quite nice. But have a look at other districts of Berlin too, or look at Frankfurt or Duesseldorf or whatever all of these places are called, in their present condition; then you will admit to me that the population will not be able to endure this condition permanently; not that there is any danger of a revolution or any such thing as we know it from 1918. But at a certain point a human being just cannot endure any more. It is quite surprising how the population has endured this thing so far or how it always gets on its feet again, when it is led in the proper way by true leaders (Fuehrer) who, thank God, are present among the people through the Party and the rest of the leadership. But you must not forget, Gentlemen, the war of nerves has reached a point which causes us in the leadership group worry. The people cannot endure that forever.

One does not have to see only how the people are working—I have told you that—but also how they live, where they are living today, how they are sleeping today. There are hundreds of thousands of Berliners who have not known any heating for months, who have not been able to take a bath for months, who have not been able to shave with warm water for months, and the like. They are happy if they can still put their warm coffee [Plirsch]

in their stomachs in the morning and at noon their soup. And with that they work seventy-two hours. It is a damned difficult affair. Whoever does not understand that and whoever does not say on this occasion: From now on our work will be done quite differently than was the case so far, is a miserable wretch in my opinion. And everyone of us and everyone you appoint has to be trained to accomplish in this sphere what the others have been accomplishing for a long time. We have to do that, we have to increase our production so that we can push the enemy back in the next few weeks and months in the same way as he has advanced to Berlin and farther, step by step.

* * * * *

Please go wherever you are going and knock everybody down who blocks your way! We cover up everything here. We do not ask whether he is allowed to or whether he is not allowed to. For us, there is nothing but this one task. We are fanatics in this sphere. We do not even consider letting anything at all distract us from that task. No order exists which could prevent me from fulfilling this task. Nor shall I ever be given such an order. Now, do not let anything deter you, and get your people to the point that no one deters them. If there is a little hindrance from below, this is not due to ill will but to stupidity. Gentlemen! In the fifth year of war stupidity is a crime!

* * * * *

Gentlemen, I know, not every subordinate can say: For me, the law no longer exists, but he has to have someone who covers up for him, not out of cowardice; but if you act according to the spirit of the old field service regulation, "Abstaining from doing something hurts us more than erring in the choice of the means," and if, moreover, you keep in touch and immediately clarify difficult points so that something can be done, then we are willing to accept the responsibility, whether this is the law or not. I see only two possibilities for me and for Germany: Either we succeed and thereby save Germany, or we continue these slipshod methods and then get the fate that we deserve. I prefer to fall while I am doing something that is against the rules but that is right and sensible and be called to account for it and, if you like, hanged, rather than be hanged because Papa Stalin is here in Berlin, or the Englishman. I have no desire for that. I would rather die in a different way. But I think we can accomplish this task, too. We are in the fifth year of war. I repeat: The decision will come within the next six weeks!

Heil Hitler!

(End: 12:20 hours)

TRANSLATION OF DOCUMENT NOKW-261
PROSECUTION EXHIBIT 70

CHART OF THE ORGANIZATION OF THE JAEGERSTAB DRAWN
BY SAUR WITH LETTER OF TRANSMITTAL TO PROSECUTION
STAFF, 14 NOVEMBER 1946

Nuernberg, 14 November 1946

K. O. Saur

TO: Mr. King, via Prison Office.

In accordance with your request enclosed please find the organization chart of the Jaegerstab which was founded by decree of Reich Minister Speer on 1 March 1944. The chart was drawn up from memory.

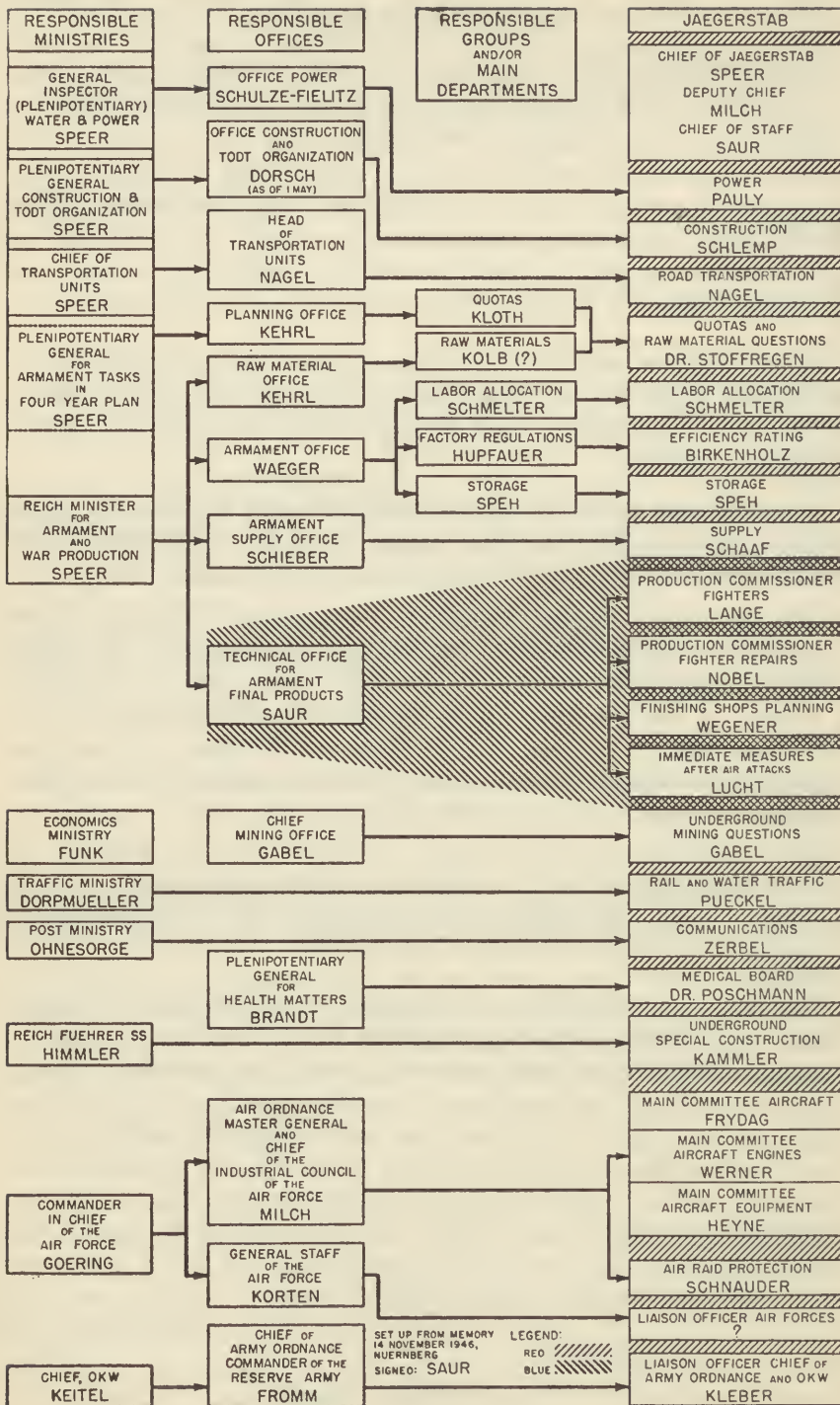
The working methods of the Jaegerstab are disclosed in their essence by the following paragraph from the Armament Staff Charter issued by Reich Minister Speer on 1 August 1944.

“Also in the future in order to prevent the Armament Staff from developing gradually into an extensive agency, the regulation concerning the purely personal membership will be maintained, as was the case for the Jaegerstab. The technical work will be done, therefore, in the office and agencies to which the personal members belong, under the responsibility of the competent office chiefs or agency directors.”

The ministries and their offices or agencies responsible for the different tasks are mentioned individually in the organization chart.

For reasons of clarity, the Jaegerstab, as liaison office, has been framed in red; the technological office, which then was under my own responsibility has been framed in blue. [See legend on chart.]

[Signed] SAUR



TRANSLATION OF DOCUMENT 1584-III-PS
PROSECUTION EXHIBIT 71

CORRESPONDENCE BETWEEN HIMMLER AND GOERING, 9 MARCH
1944, CONCERNING THE USE OF CONCENTRATION CAMP
PRISONERS IN THE AIRCRAFT INDUSTRY

1879/44

Secret

9 March 1944

Field-command office

Subject: Employment of prisoners in the aviation industry.

Reference: Teletype of 14 February 1944.

5 copies, 5th copy

Top Secret State Matter

Most honored Reich Marshal,

Following my teletype letter of 18 February 1944, I herewith transmit a survey on the employment of prisoners in the aviation industry.¹

This survey indicates that at the present time about *36,000 prisoners* are employed for the purposes of the air force. An increase to a total of *90,000 prisoners* is contemplated.

The production is being discussed, established, and executed between the Reich Ministry of Aviation and the Chief of my Economic Administrative Main Office, SS Obergruppenfuehrer and General of the Waffen SS Pohl.²

We shall render assistance with all forces at our disposal.

The task of my Economic Administrative Main Office, however, is not solely fulfilled with the delivery of the prisoners to the aviation industry, as SS Obergruppenfuehrer Pohl and his assistants take care of the required working speed through constant control and supervision of the work-groups [Kommandos] and therefore have some influence on the results of production. In this respect I may suggest consideration of the fact that in enlarging our responsibility through a speeding up of the total work better results can definitely be expected.

We also have for some time adjusted our own stone quarries to production for the air force. For instance, in Flossenbuerg near Weiden the prisoners employed previously in the quarry are work-

¹ Survey is published as part of document in *Nazi Conspiracy and Aggression*, vol. IV, pp. 120-125, U.S. Government Printing Office, Washington, 1946.

² Defendant in case of *U.S. vs. Oswald Pohl, et al.* See Vol. V.

ing now in the fighter plane program for the Messerschmitt corporation, Regensburg, which saw in the availability of our stonemason shops and labor forces after the attack on Regensburg at that time a favorable opportunity for the immediate partial transfer of their production. Altogether 4,000 prisoners will work there after the expansion. We produce now with 2,000 men 900 sets of engine cowlings and radiator covers as well as 120,000 single parts of various kinds for the fighter Me 109.

In Oranienburg we are now employing 6,000 prisoners at the Heinkel works for construction of the He 177. With these we are supplying 60 percent of the total crew of the plant.

The prisoners are working without fault. Up till now 200 suggestions regarding the improvement of work have been handed in at Heinkel from the ranks of the prisoners, which were used and were rewarded with premiums. We are increasing this employment to 8,000 prisoners.

We also have employed female prisoners in the aviation industry. For instance at the mechanical workshops in Neubrandenburg 2,500 women are working now in the manufacture of devices for dropping bombs and rudder control. The plant has adjusted the total aerial production to employ prisoners. In the month of January 30,000 devices as well as 500 rudder controls and altitude regulators have been manufactured. We are increasing employment to 4,000 women. The performance of the women is excellent.

In our own plant in Butschowitz near Bruenn (Brno) we produce also for the air force, there however with civilian workers. This plant supplies 14,000 wooden-built rear control apparatus for Me 109 to the Messerschmitt Corporation, Augsburg.

The movement of manufacturing plants of the aviation industry to subterranean locations requires *further* employment of about 100,000 prisoners. The plans for this employment on the basis of your letter of 14 February 1944 are already under way.

I shall keep you, most honored Reich Marshal, currently informed on this subject.

Heil Hitler!
[Initialed] H.H
[HEINRICH HIMMLER]

TRANSLATION OF DOCUMENT R-124
PROSECUTION EXHIBIT 48-E

EXTRACTS FROM THE MINUTES OF DISCUSSIONS BETWEEN SAUR
AND THE FUEHRER, 6 AND 7 APRIL 1944

Top Secret State Matter

The Chief of the Technical Office
TA Ch S/Kr

Berlin, 9 April 1944

*MINUTES OF DISCUSSIONS WITH THE FUEHRER
ON 6 AND 7 APRIL 1944*

* * * * *

16. Reports made to the Fuehrer by myself [Saur] and Field Marshal Milch, based on tables and drawings, as to the achievements of the Jaegerstab stressing the satisfactory cooperation of the new organization with all offices and plants. Reported in detail that plans have been made for the best part of transfers, and that, as a first installment, the decentralization above ground will be completed by August, and, as the second installment, that the most vulnerable plants will be underground by the end of the year.

17. Field Marshal Milch reported on the result of a construction staff meeting of the Central Planning Board according to which the most important building projects only could materialize due to a great tension in general conditions. In spite of this, the Fuehrer demands that the two huge buildings of 600,000 square meters each should be erected with all speed. He agrees that one of these buildings is not to be made from concrete but—according to our suggestion—will be set up as an extension of, and close to, the Middle Plant [Mittelwerk] as a so-called “Middle-Building” [Mittelbau], and that this plant will be placed under the direction of the Junkers Works. Plans have to be made without delay to secure production in bottleneck items of the Junkers Works, production of Me 262 at 1,000 per month, and fighters at 2,000 per month.

Suggested to the Fuehrer that, due to lack of builders and equipment, the second big building project should not be set up in German territory but in close vicinity to the border on suitable soil (preferably on gravel base and with transport facilities) on French, Belgian, or Dutch territory. The Fuehrer agrees to this suggestion if the works could be set up behind a fortified zone. For the suggestion of setting this plant up in French territory speaks mainly the fact that it would be much easier to procure

the necessary workers. Nevertheless, the Fuehrer asks that an attempt be made to set up the second works in a safer area, namely in the Protectorate. If it should prove impossible there, too, to get hold of the necessary workers, the Fuehrer himself will contact the Reich Leader SS and will give an order that the required 100,000 men are to be made available by bringing in Jews from Hungary. Stressing the fact that the building organization of the Industry Association Silesia [Industriegemeinschaft Schlesien] was a failure, the Fuehrer demands that these works must be built by the O.T. [Organization Todt] exclusively and that the workers should be made available by the Reich Leader SS. He wants to hold a meeting shortly in order to discuss details with all the men concerned.

* * * * *

The Fuehrer agrees that these items may be used as a basis for future conferences.

[signed] SAUR
[typed] (SAUR)

TRANSLATION OF DOCUMENT NOKW-247
PROSECUTION EXHIBIT 61

APPOINTMENT OF FIELD MARSHAL MILCH AS GOERING'S
PLENIPOTENTIARY FOR THE INTENSIFICATION OF
AIR FORCE ARMAMENT

Copy

The Reich Marshal of Greater Germany
Chairman of the Reich Defense Council

Berlin, June [sic]

AUTHORIZATION

The war situation calls for the utmost intensification of the armament capacity of the German Air Force within the shortest time. The goal of the measures to be taken has to be the fourfold increase of the present production in all branches of air force armament. I commission the State Secretary of the Ministry of Aviation, Field Marshal Milch, with the speediest execution of this intensification of armament ordered by the Fuehrer. To secure the attainment of the end at which we aim I confer here-with the most extensive power of authority on Field Marshal Milch within the sphere defined as follows:

1. Shutting-down and seizure of factories, decisions about expropriations and forced leases, seizure and expropriation of construction material in agreement with the Plenipotentiary General for Construction, erection of auxiliary buildings exempted from restricting provisions of the building police, of the office for the supervision of industry, of air-raid protection, social institutions, etc., as far as these provisions are incompatible with the fast completion of the building projects.

2. Confiscation, expropriation, and renting of machinery of all kinds and its distribution to the armament factories of the Luftwaffe. Forced transfer of workers who are unemployed or employed in industry of any kind whatsoever, this not only for the erection of the buildings but also for allocation to Luftwaffe armament factories.

3. Confiscation of raw materials absolutely essential for the Luftwaffe program; only superfluous raw materials may then be distributed in the manner as now. This refers especially to light metals and gasoline.

4. Removal and transfer of key personnel of the entire armament industry irrespective of existing contracts under private law; cancellations of or changes in existing powers of authorization, and issue of new powers; creation of industrial associations, patent associations, merger of companies; creation of new companies, and separation of uneconomically working firms and their coordination or subordination to better managed firms.

5. Deviation from existing regulations about the financing of the war and premiums in cases where the utmost intensification of output cannot be achieved otherwise. In this connection due consideration has to be given to the economical situation and to the financial capacity of the firms involved.

6. All decisions of and all measures taken by my plenipotentiary on the basis of this authorization have to be regarded as if they were ordered by me. These decrees and measures have priority in respect to all other official directions and decrees as far as these are not compatible with the speediest execution of the intensification of the production capacity.

TRANSLATION OF DOCUMENT F-824
PROSECUTION EXHIBIT 57

ORDER OF FIELD MARSHAL VON KLUGE REGARDING
COMPULSORY RECRUITMENT OF LABOR IN THE WEST,
25 JULY 1944

Secret [Stamp]

2a [Handwritten]

Headquarters, 25 July 1944

546 [Handwritten]

Commander in Chief West Section
IaT No. 1731/44 secret

Reference: 1. OKW/WFST/Qu. (Adm.1) Qu.2 (West) No. 05201/44 secret of 8 July 1944 (*distributed only to Commander in Chief West and the Military Commanders.*)

2. OKW/WFST/Qu. (Adm.1) Qu.2 (West) No. 05431/44 secret of 19 July 1944.

(File Notes)

Subject: Procurement of Labor in the West.

With Ref. to 2, Chief OKW has ordered:

"The communication of Field Marshal Von Kluge of 8 July, addressed to the Reich Minister for Armament and War Production, crossed with my order of the same day." (OKW/WFST/Qu. (Adm. 1) Qu. 2 (West) No. 05201/44 secret).

From this it is evident that, by order of the Fuehrer, under suspension of orders to the contrary, the wishes of the Plenipotentiary for Labor [Sauckel] and of Reich Minister Speer must, in principle, be carried out. Further, to my teletype, the following additional general directions apply in future, as a result of the conference of ministers in the Reich Chancellery on 11 July, about which the Commander in Chief West will have been informed by the military commander:

Rejecting justified misgivings with regard to peace and security in the interior of the country, seizures must be carried out wherever the opportunities referred to in my above-mentioned teletype offer themselves. As the only limitation, the Fuehrer has ordered that no forcible means shall be employed against the population in the actual combat area as long as it [the population] shows itself prepared to assist the German Armed Forces. However, recruiting of volunteers from among refugees from the

combat zone is to be carried out vigorously. Moreover, every means is justified to seize as much labor as possible otherwise, apart from [using] the powers granted to the armed forces.

In order to render as effective as possible the measures which have been introduced, the troops are furthermore to be instructed in general as to the necessity of the organization for conscription of labor in order to put an end to the open and covert resistance which has arisen in many instances. The field commandants and the offices of the military administration must give wide support to the representatives of the Plenipotentiary for Labor Allocation and refrain from encroaching on their sphere of activity.

I now direct that the necessary orders in this sense be given and that I be constantly informed about the measures taken and their execution.

Indorsement of Commander in Chief West:

In accordance with this, Commander in Chief West has reported the following to the Chief of the OKW on 23 July 1944:

1. I have authorized the execution of the Sauckel-Laval agreement of 12 May in spite of misgivings because of interior security.
2. I will issue more detailed directives for the execution of the measures in the combat zone in accordance with OKW/WFST/Qu. (Adm.1)/2 (West) No. 05201/44 secret of 8 July 1944.

The Commander in Chief West
[Typewritten] VON KLUGE
Field Marshal

Additional orders will follow.

For the Commander in Chief West
The Chief of Staff

BY ORDER

(illegible signature)
Colonel, GSC

Distribution:

High Command Army Group B
High Command Army Group G
Armored Group Command West
Mil. Cmdr. in France
Armed Forces Commander in Belgium and northern France

For Information:

Commander in Chief West/Ic [Intelligence]
IaT (Draft)

PARTIAL TRANSLATION OF DOCUMENT NOKW-337*
PROSECUTION EXHIBIT 75

EXTRACTS FROM TRANSCRIPT OF STENOGRAPHIC MINUTES OF
THE JAEGERSTAB CONFERENCE OF 6 MARCH 1944

SS MAJOR: [unidentified] I have already discussed with Lt. Col. Diesing our requirements according to our construction plan in the immediate program. From tomorrow 5,000 prisoners will be in readiness to carry out this measure. For that we need 750 guard personnel.

* * * * *

FIELD MARSHAL MILCH: We must distribute our German people as key personnel. That is, out of three construction companies we can probably make ten complete ones by introducing 70 percent foreigners.

SS MAJOR: They must be skilled workers. In handling the prisoners, it appears best that we should give 5 to 10 of them to one man who knows his job.

SAUR: The construction companies will be dissolved to provide key personnel for teams 10 times or even 100 times their size. That is a question which must be clarified by 10 a.m. tomorrow between the Plenipotentiary General for Construction and the air force construction units on one side and Kammler's construction staff on the other. That will be clarified by tomorrow and he then must say what he needs. The Todt Organization must take part in the discussion, but I cannot consent to the inclusion of the Todt Organization in the matter as a third leading organization, as we would get confused. The Todt Organization must bleed with the rest. It is the same as your construction companies. It is the donor but he is the organizer and usufructuary. He is by all means the usufructuary. For besides being organizer, he is the usufructuary for the construction sites of the Plenipotentiary General for Construction.

SS MAJOR: Therefore it is important that these construction companies should be under military leadership!

FIELD MARSHAL MILCH: * * * We further appealed to the Fuehrer that we should get the 64 miners who are in Berchtesgaden, as the work there will probably soon be finished. He made the suggestion that we, like the SS, should also train miners in the greater degree and mentioned the figure of 10,000 who would have to be trained one after another because they could not all be trained at once.

* Portions of this document were introduced by the defense as Defense Exhibit 12. See pp. 561-62.

SAUR: The SS should be told that the training of miners should rest entirely with them because the SS runs the best mining school.

FIELD MARSHAL MILCH: We must also ask the SS to get more miners from Italy and Slovakia.

SAUR: * * * We must bring more order into the PW base camps [Stalags]. We have made a proposal that the PW base camps should be transferred to the SS. The Italians and eastern peoples should be treated more roughly.

* * * * *

PARTIAL TRANSLATION OF DOCUMENT NOKW-338 *
PROSECUTION EXHIBIT 75

EXTRACTS FROM TRANSCRIPT OF STENOGRAPHIC MINUTES OF
THE JAEGERSTAB CONFERENCE ON FRIDAY, 17 MARCH 1944

* * * * *

STOBBE-DETHLEFFSEN: * * * We already count on 100,000 men for the tasks of the Jaegerstab. To transfer them would mean breaking into the rest of the armament economy to an unheard-of degree.

(SAUR: 100,000 without Kammler!)

Including the labor we give Kammler but not including the concentration camp people.

SAUR: Right from the beginning we realized that 200,000 men would be transferred.

STOBBE-DETHLEFFSEN: I have just spoken to Prinzel about it. It is absolutely necessary that the few German key personnel at our disposal should be taken with the concentration camp inmates or with the other subjugated people in such a proportion as will guarantee the best use of this valuable German strength * * *.

* * * * *

STOBBE-DETHLEFFSEN: I am always getting demands for German labor. For example: Here are 5,000 concentration camp inmates, give me 1,000 German workers. I do not fulfill these requests in this proportion; otherwise my German labor would soon come to an end. We have filled only a fraction of the positions. I distribute German workers only in the ratio of 1:10.

* * * * *

* Other portions of this document were introduced by the defense as Defense Exhibit 13. See pp. 562-63.

MILCH: The air force stresses the importance of getting the whole cave for the purposes of manufacture. * * *

PORSCHER: * * * I shall talk to Weiss again about our getting more concentration camp people for finishing off the work.

(DIESING: We probably shall not get them.)

I'll get them from the Reich Leader. I already have 3,500. Two of Obergruppenfuehrer Pohl's men are going to France to prepare everything locally with regard to housing and feeding.

* * * * *

NOBEL: Can one be responsible for foreigners working as airfield control personnel? The repair works say: yes!

(MILCH: Not as pilots!)

I do not think that is intended. The repair works said yesterday that it would be a help to them if foreigners could be used as airfield control personnel. * * *

* * * * *

PARTIAL TRANSLATION OF DOCUMENT NOKW-346
PROSECUTION EXHIBIT 75

EXTRACTS FROM TRANSCRIPT OF STENOGRAPHIC MINUTES OF
THE JAEGERSTAB CONFERENCE UNDER CHAIRMANSHIP OF
FIELD MARSHAL MILCH ON MONDAY, 20 MARCH 1944

* * * * *

SAUR: * * * As far as Hungary is concerned, I should be grateful if the Field Marshal would call up Mr. Sauckel and tell him that the whole group mobilized in Hungary should be primarily at the disposal of the Jaegerstab. Large construction [of entrenchments] columns [Schanz Kolonnen] must be formed. The people have to be treated like prisoners. Otherwise it won't work.

* * * * *

SAUR: Where are the 54,000 Czechs?

MAHNKE: Of the 58,000 Czechs, 17,000 have been earmarked for Czechoslovakia. 31,000 are intended for the Reich, and after that 26,000 have been divided among the special commissions [Sonderausschuesse]. 31,000 were for power units.

* * * * *

PARTIAL TRANSLATION OF DOCUMENT NOKW-388
PROSECUTION EXHIBIT 75

EXTRACTS FROM TRANSCRIPT OF STENOGRAPHIC MINUTES OF
THE JAEGERSTAB CONFERENCE OF 28 MARCH 1944

* * * * *

NOBEL: The labor situation in the repair sector is very unsatisfactory. Of the 2,000 people promised me before from the Action Sauckel, not one has yet arrived. There is no point in saying that people should apply to the armament department [Ruestungskommando]. The armament departments and inspectorates [Ruestungskommandos and Inspektionen] have not got anybody. If these men are not roped in by higher authority, the repair workshops cannot get any labor. My people are not in a position to stop production because we have not received any men since 11 March.

MEMBER OF THE JAEGERSTAB: I brought this matter up yesterday with Ministerialdirigent Dr. Timm of the office of the Plenipotentiary General for Labor Allocation, and told him that we handed in our request on 17 March, but had not yet received any laborers. He could not tell me anything but will let us know today. I will ask Schmelter, who is coming to this meeting later, to follow up the matter.

MILCH: Tell Schmelter, that if I can help in any way by calling Sauckel, etc., he should let me know.

* * * * *

SCHMELTER: I have received such high demands, for instance today over 3,000, tomorrow over 5,000, and the day after, again over 4,000, that it cannot possibly be that the labor is really needed, or else the firms do not understand the program. What has been received from you, Mr. Lange, has been passed on. It is also to be expected that these laborers will come within the next 10-14 days. I have arranged with Sauckel that I shall give out red tickets for the most urgent demands, first of all a consignment of 10,000. That will do to begin with. These red tickets will have priority, even over other red tickets. Of course, that will cause difficulties over skilled workers. When we have a picture of the number of skilled workers we need, we must decide from which branch of manufacture we can remove them, for Sauckel does not have so many skilled workers. Those who have already arrived are, for the most part, from the East. That is still the most prolific source. Very few come from the West and they are slowly starting to come from Italy. There are comparatively few skilled workers among them. So we must decide what factories

are to be closed or restricted and where we shall take away the skilled workers. I can only let you have details in a few days when I have a complete picture of requirements.

NOBEL: If I must speed up repair work in a limited time, I need the labor at once. Since 16 March not one of the 2,000 people that Sauckel was going to send has arrived. That is already two weeks ago. They tell me that if they have to deliver 50 machines they must have 60 people today or tomorrow. But that won't work because I have not got the people. I have always said—you will not get skilled workers. They answer—then give us others. If we do not fulfill these demands, their confidence in the Jaegerstab will be undermined. This morning I shall get material from Hansen & Company in Muenster. The labor office there is not yet clear about the set-up of the Jaegerstab and the priority of the fighter program. It is the result of the bureaucracy of the authorities. My men have to argue with the authorities and thereby lose valuable time.

SCHMELTER: It is now customary, if one fails to produce something to put the blame on the labor office. I remind you of the Messerschmitt affair.

(MILCH: That is not so in all cases.)

Assuredly! The gentlemen were with me on Saturday. They had got back 50 tool makers from the army into the bargain, which they had had in the meantime, and said nothing about. First, they could not employ them, secondly, they did not need them, and thirdly, they got them elsewhere. Furthermore Sauckel puts the people at the disposal of the repair department. It was immediately reported that the labor offices worked too slowly.

MILCH: You will make things easier for yourselves if you build up gradually a small reserve of a few hundred people, at first 500 which you can later raise to 2,000 so that you can cover immediately any need that arises. Then our work will gain the respect of others. At the moment it is like this—either we must transfer people and leave a gap where it is less vital, or wait until the people are brought in by Sauckel. When one sees the figures that Sauckel has produced and ascertains what the armament industry has received, the comparison is ridiculous.

SCHMELTER: A letter is on the way from the minister to Mr. Sauckel. During the first three months Sauckel has brought in between 300,000 and 400,000 people, but not even a miserable 66,000 red tickets could be honored.

MILCH: I personally cannot get over it! Take the help away from the housewives! In the past year 800,000 domestic servants have been negotiated and we are fighting for 2,000 men!

SCHMELTER: In one year the demand for female domestic servants in Germany has risen by 200,000, the demands of the armament industry during the same period by 600. I have arranged that transports that come from abroad are directed straight to the points of greatest need.

MILCH: Every week 2,000 people come from the East.

(SCHMELTER: Most of them go into agriculture.)

The Jaegerstab has priority over agriculture. Can you not intercept them?

SCHMELTER: I have arranged that. The 2,000 are disposed of; some of them are already at work. But it does not always happen that the reports of the firms are 100 percent correct. We have often checked that up. It often happens that firms take the people and put them into another branch of production but still shout for people for the high priority processes.

(NOBEL: That is not the case in my repair industry!)

FRYDAG: Yesterday, I was in Wiener Neustadt. The works have a considerable assignment and a hefty increase. Merely in order to get out of the room unscathed I gave them 200 men from the airframes industry.

SCHMELTER: In Wiener Neustadt there was a demand for 1,000 or 1,500. A thousand were supposed to come from Air Fleet 2 in Italy. An engineer official, Weidinger, was going to produce them. On Sunday I received a phone call to the effect that the engineer official could not produce them.

FRYDAG: That is quite right. But you must put yourself in the firm's place. The firm must have these people.

SCHMELTER: Then I must see to it that I take them from somewhere else.

MILCH: You know our position. We are convinced that you do everything you can. But we must now commit a robbery. We can no longer operate along legal lines.

(SCHMELTER: That is the only possibility.)

There will be abuse but we must accept that.

SCHMELTER: I shall go tomorrow to Mr. Sauckel and tell him that he must give the fighter industry the next transport of workers from the East. The proposal that the fighter industry should not give back the laborers it received who originally worked in agriculture has been turned down by Sauckel. I am commissioned to inform you of this.

MILCH: That is out of the question. Nothing shall go out of the fighter industry!

SCHMELTER: I am commissioned to say that he must have this labor back again.

MILCH: Later, not now! One more thing. We must protect all the factories working for the fighter program. We must say to them: You must not give up people for anything whatsoever except on command of the Jaegerstab. None can touch you, not even the local labor offices and the ministerial authorities; requests for personnel must all be directed to the Jaegerstab. We must put that out clearly as an order.

(PETRI: That is already in previous minutes.)

SCHMELTER: May I request that this order should be extended to the management and repair personnel of the electricity and gas works.

MILCH: I can only do it for the Jaegerstab. I am not doing it for the bomber and other branches either as we have only that special authority.

SCHMELTER: I should like to ask that it should only be done for manufacture and not construction.

MILCH: Agreed! We must write a letter to Keitel of the OKW and a letter to Sauckel saying: Requests are to be made only directly to the Jaegerstab.

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PARTIAL TRANSLATION OF DOCUMENT NOKW-334*
PROSECUTION EXHIBIT 75

EXTRACT FROM TRANSCRIPT OF STENOGRAPHIC MINUTES OF
THE JAEGERSTAB CONFERENCE OF 25 APRIL 1944

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[page 27]

WEGENER: I have a question for Schmelter: Has the question of the *transfer of western Europeans* been clarified?

WERNER: On this subject I can say that it is especially difficult for BMW [Bavarian Motor Works], because we can only transfer Russians and concentration camp inmates, and the guards for these are mainly Belgians and French.

* * * * *

WEGENER: As far as I can remember, 200 key personnel are needed for Markirch.

* Portions of this document were introduced by the defense as Defense Exhibit 16. See pp. 564-65.

MILCH: Perhaps that must be brought before the Fuehrer again.

SCHAAF: Saur came back and said there was no more to be said on this subject to the Fuehrer.

MILCH: That is out of date now. I have discussed with Saur the fact that we cannot keep up this state of affairs. Saur is of my opinion. It must be discussed once more with the Fuehrer. I can discuss it again with the Reich Marshal. We shall do what we can, but we cannot throw everything into confusion without due consideration. How should we then manage to produce! I am convinced that the Fuehrer will agree as soon as we can put these people reasonably into barracks so that they do not come into contact with the population.

* * * * *

SCHAEDE: Whenever French key personnel are brought to Lorraine, they run away without fail in a short time. This one must tell the firm. Already they do not come back from leave.

MILCH: It will only work if we put these workers into barracks. We cannot exactly treat them as prisoners. It must appear otherwise, but it must be so in practice.

* * * * *

MILCH: I am personally convinced after talking to the Fuehrer that he will agree as soon as it is made reasonable. The people should not be able to mingle with the population and to conspire. Nor should they be allowed to run around free, so that they can cross the frontier every day. Both practices must be stopped.

* * * * *

HEYNE: I have two short points. Yesterday Maehrisch-Truebau was removed from the program because the Quartermaster General told me the previous night that it was possible to move in on the morning of 28 April. The matter is already progressing. Last night I was called up again because the Chief of Prisoners of War Affairs did not quite agree with the new accommodation in Brunswick of the prisoners from Maehrisch-Truebau for some reasons of security.

I should like to ask Major Kleber, who was also yesterday announced as Mr. Saur's liaison officer with the OKW, to exert some pressure here.

Apart from that, General Schmidt said that there were also some fighter units and suchlike in the barracks; that he could not move out as quickly as that; he would not take orders; otherwise he would go to the Reich Marshal.

MILCH: I am of the opinion that that must be done at once. It's all the same to me if individual people do object. Protest does

not interest me at all, whether from the Chief of Prisoners of War Affairs or from our side.

Kleber, would you be so good as to take care of this?

KLEBER: As far as prisoners of war are concerned I can take care of it, but not where it concerns the air force. That must be handled separately.

MILCH: Naturally. This matter must be handled by us. There was in fact, another proposal but we do not want it. Otherwise someone else will come complaining.

KLEBER: I should like to transfer the prisoners further off to Brunswick.

MILCH: I think it is an excellent idea for the prisoners to go there if Brunswick continues to be attacked.

* * * * *

SAUR: I must come back again to the question of *western European workers*. Make an energetic attempt to make a *compromise within the factories*. I think it will work out. I do not think the Fuehrer will give in even if we put the French into barracks. He has spoken so firmly and for reasons which I cannot but recognize. I am all the more thankful that permission has been given for the Protectorate. I am going to see State Minister Frank on Friday and I shall discuss with him the whole question of dispersal in the Protectorate. I shall like Schmelter to accompany me to Prague on Friday to discuss the question of transfer of workers.

MILCH: I said before that we wanted to carry out the transfer within the factories. Then if something is left over, we should have to approach the Fuehrer again, but only on condition that they are in barracks and that there are replacements for them.

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PARTIAL TRANSLATION OF DOCUMENT NOKW-362
PROSECUTION EXHIBIT 75

EXTRACTS FROM TRANSCRIPT OF STENOGRAPHIC MINUTES OF
JAEGERSTAB CONFERENCE ON THE OCCASION OF THE 5TH
TRIP OF THE "HUBERTUS UNDERTAKING", 2 AND 3 MAY 1944

* * * * *

[Page 65]

MILCH: * * * I also ask that every time the civilian population is attacked [Translator's note: by low-flying aircraft], in private cars, on [rail] roads, etc., the local offices make reports accordingly. The Fuehrer has ordered extremely severe measures against these enemy crews who harass the civilian population.

There is not the slightest military necessity for this and the Fuehrer intends absolutely to act according to the Japanese pattern. (Enthusiastic applause!) We must only take cases individually so that we have the necessary material and can produce it. We owe that to our boys who are prisoners over there, who will be held as hostages unless we have proper proof.

* * * * *

[Page 110]

SCHNAUDER: * * *

1. At the Heinkel factory at Barth there are 3,300 workers, consisting of 300 Germans and 3,000 concentration camp inmates. Of the 3,000 concentration camp inmates, 1,500 are men. In order to maintain their working capacity it is necessary to evacuate these men too during daylight air attacks. However, there are not enough guards and sometimes there is a deficit of as many as 20. As guards cannot be drawn from any other source, it has been decided that the factory is to arm as guards certain men from its own ranks to guard the concentration camp inmates. * * *

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PARTIAL TRANSLATION OF DOCUMENT NOKW-390
PROSECUTION EXHIBIT 75

EXTRACT FROM TRANSCRIPT OF STENOGRAPHIC MINUTES OF
THE JAEGERSTAB CONFERENCE OF 4 MAY 1944

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SAUR: 12. Can the arrival of the reported 50,000 Italians be relied on? By what date will the first transport arrive? This wording is, frankly, unintelligible. It was quite clear that the 50,000 Italians were coming so that the transport facilities were guaranteed long ago. How did such a report get into the minutes of 14 April?

(Comment: The camps into which these people are to go don't even exist yet!)

We shan't get any further like this! Inform Mr. Schmelter.

FIELD MARSHAL MILCH: Are they coming via Sauckel?

SAUR: No. This is our own undertaking. Pueckel has clarified various doubtful points with Nagel and got ready a large number of vehicles and now all that comes to nothing. Schmelter must report on it tomorrow, not in the sense of whether it can be done, but that this and that must be done, and by such and such means.

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PARTIAL TRANSLATION OF DOCUMENT NOKW-442 *
PROSECUTION EXHIBIT 75

EXTRACT FROM TRANSCRIPT OF STENOGRAPHIC MINUTES OF
THE JAEGERSTAB CONFERENCE ON 5 MAY 1944

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SCHMELTER: Then the transport of the Italians. 50,000 Italians have not yet been transported. It was due to the fact that the escort for the transport has not yet been appointed. The conversation yesterday with the Plenipotentiary in Milan proved that the transport should leave today for this place Woerl (?) [sic] where further distribution will be undertaken. I booked another call this morning but did not get through. I hope to be able to give more details tomorrow.

MILCH: Has a proper reception center been set up in Woerl?

(SCHMELTER: Yes.)

Is it assured that the number of those leaving is in reasonable proportion to those arriving? * * *: [sic] That shall be. A man has been appointed by Schmelter to travel down there especially and control directly the conscription of civilians.

MILCH: Is there someone at the Escort Detachment Headquarters in Italy responsible for seeing that people do not get out and run away during the journey?

* * * [sic] That is what the escorting personnel is there for.

(MILCH: Someone of standing?)

Dr. Wendt is responsible for the whole undertaking.

MILCH: I am of the opinion that, if anyone jumps out, he should be shot; otherwise a thousand will get on and only twenty will arrive there. The Gendarmerie and all military posts must look out for those who abscond on the journey. They will be arrested at once and will appear before a court martial.

(End of meeting 1225 hours).

PARTIAL TRANSLATION OF DOCUMENT NOKW-361
PROSECUTION EXHIBIT 75

EXTRACT FROM TRANSCRIPT OF STENOGRAPHIC MINUTES OF
THE JAEGERSTAB CONFERENCE DURING THE 6TH JOURNEY
OF THE "HUBERTUS UNDERTAKING" FROM 8-10 MAY 1944

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GABEL: We must have 1,000 underground workers at once.
SAUR: Definitely.

* Another portion of this document was introduced by the defense as Defense Exhibit 21. See pp. 565-66.

BORNITZ: The Erzberg [ore mine] has, furthermore, a loss of from 1,400 to 1,500 men per annum due to climatic conditions. It goes up as high as 1,500 meters.

SAUR: Do you give the men up systematically, and to whom?

BORNITZ: Not systematically. They collapse, report sick, and the foreigners do not come back. Some escape too, as in the mountain country it is not possible to seal everything hermetically.

(Comment: A year ago the labor potential of a large concentration camp was thoroughly gone into. That possibility must not be entirely disregarded).

GABEL: Careful! Concentration camp internees are not strong enough to be able to work underground.

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PARTIAL TRANSLATION OF DOCUMENT NOKW-336 *
PROSECUTION EXHIBIT 75

EXTRACTS FROM TRANSCRIPT OF STENOGRAPHIC MINUTES OF
THE JAEGERSTAB CONFERENCE ON 26 MAY 1944

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[Page 31-32]

REICH MINISTER SPEER: With regard to construction it is important that we should not start more building than we can supply labor and equipment for. Equipment is of secondary importance. We must not continue with the mistakes we found in the air force armament industry when we took over, i.e., the beginning of no end of buildings for which, at that time, only 20 to 30 percent of the necessary labor was available.

SAUR: That is the case now unfortunately. We have at least 3 times as many buildings under construction as we have labor available.

REICH MINISTER SPEER: What is the news about the Hungarian Jews?

KAMMLER: They are on the way. At the end of the month the first transports will arrive for surface work on the surface bunkers.

* * * * *

[Page 33]

SCHLEMPF: * * * Dorsch said yesterday that he wanted to bring 100,000 Jews from Hungary, 50,000 Italians, 10,000 men

* Other portions of this document were introduced by the defense as Defense Exhibit 23. See pp. 566-67.

from bomb damage repair, also 1,000 from Waldbroehl (?) [sic]; then he wanted to get something from Greiser's zone by negotiation, then 4,000 Italian officers, 10,000 men from South Russia and 20,000 from North Russia. That would be 220,000 altogether.

REICH MINISTER SPEER: We have often made such calculations; but the people never came.

* * * * *

[Page 34]

KAMMLER: For all these measures [Translator's note: A and B construction measures which were the responsibility of the SS], I must take in 50,000 more people in protective custody [Schutzhäftlinge].

* * * * *

[Page 43]

REICH MINISTER SPEER: We shall carry out a special operation [Sondereinsatz] of our own in order to build up reserves of manpower [Schwerpunkte]. It will bring in 90,000 men in three installments of 30,000.

* * * * *

It will be experts who are called up. And it would be a good thing if one linked up with it the conscription of tool makers within the firms so that one would have a body of tool makers in the armament industry. These people would get leave from this group and would function as armed forces employees. If we make them armed forces employees we have the advantage of being independent of Sauckel's offices.

* * * * *

[Page 80]

FIELD MARSHAL MILCH: How long do the Italian PW's actually work here?

SCHMELTER: As long as the factory works. There is a regulation that PW's must work so long.

FIELD MARSHAL MILCH: Could you not look into this? You can see people on the streets about 4 or 5 o'clock and nobody after that.

(SCHMELTER: I can look into it!)

I do not believe that any Italian prisoner of war works 72 hours.

* * * * *

[Page 81]

SCHMELTER: * * * Dorsch will accompany me to Greiser to

try and get 20 to 30 thousand men out of him.

REICH MINISTER SPEER: Kammler had his doubts about that before.

REPRESENTATIVE OF KAMMLER: He didn't think the 100,000 Jews would come.

SCHMELTER: To that I can add the following. Till now two transports have arrived at the SS camp Auschwitz. For fighter construction we were offered only children, women, and old men with whom very little can be done. * * * Unless the next transports bring men of an age fit for work the whole action will not have much success.

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PARTIAL TRANSLATION OF DOCUMENT NOKW-359
PROSECUTION EXHIBIT 75

EXTRACTS FROM TRANSCRIPT OF STENOGRAPHIC MINUTES OF
THE JAEGERSTAB CONFERENCE ON 27 JUNE 1944

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[Page 27]

SCHMELTER: I have another small point to bring up. I said once before that we had fairly large numbers of English and American "Terror Flyers" in air force camps, who cannot be used. It is a matter, in all, of about 17,000 people, approximately half officers and NCO's who do not need to work. That means that there are 6 to 9 thousand men in camps who just sit about doing nothing. The suggestion that they should be put to work has now been turned down on the grounds that it concerns especially intelligent people trained in collecting information and, apart from that, inclined to acts of sabotage.

SAUR: Can we put them into the manufacture of component parts?

LANGE: Perhaps we can employ them in underground factories.

SAUR: We could employ them in the manufacture of component parts. Who is responsible for this matter?

KRAUSE: The Commission for Prisoners of War; it comes under the Quartermaster General.

SAUR: Will you undertake to put this matter in order? These people must be put at the disposal of the component parts industry. That would be an unbelievable help to us.

SCHMELTER: It must be laid down that these people *all* go into fighter production or into the component parts industry. Other-

wise a part will be sent off elsewhere. The people in question are excellent people, good material.

* * * * *

[Page 31]

SCHMELTER: I have a few more points. Up till now 12,000 female concentration camp internees, Jewesses, have been demanded. The matter is now in order. The SS has agreed to deliver these Hungarian Jewesses in batches of 500. Thus the smaller firms, too, will be in a position to employ these concentration camp Jewesses better. I request that these people should be ordered in batches of 500.

MAHNKE: How many are still there?

SCHMELTER: There are still enough there.

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TRANSLATION OF DOCUMENT NOKW-320
PROSECUTION EXHIBIT 73

EXTRACT FROM INTERROGATION OF KARL OTTO SAUR ON
13 NOVEMBER 1946, CONCERNING THE USE OF CONCENTRATION
CAMP PRISONERS IN JAEGERSTAB CONSTRUCTION

Q. Were special factories built after the creation of the Jaegerstab?

A. All building of factories above the ground was stopped, and subterranean factories were built. We divided approximately 30 factories into 700 individual workshops to avoid offering targets for attacks.

Q. What kind of workers were used for this construction?

A. The construction was divided into three parts: the two Kammler parts, (a) new construction underground, and (b) expansion underground, and the Todt Organization part.

Q. This expansion program was directed by Kammler,* then?

A. Parts (a) and (b) were directed quite independently by Kammler. He had full authority from Goering as of 4 March 1944 and was then made a member of the Jaegerstab. * * * The whole affair was carried out by Kammler alone.

Q. And the workers who were used for this purpose were concentration camp prisoners?

A. To my knowledge, they must have been concentration camp prisoners.

* Kammler was one of the leading officials of the Economic Administrative Main Office of the SS [Wirtschafts-Verwaltungshauptamt—WVHA]. See case of *United States vs. Oswald Pohl, et al.*, (Vol. V), concerning the WVHA which administered the utilization of concentration camp labor.

TRANSLATION OF DOCUMENT NOKW-266
PROSECUTION EXHIBIT 76

AFFIDAVIT OF FRITZ SCHMELTER, 19 NOVEMBER 1946,
CONCERNING THE ORGANIZATION OF THE JAEGERSTAB

I, Fritz Schmelter, swear, testify, and state:

1. That, since about January 1944 until April 1945, I held, in the end, the office of Ministerialdirigent in the Ministry for Armament and War Production (Ministry Speer); that as Ministerialdirigent I was in charge of the Division for Labor Assignment, and from December 1944 until April 1945 of the Central Department for Labor Assignment and Labor Output, and that, as a holder of these positions I was also a member of the Jaegerstab.

2. That Milch and Speer together were in charge of the Jaegerstab; that Saur was the Chief of Staff and was, in this capacity, the immediate subordinate of Milch and Speer.

3. That during its existence the Jaegerstab met almost every day and that these meetings were presided over in most cases by Milch, in the beginning, and later on by Saur; that Speer was very rarely present and only on special occasions; that these meetings took place, first, in the Reich Air Ministry and after this was destroyed in the barrack at Tempelhof.

4. That in the meetings of the Jaegerstab the supply of labor for the Luftwaffe was discussed; that, for the Jaegerstab, the labor requirements necessary to the industry of the Luftwaffe were discussed with the Plenipotentiary for Labor Allocation (Ministry Sauckel); that Sauckel satisfied these requirements as far as possible; that the Chief of Staff, in the Jaegerstab, Saur occasionally also distributed the available labor to the different Luftwaffe plants.

5. That in the year of 1944 the air raids made it necessary to decentralize many of the plants of the Luftwaffe; that this decentralization was ordered by the Jaegerstab; that many factories of the Luftwaffe were transferred into subterranean buildings and that for the completion of these subterranean buildings concentration camp inmates and Jews were also used; that the whole building program of the Jaegerstab was established and controlled by this Jaegerstab itself.

6. That the above facts are personally known to me; that these facts are known to me on account of the position I held and

the responsibility it gave me in the Jaegerstab and in the Ministry Speer.

I have read the above statement which consists of two pages in German, and I state that this is the full truth, to the best of my knowledge and belief. I have had the opportunity to make changes and corrections in the above statements. I have given this testimony voluntarily, without any promise of reward and without being, in any way, forced or threatened.

Nuernberg, 19 November 1946.

[Signed] DR. FRITZ SCHMELTER

TRANSLATION OF SPEER EXHIBIT 34¹
DEFENSE EXHIBIT 17

ORDER OF HITLER, 21 APRIL 1944, DELEGATING TO DORSCH
AUTHORITY FOR JAEGERSTAB CONSTRUCTIONS²

Copy

The Fuehrer

Fuehrer's Headquarters
21 April 1944

To the Reich Minister for Armament and War Production and
Head of the Todt Organization, Reich Minister Speer

Berlin W 8

I delegate Ministerialdirektor Dorsch, Chief of the Todt Central Office, to carry out the erection of the six fighter production buildings ordered by me, while retaining his other functions in your sphere of work.

You are to be responsible for taking care of all the prerequisites necessary for the speedy erection of these buildings. You are particularly to effect the best possible coordination with the other war-essential buildings, if necessary referring to me for a decision.

[Signed] ADOLF HITLER

¹ Document was Speer Exhibit 34 in Trial before International Military Tribunal. See Trial of the Major War Criminals, vol. XVI, p. 589, Nuremberg, 1947.

² Defense Counsel, Dr. Bergold, explained (*Tr. p. 580*): "This proves that the Fuehrer himself ordered these large construction works, the execution of which is charged to the defendant.

Although I mentioned before that the Jaegerstab was of the opinion that it could only build one factory, the order was given by Hitler to build six. That was an impossible number. He delegated this duty to Mr. Dorsch. That man had his orders from the Fuehrer and not from the Jaegerstab, which, of course, was no longer responsible for his activities."

PARTIAL TRANSLATION OF DOCUMENT NOKW-337 ¹
DEFENSE EXHIBIT 12

EXCERPTS FROM THE STENOGRAPHIC MINUTES OF THE
JAEGERSTAB CONFERENCE ON 6 MARCH 1944
IN THE REICH AIR MINISTRY ²

* * * * *

SAUR: I see a great many unknown faces and I do not know what business all these gentlemen have here. I suggest that a check be made at the door and that the showing of passes be mandatory. Otherwise there is danger that other people may sneak in here. I demand therefore a stricter control under all circumstances. Furthermore I would ask that gentlemen remain at meetings only as long and no longer as their business makes it necessary. I would therefore request that each gentleman report his presence and state whether he has any matters of general interest. These things could then be taken up first and that would settle that and the man could leave. We only want one gentleman for one subject, not a whole bunch of them.

* * * * *

SAUR: Does the term "construction company" ³ exist at all? I think it does not exist.

DIESING: We have construction companies with the Luftwaffe, among them masons, slaters, window fitters, etc. That is how we arrived at the term "construction company". We cannot again withdraw the six construction companies which we have taken from Berlin. For each building site we need approximately 100 skilled people, this on the basis of a fixed distribution key and we do not know where to get them.

* * * * *

MILCH: Now we come to the question of foreign exchange. Here the Fuehrer has announced his consent that the requests of the Slovaks to purchase anti-aircraft guns, etc., be complied with. Saur has reported orally how many anti-aircraft guns have actually been finished and how far we have exceeded the program. This is a good and acceptable method for us.

We have furthermore approached the Fuehrer in order to obtain the 64 miners, at present employed at Berchtesgaden, since

¹ Portions of this document were introduced by the prosecution as Prosecution Exhibit 75. See pp. 544-45.

² DR. BERGOLD stated (*Tr. p. 567*): "I introduce this in order to show that the Jaegerstab meetings not always prove who was there at a certain given time and those meetings changed so that as far as the defendant Milch is mentioned, this does not prove he was there all of the time."

³ DR BERGOLD explained (*Tr. p. 568*): "There was introduced by the prosecution and also presented an exhibit from this Jaegerstab conference where the term 'construction company' was mentioned in such a way. Those were companies of concentration camp inmates. This explains the term 'construction company' clearly."

the work there should soon be finished. He said that we, like the SS, should train miners on a larger scale too, and named the figure of 10,000 to be trained in successive shifts because one cannot train them all at the same time.

SAUR: The gentlemen of the SS should be told of this, that the entire training of miners is supposed to be done by the SS because the SS has the best school for that.

MILCH: Furthermore we must ask the SS to get hold of further miners from Italy and Slovakia.

SAUR: Barowski (?) [sic] must know that! This question must be cleared up at once, today, in order to agree on the selection with the SS.

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PARTIAL TRANSLATION OF DOCUMENT NOKW-338¹
DEFENSE EXHIBIT 13

EXCERPTS FROM THE STENOGRAPHIC MINUTES OF THE
JAEGERSTAB CONFERENCE PRESIDED OVER BY FIELD MARSHAL
MILCH ON FRIDAY, 17 MARCH 1944, 1100 HOURS,
IN THE REICH AIR MINISTRY²

* * * * *

[Page 13]

STOBBE-DETHLEFFSEN: ² Probably you have not understood me quite correctly. When I asked this question, I did not have in mind the projects of 600,000 and 800,000 square meters,

(SAUR: But I did!)

but the original 60,000 square meter works. I now ask: shall these 60,000 square meter works now be simply cancelled in consideration of the big works, and are they no longer to be taken into consideration? This seems hazardous to me because we must make the following distinction. The construction capacity of underground works in mountains and caves is entirely different from the one to be reckoned with at such concrete works. It is available for concrete works and consequently it should be used. It was not as if we had to go into caves or worm ourselves into the mountain. The question of the big works is a very difficult one for us from the point of view of capacity. It alone requires another 25,000 workers. We reckon already now 100,000 men for the tasks of the Jaegerstab. To switch to some other work

¹ Other portions of this document were introduced by the prosecution as Prosecution Exhibit 75. See pp. 545-46.

² Chief of the Construction Department in the Speer Ministry.

would constitute an inroad of unheard of proportions into the remaining armament economy.*

(SAUR: 100,000 without Kammler!)

Including the manpower we give Kammler, but without the people from concentration camps!

* * * * *

MILCH: We have been ordered to carry out these two construction projects by the Fuehrer. If I now take a higher compression ratio and thus attain much higher figures, even this higher figure would not prevent us from having to deal with further shifting afterwards, besides concrete works and cave works, smaller caves, tunnels, etc. It is now doubtless correct to ascertain: (1) What has to be constructed, (2) for whom it has to be constructed, (3) where it has to be constructed. We have to distribute it in such a way that we can efficiently cope with manpower and all the other questions, power, transportation, etc.

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PARTIAL TRANSLATION OF DOCUMENT NOKW-365
DEFENSE EXHIBIT 15

EXTRACT FROM THE STENOGRAPHIC MINUTES OF THE
JAEGERSTAB CONFERENCE, 12 APRIL 1944

STENOGRAPHIC MINUTES OF THE JAEGERSTAB CONFERENCE PRESIDED OVER BY HAUPTDIENSTLEITER SAUR, LATER ON PRESIDED OVER BY FIELD MARSHAL MILCH, ON WEDNESDAY, 12 APRIL 1944, 10 O'CLOCK IN THE REICH AIR MINISTRY

* * * * *

SAUR: Please tell this to Schmelter. We are in an incredible situation as a result of lack of manpower. Here we are in the middle of the month already, and the 10,000 people allocated to us according to red slips have not arrived yet. A way must be found to assure priority for red-slip matters over all other allocations. Tell Herr Schmelter to contact Gauleiter Sauckel today. Going further than that, the discontinuation, transfer, or concentration of every other type of production must be brought about by us at once.

SCHAAF: The 4,000 people from Kahla!

* DR. BERGOLD stated (*Tr. p. 751*): "The prosecution has alleged that these great plants were made by slave labor, and I want to show that this plant in which, according to the allegations of the prosecution, Hungarian Jews were used, was not built by the Jaegerstab and that therefore the prosecution has not proved altogether that the Jaegerstab used Hungarian Jews.

The passage will show in a very short time that concentration camp inmates were not used. * * *

LANGE: Schmelter's people complain particularly because they have no means of making pressure demands to Sauckel which will also be complied with.

SAUR: Field Marshal, the best thing would be for you to approach Sauckel yourself since he is the man in charge of labor allocation.

MILCH: I shall tell him that the 10,000 red slips were not honored.

BALCKE: On that I can report that the requests were sent out on the 5th and that on the 11th they had not yet reached the labor offices. The way is long, it is true. Therefore it is not yet possible for the people to be employed.

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PARTIAL TRANSLATION OF DOCUMENT NOKW-334*
DEFENSE EXHIBIT 16

EXTRACTS FROM THE STENOGRAPHIC MINUTES OF THE
JAEGERSTAB CONFERENCE, 25 APRIL 1944

STENOGRAPHIC MINUTES OF THE JAEGERSTAB CON-
FERENCE OF 25 APRIL 1944, 10 O'CLOCK IN THE
REICH AIR MINISTRY

PRESIDED OVER BY FIELD MARSHAL MILCH

Herr Saur does not appear until towards the end of the meet-
ing.

* * * * *

WEGENER: I have a question for Schmelter: Has the question of the *transfer of west European workers* been settled?

WERNER: On this I can say that especially for the Bavarian Motor Works matters are particularly difficult because we can transfer only Russians and concentration camp inmates, and the staff used for supervision consists mostly of Belgians and Frenchmen.

* * * * *

KREUTZ: Mueller declared at one time—and he believed he could do it—that he would try and shift a part of the head personnel within the concern.

SCHAEDE: If you bring the French key personnel to Lorraine, I can guarantee you that they would run away within the shortest possible time. That must be told to the firm. Even now they do not return from their vacation.

MILCH: It will work only if we place these people into barracks.

* Portions of this document were introduced by the prosecution as Prosecution Exhibit 75. See pp. 550-52.

It is true we cannot treat them as prisoners of war; the outward appearance must be different, but in actual practice that is just what it must be.

SCHAEDE: I merely wanted to suggest to the firms to take along as few French people as possible so that they would not lose them altogether, and rather follow the system of Mueller.

MILCH: Exactly. And if then there are still some left one can say that this will be limited in terms of time, perhaps to several months, and that in return certain advantages will be granted to them because they will be subject to certain deprivation of their freedom.

* * * * *

MILCH: As early as today at noon, we may face the situation that Bavarian Motor Works at Allach is completely destroyed and that we have to get out. Then we cannot deal with things such as 200 or 300 French people who cannot come to Lorraine. That must be explained to the Fuehrer once more. Otherwise, I see no possibility for carrying through our assignment.

Personally, I am firmly convinced—after the conversations with the Fuehrer—that he will then consent provided it is done in a sensible way. The people must not sit together with the population and they must not be able to conspire. Nor should they have sufficient freedom of movement to be able to pass the green border line. Both of these things must be prevented.

In compensation for these restrictions we can, on the other hand, give these people something and make them happy—be it even only cigarettes.

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PARTIAL TRANSLATION OF DOCUMENT NOKW-442¹
DEFENSE EXHIBIT 21

EXTRACT FROM THE STENOGRAPHIC MINUTES OF THE
JAEGERSTAB CONFERENCE, 5 MAY 1944

*THE STENOGRAPHIC MINUTES OF THE JAEGERSTAB
CONFERENCE ON FRIDAY, 5 MAY 1944, 10 O'CLOCK
IN THE REICH AIR MINISTRY*

* * * * *

SCHMELTER: I was supposed to report on the employment of labor in the penal institutions.² The Minister of Justice has not

¹ Another portion of this document was introduced by the prosecution as Prosecution Exhibit 75. See pp. 554-55.

² DR. BERGOLD stated (*Tr. p. 584*): "Your Honors, in all civilized countries, also in Germany, penal prisoners have to work. If concentration camp inmates were put to work in Germany, this was done within the frame of the law which existed in Germany for the employment of criminal prisoners. This was nothing special. This work of concentration camp inmates cannot be considered slave work."

yet forwarded the complete list of workers available in the penal institutions. I have made another inquiry. Dr. Schmelter (?) [sic] has appointed Attorney Karl as special official in charge. He is the liaison to the Reich Ministry of Justice. * * *

HEYNE: Such conversations have taken place. They do not get us anywhere. The thing we need is a listing of all localities showing how large a number of prisoners are yet available there. Then we must see whether they are required there. Herr Schmelter planned to concentrate the skilled workers in those spots. There are only 2-3 percent skilled workers in all among all prisoners. That is too little.

MILCH: I suggest you are going to submit to me today a letter to Thierack, to wit: Taking into consideration the extraordinary urgency of the work in connection with the Jaegerstab we need this assistance. We have failed for a long time unfortunately to obtain the compilation from the authorities concerned. We need such and such data. I ask him to concern himself personally with the matter and to let us have the material in the very near future.

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PARTIAL TRANSLATION OF DOCUMENT NOKW-336 *
DEFENSE EXHIBIT 23

EXCERPTS FROM THE STENOGRAPHIC MINUTES OF THE
JAEGERSTAB CONFERENCE ON FRIDAY, 26 MAY 1944,
AT 10 O'CLOCK

* * * * *

(Minister Speer and Field Marshal Milch entering.)

MILCH: I welcome our Minister Speer for the first time in the circle of the Jaegerstab, and would like to express my special happiness and at the same time yours, that you, dear Speer, are again with us, well, cheerful, and in the old creative spirit.

This machinery, created by your orders, accomplished excellent things in the three months of its existence. It has made special efforts to bring the production of fighters and all that goes with them to a high level.

* * * * *

SCHMELTER: The reports of the board of examiners show that a larger number could be deducted from the plants belonging to the Luftwaffe if one succeeds in establishing joint direction for the department of plane construction, the technical plant groups and companies. Up to now they exist separately under three different

* Other portions of this document were introduced by the prosecution as Prosecution Exhibit 75. See pp. 555-57.

commands and leaderships, and that would make it possible to deduct more workers. The board of examiners thinks that hundreds of laborers could be deducted if a single command would be established. This must be done by Field Marshal Milch.

MILCH: The Quartermaster General to whom all are subordinate! No one is subordinate to me.

* * * * *

(SCHMELTER: Probably they will work in plants where people do not work for 72 hours.)

Isn't it possible—to avoid injustice toward our workers—to have our other plants work too, not all of them for 72 hours, but perhaps up to 64 hours? That should suffice if all would do it.

SCHMELTER: I prepared already for the conference of the chiefs of the various offices the suggestion that working hours in civilian production should be increased. There are still many production plants working only 48 hours.

MILCH: Then one can equalize and we need not work all the time for 72 hours.

* * * * *

EXTRACTS OF TESTIMONY OF DEFENSE WITNESS FRITZ SCHMELTER *

DIRECT EXAMINATION

[Tr. pp. 717-734]

DR. BERGOLD: Witness, will you give us your first name and your last name?

WITNESS SCHMELTER: Fritz Schmelter.

Q. When were you born?

A. On the first of March 1904.

Q. What was your position at the end of the war?

A. At the end of the war, I was Central Department Manager at the Ministry of Armament.

* * * * *

Q. Thank you. Witness, when and in what position did you have to do official business with the defendant?

A. I had some dealings with him on official business after 1944 when I became Chief of the Amtsgruppeneinsatz in the Ministry of Armament. I saw him again after the Jaegerstab was formed, that is, after March 1944.

* Complete testimony is recorded in mimeographed transcript, 6, 7 Feb. 47, pp. 717-759.

Q. In your position in the Ministry of Armament, did you have anything to do with the Central Planning Board?

A. I had something to do with them insofar as the chief of staff of the armament office was concerned. He was my chief. I had to write down the necessary figures concerning labor assignments when I accompanied him to certain sessions of the Central Planning Board as assistant.

Q. What month was that, approximately?

A. As far as I can remember the first session in which I participated was in February or March 1944. I did not always participate in these sessions, only in a few of them when I accompanied the man I mentioned before.

Q. Did the sessions of February and March 1944 deal with labor assignments?

A. Yes.

Q. During these conferences, were they trying to clear the numbers or the figures which were announced by Sauckel?

A. In one of the conferences I remember they wanted to make Sauckel a proposal concerning the distribution of labor he wanted to provide. I remember that the Central Planning Board had a written proposal submitted to him concerning requests about labor assignments. Sauckel said that he would acknowledge this proposal but would take care of the distribution personally.

Q. Did they, during these sessions, try to find out whether the numbers and figures Sauckel reported were correct? If he mentioned figures which were too high, did they speak about those matters in this conference?

A. I do not remember that day. But I know that in various conferences the question of reliability of the figures played a great part. There was always a difference between the figures Sauckel reported and those Speer reported.

Q. Did this apply to figures which Sauckel mentioned as having already been brought in or did it apply to figures on labor still to come?

A. That applied particularly to the numbers of laborers who had already been brought. It was not possible to try to control the number of laborers wanted because it was only something that was being planned, nothing else.

Q. That is correct, but from previous experiences, weren't they in a position to find out that Sauckel's promises were not being kept?

A. At the time they doubted that the figures which Sauckel reported could ever be brought in.

* * * * *

Q. Is it correct that in your position, as a member of the Speer ministry, or in your capacity as a member of the Todt Organization, you very often participated in the staff meetings of Sauckel?

A. Every month Sauckel would call such a staff meeting where representatives of the most important labor assignment ministries took part. I almost always participated in those meetings.

Q. What other ministries apart from the Ministry of Armaments participated in those conferences?

A. The Air Ministry, the OKW, the Ministry of Economics, the Agricultural Ministry, and I do not think I can remember anything further.

* * * * *

Q. Did the defendant Milch ever participate in those sessions?

A. No. Those were conferences in which the experts of the ministries took part; not the leaders and not their representatives, either.

Q. Who was the chief of the Air Ministry?

A. Goering.

Q. At these staff conferences, did Sauckel ever make any statements saying he brought the laborers voluntarily to the Reich?

A. I remember that Sauckel repeatedly said approximately the following:

“They say that I am forcing laborers to come to Germany. Once somebody said I went to foreign countries with a lasso and caught people and brought them over to Germany. They said I forced them to come to Germany.”

Furthermore, he said:

“I declare all those things are not true. The laborers are brought to Germany by me on the basis of contracts with other governments, as far as there are governments in those occupied territories, or on the orders of the local military commanders or other local German agencies.”

He asked us to tell our superiors his opinion on that question.

* * * * *

Q. Is it known to you that there was an agreement with the French Government according to which one prisoner of war would be released to France for two laborers.

A. Yes.

Q. Is it known to you that the French workers during their activity in Germany got leave once in a while?

A. Yes.

Q. A leave to France?

A. Yes.

Q. Did they ever return from their leave or did they just stay there?

A. The greater part came back from their leave; quite a number did not come back. Part of the laborers who went on leave did not come back. Some of them came back.

Q. Was that the larger part that came back or the smaller part?

A. I did not hear any figures concerning that. As far as I know the greatest of them came back. According to the factory manager, the larger part always came back, but of course I have no exact figures.

* * * * *

Q. Witness, you then joined the Jaegerstab. Do you know anything about the creation of the Jaegerstab?

A. Approximately on the first of March, I do not remember the exact date, I was asked by my chief of staff to go to the Air Ministry where Milch and Mr. Saur were present. He said the air armament was so badly damaged by the air raids that there had to be a fighter program. For that purpose a staff needed to be developed to hold daily conferences which would be necessary in order to increase the fighter production or at least bring it to the same level that it used to be. A number of gentlemen from air as well as from the armament industry were designated to participate in these sessions and to report to their offices what had taken place and put orders into effect.

As a representative of the Armament Ministry, I was assigned to labor assignment. Later on I heard that this Jaegerstab was under the management of Speer and Milch and that Saur was the manager of the Jaegerstab. Later on there were conferences almost daily, first at the Air Ministry and later on at a barracks at the Tempelhof, near Berlin. They dealt, first of all, with the production of the fighters and with all the questions in connection with the fighters and also with labor assignment.

Q. Who directed these conferences?

A. At the beginning Milch participated almost regularly in those sessions and he was the one that actually led or presided over the conferences; formally, that is, Mr. Saur was the speaker most of the time. Mr. Speer very seldom, according to my recollection perhaps three or four times, participated in those sessions, which on those particular days were transferred to the Armament Ministry.

Q. You just said that Milch at the beginning had the formal leadership. From what time on did that cease?

A. After the transfer into the Armament Ministry, or rather,

into the Caserne at Tempelhof—I don't remember the date—Milch did not participate as regularly as he did before. At those conferences, after the transfer of the fighter staff into the Armament Ministry, he only participated once or never.

* * * * *

Q. Witness, concerning the conferences of the staff, there were always verbatim records taken. Is that known to you?

A. Yes.

Q. Apart from those minutes, were any other minutes taken?

A. Yes. An extract of the verbatim record—I want to call it a "result record"—was compiled and these records were sent to all of the offices which were interested in those conferences. Those verbatim records which were taken down by stenographers during the session, according to my knowledge, were sent only to Mr. Speer, and of course they remained with both Saur and Milch. In other words, very few copies were made.

Q. Were these verbatim records ever controlled?

A. No, I don't think so. I don't believe that the large records were read or checked by someone else.

Q. Can one say then that the decisions of the Jaegerstab were contained in the records?

A. Not only the decisions but also the more important deliberations that took place. However, when decisions were made, then they were included in the result records.

Q. During these conferences did it ever occur that the participants were not always present?

A. That happened very often because the sessions lasted for a long time and it happened many times that I, for instance, was called out and ordered to take care of my business, at least by telephone, and the members of the Jaegerstab themselves did not always participate in the conferences, but later on—that is, from May on—they had representatives or deputies replace them.

Q. Did those sessions often result in individual discussions?

A. That happened once in a while, particularly when technical questions were discussed where very few experts could say something.

Q. I shall now proceed to the labor assignment within the Jaegerstab. How did the Jaegerstab deal with questions of labor assignment?

A. Along with all the production discussions of other programs, labor assignment questions were discussed at the sessions of the Jaegerstab. I had the task, concerning these labor assignment questions, to pass them through my office chief and so far as the tasks I had with the Jaegerstab overlapped my other duties and

tasks with other organizations; in other words, if you want to know exactly or if you want to have a detailed description of what my tasks were in general—

Q. I want to know what you had to do with the labor assignment of the Jaegerstab and what was your main task there; otherwise, we will be here about an hour or so.

A. Among other things, we had the task, on the basis of the reports of the various factories which came over the Armament Inspectorates to me, to write up a proposal how those red slips were to be distributed on each individual production. In the Jaegerstab, I also had the task to distribute those red slips in such a way that the most important factories would get the necessary number of red slips. The red slips were orders to the labor assignment offices or agencies of Speer; in other words, to the Armament Inspectorates and to the armament commandos, and were given from Sauckel to his labor assignment agencies which were to provide preferentially the necessary amount of workers on the basis of those red slips. I furthermore had the task to take care of transfers of laborers who already were in the armament industry by giving respective orders to my agency and requesting Sauckel to carry out the transfer. Since in the fighter production, the question, in the first place, concerned skilled workers only; transfers of this kind were carried out. Skilled workers were no longer assigned to us by Sauckel in 1944. My main activity, therefore, concerned transfers from one of the industries to the other, and as regards the Jaegerstab, in transfers from the destroyed bomber factories or from other aircraft types to the fighter factories which were working full time.

I finally had the task to deal with deliveries of armament to the Wehrmacht soldiers and I had to take care of those. In 1944, through several actions, many laborers were withdrawn from the armament industry and delivered to the army. That concerned particularly skilled workers. It was my task then, together with those responsible for the production, to take care of the distribution in such a manner that the armament industry be hampered as little as possible in their production.

Q. Is it known to you that Milch tried to see to it that no one from the fighter factories had to go to the Wehrmacht?

A. Yes, from all the factories, and particularly from the fighter factories, they tried to send as few laborers as possible to the army. At the beginning, in the early days of the Jaegerstab—in other words, in the months of March and April, approximately—we tried to relieve the fighter program from delivering laborers to the Wehrmacht. Later on, this was very difficult. I know, however, that Milch tried his very best to give as few people as possible

to the Wehrmacht from Jaegerstab production, that is, of the Jaegerstab factories.

Q. Witness, you just said that, concerning the request for assignment of workers, you made suggestions to Sauckel. In these meetings there is a statement by Saur that says, "We take care of the labor assignment." What is correct now? Did you just request them or did the Jaegerstab actually take care of the assignment?

A. The Jaegerstab was not able to give orders to offices which did not belong to the Speer Ministry or to the Air Ministry. In Jaegerstab, very often Saur and perhaps Milch—I can't remember, concerning Milch—used such words. In reality, however, it was quite different. I appeared at Sauckel's and I was ordered to tell him about the creation of the Jaegerstab and its importance concerning the fighter production, with the request that when labor was distributed, the Jaegerstab production should be considered in first place. An order to Sauckel was never given by me and I am sure that Sauckel would certainly not have followed my request, particularly as he always and repeatedly stressed the point that he was independent and was responsible only to the leader of the Four Year Plan and Hitler.

Q. When Saur made such a statement, "We take care of the labor assignment," why do you think he said that?

A. Well, once in a while such strong words were used. I never took this statement very seriously and I didn't react to it because I knew exactly that nothing would happen afterwards, and nothing really happened. I was sure that the labor assignment should have been taken care of by the Jaegerstab, but it was impossible to take care of that for one single production. Everyone who had something to do with labor assignment could understand that.

Q. Witness, you just spoke concerning boasting remarks. Is it known to you that Milch often used such strongly exaggerated boasting remarks during these meetings?

A. I don't remember single statements made by Milch but I am sure that they occurred. What I wanted to say now is that it appeared to me that Milch very often, particularly concerning the industry and his own generals, wanted to boast in order to play the strong man. I believe, however, that these statements did not always make the impression he wished to create.

Q. Do you mean to say that they were not taken seriously?

A. Well, not quite seriously, anyway.

Q. Were you present during the conference of the Jaegerstab where Milch made a long speech to the air force engineers and the quartermaster chiefs?

A. I was there part of the time. I remember now. That was the

session which took place in the Air Ministry—there were 100 people there at the time, and I have to remind you of the fact that I wasn't present during all those conferences.

* * * * *

Q. Witness, the prosecution introduced a document during the trial where Goering gives Himmler a fighter group in exchange for the use of concentration camp inmates which were put at the disposal of the air force armament. Do you know anything about that?

A. What fighter group do you mean?

Q. I mean a squadron—a whole squadron was placed at the disposal of the SS, and Goering wanted to have concentration camp inmates from the SS. Do you remember anything about that? It was on the 15th of February 1944.

A. I can't remember that exactly. Goering, that is the Luftwaffe, put a great number of soldiers at his disposal for immediate production. They got their leave. But if there ever was such an exchange of concentration camp inmates, I do not know today anymore. It could be possible; however, I can't tell for sure.

Q. Witness, is it known to you that in the Jaegerstab they were often transferred from the construction sector of the Plenipotentiary for chemistry?

A. No. In any case, I don't know that this was done to a considerable extent. It is possible that it also was said during my presence that the Plenipotentiary for chemical industry had too many workers in the construction sector and a few of them had to be transferred; lots of complaints were made. However, I can't remember anything concrete.

Q. Witness, can you remember that Milch tried to be able to free certain engineers from Hitler who were working in Berchtesgaden?

A. I believe I can remember that. The question of engineers was discussed very often because this was a big bottleneck in the construction sector. I remember also that, concerning the construction works in Berchtesgaden, it was discussed in this connection and that one hoped to be able to get not only engineers but other skilled workers from the construction works carried out in Berchtesgaden for Hitler.

* * * * *

Q. Witness, is it known to you that the use of concentration camp inmates was carried out in closed groups?

A. Yes, as far as the SS used concentration camp inmates, outside of their own factories, this was obviously only done in larger groups of about 500 to 1,000.

Q. Is it possible that during constructions a few miners or engineers were concentration camp inmates?

A. When the rest of the workers were not concentration camp inmates, then, according to the regulations of the SS, personally, I don't believe that there were certain concentration camp inmates in there, and I don't know of any such cases. I know that the SS always required that the concentration camp inmates be taken in large numbers and that they should be assigned in groups and billeted in groups.

Q. In other words, is it possible that the SS also used people of their own as miners, apart from those concentration camp inmates?

A. I couldn't tell you, because I did not know the situation with the SS. However, that is possible.

* * * * *

Q. The question was: If the SS ever used miners from their own ranks and if they trained them?

A. No. I don't know anything about that either.

Q. Do you know if the SS had a miners' school?

A. No. I don't know that either. I never heard of any miners' school. The miners learned by experience.

* * * * *

[Tr. pp. 743-759]

Q. What do you know about labor utilization of English and American prisoners of war? That is to say, Americans and British who were captured in Germany?

A. In 1944, that is to say, in my time, no new prisoners of war were used because we didn't capture any more. So far as I know, British and American prisoners of war were not used in armament factories. Repeatedly, proposals in this direction were made also in the case of noncoms and officers. In the case of officers—it was Polish officers, if I recall, no change in the regulations was made, so far as I recall. Instructions were transmitted to the OKW, but I do not know if anything came of them.

Q. I come now to your two sworn affidavits of 19 November 1946; Prosecution Exhibit 76 is a sworn affidavit of yours of that date. NOKW—266, dated 19 November, * * *.

* * * * *

Q. Did you know that in 1944, in order to protect the aircraft industry, underground and protected factories were built?

A. Yes.

Q. You know who gave the original order for this?

A. So far as I know, the order for this relocation of industries

in subterranean plants was given by the Jaegerstab itself. I was not competent in this matter, but naturally I took part in the discussion of the Jaegerstab and heard it there. I heard that it was decided that a bombed-out factory should be relocated to a different place which the Jaegerstab would determine.

Q. That's no answer to my question. Witness, I asked: Who gave the original order for the construction of these subterranean factories? Do you know that?

A. If I may repeat; you want to know who ordered in the first place that these plants should be transferred to subterranean factories? That I do not know.

Q. Do you know Herr Kammler?

A. Yes.

Q. Do you know from whom he received the order to construct these special subterranean factories?

A. Here again I do not know precisely who gave him the original order. In any event, at the first beginning of the Jaegerstab, Kammler became a member and was commissioned to undertake the construction of subterranean buildings for Jaegerstab protection. The Jaegerstab pointed out to him individual objectives and he reported from time to time how many square meters were now ready. But who first originally gave these orders to Kammler, whether it was Himmler or Hitler or some agreement or something like that, I don't know.

Q. Was Kammler commissioned into the Jaegerstab because of an order of Himmler or because of some special order elsewhere?

A. I am not able to say. I assume that Himmler also gave him an order. The individual orders, what he was to build, he received from the Jaegerstab.

* * * * *

Q. Did Kammler, within the Jaegerstab, represent Himmler?

A. I do not know his powers or his functions and I cannot say. He was in the construction sector. That I know, but Himmler had charge of more things than construction.

* * * * *

PRESIDING JUDGE TOMS: Will you try to answer these questions as simply and briefly as you can? Were Russian prisoners of war used in the armament industry?

WITNESS SCHMELTER: In the armaments plant Russian prisoners of war were also employed. At what they were employed, I do not know, since they were already there when I came and I did not myself inspect the plants.

Q. Did you ever see Russian prisoners of war either manufacturing or transporting munitions of war?

A. In plants and in transports? No. Neither in plants nor in transports did I see Russian prisoners of war.

Q. That question is perfectly clear and you understand it?

A. I shall repeat it. I was asked whether these prisoners of war worked—whether I saw them in plants or in transport.

Q. That's right.

A. And I answered in the negative.

Q. Were Russian prisoners of war used in the decentralization of the Luftwaffe after the heavy bombings?

A. Not that I know of. So far as I know, after the heavy bombings Russian prisoners of war were no longer available. They had already been assigned elsewhere. I do know that after the heavy bombings, that is, in the year 1944, new Russian prisoners of war were not used in armaments or in the bombed out factories. It is, of course, possible that the local labor offices used Russian prisoners of war for this purpose, but we in the central offices knew nothing of this.

Q. Will you answer the same questions as to Polish prisoners of war?

A. So far as I know, Polish prisoners of war consisted solely of officers. Only officers were available. The others had been freed. The officers, however, in contradiction to many wishes that were expressed, were not used. At least if they were, I know nothing of it.

Q. Will you answer the same questions as to Hungarian Jews?

A. Hungarian Jews, among other things, were used in the construction of fighters—fighter planes. Female Hungarian Jews were also used in the actual construction of fighter planes.

Q. Were they voluntary workers?

A. No. Those were inmates of concentration camps, prisoners at the disposal of the SS.

Q. So the Hungarian Jews who were employed in the manufacture of fighter planes were forced to work in that connection?

A. The Hungarian Jews, so far as I recall, were offered by the SS to be employed in armament production. At first there were 1,000 of them or 500 who were employed. Then a number of plants said that they wanted such workers and they were then allotted by the SS to these plants and there they were obliged to work.

Q. Then the SS, which was one branch of the German military establishment simply dealt out the Hungarian Jews to anybody who needed them?

A. No. The Hungarian Jews, like all concentration camp inmates, were housed in camps that were either in or near the plants and which were constructed by the SS. They were then taken to work every day, and after the work they were again brought back

by the SS to the camps. Also, the supervision of the work, for security reasons, was carried out by the SS. So far as the technical side of it was concerned, it was carried out by the representatives of the plant.

Q. Of course you don't claim they were paid for their work?

A. That I do not know. I only know the general regulations concerning concentration camp prisoners, and I know them in part. I know that these prisoners, at least toward the end, also received some sort of wages. What the payment was, I do not know. I do know that the plant had to give the SS a certain amount for each prisoner, but what the prisoner himself received, I do not know.

Q. Do you know whether these Hungarian Jews worked through any contract with a foreign government, as was the case in France?

A. Let me repeat the question whether Hungarian Jews worked on the basis of an agreement with a foreign power—foreign government. Was that the question?

Q. Yes.

A. Not that I know of.

Q. I have no other questions. One more question please. You said that you know that Russian prisoners of war were working in the armament factories but you didn't know what kind of work they were doing.

A. Yes.

Q. Did you ever see them in any of the factories?

A. No.

Q. What do you think they were doing?

A. I guess some of them were engaged in construction. So far as skilled workers were concerned they were certainly working at tasks that they were qualified to do. So far as they were unskilled workers they might have been doing almost anything.

Q. If they were working in munitions factories they were doing something to manufacture munitions, were they not?

A. If they worked in munitions factories then they must, of course, have had something to do with manufacturing munitions. Even if they only worked in the courtyard, or something like that, they still had something to do with the manufacture of munitions.

* * * * *

JUDGE PHILLIPS: Witness, did you ever know of any prisoners of war, especially Russians, being used to man anti-aircraft guns?

A. In the construction or in the use of the anti-aircraft?

Q. In the use of anti-aircraft.

A. Yes, I have heard of that. I heard that Russian prisoners of war were used to man antiaircraft guns of that sort.

Q. Do you have any idea how many were used for that purpose?

A. No, I don't.

Q. Did you ever see them being used for that purpose?

A. No.

Q. On what fronts were they used?

A. I believe they were used on the home front, not on the actual battle front, but that is simply my opinion.

Q. Against American planes, British planes, and Russian planes?

A. They shot at whatever planes were over Germany.

* * * * *

DR. BERGOLD: Witness, you spoke of female Jews. When were these female Jews employed?

A. I do not know the precise date. It was the summer of 1944. In my estimation, it must have been May.

Q. Let me show you Document NOKW-359, Prosecution Exhibit 75. It is the next to the last document of the prosecution, Stenographic Minutes of the Jaegerstab Meeting of 27 June 1944. You said: "I have a few more points. Up until now 12,000 female concentration camp internees, Jewesses, have been demanded. The matter is now in order. The SS has agreed to deliver these Hungarian Jewesses in batches of 500. Thus the smaller firms, too, will be in a better position to employ these concentration camp Jewesses. I request that these people should be ordered in batches of 500."

Is this the point from when onward these females were used?

A. Yes. It must have been about this time. The difficulty was the following: The SS demanded that the females should be delivered in batches of thousands only. Most factories could not use such a large number of females. Consequently, the SS was asked if it could not deliver them in smaller groups. That is the reason.

Q. Witness, is there a difference between the concept of "Ruestungsfabrik", which means armament factory, and "Munitionsfabrik", which means a munitions factory? Is there a difference in Germany?

A. "Ruestungsfabrik" took care of all sorts of armament production, materials, finishing up the deliveries and so on and so forth. "Munitionsfabrik" is the narrower concept and contents itself with the manufacture of munitions only.

Q. Did the "Munitionsfabrik" belong inside the concept of "Luftruestung", air armament?

A. So far as the "Luftruestung" is concerned, they did, yes. The limitation of these concepts was not, however, uniform. Un-

fortunately, we had very few uniform concepts. They were often misused.

Q. Were factories that made sheet metal and so on, armament factories? Did they fall under the concept of armaments?

A. They did, yes.

DR. BERGOLD: Thank you.

* * * * *

CROSS-EXAMINATION

MR. DENNEY: In one of these interrogations, on 30 December 1946, you were asked what the Jaegerstab did to bring workers from Hungary into Germany; do you recall that?

A. Yes.

Q. And do you recall that you made reference to certain trips of the Jaegerstab to Hungary?

A. Yes.

Q. You made this statement: "The Jaegerstab, during its existence, made at least a total of 10 to 12 trips"?

A. Yes.

* * * * *

Q. All right. You were asked this question: "Who was in charge of these trips?" And your answer was: "So far as I remember, it was Milch. Milch participated in most trips of the Jaegerstab."

A. In most of them, yes.

Q. In the same interrogation on 30 December, the record indicates that you made this statement: "I know about 100,000 workers from Hungary; however, these were Jews who were allocated to construction. I know nothing about 8,000 workers who evidently were skilled workers, intended for the fighter production program."

A. Yes.

Q. You were then asked: "Is it known to you that these 100,000 Jews were used by Todt in the interests of the Jaegerstab?" and you made the following answer: "Yes, that is known to me."

A. Yes.

Q. You were interrogated on 24 January and asked this question: "Do you know whether the Luftwaffe, in the Luftwaffe industry, used concentration camp prisoners, not in the building program, but for production?" and your answer was: "I don't know. I don't think so, except for women. The SS once offered us a lot of women. The difficulty was that, at first, at least 1,000 and later 500 were to be employed. Various firms got women after that, and I think that Heinkel, in Oranienburg, used concentration camp prisoners, not only women, but all the inmates."

A. Yes.

Q. The answer was yes, if your Honor please. And Heinkel was an airplane factory, was it not, producing the Heinkel plane?

A. Yes.

Q. On November 15, of last year, you were asked if you knew that Himmler used concentration camp inmates for the underground buildings of the Jaegerstab, and your answer: "Yes. You mean the finished buildings, do you not?" And then you were asked: "The underground ones, the completion of the existing caverns or tunnels, or the like, where concentration camp inmates were employed?" and your answer: "Yes."

A. Yes.

Q. And you were also asked: "Were these constructions built in the interest of the Luftwaffe?" Your answer: "These new constructions? Yes."

A. Yes.

Q. The next question: "Exclusively in the interest of the Luftwaffe? And did the orders for the new constructions come from the Jaegerstab?" Answer: "Whether other constructions were also built there? Probably, yes." Question: "I am only interested in the Luftwaffe." Answer: "Also for the Luftwaffe. I do not know whether for others. I would not like to pin myself down."

A. Yes.

Q. Later you were asked: "Do you know that prisoners of war were at all employed in air armament?" and you stated: "Yes, I should like to say, the armament plants. The air armament also employed prisoners of war in its plants."

A. Yes.

* * * * *

Q. In reply to a question: "What was Field Marshal Milch's position in the Jaegerstab?" you stated, "There were two chairmen in the Jaegerstab, Speer and Milch. In the first session, or rather in most of the sessions, Milch participated personally; Speer did not. Speer was present only in exceptional cases. In his position, Saur, who was at the same time manager, initiated the contact with the rest of the armament industry. Milch was Chief of the Jaegerstab, besides Speer."

A. Yes.

Q. In the same interrogation of 15 November you made the following statement: "Assignment of labor was involved in every question including every question of production."

A. Yes.

Q. On 26 November you made the following statement when you were interrogated: "Mobilization of manpower as a matter

which is closely connected with production was very much discussed. Everybody had a word to say, had a request for something and they suggested or said I could do better, etc.”

A. Yes.

* * * * *

REDIRECT EXAMINATION

DR. BERGOLD: Witness, as to the trip to Hungary, were you present when the committee went to Hungary?

A. No, I traveled only as far as Prague and returned.

Q. Do you know the purpose of this trip to Hungary?

A. Not precisely. I know that there was a question of production to take place in Hungary, but precise information I do not have.

Q. Do you know that there was a definite contract with Hungary?

A. I heard about that subsequently.

Q. Did you then hear that this trip had the purpose of bringing Hungarian Jews to Germany?

A. No.

Q. Thank you. The prosecutor spoke to you of 100,000 Jews. Did you know that these were to be used by Mr. Dorsch?

A. Yes.

Q. And, as far as the tasks that he had, mainly for the construction of bombproof factories?

A. Yes.

Q. Do you know whether the Jaegerstab ordered these 100,000 Jews or whether somebody else did?

A. The employment of these 100,000 Jews in this construction organization took place on Hitler's orders. I, myself, was not present at this discussion. Dorsch, however, was present and told me that Hitler had ordered—had said Himmler had 100,000 Jews for bombproof factories and was to make them available.

Q. Do you know whether and in what number and when these Jews arrived to carry out this construction work?

A. I do not know precisely the dates. It was in the summer of 1944. Nor do I know whether all of them arrived. Once I concerned myself with the question regarding the guarding of these people. At that time the SS did not have enough guard personnel and Hitler ordered Keitel to provide 10,000 soldiers which were to be withdrawn from the eastern front and to make them available to the SS so that they, the SS, would have the necessary guard personnel. Thereafter, I heard nothing further about the matter and assumed that the Jews for the most part were employed. I deduced this from the fact that I otherwise should have heard of it probably.

Q. I discussed just yesterday with you whether these buildings were ordered by the Jaegerstab. I do not need to return to that question. Were these constructions used exclusively by the Jaegerstab or for other advantages, such as armored cars?

A. Originally they were exclusively planned for fighter construction but I do recall that, as time went on, there were also discussions of using them for other manufacture, for instance, tanks, and this construction was to take place in these buildings. Since, however, I had nothing to do with this professionally, I can only report on this from hearsay. In other words, I know nothing precisely.

Q. The prosecutor quoted to you a statement of yours from an interrogation; I shall ask you now did you make the statement in the interrogation that Milch was responsible in air armament to seek out workers individually?

A. I don't know how I should understand the word "seek out"; if you mean that he went to foreign countries and searched for them personally, then of course that is wrong. I did state in that interrogation that during my activity in the Jaegerstab in March 1944 no individual actions in foreign countries were carried out by Milch or the Jaegerstab. The manpower was provided by Sauckel exclusively, or to the extent that they were prisoners by the SS, or prisoners of war by the Wehrmacht.

Q. And then they were transferred, as you said yesterday, to other sectors?

A. Yes.

Q. You also said in this interrogation that in most of the meetings Milch was present.

A. At the beginning, I said.

DR. BERGOLD: I have no further questions.

EXTRACTS OF TESTIMONY OF DEFENSE WITNESS XAVER DORSCH *

DIRECT EXAMINATION

[Tr. p. 1361-1379]

DR. BERGOLD: Please state to the Court your first and last name?

WITNESS DORSCH: Xaver Dorsch.

Q. When were you born?

A. 28 December 1899.

Q. What was your last position in the German Reich?

* Complete testimony is recorded in mimeographed transcript, 24 Feb. 47, pp. 1361-1379.

A. I was Deputy Chief of the Todt Organization, in the Speer Ministry.

Q. On the 28th of December 1946 you signed an affidavit?

A. Yes, sir.

DR. BERGOLD: Your Honor, this is Document NOKW-447, Prosecution Exhibit 74.

Q. Witness, you made the following statement:

"As deputy of Minister Speer in his capacity as Chief of the Todt Organization, I received from Hitler, at the end of April 1944, an order to construct with the Todt Organization six bombproof fighter factories, of which two should have priority." Can you tell me about the history of this construction?

A. Yes, but I must go into detail.

Q. Proceed.

A. Approximately eight months before this date, I made a suggestion to Minister Speer about how bombproof fighter factories above ground could be built, in this way, not only to secure manufacture, but also so that they would be more secure against bomb damage while being built.

The source was that the Todt Organization in France was doing a similar construction job as a launching site for V-2 bombs. Speer told me that I should take the plans with me on my next visit to the Fuehrer's Headquarters, and two weeks later I was with Speer, visiting Hitler, and after other matters had been discussed, and before going, Speer mentioned this matter and Hitler said: "We must absolutely achieve bombproof aircraft factories because there is danger that transportation might be attacked, and then we cannot make up the time we have lost." Hitler wanted large-size, big scale units, in which planes and fighters could be protected from the beginning to the end, because he saw a danger in the fact that transportation could be attacked and interrupted, and then the different parts, if they were made in various factories, could not be assembled.

He said that he imagined the matter roughly as follows: In narrow mountain valleys in Saxonian Switzerland, for example, caves could be dug which would provide these bombproof factory installations. Then Speer said, "Dorsch or the Todt Organization has another suggestion." Speer said that, and I then submitted to him my plans for the special Todt Organization construction, which, as I said, had already been built in France, and I also pointed out to him that such factories, even as they were being built, were relatively safe against bomb attack.

This was roughly eight months before this date in April on which this commission of which I spoke in my affidavit was given to me. Hitler said to me that it was a matter of indifference to him

according to what system these things were built, but that it was important to him that something really serious should be done.

On the next day there was a discussion on the same theme with Goering. Speer's representative Dethleffsen, as Plenipotentiary for construction matters, and the leader of the main committee for construction, Gaertner, were present. I had to explain again the thought behind this special construction which I was proposing. Goering was enthusiastic and said that that was the solution and that the Todt Organization should begin immediately with that construction. Thereupon Speer said, "The Todt Organization cannot build these factories because it builds only outside the Reich, with the exception of the Ruhr district, and in the Reich itself the Main Committee for Construction should carry out the construction," and for that reason, he had called the two gentlemen I mentioned above. Goering also said that it was indifferent to him who built the factories, that the important thing was that they should be built soon.

In April of 1944, I was visiting Speer near Meran when a call came that I should immediately go to Hitler. Speer asked me if I had any idea what was afoot, but I did not. I immediately went to Berchtesgaden. There Hitler asked me, "What has become of your fighter production?" I told him that I did not know precisely, because in the Reich the Todt Organization did not do the constructing but another organization. He was greatly excited and said roughly, that he had heard enough about this other organization, that he did not want it, and he demanded that the Todt Organization should take over that construction immediately.

Then the plans were fetched overnight from Berlin. I explained the whole system to him once more. I told him that I could only carry out this construction if it were given priority above all other construction as far as workers, machines, building materials, trucks, and so on—whatever is needed in construction—were concerned. I was given assurances that that priority would be given me, and I then took over this construction project.

I was able to assure myself that the Hauptausschuss Bau—the Main Committee for Construction—which had been in charge before I took over had begun constructions at three locations. On one of these we immediately stopped work, because both architecturally and, as the Jaegerstab told me, technically the factory was no good.

Q. Witness, you then said that the wish to build these bomb-proof fighter factories by the Todt Organization was communicated to you by the Jaegerstab. What do you know about that personally?

A. I know the following: The Jaegerstab, as far as the entire work of the Plenipotentiary for construction was concerned, was not satisfied with the work. Saur complained continuously about how work dragged on and asked me repeatedly to step in and do something. He called me to his meetings in the Jaegerstab and asked me to develop further plans. I was called up continuously by other gentlemen. I remember Major Dr. Krohmer, who also asked me to step in, and again and again I had to say that that would not do because, I said the Todt Organization did not carry out construction in the Reich. I was pressed continuously by the Jaegerstab, because it was the organization that would benefit from these constructions.

Q. Do you know whether Milch went in that direction too, or only Saur?

A. That I cannot say. I did not speak about that to him myself. I did speak with Saur and a few other gentlemen—I believe with Schlempp who was later representative of the Todt Organization in the Jaegerstab.

Q. When was that first pressure on the part of Saur? Was that before March of 1944?

A. Yes. That was even earlier, but I cannot say precisely. It might have been in February even.

Q. Do you know whether Saur visited the Fuehrer on this matter?

A. I was not present, but I assumed that it must have been so. I cannot prove it, however.

Q. So. This afternoon you told me what you thought Milch's function was in the Jaegerstab. You used a rather striking expression. Would you like to repeat it here?

A. I called him "the breakfast director". I ask the defendant to pardon the expression. He shouldn't hold it against me.

Q. What do you mean by this "breakfast director"?

A. Well, it is sort of difficult for me to tell that.

Q. Milch won't be angry.

A. Well, I only saw him at a Jaegerstab meeting once, when he invited me and when he asked for the support of the Todt Organization. He explained to me the general situation. He told me what his worries and troubles were, but the real work, the whole functioning of the thing, I don't believe he concerned himself with. That is why I used the expression "breakfast director," but perhaps that was a little exaggerated.

Q. I quite understand. After the end of April 1944, when you were commissioned with these construction matters, what did you do?

A. As I told Hitler very exactly, I took Todt Organization units from France and from the Atlantic Wall.

Q. How many were there?

A. 2,000 or 3,000—I cannot remember.

Q. Your affidavit says 10,000.

A. No, that is incorrect. That cannot have been the number in France. The second time that I went to the Plenipotentiary General for chemistry, Prof. Krauch, and told him of the serious situation, and I finally brought him to the point of giving me 15,000 workers from his department.

Q. What workers were those?

A. First of all, in the Baltic States—that was a Todt Organization itself—I took away most of the German workers, and took some elsewhere as additional workers, engineers, experts of one sort or another, machinists. Then came the attack on Leuna on the 10th or 12th of May 1944. That was on the occasion of the first attack on Leuna. I had a talk with Hitler at that time. He said, "This cannot be tolerated—that, at the very moment when we are so in need of oil, workers are taken away from Leuna".

I then answered him that, first of all, I had undertaken this measure before the air attack, and secondly, it was not a question of cutting down on oil production, but of oil capacity. Hitler took over and said, "No, that cannot be". Then Speer said, "If we don't get the workers, we can't do the building". Hitler said, "Quiet down, you will get 50,000 Italians," and then I said, "I don't believe that", and I said that for the following reasons: We, the Todt Organization, had such workers from Italy for the construction program Riese in Silesia, but we did not do this via Sauckel but by applying to Italian firms to take over construction commissions in Germany, and then they automatically brought their workers, their directors and architects, and so on, with them particularly after we had assured them that we with our organization—that is to say, with the Todt Organization in Italy—would take care of paying wages, paying for the hospitalization fees, insurance, and so on, but at the moment when workers were fetched by Sauckel, I understood clearly that workers such as we needed would not be provided in any considerable numbers. At any rate, I told Hitler, "I do not believe in these Italian workers, and I won't believe in them until they have crossed the Brenner Pass." He then said to me, "You can believe in them because tomorrow Mussolini is signing an agreement that 1,000,000 workers will come to Germany."

* * * If I may mention it, it is also worthy of mention, that in January, the beginning of January, I was at a conference with Hitler, or rather, I did not take part in it, but I knew of it. There,

a new worker contingent was demanded, and in this conference Hitler himself named the number of 250,000 workers for the construction; for aircraft construction. In other words, it wasn't Speer but Hitler who demanded those workers, especially, and it is possible—that, at any rate, is the way I construe it now—that he was thinking of these fighter plants. Then I asked Hitler to permit me to use 10,000 Todt Organization workers from Southern Russia. I must mention that here, because I did that as Speer's representative with Hitler. I could not have said to Speer that he should give me these 10,000 workers. I had to do that through Hitler, because the commanders in chief, in this case the commander in chief of the army group in Southern Russia, were in charge of these people and they had to be released by them. Thereupon these 10,000 workers got under way toward Germany. However, they unfortunately arrived very slowly and some of them never got to the fighter plant, but were taken over by Speer to make ball bearings in Wellen, in Thuringia, and then, when no workers came, the plants were to be built by Hungarian Jews. I do not know precisely when it was, but I do remember an armaments conference in Linz—I guess it was about the middle of June or maybe later, but I can't say for sure—and it was then that the first ones began to arrive.

Q. Were they approved by Hitler?

A. Yes.

Q. Witness, when you of the Todt Organization fetched Italians on your own initiative, were they volunteers or were they more or less forced labor?

A. Precisely in Italy, we had a remarkable achievement because as a matter of principle we turned to Italian firms, gave them commissions and they provided the workers. I believe I can say that the Todt Organization was known for taking model care of its workers. For instance, in Norway and Holland, the Dutch or Norwegian Todt worker received higher wages than the German Todt worker who was working right beside him. I could make extensive statements on that if I wanted to, or if I were given the opportunity.

Q. But that is not an answer to my question, whether they were volunteers or forced labor?

A. They were not forced. They were brought by their firms.

Q. Through the Italian firms?

A. Yes, that was the intention from the very beginning, so that the Italian firms could provide their trained and expert personnel to us, and, in this way, they were simply volunteers; they did much better work than if they were forced.

DR. BERGOLD: No further questions.

CROSS-EXAMINATION

MR. KING: Witness, you stated that Milch was only present at a few of the early meetings of the Jaegerstab. May I ask you—

A. What I said refers only to those meetings of the Jaegerstab at which I was present and that was perhaps four or five.

Q. Now, you said, in your affidavit, which has been submitted as a prosecution exhibit referred to by Dr. Bergold, that you received an order for the construction of fighter factories at the end of April 1944?

A. Yes.

Q. Do you recall being present at a conference at Berchtesgaden with Goering, among others, on the 19th of April 1944?

A. I cannot say whether that was the precise date, but I did take part in some such conference.

Q. Do you recall who was present at that conference?

A. Yes. Goering was there, Milch was there, the others I'm not sure about. Saur—I'm not sure he was there. I knew for sure that Milch and Goering were present, but as to the others I no longer recall.

Q. Do you recall what was discussed at this conference?

A. The construction of fighter plants was discussed then, and, if I remember, Goering pointed out that the Todt Organization was to receive all sorts of support but I do not remember the details at the moment.

Q. And a few days later, on 21 April 1944, you received the order from Hitler to build the six fighter plants?

A. Yes.

Q. Do you recall that possible sources of labor were discussed at this meeting? That is, labor for the construction of the fighter factories?

A. I should like to assume that, but I do not remember precisely. Probably all sorts of conditions and possibilities were discussed, but I cannot answer this precisely.

Q. You were discussing a large-scale construction; you must have known where this labor was to come from. Can you tell me what possible sources were discussed at that meeting?

A. I do not know whether or not that question was discussed at this conference. I assume that it was, but that was such a long time ago that it is impossible for me to recall these details. But I was clear in my own mind about that fact. That we needed so and so many workers was of course obvious. I did make the demand that this construction program should receive top priority and I stated previously that I wanted primarily German workers, which was then done, and in the sector of the Pleni-

potentiary General for chemistry I wanted to take some workers; that was the way in Germany that you got workers. Later, when we of the Todt Organization took over the construction program in Germany, we saw that a large number of construction offices had so little manpower that they had to stop production and there again we found workers. The whole situation was somewhat unclear because when we took over building these fighter factories, the entire construction was turned over to the Todt Organization, and no one could take the responsibility for such important constructions unless he could control the direction of the whole construction program, but, with the best will in the world, I can't recall the details. There were so many conferences, one followed the other so rapidly, I do not any longer recall.

Q. Who was your representative at meetings of the Jaegerstab?

A. Schlempp, first of all; even before I was commissioned with this task, he was the technical adviser or expert on construction. Saur asked me at that time to regard him as the liaison man between the Todt Organization and the Jaegerstab. Then, about the middle of June, Schlempp became group leader of the unit in Prague, for which reason I provided one of my best men, namely, Knipping and I used him in what had previously been Schlempp's capacity.

Q. Do you recall that Schlempp, and later Knipping, reported on the progress of it to the Jaegerstab?

A. I am convinced that they did, because that was their job.

* * * * *

Q. Now can you give me percentagewise the breakdown of this labor by groups, that is, prisoners of war labor, foreign labor, concentration camp labor, German labor?

A. That I could only do with the most general estimate, with vagueness. In the case of Kaufering, there were perhaps sixty percent from the concentration camps; however, prisoners of war, as far as I know, were not there at all. The rest must have been Germans. In Muehldorf, where the second factory was, the breakdown was roughly the same, but I really cannot say. I visited each one of these factories only twice. Because of the transportation situation of the Rhine bridges and the hydrogenation plant situation, I did not have the time to visit them.

Q. Now did you obtain any of this labor for the construction project? Do you recall obtaining any of this from Schmelter?

A. I take it that Hitler himself had approved these workers. Our request went to Schmelter, and he was working his own men in that Todt Organization, and in the Jaegerstab, and it was his job to settle the details when they should come, and what they

should be paid, and such matters. That was Schmelter's job, and Schmelter was told that this is a technical staff, and he knew that Hitler had approved the workers, and so it was his job to take care of the details, and to inform the Einsatzgruppe what it should do. I did not carry much of these things in detail after that.

Q. Now do you recall how large a construction was at Kaufering? I am speaking both at Kaufering I and Kaufering II?

A. You mean the technical construction?

Q. Yes.

A. There was one main hall in Kaufering I, three hundred meters long, ninety meters wide, with six stories. Kaufering II conducted production later, but everything was concentrated in Kaufering I.

Q. Do you recall how much of this construction was completed?

A. I should think three-fourths. At the last time I visited this construction shortly before the collapse, the machines were being set in on one side of the building, and that is as far as it went.

Q. And to whom was this plant allocated?

A. That I cannot say. In my opinion the Messerschmitt, but I must be careful in what I say here, because in the last week before the collapse there were negotiations with the armament staff. I cannot remember what that situation was in Kaufering, but in Muehldorf there was constant talk of putting Buna in there. That changed continuously, dependent on the war situation. Once Speer wanted to set up a steel foundry in the fighter factory in the Rhineland, which was later changed.

Q. Please answer the question. Now in these inspections at Kaufering, do you recall any Luftwaffe representatives who inspected these construction sites?

A. That I don't know. I cannot say. A colonel of the Luftwaffe was there but in his capacity as representative of the armament commando or of an armament office.

Q. Now getting back to this meeting of 19 April 1944, do you recall that Speer was present there?

A. No.

Q. How were your relations with Speer at that time?

A. They were tense. Speer did not regard the Todt Organization as a sort of construction organization. To make a statement, I should have to go into great detail on this subject.

Q. I think that suffices. Now with regard to the recruitment of these fifty thousand Italians, which you discussed with Dr. Bergold, do you recall who was to handle the recruitment of those Italians for work in the Reich?

A. To be sure that I do not make any false statement, is it

your concern who recruited the fifty thousand Italians that Hitler approved of?

Q. My concern is through what channel were these Italians that were promised Hitler by Mussolini, through what channels were they recruited?

A. That was to be taken care of by Sauckel, but through the Todt Organization, who had their office in Italy apply to Italian firms ultimately, and that was done through the Todt Organization office in Italy.

Q. Now with regard to these Italians, do you know what provision was made for the guarding of those that were to arrive, that is, en route?

A. Of that I know nothing, because they did not arrive. They were not watched, or guarded at all. They were free workers, there was no reason to guard them.

Q. Now, Witness, outside of Kaufering, can you tell me where and under what names these other fighter factories were to be located?

A. In Muehldorf, and then there was a factory in Vaihingen.

Q. Just a minute. Now with regard to Muehldorf, can you tell me what that was to be used for, who was it to be used by?

A. First it was thought of as a fighter factory, and then, a few weeks before the collapse, there was a conference of the armament gentlemen in Munich, at which it was agreed that it could be used for the manufacture of Buna; in other words, they changed their minds.

Q. What time did that conference at Munich take place?

A. That must have been about the end of March 1945.

Q. Now, with regard to Muehldorf, can you tell me where, primarily this labor was coming from?

A. These were Hungarian Jews. There were Germans there. Where they came from, that I don't know.

Q. Well, now, with regard to these Hungarian Jews, can you tell me whether that was a result of a special action in Hungary?

A. I don't believe so, but I don't know. We were only told that we were going to receive Hungarian Jews. They were already in Germany, if I remember, but where they came from I don't know because I didn't concern myself with it.

Q. But you do recall that Hungarian Jews were used on that site?

A. Yes.

Q. Now, with regard to these other factories, we have covered Kaufering and Muehldorf, can you tell me the location of the others?

A. Vaihingen—that was a factory that was already under construction before the Todt Organization stepped in.

Q. Witness, where was that located?

A. V-a-i-h-i-n-g-e-n, and it is in Wuerttemberg.

Q. And how large was that construction?

A. It was a building about 100 meters by 60, four, five stories high.

Q. And do you recall what type of workers was used in that construction?

A. Concentration camp inmates, but I don't know the number.

Q. And that was in Thuringia?

A. No, in Wuerttemberg.

Q. Now do you recall that any of these factories was to be located in the Protectorate?

A. One was to be erected there, yes, in the neighborhood of Prague but so far as I know they never got around to it. Perhaps the ground work was carried out and the machines were shipped there, but the factory itself was not actually built. Then there was to be another one in the Rhineland. I have already mentioned that.

Q. Witness, with regard to this factory in the Protectorate, can you give me the code name for that factory?

A. No, I don't know it. It was about 50 kilometers north of Prague.

Q. And that was to be used by what company?

A. I can't say, I don't know.

Q. Can you give me any indication of the size of that factory?

A. The one north of Prague? Yes. That would have been about the same size as Kaufering, roughly, but, as I say, I really don't know whether they got construction under way there.

Q. But you were to construct it?

A. Yes, it would have been done under my supervision, or under my direction. I was Speer's representative and chief of the Todt Organization.

Q. But you don't know how far along or whether construction was initiated there?

A. I cannot say for sure. I suppose that they started the construction, but so far as I know they really did not actually get this factory built.

Q. Now, with regard to this factory in the Rhineland, can you tell me where that was to be located?

A. I can't remember the name any more. I was there once, and I can perhaps locate it on the map. It was west of the Rhine, 70 or 80 kilometers, but I can't remember the name any longer. It was under construction, and then the construction was inter-

rupted by military events, that is, about the time when the Americans entered the Rhineland on the Ruhr. Nor do I know whether concentration camp inmates were used there.

Q. Do you recall whether foreign labor was used?

A. In this factory? That I cannot say.

Q. You don't recall constructing any factories for Wiener-Neustadt?

A. No.

Q. Or for the automobile works at Steyr, in Austria?

A. No.

Q. Focke-Wulf, in Bremen?

A. No, in Bremen we only built a U-boat factory.

Q. Do you recall constructing any factories for Heinkel?

A. That I don't know. I wasn't really interested in such questions, because I received the data from the Jaegerstab, and the Jaegerstab did the actual construction. The engineer of the Todt Organization built the house, and then the Jaegerstab took care of the rest. There were no discussions on my part with construction firms. Moreover, I didn't even have time to carry out such things.

Q. But you got your labor through Schmelter, who was a member of the Jaegerstab?

A. Yes, he was a member of the Jaegerstab, and I have already said that he was also the leader of labor allocation in the Todt Organization. He was in charge. At first he was entirely within the Todt Organization, and then later he was what you might call the leader for the allocation of labor in Speer's Ministry, and was in charge later of the allocation of labor in the Todt Organization. At the same time, he performed the same function in the Jaegerstab, so that automatically there was a connection between the Todt Organization and the Jaegerstab.

MR. KING: I have no further questions, your Honor.

REDIRECT EXAMINATION

DR. BERGOLD: Witness, I have one more question. When did these Hungarian Jews arrive at Muehldorf?

A. I do not know about Muehldorf, but I can recall that at Kaufering the first ones came—and here I must guess—at the end or the beginning of June 1944.

DR. BERGOLD: Thank you, I have no further questions.

MR. KING: I have one further question, if your Honor pleases.

DR. BERGOLD: I have just heard that the interpreter was inaccurate. The witness spoke of the end and the middle of June, and the interpreter said "the beginning of June".

THE INTERPRETER: "The middle or the end of June" is what the witness said, but he is not sure about it.

RE-CROSS-EXAMINATION

MR. KING: Now, Witness, with respect to this construction at Kaufering, can you tell me when that was initiated?

A. In May of 1944 it must have begun, the beginning of May.

Q. And that was also true of the other fighter factories that you were to construct under the Hitler order?

A. Perhaps two weeks later the construction in Muehldorf began; the construction in Vaihingen that I mentioned before was already under way, and I took it over. The construction in the Rhineland started considerably later, it could have been perhaps at the end of June; Prague came along much later.

Q. Now, you say that you were at Kaufering on two separate occasions. Did you have any opportunity to—

A. (Interposing) I was in Kaufering three times. Do you want to know when? In May 1944; at the beginning of January 1945; and then once more just before the capitulation, perhaps two or three weeks before the capitulation.

Q. Do you recall anything about the conditions at Kaufering; that is, the conditions of labor?

A. I only saw the construction site. When I was in Munich, Niebermann, who was responsible for construction, told me that the Hungarian Jews were poorly clothed and poorly fed in part. I then told the competent SS man, whose name I no longer recall—but he was there in Munich, in Niebermann's office—and I pointed out to him that this was the responsibility of the SS and he should see to it that these men were decently clothed.

Q. Witness, do you recall any reports of deaths of Hungarian Jews on the project?

A. Roughly, in October, our physicians told us that the fatalities in Kaufering were higher than normal. I then commissioned that physician to take up negotiations with the SS to improve conditions.

I should like to say explicitly that the Todt Organization was forbidden to enter the camps. The physician tried to send medicines to the camp, and was successful. I can remember a date, namely, one on which I was operated on—that is why I remember it—in November, at which time the physician told me that he had succeeded in bringing these bad hygienic conditions to an end after considerable effort. I remember the date because it coincided with a sickness of my own.

4. GENERALLUFTZEUGMEISTER *

Evidence

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* Generalluftzeugmeister was translated as: Aircraft Master General, Air Ordnance Master General, Chief of Supply for the Air Forces, Chief of Air Forces Special Supply and Procurement Service, Director of Supplies, and Director General of Air Force Equipment.

PARTIAL TRANSLATION OF DOCUMENT NOKW-311
PROSECUTION EXHIBIT 62

EXTRACT FROM INTERROGATION OF HERMANN GOERING ON 6
SEPTEMBER 1946, REGARDING MILCH'S POSITION AS
GENERALLUFTZEUGMEISTER (GL)

* * * * *

INTERROGATOR: Now to the Milch case: Who was commissioned after 1941 with the labor allocation in the Ministry for Air?

GOERING: What am I to understand by "labor allocation"?

Q. Labor allocation consisted of the drawing in of foreign workers or German workers, especially of concentration camp inmates, in order to free them for air force production.

A. This matter went through Udet, the Chief of Supply for the Air Force, until Udet's death, and then it went through Milch.

Q. In what manner did the Reich Air Ministry submit its requests to Sauckel and the approximate figure for its requirements, the number of workers, etc.? And if Sauckel received such a request from the Reich Air Ministry, how did he undertake the distribution?

A. The requests were made by Milch, it was he who said how many workers the air force needed, and these were forwarded to Speer. Speer then asked Sauckel for the workers for the entire armaments branch, almost for the entire industrial branch, and he then made the distribution. It was he in the end who made the final decision as to how many workers went to the air force for instance, how many to the army, etc. As far as I know, Sauckel had actually nothing to do with the distribution of labor. The contingent was put at the disposal of the authorities. Terrible pressure was continually brought to bear on Sauckel. If the requested number was not brought, he was given hell. I personally presided over a meeting where there were differences between Sauckel and Speer. He wanted to have more, etc. There was a mix-up and that's how I know it; but the needs of the air force were put forward by Milch, that is the Chief of Supply for the Air Force. When difficulties arose and they did not get the people, and the program threatened to break down, then they came to me and I supported their demands.

* * * * *

PARTIAL TRANSLATION OF DOCUMENT NOKW-418
PROSECUTION EXHIBIT 136

EXTRACTS FROM STENOGRAPHIC MINUTES OF GL-CONFERENCE,
5 MAY 1942

[Two handwritten marginal notes at top of document:] Mi. 10.

Secret

*SHORTHAND TRANSCRIPT ON THE GL-CONFERENCE
PRESIDED OVER BY THE STATE SECRETARY, FIELD
MARSHAL MILCH, ON TUESDAY, 5 MAY 1942,
10 A.M. IN THE REICH AIR MINISTRY*

* * * * *

ALPERS: The reason given is shortage of labor. And in fact there are 2,000 men lacking at Heinkel-Oranienburg.

MILCH: As far as the French are concerned, 60,000 of the ones that we had been promised are still missing.

(Comment: 40,000 are missing.)

If we get those men I would assign 2,000 to Heinkel-Oranienburg.

FRYDAG: The French become worse and worse; I threw out 80 of them who will be sent to concentration camps in Russia. They refused to work. The French say at 4 o'clock: "I won't work another hour," and you cannot make them work another hour. This happened four weeks ago all of a sudden, when the first bombing attack on Paris took place, while before that the French were the best people.

MILCH: We were told in Oranienburg that they were good as long as they didn't get spoiled by our German people.

FRYDAG: It happened here after we got the French from Messerschmitt; according to the French they got a warm meal twice a day there and had their laundry done. We cannot do either. We don't have a warm meal twice a day either. At Messerschmitt the living conditions were better.

MILCH: Gablenz, I want you to get in touch with Reinecke concerning these French. I demand that if the people refuse to work they immediately be placed against the wall and shot before all the other workers. I ask you to get in touch with the Reich Leader SS and to ask him to discuss the matter with the Fuehrer. Now is the right time; unless we do something effective now, the others will become bothersome. I ask that their being sent to concentration camps be taken into consideration too. I'll tell you afterwards how you should act in such a matter.

So I do not agree. You should make another proposal. At the beginning you cannot expect more.

* * * * *

PARTIAL TRANSLATION OF DOCUMENT NOKW-407
PROSECUTION EXHIBIT 137

EXTRACTS FROM STENOGRAPHIC MINUTES OF GL-CONFERENCE,
27 MAY 1942

[Three handwritten marginal notes at top of document:] To my
files Mi. 14

Vossen/Dr. Reynitz/Ca.

Secret

*SHORTHAND TRANSCRIPT OF THE GL-CONFERENCE
PRESIDED OVER BY THE STATE SECRETARY, FIELD
MARSHAL MILCH ON WEDNESDAY, 27 MAY 1942,
9 A.M. IN THE REICH AIR MINISTRY*

* * * * *

VON GABLENZ: Yesterday, the first * has exploded in France,
at the Arade plant, an explosive, a float, but no damage has been
done.

FIELD MARSHAL MILCH: What measures have been taken in
consequence?—I want to have a report on what has been done.
How many people have been shot and how many hanged? If that
guy cannot be found today, fifty men should be selected and if I
were you I would hang three or four of them whether they are
guilty or not. It is the only way!

(Mahnke hands another letter to the Field Marshal.)

What do you think of that man?

* * * * *

TRANSLATION OF DOCUMENT NOKW-406
PROSECUTION EXHIBIT 138

EXTRACTS FROM STENOGRAPHIC MINUTES OF THE GL-CONFERENCE,
7 JULY 1942

[Two handwritten marginal notes at top of document:] St/R 21

Secret

*SHORTHAND TRANSCRIPT OF THE GL-CONFERENCE
PRESIDED OVER BY FIELD MARSHAL MILCH ON
7 JULY 1942, 10 A.M. IN THE REICH AIR MINISTRY*

* * * * *

FIELD MARSHAL MILCH: I do not like the engine. I have in-
spected it and for the time being anyhow, I shall not take the
177 plane as a traveling plane.

* Word is missing in German original document.

With regard to the output of Prague I want to say this: Of course, one must recognize good output, even of a foreigner. On the other hand, as far as the French are concerned, something must be done now. Gablenz, ring up Toennes and tell him that this is a crazy situation [tolle Schweinerei]. However, we would still try first to arrange it in a friendly way through Toennes. If that does not succeed, then I intend to fill the new Heinkel plant in the east entirely with Frenchmen brought down there by force. If they don't work in France, they may work as prisoners in Poland. After all we have to remember that it is we, and not the French, who have won the war.

* * * * *

TRANSLATION OF DOCUMENT NOKW-408
PROSECUTION EXHIBIT 139

EXTRACTS FROM STENOGRAPHIC MINUTES OF GL-CONFERENCE,
28 JULY 1942

[Two handwritten marginal notes at top of document:] St/R 24
Vossen/Dr. Jonuschat/C

Secret

*SHORTHAND TRANSCRIPT ON THE GL-CONFERENCE
PRESIDED OVER BY STATE SECRETARY FIELD
MARSHAL MILCH ON TUESDAY, 28 JULY 1942,
10 A.M. IN THE REICH AIR MINISTRY*

* * * * *

ALPERS: We have discussed whether a stronger pressure should not be put upon French firms by both our liaison office and by us here. I have talked with the French works managers myself. Actually they are all of the same mind; they are willing to exert pressure, but then the workers will leave them. In France there is no law that binds a worker to his place of employment.

MILCH: As far as we are concerned, that is very difficult. But at the very moment when the deadline is passed for me, I shall say: Now there is no more French production. The workers are sent on leave or taken away immediately for other work. The French always want the proportion 1:5, but they only reach 1:2.3. In reality they have very much more, as we have received only old French junk. If we consider the actual output that we have received, then the proportion is not even 1:0.2, but exactly the contrary: 5:1 in favor of the French! At the present time we receive 8 to 9 planes from the French. I could well imagine that they get out 45 for themselves. I shall shut the shop with a single stroke and have the workers and the machines come to Germany. If it does not work on a voluntary basis, then we do

it by compulsory contracts. Perhaps I shall first give them a week to think it over.

(ALPERS: Amio himself is behind. For him the surfaces and tail unit factories are situated just right.)

—It is a fact that, on the whole, these people work in silent opposition. One cannot blame them for it either, it is true, but they should not have started the war.

* * * * *

TRANSLATION OF DOCUMENT NOKW-409
PROSECUTION EXHIBIT 140

EXTRACTS FROM STENOGRAPHIC MINUTES OF GL-CONFERENCE,
4 AUGUST 1942

[Handwritten marginal notes] To my files, personally St/R 25

Secret

*SHORTHAND TRANSCRIPT ON THE GL-CONFERENCE
PRESIDED OVER BY FIELD MARSHAL MILCH
TUESDAY, 4 AUGUST 1942, 10 A.M. IN THE
REICH AIR MINISTRY*

* * * * *

GEYER: In the west there is a danger of the French going on strike in the event of a British attack. In that case, the whole of the engine supply would be severely handicapped.

MILCH: In such a case I would ask to be appointed military commander myself. I would band the workers together and have 50 percent of them shot; I would then publish this fact and compel the other 50 percent to work, by beatings if necessary. If they don't work, then they too will be shot. I would get the necessary replacement somehow. But I hope the military commander will do his duty. I'm not worried about it. The word "strike" must never be used. For us there is only "living or dying", but not "striking". That goes for the educated man as well as for the worker, for the German [Inlaender] as well as for the foreigner. The word "strike" means death for the man who uses it.

* * * * *

GABLENZ: Sauckel also made an effort but he does not have a completely free hand. Lt. Col. Nickolai and Stending are still standing in between.

MILCH: In spite of all, he has brought in quite a tidy number. Sauckel has brought over 1.6 million people to Germany, 1.3 million from the east and the rest from other countries.

GABLENZ: We should not be sorry if Sauckel not only took care of getting the workers, but also of distributing them. That way we would fare better.

* * * * *

TRANSLATION OF DOCUMENT NOKW-412
PROSECUTION EXHIBIT 141

EXTRACTS FROM STENOGRAPHIC MINUTES OF GL-CONFERENCE,
18 AUGUST 1942

[page 1874 of original]

[Handwritten marginal notes on attendance list] St/R 27

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[page 1932 of original]

FIELD MARSHAL MILCH: As soon as the figures for August are ready I request an exact account for my report to the Reich Marshal and also for the conferences which I want to hold with Sauckel and Speer beforehand. This account is to show how the labor question has developed, how great the fluctuation is and which nationalities it involves, what real requests we now have to make in the different sectors in order to cover the needs for specialists and for skilled and unskilled labor, how many of them can be foreigners, etc.? What happens to those who leave the industry? Are they being compelled to work elsewhere? Are they, as I proposed, under control in the camps supervised by the SS and considered as being in mild concentration camps, or are these gentlemen allowed to remain outside and do as they please?

TRANSLATION OF DOCUMENT NOKW-416
PROSECUTION EXHIBIT 142

EXTRACTS FROM STENOGRAPHIC MINUTES OF GL-CONFERENCE,
26 AUGUST 1942

[Handwritten marginal notes] St/R 29

Secret

*SHORTHAND TRANSCRIPT OF THE CONFERENCE OF
THE DIRECTOR OF SUPPLIES PRESIDED OVER BY
FIELD MARSHAL MILCH ON WEDNESDAY, 26
AUGUST 1942, 11 A.M. IN THE REICH
AIR MINISTRY*

* * * * *

MILCH: Is Quartermaster General 6 here?
(Comment: Yes!)

Do you know anything about it?

(Comment: No!)

Ask about it and inform Colonel Brueckner!

FRYDAG: Another important consideration is the letter, which you yourself have signed, Field Marshal, dealing with the expiration of the labor contracts of the foreign workers. * * *

MILCH: The Reich Marshal [Goering] wanted to bind these people by law at one time, that was one idea. The Fuehrer's plan would be more favorable. He wishes that the workers be gradually all replaced by Russians for whom there is no longer such a thing as expiration of contracts.

(Comment: But there is a certain transition period!)

BRUECKNER: You, Field Marshal, have yourself put your signature to this matter. The contracts are to be extended till 1 October 1943. I hope that it will be done.

* * * * *

MILCH: On the other hand, a number of these people have been drafted into the armed forces. But if I consider the others, I arrive all the same at a monthly total of about 30,000 who loaf around and fluctuate from job to job. According to the suggestions of the Reich Marshal, these people are to come under the care of Himmler and are to be handled severely there. What has been done, so far, in this regard? Brueckner, you know about this matter, don't you?

(BRUECKNER: Yes!)

You do not seem to be informed quite correctly. Sometime ago we were quite irritated about the fact that so many workers move about from one factory to another, most of them antisocial elements who do not like to work and whom the firms are possibly glad to get rid of because they do nothing but complain and grumble, do no proper work, are constantly late, shirk work where they can, pretend to be sick, etc. These people were supposed to be handled more severely, and about a year ago the Reich Marshal issued an order and gave the Ministry of Labor the job of dealing with this matter firmly. Then the Ministry of Labor issued an explanatory order which was nothing but a sabotage of the order and the desire expressed by the Reich Marshal. I reported to the Reich Marshal—in the very words which I have just used—that in this case his will was clearly being sabotaged by some lawyers or other poor fellows and that I asked him to take measures against it. He told me that he would talk the matter over with Himmler. That is, I had suggested to him that this matter could only be settled with the help of Himmler's organization.

The armed forces are not in a position to do it. The suggestion had been made that the armed forces should take care of these people in camps but these workers are not ready for that. They have not been condemned and in no way violate the existing laws, but act only against their country which certainly does not yet come within the sphere of the old legal nonsense. That is why Himmler should get these people into his clutches because he can treat them outside the law. My suggestion was that the people should be put into camps or, in part, just get numbers. The person involved would have a passport in which it is entered that he is a German of this or that category, and that his number is so and so. Then there are subsequent entries: At this or that time he did not work, at this or that time he was late, etc. If he "loses" this passport—because he doesn't want to have it anymore—off he goes to the concentration camp immediately; the same thing happens if he does not show it when ordered to do so. Once every month the pass is checked by the local SD. If it shows that the man has been ill, or late thirty times in one month, then the SD takes him along and gives him a job in which he has to work 14 hours a day and where he is treated in the way he deserves if he is not willing. The Reich Marshal has approved this suggestion. Nevertheless I have not yet seen anything of the kind being carried out.

BRUECKNER: I know that such labor camps have been established.

MILCH: In that case I want you to tell me exactly during the next conference, where these camps have been established, who is in charge of them, and how do we get these honorable gentlemen who do not want to work into them? * * * It is a simple matter to have these people taken care of somehow by the SD. It has only got to be taken in hand. I want to have a report on it as soon as possible. Otherwise I will talk to Himmler about it myself and see that this matter is taken very firmly in hand. I see in these people the greatest danger for the home front.

* * * * *

TRANSLATION OF DOCUMENT NOKW-286
PROSECUTION EXHIBIT 144

EXTRACTS FROM STENOGRAPHIC MINUTES OF GL-CONFERENCE,
1 SEPTEMBER 1942

[Handwritten marginal notes]

St/R 31 To my files

Secret

*SHORTHAND TRANSCRIPT OF THE GL-CONFERENCE
PRESIDED OVER BY STATE SECRETARY FELD
MARSHAL MILCH ON WEDNESDAY, 9 SEP-
TEMBER 1942, 10 A.M. IN THE REICH
AIR MINISTRY*

* * * * *

DEUTSCHMANN: Reports have come in from front repair workshops that up to 40 percent of the people simply do not come to work. Because of the difficulties in the food supply they simply go out into the country in order to have something to eat. At the plant Mechanical Workshops [Mechanische Werkstaetten] I have found out that the Poles have not come because Russian pilots had dropped propaganda material. In one case, I have seen that about 50 percent of the workers failed to come.

MILCH: What do you do against that?

(DEUTSCHMANN: For the time being, I did not do anything.)

And where was that? —In Warsaw? In such a case, orders have to be given that these workers get a good beating. And Russian prisoners of war are used to give it to them.

DEUTSCHMANN: Just at the time when the Russians attacked I was planning to have 200 Poles transported to western Germany in order to fill a gap in the hoop production there. The conditions of procurement in Warsaw were such that I could afford it; therefore, I had no special reason to take measures.

MILCH: If those workers stay away from work just as they please then they need a good beating and this punishment is to be administered by Russians. Contact the SD; tell them that these workers had failed to come to work and that I demand that they be punished and not by having their food taken away from them but by the slightly milder punishment of 50 strokes each on their behind.

DEUTSCHMANN: Various unfortunate occurrences have happened together.

MILCH: I don't care, these occurrences are none of my business. The unfortunate occurrence for the person involved is when he gets his good beating. And he should not fail to get it.

(DEUTSCHMANN: We have already drawn the attention of the Reich Leader SS to it; something is going to be done about it.)

Such occurrences must not remain unpunished, they must not happen. If those people mutiny and do not work, then I demand that some shooting is done at those occasions. We do the same in Poland as the British do in India, with the only difference that the British deal with their own subjects, whereas we deal with the enemy. I want none of our people ever to show lack of action. I make every section chief responsible to take measures to that effect immediately. He is not to administer the beatings himself but to go to the SD and demand that this or that is done. What kind of measures they take we will leave to the SD, but I want to have a report on what has been done in such cases! What do you think would happen to a worker in Germany if he went on strike?

* * * * *

TRANSLATION OF DOCUMENT NOKW-245
PROSECUTION EXHIBIT 157

EXTRACTS FROM STENOGRAPHIC MINUTES OF CONFERENCE
WITH GOERING, 22 FEBRUARY 1943, REGARDING PLANS
FOR AIRPLANE CONSTRUCTION

* * * * *

MILCH: * * * Just now things are not going well. Sauckel has agreed with Speer and myself that von der Heyde is to go to Paris to ascertain on the very spot what may be taken away. If we want to maintain the program we require an additional 80,000 workmen over there. Sauckel said he recognized that and promised to deliver them. If the promise is kept all will be all right.

REICH MARSHAL: What sense does it make to leave the workers there?

MILCH: There is no good will in France, and you can really not expect it from these fellows. But we will force them to work by not feeding them.

REICH MARSHAL: I can do this here much better.

MILCH: That'll get us nowhere. We shall then have to shut down the plants in France.

REICH MARSHAL: The fault is this: Sauckel should have said: Milch, there are too many skilled workers in that plant; take so-and-so many out for your German plants; I am going to replace those skilled workers from our French workers pool. Otherwise there is no sense in his taking them away.

MILCH: Until six months ago we piloted the whole French in-

dustry by way of the government, but since then we changed and took sponsor-firms. * * *

REICH MARSHAL: I'll tell Sauckel not to touch our industry at all. But we must do it ourselves.

MILCH: I told Sauckel that we will cooperate on all matters on the very spot, that we will get the thing done but not smash up anything that is producing for us or is going to produce. He admitted that his men had acted wrongly. * * * Speer and myself are of the opinion that he must be incorporated somehow in the Central Planning in order to secure manpower for us as well as the material. Now we got the first workers in November; prior to that date none at all. Of course, by taking into account the many fluctuations he arrives at fantastic figures. We try to diminish the fluctuations with the aid of Himmler and Ley. The military physicians are put in to examine the men. I have proposed that a man who leaves his working place more than three times a year, should be put into a detention camp and be released only when he stays on the very spot. * * *

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TRANSLATION OF DOCUMENT NOKW-449
PROSECUTION EXHIBIT 148

EXTRACTS FROM STENOGRAPHIC MINUTES OF GL-CONFERENCE,
2 MARCH 1943

[Handwritten marginal notes] To my files Mi
Secret

*SHORTHAND TRANSCRIPT OF THE GL-CONFERENCE
PRESIDED OVER BY THE STATE SECRETARY FIELD
MARSHAL MILCH ON TUESDAY, 2 MARCH 1943,
10 A.M. IN THE REICH AIR MINISTRY*

* * * * *

MILCH: Another question! All the reports from France show that the French have got their heads full of political thoughts and ideas. On the basis of the news they tell themselves: They are retreating on the eastern front and the English and Americans are gradually getting afraid that the Russians alone will be victorious. The French go on to say: If the promises made to us by the Americans are really kept, our fortunes are made. That has already led to our foreign workers slowly becoming hostile. On principle I have to be informed of every case of swinishness. I do not understand at all why Germany should put up with it when Poles and Frenchmen explain to the people: Today indeed you are still sitting in this work, but later we shall be the owners and if you treat us properly we shall see to it then that you are shot

dead immediately and not tortured first. In all these matters energetic interference must be made. I am of the opinion that there should be only two types of punishment in such cases: firstly, a concentration camp for foreigners, and secondly, capital punishment. If a certain number of such hostile elements are removed and the others are informed, they will then work better. Their love for us certainly won't become any greater, but neither will their hate, for it is already strong enough. In this respect, too, energetic interference must be made and in no case must the workers put up with it. The best method is to give the person concerned one with a sledge-hammer and I shall treat with distinction every man who does something like that whenever he hears such stupid nonsense. We are living in a total war and the workers must be told that they don't have to put up with anything. Now the question is whether or not the gentlemen believe on the whole that we achieve something worth mentioning with our production in France. For then we must consider that the establishments there will be besieged. Then the French would have to be forced to come to Germany. There I must reflect on whether the available means of compulsion are sufficient. That does not depend on me. But, in the abstract, I see no difficulties in the way of getting 100,000 or 200,000 French workers to Germany, nor do I see any difficulties in the way of keeping them in order. If a case of sabotage occurs in one area, every tenth man in that area will be shot. Then such acts of sabotage would cease of themselves. The western peoples are very much afraid of death, while it is a quite different matter with the Russians.

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PARTIAL TRANSLATION OF DOCUMENT NOKW-195
PROSECUTION EXHIBIT 143

EXTRACTS FROM STENOGRAPHIC MINUTES OF CONFERENCE WITH
GOERING, 28 OCTOBER 1943

[Handwritten] Notes for Discussion No 116/43/KD st. 4th copy

[Signature] MILCH

*STENOGRAPHIC TRANSCRIPT OF THE DISCUSSION WITH
THE REICH MARSHAL ON 28 OCTOBER 1943,
12 O'CLOCK AT KARINHALL*

Subject: Allocation of Labor.

Effects of the Drafting of Laborers.

Participants:

Reich Marshal

Reich Minister Speer

Field Marshal Milch
Gauleiter Sauckel
General von der Heyde
Staatsrat Gritzbach
Ministerialrat Dr. Groennert
Ministerialdirektor Hildebrand
Landrat Berg
Lt. Colonel Biesing, GSC
Lt. Colonel von Brauchitsch, GSC
Director Frydag
Dr. Janicke/Dr. Eggeling/Bs

25 October 1943

* * * * *

MILCH: Interesting are the figures on the decrease of prisoners of war where one had believed they would remain stable. Between January and August the figure went down for the Russians from 22,000 to 19,000; for the others, from 48,000 to 28,000. In the summer the prisoners of war decreased from 70,000 to 48,000.

* * * * *

REICH MARSHAL: But here you report to me and to the Fuehrer: From 1 January to 30 September a total of 2,200,000 in manpower could be made available for armament production,

(Comment by SAUCKEL: But not for the first time.)
among whom there are 770,000 prisoners of war. Through allocation 300,000 of these who had been drafted for armament and the armed services, and those who left for other reasons, were replaced, and labor for the most important armament industries was increased by 650,000, from 5.3 million to 5.9 million.

(Reading continued.)

FRYDAG: Those are the total allocations.

(REICH MARSHAL: I took that to be net allocation.)

No, gross.

MILCH: The Luftwaffe has increased by 150,000 men; the army by 240,000; the navy by 50,000; military administration has remained stable. For the Wehrmacht armament alone, there has been an increase of 400,000 men. Then other industries, including state railway [Reichsbahn], postal service, experts basic materials industry, make a total increase of 5.29 million, i.e., an actual addition of 500,000 men in this whole area within half a year.

* * * * *

REICH MARSHAL: Then there is one more question which again belongs here and which in all seriousness must be discussed. Suppose that, in the central sector of Holland, between Arnhem,

Utrecht, and Dordrecht, I place at your disposal for three days 15,000 young German soldiers—recruits who have been there eight days, together with their respective officers' corps for handling the executive—to catch the young Dutchmen (this would have to be carefully prepared, of course)—would you expect good results? It goes without saying that everything must be well organized in advance, transport to move them out, camps to receive them here, far away from the Dutch frontier.

SAUCKEL: Considering the Dutch population figure that amounts to something. However, the same should be done in Poland and France.

REICH MARSHAL: Naturally, after that has been done once, one has to modify the system for the second blow. Then the Dutch people will no longer be out in the streets on Sundays for pleasure promenades.

SPEER: Care should be taken though, not to affect the protected industries which we have established there. Their workers are also out for walks on Sundays.

REICH MARSHAL: First, all of the people must be brought together in a pen [Pferch]; then they will be asked individually who works where, and then the men will be selected accordingly.

SAUCKEL: We should like to set an example. However, I do not like to rely on this alone for the next year; but I should like to ask that one have the confidence in us that, reasonably speaking we are doing things in the right way. The factories which Speer barred to us * * *.

REICH MARSHAL: Really I am not imposing. But when I constantly hear: I could do very much if I only had the executive power, then I am ready to assist you, not permanently, but then, for five days or one week, by putting my men at your disposal. In France also we have training regiments, and the army, too, could arrange to make certain units available so as to make a big push.

SAUCKEL: If I may be permitted to speak quite frankly, the conditions are as follows: All of our Military Commanders, and also our Commissioners General—with the exception of Koch—also the general governors, take the stand that in all of their regions the supreme law is tranquility and order. Also during the present era of war these German people still feel—after all that is typically German—the inherent obligation of maintaining order in their country and of somehow protecting the local population.

(REICH MARSHAL: They do not see Germany, but Seyss-Inquart sees Holland only.)

That is the greatest difficulty which we face, and in spite of the

obduracy which is there I am of the opinion that we really have more friends in these countries than we imagine. I shall place my reports at your disposal, among them a detailed report of a Flemish man, an economist who lives with his wife in Weimar, works there, and who at the same time looks after the Flemish people in my district. The matter is as follows: Our highest political authorities in these countries cultivate to some extent social contacts with the local high society; thus in Belgium, bluntly stated, with elite circles, the high financial circles, and leaders of industry. They show to the German commanders in chief a certain demeanor of courteousness and of conventionality and thereby satisfy our gentlemen to a great extent. Under this mask, however, they permit their nearest subordinate organizations to persecute and harass everybody who is in any way friendly to Germany. Unwillingly and without being suspected by our gentlemen [Herren] we have in this manner placed the Germans who were there under pressure. They all have become fearful, and they bar their minds against Germany, and those who really did something for Germany resign.

* * * * *

REICH MARSHAL: * * * Our method of procedure in the expansion of the large air fields, Sauckel, would then be that, we try, first of all, to get a hold of the available labor in the vicinity of the harbors in France, Belgium, and Holland which so far has not been recruited in any manner by Speer or by the Luftwaffe, or by you—just as the Russians do, and as the British now also are doing in Southern Italy and Sicily. There is a scarcity of water there and he who loafs is not permitted to come near the water tap. They are very strict on this point. Now, in the fifth year of the war, we too must be just as strict. And over and above this I still need workers who will be fetched from regions farther away if those from the immediate vicinity are not sufficient. And then come specialists, whom Speer makes available from his organization, the engine operators and so forth. If I am to rearm the Luftwaffe with everything that is conceivable now, I do need a considerable reserve stock of laborers. Technical workers must be included. This is in addition to the number necessary for fulfilling needs arising from actual fluctuation and departure of workers. Now that would have to be considered in detail.

SAUCKEL: May I call attention to the following: That which makes things very difficult for me at the moment is the question of our currency. It is a fact that prices in France, and in the entire west, are very much out of proportion. If we bring the workers

to Germany and, according to German standards, we pay them just as well as the German workers, that does not help them at all because their families living in the occupied territories cannot buy anything with the money that the people transfer. I should like to ask you, Herr Reich Marshal, to talk with Reich Minister Funk and the other competent officials so that under all circumstances and with all possible means the German mark will preserve its purchasing power against the French franc, just as it was done on the other side, during the World War.

REICH MARSHAL: All we need to do is to fix the rate of exchange, just as was done at that time with the dollar, i.e., today the German mark equals 20 francs, tomorrow 23, then 27, then 40, etc., etc., up to one million, or one billion. We have had all that. The same holds true for the guilder. One cigarette now costs in Holland 1.50 guilders; formerly it cost 10 cents. I merely have to say: 1.50 guilders equal to 10 pfennigs, or one mark equals 15 guilders.

SAUCKEL: That would solve a big problem in the wage question.

REICH MARSHAL: The same is done in Belgium. I shall schedule a discussion on that with Mr. Funk. With friendly nations it is more difficult; nevertheless, there, too, we have to do it.

SAUCKEL: There is still something I should like to say. If this large-scale recruiting is carried into effect, even with coercion, it is nothing but compliance with laws which were promulgated there by their own governments, except that the governments declare they lack the executive power.

REICH MARSHAL: That is always the excuse; I simply shall give them the executive power.

Well, let me summarize it once more. We undoubtedly are agreed on the fact that what Sauckel brings to us here, and that which to us appears as stocking up, has been subject to a natural compromise and actually a greater number of people was necessary, to make up for the losses. If it had been impossible to obtain more labor there would, of necessity, have been a decrease, merely by reason of the draft, the increased rate of disease during the war, deaths, etc. The decrease in prisoners of war should really be insignificant unless there are modifications; on the contrary, I should like to see that the prisoners of war who had been released, Norwegians, and so forth, be taken again. Insofar as officers are concerned this has been done to a certain extent. It was the greatest nonsense ever committed by us and for which nobody thanks us. We have made prisoners of entire armies and we let them go again. We do not get anything from Norway?

SAUCKEL: No. Even Russians are being taken there, also French specialists.

(REICH MARSHAL: Why?)

The tasks there are much bigger than the population could cope with.

* * * * *

TRANSLATION OF DOCUMENT NOKW-180
PROSECUTION EXHIBIT 155

EXTRACTS FROM STENOGRAPHIC NOTES ON THE CONFERENCE AT
THE REICH MARSHAL'S ON THURSDAY, 4 NOVEMBER 1943,
11 O'CLOCK AT THE JUNKERS PLANT IN DESSAU

* * * * *

THE REICH MARSHAL: Give the prisoner-of-war camp [Stalag] commander my greetings and tell him I said the Stalag is the biggest racket in Germany and merely a camp where get-aways are being organized wholesale. The men do not even have to bother to dig a tunnel, since they can walk out freely in broad daylight. The Italians get beaten up when they do not work. * * * It is absolutely useless to take the Italians as soldiers, for they report for duty, it is true, but then they bolt again. We need them here, however, as workers for the 100,000 men operation. In the second place, why do we not get the machines? If I want to have them, I just have to occupy a factory by surprise.

MILCH: There are no transportation facilities to make this possible. We have to let certain plants go on working in Italy, such as ball bearings, steel castings, and others, and we cannot take the people from there. The same applies to the technical sphere. The people there are working for us. All depends on our policy toward the Italians. I have ordered that they can be beaten up if they do not work. I have also given permission that Italians caught sabotaging be sentenced to death. If this measure is not desired by the higher authorities, which seems to be the case, we are powerless; then the Italians in the Reich will not be of any use to us, and they will not do anything down there either. Now the Italian has found the way out, he goes into the militia and, once he is over there, he bolts. There is one other way to make him work; if we do not provide the Italian with food and tell him: only those who fight and work for us will get food.

(THE REICH MARSHAL: That is what the Americans do!)
Why do we not do it? In my opinion we should try to get the

machines by force. We can manufacture 1,000 pursuit planes in Italy and the engines for them. The engines will go only through Junkers, the other parts only through Messerschmitt. I should like to have the 109 and the 605 in Italy while they are still working, so that we can modernize our factories. We have the further advantage that the enemy drops his bombs not only on Germany, but also on Italy. We can disperse industry there in small valleys and we need not use the big Milan plants. The situation there is rather favorable.

THE REICH MARSHAL: Above all, this question must be discussed at once with the Fuehrer.

(End of the conference at 11:45 p.m.)

* * * * *

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149-43 III gK [Stamp]

Top Secret

The Reich Marshal of the Greater German Reich
Adjutant's office
Adj. 2019-43 top secret

[Pencil note] For my files

Berlin W 8 Leipziger Str. #3
Telephone: 120044
Headquarters, 12 Nov. 1943

2 copies, 1st copy

[initialed] Mi 15 Nov.

To the State Secretary for Aviation and Inspector General of the Air Force, Field Marshal Milch.

Reich Air Ministry

Forwarded herewith for your attention and further handling are the uncorrected stenographic notes on the conference at the Reich Marshal's [Office] on 28 October 1943.

Inclosure:

Notes on conference No. 116-13

Top Secret—4th copy.

[signature] BRAUCHITSCH
Lieutenant Colonel, GSC and Chief Adjutant

DIRECT EXAMINATION

DR. BERGOLD: Will you please give the Court your first name and second name?

WITNESS KOENIG: Max Koenig.

Q. When were you born?

A. 19 August 1897.

Q. What was your last position in the war with the Wehrmacht?

A. Lieutenant colonel in the reserve.

Q. And where were you?

A. With the commander of the Luftwaffe in Rechlin in charge of the testing station.

Q. Is it known to you, Witness, whether and what sort of orders, if at all, Milch gave with reference to the treatment of so-called terror pilots?

A. My department was subordinate to the GL, and therefore received orders from that office concerning the treatment of pilots who had made emergency landings, and such orders were to the effect to inform the Buergermeister [mayors] and the councillors that the prisoners who had made emergency landings should be sent to Oberursel at once.

Q. Then were these orders given or were they repeated in certain cases?

A. I myself went there in 1942 to that office and I remember very well that the first orders in this respect were given in 1943 and then in 1944.

Q. Have these orders provided for the taking of prisoners of all pilots by the Luftwaffe and taking them to Oberursel?

A. The GL ordered, followed by the threatening of heavy punishment if the orders were not followed, that all pilots who bailed out or made emergency landings should be taken at once in the quickest way possible to Oberursel.

Q. Did you transmit these orders to the mayors and councillors of your district?

A. These orders were passed on by the commander of the testing station to the ground organization of the base, passed on to all Buergermeister and the city councillors.

Q. Can you confirm that these orders came from Milch?

A. They came from the GL. It was even ordered how we should

* Complete testimony is recorded in mimeographed transcript, 17 Feb. 47, pp. 1189-1204.

proceed. As far as I can recall we were ordered, among other things, that the contents of their pockets should be taken away from the pilots and sent to Oberursel with an accompanying letter.

Q. Did you know at that time that the Party wanted the pilots to be treated in a different manner?

A. I did not know that for we in Rechlin had hardly any contact with the Party.

Q. Therefore, you never corrected orders from the Party? Or would you have done this?

A. No. We were subordinate to the GL, and, therefore, we could only take orders from that superior office.

Q. Witness, what do you know within your office as to how concentration camp inmates were treated?

A. I should say this: When labor was requested for the building of a pillbox, we were given a detachment from Oranienburg. These prisoners were housed by the evacuating of our testing station, that means our German soldiers, in Laerz, and prisoners from the concentration camp at Oranienburg were moved into the billets of the German soldiers. There were about a thousand of these.

Q. Were the barracks in good condition?

A. They were not barracks in the bad sense of the word. They were the best billets which we had at our disposal in Laerz. They were new buildings and contained, apart from the living rooms, a theater room, and a big kitchen with, I believe, four stoves. I know the camp because I visited it repeatedly.

Q. Witness, what orders did you receive for treating of those people by the GL?

A. I remember two orders that were to the effect that all those who actually worked, whether foreigners or concentration camp inmates, should be treated well in order to save their good health and in order to increase their production.

Q. What has been done for that purpose?

A. As far as their health was concerned, under this order, I repeatedly saw to it that I obtained medical supplies from the hospital [Revier] of Rechlin.

Q. What you call the Revier is the hospital ward?

A. "Revier" is the sickroom which, considering the bigness of the agency, is approximately the equivalent to a hospital * * *.

Q. Let us go back to concentration camp inmates. What has been done in health matters?

A. Near Rechlin, there was an estate called Boek. This estate consisted of several thousand acres and apart from potatoes and turnips also produced wheat. On orders from the GL we received

from that estate for the commando in Laerz and for the concentration camp and for the foreign workers large quantities of goods produced there.

Q. These concentration camp inmates; were they exploited unfairly?

A. I can say this—I myself was in the hall east from there up to the building of the commander, which was about a kilometer and a half. The foreign workers and concentration camp inmates lived in smaller and bigger groups and worked in such groups, but I could always observe them when I walked along the lanes. It seemed that when the civilian and other employees there were still working, the concentration camp groups had already stopped working because they had to be in their camp at a certain time. The time they needed to march to and fro was part of their working hours.

Q. Were they told to work particularly fast, or particularly heavy?

A. I can say this that I could really judge them because after all I saw them almost daily. Their work was not particularly slow, it wasn't particularly fast. And one couldn't say they were driven on.

Q. Were these people happy or did you hear complaints?

A. Should complaints have occurred I would have been the first to hear about them for it would have been my job to hear them, because I headed the particular office for food and treatment which was the liaison office between ourselves and the Stalags. I even listened at times to outbursts of joy. And from the liaison office we bought everything, beginning from cigarettes and other small gifts, foodstuffs, etc. This was used both in the camps and foreign workers, and the foreign workers were always running about freely there.

Q. Did your office ask for concentration camp inmates or were they sent to you by labor exchange on the basis of assignment of labor?

A. We had to use two ways, we had to use two channels here—one through labor exchanges and the other through the GL who ordered labor for us and on the basis of our application with the labor exchanges and the GL, this special commando and attachment came, whether on the basis of our application I really don't know.

Q. Did you request concentration camp inmates or simply workers?

A. I may say quite frankly here I asked for German workers and I expected they would turn up but as we were under orders

to maintain secrecy, neither did I think of foreign workers nor concentration camp inmates.

* * * * *

CROSS-EXAMINATION

MR. DENNEY: Just what was your job in Rechlin?

A. I was I B or I Bertha—that means an organization, and my job was looking after the army.

* * * * *

Q. Well, in your position having to do with figures you possibly were concerned with labor in Rechlin?

A. From Rechlin we were ordered to build a shelter in Laerz, and to carry this out we had to ask for labor.

Q. Didn't they consolidate requests for labor and give them to you and you would send them up?

A. Requests were sent on to the labor offices on the one hand, and on the other hand to the GL.

Q. And they were sent by you?

A. They were sent by the commanding officer of the testing station, that is, to say, my superior officer.

Q. But you got them up and gave them to him to send them on?

A. I worked on them and passed them on to my commanding officer.

Q. You said that you had concentration camp workers—you also had foreign workers didn't you?

A. There were about 1,000 concentration inmates and a certain number of foreign workers—Russians, French, and Italians.

Q. Did you have any prisoners of war?

A. Yes. We had some prisoners of war.

Q. How many people were employed there altogether?

A. In Rechlin, prisoners of war and foreign workers, Germans, altogether there were 4 to 5 thousand.

Q. Well, now we have got 1,000 concentration camp workers. So that leaves 3 to 4 thousand. How were those broken down among prisoners of war, foreign workers, and Germans?

A. Prisoners of war, roughly 500. There were about 300 foreigners, and the rest were German civilians and German military personnel.

Q. Now, these concentration camp workers, were they guarded?

A. They were guarded in their own camps and in some cases on trucks were taken to their places of work on the east Boek airstrip.

Q. And the foreigners, were they guarded?

A. I think they were at first a little guarded or, let us say, not at all.

Q. How about the prisoners of war?

A. The prisoners of war were under a similar condition as there were not very many guards at our disposal—guards were very few.

Q. You talked about the concentration camp people marching back and forth. Were they marching under guard?

A. Yes. They marched under guard.

Q. In the stockade?

A. They were in large camps or huts under stockade and under guard.

Q. Was there barbed wire around it?

A. Yes. There was barbed wire.

Q. And guards walking around?

A. And guards, yes.

A. Armed guards?

A. Yes. They were armed.

Q. Now, you told about passing on these orders about the terror fliers to the Buergermeister [mayor]. The order that you spoke of that you got from the defendant?

A. From the GL.

Q. The GL was Field Marshal Milch?

A. That was Herr Milch.

Q. And you gave those orders on to the Buergermeister about the so-called "terror fliers"?

A. The Buergermeister and county councillors.

Q. And then one day you heard about four fliers who had parachuted or made a forced landing—anyway they came down—and you sent your soldiers over there and you were told that they were not available?

A. No. The officer came back and said that the police had arrested the four pilots who had made a forced landing, contrary to our order and contrary to the regulations where the telephone number of our airfield had to be passed on to the Buergermeister. The report to the Buergermeister had the purpose to inform the airfield as quickly as possible so that from there a truck could pick up the pilots.

Q. Which police had taken these four fliers?

A. Unfortunately, I do not know. The officer of the airfield came back and reported that the police had fetched them. He didn't see the police. He merely was informed by the Buergermeister of this.

Q. And then what did you do? Did you call the Buergermeister up?

A. No. We passed this on to the airfield and the airfield reported

this to the Luftgau. The Luftgau is the next superior office above the airfield.

Q. Did they ever get these four fliers back?

A. No.

Q. They never got them back?

A. I do not know where they were taken to.

Q. You were the second man at Rechlin. You know that these orders were passed on to the Buergermeister that you received through your immediate superior from the Generalluftzeugmeister?

A. I was not the second man. I was E commander—commander of that office. I was purely an expert in I B. I was concerned in this because Colonel Petersen of the SD commando ordered the airfield should make investigations because of the Milch order to the effect that every pilot should be at once taken to Oberursel.

Q. At any rate, you didn't do anything about this after you heard it?

A. Oh, yes. The report was immediately sent to the Luftgau that the pilots had been taken away.

Q. Did you send the report?

A. No. The report had to be sent by the competent office of the ground organization—namely, the airfield.

Q. You never made any effort to find out what happened to these four Allied fliers?

A. Oh, yes, that was passed on at once and the airfield having received it sent it on to the Luftgau and continued to work on this matter. What happened at the end I could not possibly find out because the Luftgau, the next highest office, had to report on it through those channels of command.

Q. You never tried to find out, did you? Did you ever call up anybody over at the Luftgau and ask them what happened to these four fliers?

A. No. I could hardly do that because I belonged to the testing station and there was a certain amount of dualism. It was rather like air activity on the one hand and the ground organization on the other.

Q. You knew what the Hitler order was about terror fliers, didn't you?

A. Yes. I learned about this much much later after this emergency landing in 1944. I heard about this in 1945 when I was interrogated in Munich by the Reich Marshal Special Court.

Q. What nationality were these pilots?

A. I could not say that. I assumed they were Americans, but I could not say that with certainty because we never saw the

insignia of the aircraft nor even the pilots themselves as we did not take them prisoners.

Q. Were there any SD units around where you were?

A. In Rechlin itself, no, but my chief, Petersen, and I myself learned later on that we were supervised by the SD service.

Q. You say that in your position you would have heard complaints from any of the workers, of whom you had four to five thousand of whom approximately two thousand were made up of concentration camp workers, prisoners of war, and foreign workers. You never got a single complaint from any of those people, is that right?

A. No. I can only confirm that repeatedly the foreign workers gave expressions of their gratitude for having this liaison office, which consisted of a sergeant, and for the additional supplies which they thus got from the Stalag. Strictly speaking, we would have been forbidden to enter the concentration camp compound because it was part of Oranienburg, and Oranienburg was an SS agency.

Q. So you never were inside, were you, in the concentration camp?

A. I went repeatedly there. I myself attended the hospital hours. That is to say, I looked at the ill people before they saw the doctor and I asked the doctor afterwards if he needed anything, and thereupon I got the medical supplies from the airfield and for that purpose I was able to do this because I was supported by the order of the GL.

Q. The Generalluftzeugmeister was able to arrange it so you could go into the camp and look around?

A. On the basis of the order where it was my duty to look after the people that they should be well-treated and well-looked after and, therefore, I was admitted into their compound.

Q. And the compound was under the jurisdiction of the SS who had jurisdiction over* * *.

A. (Interrupting) Yes. That was under the jurisdiction of the SS.

Q. And they had jurisdiction over all of the concentration camps?

A. I didn't know that but all I know is that they came from Oranienburg and that the regulations concerning that compound came from Oranienburg.

Q. You knew that Himmler was head of the SS?

A. I heard about that in 1945.

Q. In 1945 you found out that Himmler was the Reich Leader SS?

A. Yes.

Q. I have no more questions.

JUDGE MUSMANNO: Witness, you mean you did not know, before 1945, of the power Himmler had in the SS?

A. No, your Honor. Particularly in the testing station we did not discuss that nor did we receive many reports there. The attitude of my chief—I may perhaps say here, of the GL himself—it was known what their attitude was towards the Party. We ourselves were under the Gauleiter of Mecklenburg who supervised us. Therefore, we went to no trouble to look into other matters.

PRESIDING JUDGE TOMS: This testing station was in Germany, wasn't it?

A. Yes. Rechlin is roughly 120 kilometers northeast of Berlin on the Muelef Lake [northwest of Berlin on Lake Mueritz].

Q. And an officer of the German army, 120 kilometers from Berlin, didn't know who Himmler was until 1945?

A. Of course, I knew that Himmler was a Party member but that Himmler had all the concentration camps under him I really didn't know until very much later.

Q. But you knew he was head of the SS?

A. I knew that he was an SS commander. I did not know until then that he was the head of the SS.

JUDGE PHILLIPS: How many concentration camp victims did you hear were killed up to 1945, starved to death and killed?

A. I did not know that and I only learned it from press notices which came out in connection with the Nuernberg trials.

Q. How many concentration camp workers were killed in your camp?

A. Nobody was tortured or killed in our camp; not even one man.

Q. Did any of them die a natural death while you were there?

A. Nobody died; I can confirm to the Court that both the health and the individuals' happiness was such that there was neither case of death nor complaint.

PRESIDING JUDGE TOMS: The name of this concentration camp I must know. What was it?

A. The camp was near Rechlin and was an agency attached to Oranienburg.

Q. That was Oranienburg you were talking about?

A. It must have been a branch of Oranienburg. Up to my resignation on 31 January 1945, neither a torture nor a fatality occurred there. I said that before, your Honor, and I should like to repeat it.

Q. Don't repeat it.

JUDGE MUSMANNO: How many inmates were there in this camp; what was the population of this camp?

A. The camp was roughly about 1,000 people strong.

Q. And how long were you there?

A. From October 1942 until 31 January 1945.

Q. And you say that in approximately three years' time there was not one death in this camp?

A. Your Honor, the camp was not founded in 1942; as far as I can remember, it only came at the end of 1943 or early in 1944. I cannot give you the exact figure of the arrivals. I think it must have been at the end of 1943 or the beginning of 1944.

Q. And in all that time there was not one single death in the entire camp?

A. Your Honor, I had not heard of one single case of death. Should one case of death have occurred, it is possible that the SS in Oranienburg would have been told. We ourselves had not heard of one case of death in that camp, but during the day we assigned SS men in various groups.

Q. Do you mean this camp was functioning as a health resort?

A. On that, I can say, your Honor, that after the end of the war, I heard that before the end of the war when people left, they left very reluctantly, because there they were given food just as much as was corresponding to their performance and, in turn, they were actually able to work there.

B. Medical Experiments

a. Introduction

The defendant Milch was charged with participation in criminal medical experiments. On this charge he was acquitted. Both the judgment and the concurring opinions deal extensively with this topic; also Volume I of this series, and the first part of the present volume, contains considerable documentation from Case I (the Medical Case) on the same medical experiments for participation in which the defendant Milch was indicted. Hence, only a small portion of the evidence on medical experiments offered in the Milch Case has been included in the present volume. Some of the prosecution documents which were directly related to the defendant Milch have been included here as well as the testimony of the defense witness SS General Wolff. Documents NO-285, NO-289, NO-224, 343-A-PS, and 343-B-PS, published as part of the Medical Case, were also introduced in the Milch Case. Further

defense testimony on this topic may be found by consulting the official record.

The following defendants in Case I (the Medical Case) testified as witnesses for the defendant Milch: Hans Wolfgang Romberg, Wolfram Sievers, Hermann Becker-Freyseng, Georg August Weltz, and Rudolf Brandt. In addition, six other defense witnesses testified regarding the medical experiments: Erich Hippke, Walter Neff, Dr. Leo Alexander, Siegfried Ruff, Karl Wolff, and Gerhard Engel. See list of witnesses for dates and transcript page references on pages 889-90.

b. Evidence

PROSECUTION DOCUMENTS

Doc. No.	Pros. Ex. No.	Description of Document	Page
NOKW-041 ...113	.....	Sworn statement by Hermann Goering, 27 September 1946, concerning Milch's position as Inspector General of the Luftwaffe.	625
NO-219	.....83	.....Letter from Dr. Rudolf Brandt to Dr. Rascher, 27 April 1942, concerning medical experiment report for Himmler and Milch.	626
NO-261	.....89	.....Letter from Milch to Dr. Hippke, 4 June 1942, concerning availability of low-pressure air chamber for experiments.	626
1607-B-PS	...115	.....Letter from Dr. Rascher to Dr. Brandt, 20 July 1942, concerning report on high-altitude experiments.	627
1607-A-PS	...115	.....Letter from Himmler to Milch, 25 August 1942, concerning Dr. Rascher's report on high-altitude experiments.	628
1617-PS	.....111	.....Letter from Himmler to Milch, 13 November 1942, concerning Rascher's transfer to the Waffen SS.	629
NO-262	.....119	.....Letter from Dr. Hippke to SS Obergruppenfuehrer Wolff, 6 March 1943, concerning Rascher's transfer to the Waffen SS.	631

TRANSLATION OF DOCUMENT NOKW-041
PROSECUTION EXHIBIT 113

SWORN STATEMENT BY HERMANN GOERING, 27 SEPTEMBER 1946,
CONCERNING MILCH'S POSITION AS INSPECTOR GENERAL
OF THE LUFTWAFFE

I, Hermann Goering, swear, depose, and state:

That I am the former Reich Marshal of the German Reich and the former Commander in Chief of the Luftwaffe, that I have personal knowledge of all the facts stated here, and that I know these facts because of the position and responsibility which I had in the German Reich.

That in approximately 1939 the former Field Marshal Erhard Milch was appointed Inspector General [Generalinspekteur] of the Luftwaffe and that as such he was directly responsible to me for the performance of his duties.

That the Inspector General of the Luftwaffe was in charge of all tasks and responsibilities, with the exception of those which were concerned with tactical operations (the latter were handled by my Chief of Staff). The supervision of the inspections, as well as the affairs of the health and medical inspections, was included in the tasks of the Office of the Inspector General. Special questions, however, such as the number of hospitals to be put at the disposal of the individual air fleets, fell within the province of my Chief of Staff.

That Generaloberstabsarzt [Lt. Gen., Medical Service] Dr. Erich Hippke was Chief of the Medical Service [Sanitaetswesen] of the Luftwaffe during the years 1941 till 1944 inclusive; that the Office of the Chief of the Medical Service was directly responsible for the execution of all medical research and experiments; that the Office of the Chief of the Medical Service, i.e., Hippke's office, was directly subordinated to the Inspector General, the former Field Marshal Milch.

I have read the foregoing deposition consisting of two 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 changes 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, 27 September 1946.

[Signed] HERMANN GOERING

TRANSLATION OF DOCUMENT NO-219
PROSECUTION EXHIBIT 83

LETTER FROM DR. RUDOLF BRANDT TO DR. RASCHER, 27 APRIL 1942,
CONCERNING MEDICAL EXPERIMENT REPORT FOR HIMMLER
AND MILCH

Top Secret

XI a-59

Fuehrer Headquarters, 27 April 1942

1198/42

Bra-N

To SS Untersturmfuehrer Dr. Sigmund Rascher

Munich

56 Troger Street

Dear Comrade Dr. Rascher:

The Reich Leader [Himmler] has seen your letter of 16 April 1942. He has shown the same interest in this report as in the one you sent recently. He would like you to make up for him an over-all report on the experiments carried out to date, which he would like to present personally to Field Marshal Milch.

Kind regards to your wife and yourself,

Heil Hitler!

Yours

[initialed] R. Br.

SS Obersturmbannfuehrer

TRANSLATION OF DOCUMENT NO-261
PROSECUTION EXHIBIT 89

LETTER FROM MILCH TO DR. HIPPKER, 4 JUNE 1942, CONCERNING
AVAILABILITY OF LOW-PRESSURE AIR CHAMBER FOR EXPERIMENTS

The State Secretary for Aviation and Inspector General of the
Luftwaffe

Berlin W 8, Leipziger Street 7, 4 June 1942

Telephone 12 00 47

Dear Herr Hippke!

According to the agreement with the Reich Leader SS the low-pressure air chamber for experiments in the neighborhood of Munich is still to be available for two further months.

Moreover, Stabsarzt Dr. Rascher is, in addition to his tests in the Luftwaffe, to be on duty for the present for the purposes of the Reich Leader SS.

Heil Hitler!

Yours

Generaloberstabsarzt Professor Dr. Hippke
Berlin-Tempelhof.

Copy

SS Obergruppenfuehrer and General of the Waffen SS Wolff
Berlin SW 11.

Heil Hitler!

and kind regards,

Yours,

[signature] MILCH

PARTIAL TRANSLATION OF DOCUMENT 1607-B-PS
PROSECUTION EXHIBIT 115

LETTER FROM DR. RASCHER TO DR. BRANDT, 20 JULY 1942, CONCERNING REPORT ON HIGH-ALTITUDE EXPERIMENTS

Stabsarzt Dr. Rascher

Ahnenerbe RF-SS

Munich, 20 July 1942

Top Secret

SS Obersturmbannfuehrer Dr. R. Brandt

Berlin, RF-SS.

Very esteemed Dr. Brandt.

Enclosed please find a copy of the work of myself and Romberg, "Experiments for Rescue from High Altitudes".

On 14 July 1942, I was ordered by the Reich Leader SS to send you the above-mentioned report. The Reich Leader wants that report to be forwarded to Field Marshal Milch, accompanied by a letter from him, asking Milch to receive Romberg and me for a lecture. I believe to have understood correctly that the Reich Leader thought you would submit to him a letter to that effect for his signature.

I was very glad to hear that the Reich Leader was satisfied with the result of the work at Dachau and with the film, and that he ordered an intensive continuation of the work in that field.

I recommended Romberg for the War Merit Cross 2d Class

["Kriegsverdienstkreuz II. Klasse"] on the request of SS Obersturmbannfuehrer Sievers. SS Standartenfuehrer Dr. Wuest ordered me to notify you hereof.

The Reich Leader furthermore decided on 14 July 1942 that the prisoner Sobota and the two prisoners who work in the dissection room in Dachau should be released and transferred to the group "Dirlewanger." The exact names are in possession of SS Obersturmbannfuehrer Sievers. The Reich Leader has also issued an order to that effect to Major Suchanek.

I thank you cordially for everything and remain

Heil Hitler!

[handwritten] Very faithfully yours,

[Signed] DR. S. RASCHER

TRANSLATION OF DOCUMENT 1607-A-PS
PROSECUTION EXHIBIT 115¹

LETTER FROM HIMMLER TO MILCH, 25 AUGUST 1942, CONCERNING
DR. RASCHER'S REPORT ON HIGH-ALTITUDE EXPERIMENTS

Field Headquarters, 25 August 1942

Field Marshal Milch

Secret

Dear Milch:

Enclosed please find a report about experiments for rescue from high altitudes, which have been carried out by Stabsarzt Dr. S. Rascher and Dr. med. H. W. Romberg. I saw a film² produced by Dr. Rascher.

I consider the results of those experiments as so important for the air force, that I beg you to receive Dr. Rascher and Dr. Rom-

¹ When this document was introduced, Dr. Bergold made the following statement (*Tr. p. 457*): "Please let me have the photostatic copy of the original, so that I can make a statement."

"I merely wanted to find out on the copy, whether there was any 'receiving' mark. Later on, in the course of the introduction of evidence, I shall prove that all letters which are not signed with a red pencil and do not carry the initials 'MI' were never seen by the defendant Milch but were forwarded directly. This letter does not show the initials 'MI'.

(Stepping forward and showing the Tribunal the document) "May it please the Tribunal: Milch, whenever he received the letter, added his initials 'MI'; at all times, when Milch received a document, he indicated the receipt with a date; he initialed with a date. These letters, which do not show the initials, were received by his office but were not shown to him. At a later date, I can prove this. I just wanted, at this time, to call the Court's attention to it."

² When this document was read, Presiding Judge Toms asked (*Tr. p. 458*): "Mr. McMahon, do you know whether the film referred to in this letter is available?"

Mr. McMAHON: As far as we know, your Honor, it is not available. In regard to the one [letter] just referred to, I would like your Honor to understand that the copies which we have come from the secret files of Mr. Himmler, therefore, cannot show the initials of Milch, and so, in fact, would not show that Milch had seen that. This letter was received from the files of Himmler and would not have the initials of Milch, saying that he had received this particular letter.

berg for a lecture and the presentation of the film. I am convinced that, after having seen the film, you will also refer the matter to the Reich Marshal because of its importance.

I would be obliged if you could let me know your opinion in time.

Friendly greetings and

Heil Hitler!

H. H. [initials of Himmler]

27 August 1942

[initial illegible]

1 Enclosure

TRANSLATION OF DOCUMENT 1617-PS
PROSECUTION EXHIBIT 111

LETTER FROM HIMMLER TO MILCH, 13 NOVEMBER 1942, CONCERN-
ING RASCHER'S TRANSFER TO THE WAFFEN SS

The Reich Leader SS

Berlin, SW 11, 8 Prinz Albrecht Street

Field Command Post

13 November 1942

Secret

Dear Comrade Milch:

You will recall that through General Wolff I particularly recommended for your consideration the work of a certain SS Fuehrer Dr. Rascher, who is a medical officer of the air force reserve [Arzt des Beurlaubtenstandes der Luftwaffe].

These researches which deal with the behavior of the human organism at great heights, as well as with manifestations caused by prolonged cooling of the human body in cold water and similar problems which are of vital importance to the air force in particular, can be performed by us with particular efficiency because I personally assumed the responsibility for supplying asocial individuals and criminals, who deserve only to die [todeswuerdig], from concentration camps for these experiments.

Unfortunately, you had no time recently when Dr. Rascher wanted to report on the experiments at the Ministry of Aviation. I had put great hopes in that report, because I believed that in this way the difficulties, based mainly on religious objections to Dr. Rascher's experiments—for which I assumed responsibility—could be eliminated.

The difficulties are still the same now as before. In these Christian medical circles the standpoint is being taken that it goes without saying that a young German aviator should be al-

lowed to risk his life but that the life of a criminal—who is not drafted into military service—is too sacred for this purpose and one should not stain oneself with this guilt; at the same time it is interesting to note that credit is taken for the results of the experiments while excluding the scientist who performed them.

I personally have inspected the experiments, and have—I can say this without exaggeration—participated in every phase of this scientific work in a helpful and inspiring manner.

We two should not get angry about these difficulties. It will take at least another ten years until we can get such narrow-mindedness out of our people. But this should not affect the research work which is necessary for our young, splendid soldiers and aviators.

I beg you to release Dr. Rascher, Stabsarzt of the reserve, from the air force and to transfer him to the Waffen SS. I would then assume the sole responsibility for having these experiments made in this field and would put the results, of which we in the SS need only a part for the frost injuries in the East, entirely at the disposal of the air force. However, in this connection I suggest that with the liaison between you and Wolff, a “non-Christian” doctor should be entrusted who ought to be not only a fully qualified scientist but also a man not prone to intellectual theft and who could be informed of the results. This doctor should also have good contacts with the administrative authorities so that the results would really obtain a hearing.

I believe that this solution—to transfer Dr. Rascher to the SS, so that he could carry out the experiments under my responsibility and on my orders—is the best way. The experiments should not be stopped; we owe that to our men. If Dr. Rascher remained with the air force, there would certainly be much annoyance; because then I would have to submit to you a number of unpleasant details caused by the arrogance and presumptuousness which Professor Dr. Holzloehner displayed in the Dachau military post—which is under my command—during conversations with SS Standartenfuehrer Sievers about my person. In order to save both of us this trouble, I suggest again that Dr. Rascher should be transferred to the Waffen SS as quickly as possible.

I would be grateful if you ordered the low-pressure chamber being put at our disposal again, together with the differential pumps [Stufenaggregatpumpen], as the experiments should be extended to even greater altitudes.

Cordial greetings and

Heil Hitler!

TRANSLATION OF DOCUMENT NO-262
PROSECUTION EXHIBIT 119

LETTER FROM DR. HIPKE TO SS OBERGRUPPENFUEHRER WOLFF,
6 MARCH 1943, CONCERNING RASCHER'S TRANSFER
TO THE WAFFEN SS

The Inspector of the Medical Service of the Luftwaffe

Berlin W 8, Leipziger Street 7, 6 March 1943

File No. 2299-43 secret Inspectorate

Dear Obergruppenfuehrer Wolff!

State Secretary Milch has given me your letter of 21 November last year—Diary No. 1426/42 top secret—regarding the release of Stabsarzt of the Luftwaffe Dr. Rascher to the Waffen SS.

I am prepared to release Stabsarzt Dr. Rascher from the Luftwaffe, even after the Reich Physician of the SS, SS Gruppenfuehrer Dr. Grawitz explained to me that he was unable to give me a replacement; I shall put him at the disposal of the Waffen SS if Rascher himself desires this release. I shall ask him about that.

Your conception that I, as the responsible director of all medical-scientific research work, would have been opposed to the chilling experiments on human beings and so retarded their development is erroneous. I immediately agreed to the experiments, because our own previous experiments on large animals were concluded and supplementary work was necessary. It is also highly improbable that I, who is responsible for the development of all possibilities for rescuing our airmen, would not do everything possible to further such work. When Rascher explained his wishes to me, I agreed with him immediately. The difficulties, Mr. Wolff, lie in an entirely different sphere: it is a question of vanity on the part of individual scientists, every one of whom *personally* wants to bring out new research results, and very often it is only with great effort that they can be led to work unselfishly for the common good. None of them is without guilt in this respect; Rascher is not either.

If Rascher wants to build up his own research institute within the framework of the Waffen SS, I have no objection. All research work within the field of aviation medicine—that is, altitude—moreover, is under my scientific supervision in my capacity as director of German aviation medicine. This institute would then be under the supervision of the Reich Physician of the SS, SS Gruppenfuehrer Dr. Grawitz.

Momentarily, however, this work *cannot* be carried on because

its continuation would require a low-pressure chamber in which not only the *altitude* of the stratosphere, but also the stratospheric *temperature* can be established. But there is no such chamber available in Germany as yet; a large chamber is being built in the new Berlin Research Institute for Aviation Medicine, and I hope I shall be able to have it completed in the course of this year.

If Rascher, on the other hand, wishes to conduct other experiments not concerned with altitude and chilling problems, these would not be under *my* supervision (*aviation* medicine) but under the supervision of the Medical Inspector of the Army (*military* medicine), whom he would have to contact.

I am going to talk over all these problems with Rascher in old comradeship, and I shall again notify you.

With respectful compliments and

Heil Hitler!
[Signed] HIPPE

C. Curriculum Vitae and Excerpts from the Testimony of the Defendant Milch

TRANSLATION OF DOCUMENT NOKW-269
PROSECUTION EXHIBIT 59

A SHORT CURRICULUM VITAE OF FIELD MARSHAL ERHARD MILCH

Date	Position	Activity
30.3.92		Date of birth.
24.2.10	Officer candidate	First Foot Artillery Regt.
18.8.11	Lieutenant	Recruit training.
1.8.14	Lieutenant	Adjutant, 2d Bn., Reserve, First Foot Artillery Regt.
2.7.15	Lieutenant	Air Force, Reconnaissance Observer.
18.8.15	First Lieutenant	Air Force, Reconnaissance Observer.
Winter 16-17	First Lieutenant	Air Force, Adjutant of a unit.
1917	First Lieutenant	Chief of the Fifth Air Squadron.
1918	First Lieutenant	Detached service, commander of an Inf. Company; Detached service, commander of a Field Artillery Battery.
18.8.18	Captain	Air Force, commander of 204th Air Squadron, commander of Sixth Fighter Group.
1919	Captain	Commander of 412th Border Guard Squadron.
1920	Captain	Detached service, commander of Police Air Squadron.
End of 1920	Captain	Resigned from military service.
1921	Lloyd-Ostflug, later Danziger Luftpost	Civilian air transport company, Operation chief; Civilian air transport company, Manager.
1922	Junkers-Luftverkehr & Danziger Luftpost	Head of Traffic Department—Organizer of air lines with Switzerland, Austria, Hungary, Latvia, Lithuania, Poland.
1923	Junkers-Luftverkehr & Danziger Luftpost	Id.
1924	Junkers-Luftverkehr & Danziger Luftpost	Head of air expedition to South America. Business travel to the U.S.A.

Date	Position	Activity
1925	Junkers-Luftverkehr	Head of General Administration.
Nov. 1925	Deutsche Lufthansa	Member of Technical Board.
Summer 1928	Deutsche Lufthansa	Id. and Business Director.
30.1.33	Id. and Deputy Reich Commissioner for Aviation	Id. concurrently with direction of aviation under supervision of Goering.
March 33	Deutsche Lufthansa and State Secretary	Id. in the Reich Ministry of Aviation.
May 1933	Join NSDAP	Party member without assignment of tasks for Party.
Sept. 1933	Activated as Colonel	Party membership suspended.
1934	Brigadier General	Reich Air Ministry and Deutsche Lufthansa.
1935	Major General	Reich Air Ministry and Deutsche Lufthansa.
1936	Lieutenant General (Air Force)	Reich Air Ministry and Deutsche Lufthansa.
	Inspector General of the Air Force	Reich Air Ministry, Deutsche Lufthansa and inspection of Air Force.
1938	General	
1.9.39	General	To operational Air Force.
11.4.-5.5.40	General	Commander of Fifth Air Fleet.
Since 10.5.40	General	Inspector General.
19.7.40	Field Marshal	Inspector General.
Nov. 41	Field Marshal	Id. and Chief of Air Force Material (Development, testing, procurement of Air Force material).
April 42	Field Marshal	Central Planning Board; Allocation of raw materials.
March 44	Field Marshal	Establishment of "Jaegerstab". Raising output of fighter craft.
20.6.44	Field Marshal	Resign posts of State Secretary and Chief of Air Force Material.
Jan. 45		Resign post of Inspector General.
March 45	Field Marshal	Hitler declines my reinstatement.
4.5.45	Field Marshal	Taken into British custody in Holstein.

1 November 1946.

[Signed] ERHARD MILCH

EXCERPTS FROM THE TESTIMONY OF DEFENDANT MILCH *

[March 11]

Erhard Milch, the defendant, took the stand and testified as follows:

JUDGE MUSMANNO: The defendant will raise his right hand and repeat after me: I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The defendant repeated the oath.)

JUDGE MUSMANNO: You may be seated.

DIRECT EXAMINATION

DR. BERGOLD: Witness, I do not have to tell you the same thing I tell all the other witnesses; namely, that you should speak slowly and all that. You have heard that several times.

Give your full name.

DEFENDANT MILCH: Erhard Milch.

Q. When and where were you born?

A. On 30 March 1892, in Wilhelmshaven.

Q. Who were your parents?

A. My father was a clerk with the Kriegsmarine [navy], and my mother was born Vetter.

Q. What education did you have?

A. I attended the Gymnasium in Wilhelmshaven, and then from 1905 on I went to the Joachimsthalsche Gymnasium in Berlin.

Q. When did you matriculate?

A. In February 1910.

Q. What did you study then?

A. I didn't study, but four days later I went to the First Foot Artillery Regiment in Koenigsberg in East Prussia, and I joined that regiment as a cadet.

* * * * *

Q. Witness, what was your position in the Third Reich in 1933?

A. I was State Secretary at that time; at first, it was not called a ministry. It was called the Reich Commissar's Office, because formal measures for the formation of a ministry had to be considered both with the Reich President as well as the Reichstag. At first, Goering was Reich Commissar and I was Deputy Reich Commissar for Aviation. I think it was in March that the Reich

* The defendant Milch testified in his own behalf on eight full trial days (March 11, 12, 13, 14, 17, 18, 19, and 20, 1947). His testimony is recorded in 531 mimeographed pages (Tr. pp. 1696-2276).

Ministry was formed; and at that moment I became State Secretary.

* * * * *

[March 12]

Q. * * * Witness, is it correct to say that in your capacity as Inspector General you had to make trips abroad too, that is, you had to take care of the comradely relationship with the air forces of other countries?

A. * * * Perhaps I can look up some notes to check the dates of my trips. The visits which I made were only, some of them, in my capacity as Inspector General. Some of them were made for purely personal reasons, relations with people. For instance, the first visit which I made at the request of Van Zeeland, the Belgian Prime Minister, that must have been about 1936. I visited Belgium. The Belgian Ambassador in Berlin, Count Kerkhove [Kerchove de Deuterghem], was a personal friend of mine. One day he asked me to go to Belgium with him; the Prime Minister Van Zeeland would like to see me. I was very astonished at this idea and I asked him what the matter was. I then told him that I had to have the permission of my superior officers. I received it. This was an entirely private journey. The purpose of the trip, as I realized in Belgium, was that Van Zeeland wished to come to terms with Germany, not only formally but full-heartedly. Belgium, since the First World War, had a treaty with France and was under an obligation to come to France's aid militarily by agreement with France. Van Zeeland wished to renounce that treaty, and he wished to have similar terms with France as with Germany. Belgium was also prepared in economic matters, which was a very urgent point for Germany at the time, to make concessions, far-reaching concessions. The visit started with a brief call on the King, who did not refer to the purpose of the visit. This was purely a courtesy call, but this call gave support to my trip. I saw that the Prime Minister acted in accordance with his King. The plan as such—although as I emphasized several times I am not a politician and it was not my intention to interfere in foreign office matters, but here von Neurath entirely agreed with my visit. He had not the bureaucratic mind—the plan impressed me. Rather, I saw the possibility to create friendly relations between Germany and Belgium, and via Belgium to France, and later on via France to England itself.

I was convinced that the over-privileged policy of balance of power no longer applied since the First World War. The powers in Europe had been dislodged too much and joint friendship be-

tween France and Britain was definitely a British interest in that sense.

When I returned I reported orally to von Neurath who entirely agreed with that point of view. I also reported to Field Marshal von Blomberg, who, apart from Goering, was my military superior. He took the same line. I reported to Hitler and Goering. Both received my report but did not express their own opinion. To my question whether and what I could tell the Belgian Ambassador, I was told that would have to be done through other channels, not through me. My orders had come to an end by giving this report. This was my first visit and it was entirely unofficial.

Then I went to Belgium in May 1937. At that time, as a Luftwaffe man, I was officially received by the Commander in Chief of the Belgian Air Force, General Duvivier; also by the Minister of War and other officials. That was a very friendly visit which also led to very good personal relations between ourselves and their pilots.

I was particularly interested in Belgium because in the First World War Germany had marched through Belgium, had violated Belgian neutrality, and had to make up for this now. I believed that the views as expressed by Belgium on both occasions were aimed at finally burying the hatchet. I assumed that there was a direct connection between my Belgian visit and a visit by the French Ambassador Poncet who came to call on me in my office and extended an invitation by the French Government on the occasion of the International Exhibition. That visit took place from 4 to 9 October 1937 in Paris with the full approval of Goering and Hitler. The visit was most impressive since I believe it was the first time since 1867 that a German officer was able to pay an official friendly visit to France. The French told me with the greatest satisfaction that that was the first time the French Company of Honor had presented its arms since the Prussian Crown Prince had visited Paris in 1867.

The French made great efforts to make the visit a success and I must say they succeeded all along the line. The main point was joint military inspections. Very cordial words were exchanged with the generals of the French Air Force. I was accompanied by Udet and Count Kerkhove [Kerchove de Deutergem] who also had very good relations with France from other times. The central point perhaps of the visit and its real purpose occurred after a lunch given by Pierre Cot, the Minister of Aviation. On my other side the Foreign Minister was sitting, and also the Minister of the Navy was there. After lunch the three French Ministers, Wilmer, the Commander in Chief of the French Air Force, Udet,

and myself remained in a special room and the French Foreign Minister asked me to take home with me some propositions made by his office.

I should add that our German Ambassador in France was also there, also in the smaller circle. When I said that I didn't want to interfere in his business, he himself did not take any notice of it. He said that the most important thing was to report to Hitler on my impressions. He himself could not approach Hitler. The Ambassador was then Count Welczeck. I was extremely surprised; I had no idea. I couldn't imagine that the Head of State should not see his own Ambassador. On that basis I said I would only act as a postman, and as such would transmit what I would be told. I would give my very best own will.

The contents of the conversation were to have a far-reaching agreement between the two countries, the main purpose being to establish a really permanent and lasting peace between the two countries. I was able to take over this assignment with the best conscience in the world. After all, I said yesterday what I thought of military events in Europe in the last thousand years. My impression was that the Foreign Minister was very serious in this business, nor did I have any suspicions that this might be a political trap and the Air Minister Cot who was always described as communist in Germany, gave me a very good impression indeed, and our conversations were very intimate and very frank.

The French Foreign Minister at that time was called Delbos. The farewell on the Le Bourget Airfield led to fraternization between all of us, and between ourselves and five or six of the highest French generals. I must not forget that one of the oldest French generals, General Keller, expressed with tears in his eyes that he was convinced that the thousand years war between France and Germany was now a matter of the past. We also were deeply moved.

On 9 October I flew from Paris to Berchtesgaden and reported to Hitler at once. He ordered me to report to him as soon as I had returned. I may perhaps say quite generally I could only see Hitler if Goering gave me permission or ordered me to do so, or, of course, if Hitler himself ordered me to come and see him. I myself could not go and see him as I was merely a subordinate.

In the presence of Udet I gave a report to Hitler lasting over two hours on the evening of the 9th of October, when my impression was still very fresh. Hitler listened very attentively, asked a number of detailed questions. I could tell him all about the various details which we saw and heard, not so much the military ones, but the political details. I could never talk enough about these things. After all, it was a fairly long conversation with the

Head of State. I recommended all these things very warmly and I asked him to take this extended hand and he would represent the greatest glory if he would succeed in coming to a lasting agreement with France based on the very far-reaching economic community between the two countries.

I compared this with the time of the German Customs League prior to 1870 when the German states were linked together only through this Customs League. I recalled to his memory that both countries, France and Germany, had been a unit and a community for centuries at one time, and what was greatness at that time today merely meant a normal state. I want to express in particular that nobody pleaded that the two countries should be politically linked together but that political collaboration was a necessity.

On 11 October, two days later, the Italian Ambassador called on me—

Q. Just a minute. I have to ask another question. Is it correct that during this conversation you also offered to go as a special envoy to France and to complete this task?

A. Oh yes, I told him that Count Welzeck should be called to Hitler in order to give a report. Hitler said no, that is not necessary. I then said that he must have somebody, if he wished to pursue this matter, who enjoyed his confidence and also the confidence of the government to which he was sent. I told him that I was prepared at all times to serve under Welzeck as a special envoy only for that one task. I explained to him that I regarded Welzeck as a man who enjoyed the confidence of the French Government, and that it would be a pity if Hitler would not see that man more frequently.

Q. Witness, did Hitler take a position on this question or did he keep silent again as he did before?

A. Apart from putting questions to me he didn't say anything decisive at all. After all, I was not a Foreign Office official, and I could hardly expect him to do so. Perhaps later on I can describe what I did as far as Neurath is concerned.

Q. But before that I would ask you one more question. In Belgium and in France were you told why you of all persons were approached by these foreign countries and had the confidence of these countries?

A. The Belgians were explicit on that point. When I told Count Welzeck that, after all, the Foreign Office was concerned here; that it would not serve any useful purpose, he replied, "That will not be read higher up. If you are the soldier coming to Hitler, he will listen to you, for, after all, soldiers are your trump cards at the moment. Also we have confidence in you, confidence that

you will at least be able to see Hitler; and he also has the confidence that you personally will do your best in this respect.”

Q. Witness, at that time did others also approach you, other diplomatic representatives, and lend you their confidence?

A. Yes.

Q. Did you have the confidence of Mr. Messersmith?

A. Oh, yes, Mr. Messersmith; but that was before all this. I think that really took place in 1933, '34 or perhaps in '35. He visited me three times. When he was the Consul General of the United States, he had some difficulties with some American subsidiary companies in Germany. One was Standard Oil, as far as I recall. I asked him why he wanted to see me since that was not my business. Then he said that he had full confidence that I would look after his interests. He had been told by other diplomatic representatives that I was able to help him.

Q. All right. Now, Witness, we come to the steps you took after your report to Hitler, the steps you took later on. I ask you to tell about that briefly.

A. Perhaps I'll do that. It was after my visit to England.

Q. Very well, go ahead.

A. On 11 October 1937, the Italian Ambassador came to see me. That was Professor Attolico. He told me that the Italians had got very excited at my Paris visit. It was believed that I had gone to make arrangements there which were in contradiction to German-Italian agreements. I calmed him down at once without giving him too many details; but he asked me to pay a brief visit to Italy before going to England. We had been asked to go to England on the 17th of October. An air force exhibition in Milan was the occasion; and I was asked to open that exhibition on the 12th of May. That, of course, was headlined by the Italian papers. Attolico came and saw me after this and expressed his gratitude. He said that Delbos had put a trap in front of me.

PRESIDING JUDGE TOMS: The witness gives the date as the 12th of May. Is that what he meant for the exhibition in Milan?

A. 12 October.

PRESIDING JUDGE TOMS: What year?

A. In October 1937. I went to Italy and then to England. The visit had been arranged by the Royal Air Force as a reply to the visit paid to us by the Royal Air Force in January 1937. At that time figures were exchanged between us on planned armaments, that is to say the figures concerning bombers, fighters, and so forth, by agreement with Goering and Hitler. Here again the intention existed to know exactly what the other was doing. The other point was the intention to come to terms on all these questions.

The visit to England lasted until 25 October. England had quite a lot to show. The air force was very well organized and had first-rate personnel. The visits were very cordial. Political conversations of an official nature were not held; but unofficially we spent an evening in a club, in a very small circle of ten people, perhaps less than ten. Lord Swinton, who was then Minister of Aviation, took part, as well as the leader of the opposition, Mr. Churchill, and Lord [Rt. Hon.] Amery, Secretary of State for India, and from the British Air Force, Lord Trenchard.

We had brought General Stumpff and of course General Udet. This was more in the nature of a personal contact and political questions were not touched upon. The other hosts had told me before, "Today you meet your first and second best enemy. Don't be confused by this; but if there is an attack, hit back." That is what happened; but it was a very jolly evening.

Before we took off again, that is to say on 24 October, Mr. Eden, the Foreign Secretary, rang me up. He said that he had been busy all the time before, but could I see him now. I said that I should be delighted but that a program had been arranged for us by the RAF to visit an airfield tomorrow. I asked that if the program could be changed, would he please contact the RAF. He told me that perhaps that would be a bit too complicated and asked if perhaps I could see him later on. I could be with him in two hours and thirty minutes since that was how long my aircraft took from Berlin to London at that time. Unfortunately I never saw Mr. Eden.

I reported about that trip to England on 2 November. The report took over two hours. Hitler was much more accessible than when I talked to him about France. I reported particularly my talk with Mr. Churchill and drew his attention to the seriousness which was expressed. Hitler immediately interrupted me. He said, "Please do not worry at all; never in my life will I do anything against Britain. The basis of my whole policy is collaboration with Britain." These words calmed me considerably. I immediately explained to him once more that the way to come to terms with England would be by Brussels and Paris, and I explained why.

I saw von Neurath on 11 October on the trip to France; and on 28 October I reported to him on my trip to England in great detail. All I could tell him at the time was what Hitler had said or had failed to say about France. Neurath again was very impressed with me for having worked for him in this sense. I was in agreement with him that without any further invitations by him or Hitler I must not take any further steps.

Then on 1 November 1937 I went and saw Field Marshal von

Blomberg who at that time was Commander in Chief of the Armed Forces, that is to say, Goering's military superior. I reported to him. Blomberg in all things entirely agreed with me, as had Neurath. Goering at that time did not have enough time to see me. I asked on several occasions to be allowed to report to him on these very important matters; but this did not happen because he simply declined.

Q. Witness, I think we can leave this field now. Will you only explain briefly to the Tribunal whether you received foreign delegations, and of which nations, and what happened at those occasions?

A. I said before that the British had visited us in January 1937. After that I had perhaps five or six visits from Englishmen. The French paid a return visit in 1938. On that occasion again we returned the very cordial welcome which the French had given to us. We showed the French our troops and factories. Yesterday, reference was made by the witness Vorwald * to this, who said that we only showed what the troops had at their disposal at the time and what expressly had been permitted to be shown by Goering, after a request had been made by the competent department of the General Staff. I know that somebody has alleged that Hitler at the end of the war said I had shown secret methods to foreign visitors and damaged Germany thereby. That is a slanderous statement. It was alleged that I had shown radar instruments, and at that time we didn't have any radar at all.

* * * * *

Q. Witness, were you ever Goering's deputy in this capacity, and how long?

A. Until 1937 I was his deputy, and all offices in the Luftwaffe which were subordinate to him were also subordinate to me. This applied to the execution of orders. From 1937 onwards I was his deputy only in my own sector, and this automatically as Chief of the General Staff in his field, which applies also to the General-luftzeugmeister. In any case it was within my capacity to deputize for Goering in all matters as I was the second senior officer of the Luftwaffe, and this was done only by way of rank. But Goering reserved the right to appoint a deputy in general, that is, especially always only for the Luftwaffe. This authority he did not confer upon me. Even when he was on leave he kept this right, he retained his command. I agreed with this arrangement personally.

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* Wolfgang Vorwald, former Commander of Luftgau (Air Force Administrative Command) VII, Munich.

Q. Witness, what was the position at the beginning when you took over the duties of GL? What measures did you take, and what was your aim?

A. I can be brief in this connection, at least in regard to the first point. General Vorwald yesterday spoke at length about it. No useful developments for the immediate future were available. No bomber aircraft of a new type was in existence, and as to mass production we stood very poorly, as I previously described to you. Painstakingly we had reorganized on 1 September, and it was only because of the extreme devotion of industry and because of the faithful service rendered by our German workers and those who helped them that it was possible to, shall we say, bring about a miracle.

The production figure in bombers was reached once more in the shortest of time, in the spring of 1942. There was not a single individual instance where our program as we had set it for ourselves was not reached. This was something extraordinary. In the case of fighters, there was a good type of fighter aircraft, or even two; namely, the Focke-Wulf and the Messerschmitt, but there were no engines for those fighters. We had to use incomplete engines to equip these aircraft, and on the strength of my experience collected in my capacity as director of the Lufthansa, I had to have tests carried out. My testing department in Rechlin was excellently staffed, the commander being an excellent pilot and technician, and it was due to their devotion that in a few months we managed to get even these new engines ready although, according to human estimate, we could not expect it. It was more through luck than intelligence that we got that.

Now that was the situation as I found it. The new organization, of course, had not been started up, and I had to collect a few new, extremely good experts. The men who were working there independently were rather downhearted for a long time. As experts they had lost any doubt in the outcome of the war, and they did not believe that it would be possible once again to start up our armament program.

The total number of aircraft in production was something in the neighborhood of 800. That included trainer aircraft, transports, liaison aircraft, such as the Storch; it even included towing aircraft which were to be used for parachutists. As far as fighters were concerned, production of those, when it was removed from under my care, had increased by only about ten percent, although '37, '38, '39, '40, '41—four years—five years—had elapsed. The saddest fact was that among those 800 there were only 200 fighter aircraft, although both on the British front and in the East, fighter planes were necessary. The Russians had at their disposal

a very large number of bombers, and even if they were an elderly type, after all, we did have to have fighters to keep them in check, and since the transport extended from the North to the South over 2,000 kilometers, a large number of fighter units had to be used in that campaign. This arm could not be supported with 200 fighters. We needed more.

The demand which I found from the General Staff, which of course made all demands and had them confirmed by Goering, amounted to a total of 360 fighters which were to be obtained in 1942. It was said yesterday that immediately I ordered a considerable increase. Several figures have been mentioned by various witnesses. Actually, these increases were not decided upon in one day. To begin with, it was to be doubled and a few days later I said, "Let's make it 1,000; that's a round number," and later, in fact, there were 3,000 and later even we planned 5,000. We knew at about that time just what we had to expect from our enemies. We knew the types they had.

America, in the initial period, still published their production figures correctly subdivided according to types, and we also had an excellent intelligence, and from analyzing aircraft that had been shot down and from the numbers which were coded, and which could be deciphered by an expert right away, we could discover right to the very last number what they had produced. That was production that had been actually carried out, and the figures found in the United States were not fictitious. Industry, although with a certain amount of reticence and difficulty, but certainly afterwards quite clearly fulfilled these figures. I still know exactly that the plan ran to about 8,000 aircraft, and was achieved, and that figure included four-engine bombers. Production under Britain's rearmament, too, was learned in detail, and I remember at the time Great Britain was either already producing 800 four-engine bombers a month or was just about to produce that number.

You could calculate from that the number, the quantity of bombs which could be brought to Germany, and regarding the function and size of the bombs, of course we knew about that too. This was, of course, the reason that previously as Inspector General I demanded that the entire force should be built to defend our home country, this being the fundamental principle of warfare, since without armaments and life at home, battles at the front were unthinkable. I shall later have to come to this question in more detail because I am probably the man who remembers this most accurately, and as long as I am still about I would like to state this clearly once again, because this is one of the most important questions which probably existed in every war. This was the biggest struggle that went on, and as I look back on it

today I am surprised that I did not despair over that struggle myself.

Q. Witness, those measures which you planned, were they dictated by the thought that with the campaign against Russia the situation of Germany would become desperate?

A. As I said earlier, the war on two fronts was the stab in the back of this war as far as I was concerned, that I thought excluded victory once and for all, and the only remaining question now was just how badly fleeced we might escape from this whole affair. It was no longer possible in my opinion to end this war by force of arms. It was only possible by means of arms to attain a somewhat satisfactory final position on the strength of which political and diplomatic steps would have to take place. In order to achieve such a final position it was necessary in the first place that Germany should be protected against destruction, because once the war potential was destroyed it was immaterial whether the fronts collapsed a little earlier or a little later. They could not be held any longer. This thought, unfortunately, was not understood by our leaders, or rather they did not agree with it and turned it down and just did not come to it. The end did not come until there was hardly one stone left intact.

Q. Witness, in this connection I should like to ask you to show the correctness of your present report and to prove that from the very start you had these thoughts, and to submit to the Tribunal the remark you had made in your diary when the Russian campaign started.

A. I wrote in it, "The attack against Russia: the first day 1,800 aircraft destroyed, mostly on the ground. The Russians left them there. They didn't expect that we would attack. They overestimated our intelligence."

Q. What did you want to say by these words, "They overestimated our intelligence?"

A. Well, the Russians might have thought that no opponent would be so foolish and so stupid to attack them now and create a war on two fronts.

* * * * *

[March 13]

Q. Witness, do you know at what point the Central Planning Board was ordered and how did the creation of this institute come about?

A. Its creation must have taken place during the last days of March 1942. It originated from a discussion which Speer had with Hitler in the latter's headquarters. At the time when Speer had taken over armament there was no higher authority which was

acting according to clear-cut points of view when distributing raw material. Until then we had been receiving raw material through a certain department of the OKW. This department in turn had been getting it from the Four Year Plan. The OKW was distributing to the army, navy and air force but this department had no expert knowledge. Consequently the continuity of armament suffered under this. Speer quickly recognized the state of affairs and without my having previous knowledge of it he tackled this question when talking to Hitler. As a result Hitler appointed Speer as the central planner for this subject. Subsequently Speer made the request that I should take on this task together with him, since Speer had been in the armament business rather briefly and since he said I would be able to help him—at least this was the way Speer discussed the matter with me shortly afterwards; I, myself, hadn't been at that conference. Following this, on 2 April 1942, Speer and I together went to see Goering since Speer considered that this task, which, after all, was connected with the Four Year Plan, should be discussed with Goering. Goering expressed agreement but he demanded that a representative of State Secretary Koerner, who was in official contact with the Four Year Plan should enter the Central Planning Board. I know that Speer said at this point: "It seems to me three are rather too many for this job", and I said "Well, I am only too willing to drop out. I have enough work as it is," and Speer interfered and said that was out of the question. Goering said: "No, it is my view that there can be three." That is how the composition of the Central Planning Board was realized. I can anticipate at this point that very much later Minister Funk joined the Central Planning Board as a force which was done at the instance when the so-called "War Production"—and in this case we are not talking about the armament business but civilian requirements and the like—was transferred from Funk's Ministry to Speer's Ministry.

Q. Witness, did you, within the framework of the Central Planning Board become the armed forces' or air forces' representative?

A. No, right at the very beginning that had been decided upon by Hitler that, namely, that in no way was I to look after my own interest there, that is to say, the interest of the air force, that I should be above the Party. Later on there were demands from the navy, which had not known about this arrangement. They, too, wanted to have a representative in the Central Planning Board. * * *

Q. Witness, what were the actual tasks of this Central Planning Board?

A. The tasks had been communicated to me by Speer and had been confirmed through Goering. There was only distribution of raw materials to all holders of priority permits.

Q. Witness, what is what you call the "holder of a priority"?

A. Well, the armed forces are such priority holders, and within the armed forces the navy, army, and air force are holders of these priorities. The coal industry holds these priorities; the steel industry; the textile industry; the German cities and municipalities, for their municipal requirements; the power supplying industry.

Q. What about agriculture?

A. Most certainly agriculture, for agricultural machinery requires steel, requires coal, requires all sorts of things. Altogether, the forms according to which we used to distribute, and which contained the word "armament" on the left, contained on the right all the civilian purchasers, all the buyers. There were approximately 40 to 45 civilian holders of these priorities.

Q. But then what did the Central Planning Board have to do with the Four Year Plan, to which there seemed to be some sort of formal connection through Speer?

A. The Central Planning Board as such had nothing to do with the Four Year Plan; only Speer, in his capacity as Armament Minister.

Q. Did you ever report to Goering about the Central Planning Board?

A. No, with the exception of that first meeting on 2 April 1942, when the matter was reported to him. Apart from that meeting, I have never talked to him or with him about the Central Planning Board. * * *

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Q. From whom did the Central Planning Board have instructions?

A. Directly from Hitler.

Q. Through which channels were they given?

A. Speer was with Hitler practically every week, for the reason of army supplies, or other questions, sometimes staying with Hitler for several days. On such occasions Hitler would mention his most important problems. For instance, he would mention the sequence of priorities of the various armament branches, which I explained to you yesterday. Quite automatically, through this, the approximate priority ratings were laid down. However, within the individual spheres, because of the events of the war, there were current changes: At one moment one type of tank, and then at another moment, another type of tank; or first one type of gun,

and then another type of gun, would be more important. That, of course, necessitated considerable rapid changes in the allotment of raw materials. That was the case, and to an even stronger degree, in the case of munitions, so that currently, probably during every such conference which took place in his office, Hitler used to express special wishes, which of course meant orders for us.

I personally took part in such conferences on nine occasions. Occasionally Speer would take me along to have me appear on the stage there, as he would put it. However, that ceased almost completely during the last years. Anyway, I know for certain, according to my documents, that I was there nine times.

Let me add at this point that State Secretary Koerner * was never there. Speer did not think that it was necessary for him to be taken along, and Koerner would not impose his presence either.

Q. So that during such a meeting for the receiving of orders of the Central Planning Board, Koerner was never there?

A. No, he was not there, and he did not know about it either. He didn't know, therefore, how strongly Hitler interfered in this sphere by giving orders.

Q. But didn't you always report to him, either you or Speer, in the case of the meetings of Central Planning Board?

A. It might have come as an aside during the meetings; one of us might have said, usually Speer, "Hitler has given this or that order," but that wasn't anything very noticeable to Koerner.

Q. Was it only because of the Central Planning Board that Speer went to see Hitler?

A. No, that was one very small portion of all the other discussions, because Hitler was interested, to an extraordinary degree, in army armament, and even right down to the most minute detail. He himself decided, on his own initiative, the thickness of armor on armored fighting vehicles; he decided upon the caliber and type of gun which should be fitted to tanks; he decided the thickness and the caliber of antitank defensive armor; he himself laid down, personally, the supply rate of ammunition for every type of gun. I had an awful lot of difficulty with him over anti-aircraft ammunition in that connection, since Hitler would never depart during that time, from anything which he had once laid down. He had changed a great deal from his prewar days.

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Q. Witness, it is your opinion that even this first record of the Central Planning Board meeting is inexact and does not correspond with the true discussions which took place?

* Defendant in case of United States vs. Ernst von Weizsaecker, et al. See Vols. XII, XIII, XIV.

A. May I state quite basically in connection with this that I hardly ever had my deputy with me when I went to the meetings; he had a lot of other assignments and their meetings went on for several hours. Koerner's deputy, the representative whom he brought along, always kept the minutes in the sense of observing Koerner's meaning. Sometimes I did read through these brief minutes, and I might say that I pointed out to Koerner and Speer that facts always seemed altered considerably, but all three of us used to laugh about it, and with a flick of the wrist we used to consider it quite unimportant to have these minutes altered afterwards because all of these minutes appeared of no importance whatsoever. What was important were decisions of the Central Planning Board, and they were taken down most exactly, and they contained to my knowledge only contingencies of raw materials such as we had distributed. * * *

Q. Witness, on this occasion we might touch upon the value or lack of value of the so-called verbatim minutes, now that we have come to this subject, don't you think? These verbatim minutes, which are very comprehensive, very voluminous, even with reference to one meeting, there was a whole volume it seems. Were they examined?

A. No. That wasn't possible. I might have examined one or the other minutes at the beginning, and I did on one occasion try to make improvements, but I found that it contained so many mistakes that the time of reading and improving them would have amounted to fifty percent more time than the actual meeting. These meetings often went on for four or more hours or so, and I really did not have the time to sit down for something like six hours afterwards in order to put the minutes right. I know that there wasn't any one who read through them, and I didn't really know why these records, these verbatim records, were prepared. I thought perhaps it was a question of supervision for us, and I had no cause to state that I would not allow myself to be supervised. If you went to the pains of having one stenographer who would do nothing but write, but who was stumped by the fact that we sometimes spoke too quickly or not too clearly; a stenographer who often sat far away from the man who was speaking, or who didn't know the name of the man who was speaking, there was bound to be a lot of muddle in that respect. He didn't know whether the man who was sitting on the left was talking or his neighbor on the right, and one mistake after another occurred. I gave it up pretty quickly after looking through these minutes. I once asked the others whether they read through the minutes and they just laughed at me, and said that they had more and better jobs on hand, and I said so had I.

Q. Witness, you have just said that these stenographers who sat on the side could quite often not even distinguish between the speaker, whether it was he or his neighbor. What was the custom; did you remain seated while you were speaking, or did one always rise?

A. No, no, we all stayed seated; we all remained seated and the stenographer couldn't always see who was speaking because on certain occasions a lot of people were there. If you invited one man to a meeting in Germany, then possibly he always brought his entire staff along so that he could answer all the questions; and if you invited one, sometimes fifteen or twenty showed up. I sometimes asked whether these men didn't have anything else to do because we were not really concerned with details, only with the basic, larger points, and they used to say, well, everybody is invited.

Q. Witness, did it happen that specific orders were given to stenographers to alter certain points or omit them? So that apart from accidental mistakes, deliberate mistakes were being made?

A. I have recollections of many occasions that Speer, who used to sit next to me, would shout to the stenographer across the room and say, "Leave that out, what the Field Marshal just said." Unfortunately, notorious before this Tribunal are the expressions and words I used, which were not always too carefully chosen. I have always said during my entire life what came to my mind at the moment, and I, as a soldier, was never taught to hide my opinion. But sometimes, in order to refreshen sometimes boring meetings, I used rather forceful language to shake up the others a bit so that they would at last come out with their true opinions, because many of the people were only there as experts on individual points. Quite often ministers were there; even in Germany a minister and a field marshal have a fairly high-ranking position; and the German is rather more inclined to speak too much than too little. Now, if they found that I too would use strong expressions on one occasion, or another, then they would loosen up a bit and they would start talking, since they felt that I had let go too. I was keen to have clarity, and that the cat wouldn't always run around the hot porridge, because, after all, we had to know the truth and the real background.

Since Speer was much more cautious and much more courteous, never having been a soldier, I could allow myself the exhibition of freedom, and unfortunately I did.

Q. Yes, unfortunately. So that statements of that kind of yours were either stricken or they were altered?

A. That warning of Speer's only came into force if I stated my criticism of the higher leaders too severely. If, for instance, some-

where Hitler had given assignments or orders which, to my view, were wrong, or even as to orders coming from Goering or other people, the Minister of the Interior or the Minister of the Police or some other person, then I even here would state my frank criticism amongst these people. Usually I didn't have any other possibility to state my deviating opinion, and I had the inner urge to say it out aloud. Speer, in my interest, would have it struck out, and he told me a few times afterward, "For heaven's sake, do be careful. They will hang you one day." But of course he meant by the German side. Sometimes when I myself became aware of the fact that in my criticism of these high ranking gentlemen I had gone too far, I would say to the stenographer, "Leave that out." And on one or two or three occasions I said, "Change it. Put someone else in there as having been referred to," because I myself discovered—mind you, I wasn't always aware that I criticized too severely, but since Speer told me so a few times, I controlled myself a little more—that I had said too much and that it was a mistake, and so I intervened myself.

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Q. Witness, after our discussion concerning labor questions, in connection with the decree concerning the Central Planning Board, I want you to answer my question now, whether and what powers the Central Planning Board had with reference to the Plenipotentiary General for Labor, Sauckel?

A. The Central Planning Board had no power to issue orders to Sauckel.

Q. Who was it that gave Sauckel's orders?

A. Sauckel's office had been formed by Hitler's Decree. However, after that it was taken into the Four Year Plan, so that formally Sauckel was under Goering immediately. However, he received his orders from Hitler himself.

Q. As you said, the Central Planning Board had no powers toward Sauckel?

A. None whatsoever.

Q. However, don't you know that Speer tried to win influence over Sauckel? Did that occur in his capacity as a member of the Central Planning Board, or did that occur in his capacity as Armament Minister?

A. It only occurred in his capacity as Armament Minister.

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Q. Witness, on this occasion I would like to ask you, what then do you know about these concentration camps during the war?

A. I only knew of two concentration camps, namely, Dachau and Oranienburg. I visited Dachau personally in 1935; in other

words, before the war. That was the only time that I visited a concentration camp, except for now as a prisoner of war. What there was inside the concentration camps I do not know. In 1935 there were only Germans in there; and I was very much surprised to learn after the collapse of Germany that there were also foreigners in the concentration camps. I did not know that. I am quite convinced that none of my collaborators knew about these things in the concentration camps. We had been told at the time that in these concentration camps criminals of various categories were being detained. What I saw in 1935 were habitual criminals. I thought it a very good idea that these people be not allowed to walk around freely. When we were there these people had to tell us their sentences; and there were several barriers full of people, and there the average criminal record was twenty to thirty times rape of small children. Therefore, I, being a father, believed that it was best for these people to be locked up.

However, I know that there were political people there; and I saw them, too. There my opinion differed. But I was told that those people were there on a temporary basis and would only be kept in there for a longer period of time if they actually committed active sabotage against the state. At Dachau most of the political people who were being detained there as prisoners in 1935 were members of the SA, on account of the Roehm Putsch in 1934, and that was the basis and reason for their being there.

I should like to add that I asked to be allowed to visit that concentration camp at the time, together with other officers of my branch, in other words, of the Luftwaffe, because during my meetings and conversations with foreigners, I repeatedly heard the statement, particularly from the British, "We understand your Hitler's system very well. There was no other way for you to go. However, we do not understand your concentration camps." That is why I decided to get some sort of a picture for myself by seeing the camp. It took a little while, but finally I got the permission to visit the concentration camp. That at the time was my only contact with the question.

Q. What was your impression of the camp? Was it clean?

A. In 1935, well, yes, at that time it looked very well. There were good barracks, absolutely waterproof, with two cots, one above the other. Our barracks always had the same system anyway; and I was the only one to get that principle in the Luftwaffe, so that there was quite a revolution among the soldiers in the army. I witnessed one of their meals. There was a good portion of food, meat, vegetables, potatoes, quite a lot of soup. The people were thus well fed. Of course, they had to work. The work they did was not an easy task. Cleanness was noticeable. The beds had

sheets with a special design on them. The entertainment of the people was taken care of. There was recreation. They had a special room where they could hold speeches. They had facilities for writing and reading. There was an excellent library there which even according to its size and contents was very interesting. I looked through the index one time. The man in charge of the library was a Gruppenfuehrer of the SA and also a concentration camp inmate. I saw the bakery, saw the butcher shop.

At that time I am sure that there were no cruelties and no inhumane equipment of any kind. Of course, I could not speak to these same individuals and ask them how they like it in there. We were allowed to talk to these people; but each of them was allowed only to say what his sentence was.

Q. Did you see what kind of work these inmates had to do?

A. That was very hard. They worked on their own equipment, I believe, not only for the camp but for all sorts of purposes and for the SS. In other words, they made furniture for themselves and for the Waffen SS for instance, cupboards, chairs, stools, tables. They also had a locksmith shop there. As far as I know they did work outside the camp as well.

I believe there were special commands for cutting down trees; there were special commands for splitting stones. However, I cannot go into detail because I inserted this visit into one day—it was in the afternoon after I had an inspection of the troops in Munich, which inspection I finished about 9:30 in the morning, and at four o'clock in the afternoon I had another inspection to carry out of the Luftwaffe, and in between I saw the camp. I myself ate or tasted the food which the German inmates had, and I thought it was very tasty, good, and sufficient.

Q. Witness, at a time following that, did you ever hear, even if only rumors, that inhumane acts were being committed in the concentration camps?

A. I cannot remember that anything had been mentioned in that connection—anything that had anything to do with the truth or that seemed like the truth. I can confirm the fact that there were quite a few rumors during the war. However, all our efforts to find where these rumors originated were not successful. We were not able to find out anything at all. I had very few connections with the SS itself.

Q. I shall come back to the SS later on. Now, Witness, as witnesses have said, you yourself saw to it that persons in concentration camps were freed, or were not committed to the concentration camps. Can one not draw the conclusion from that that you were of the opinion that it was not very good in the concentration camps; that bad things were happening there, because in

general one who has committed a criminal offense is not protected from imprisonment?

A. At the beginning I was quite convinced that these concentration camps were just a temporary measure. I knew from the press that they had done the same thing in Italy under the Mussolini regime, and that then, after a few years, these institutions had been dissolved—at least that's what I heard at the time—and, since many things were being imitated here in Germany which Mussolini's Italy had done, I saw at that concentration camp nothing but such an imitation. That certain abuses would occur there, I could understand, because, after all, the National Socialist movement itself, in its early beginnings, was a revolutionary group. Even if it weren't so, at least that's what people said. I thought that these things were only the childish diseases of the new regime. However, if I ever heard anything, if anything was brought to my own personal attention, then I thought it my human duty to help. That the parents of anybody who is sent to a concentration camp or something are always convinced of his innocence, can be understood and every one of us today knows how unpleasant that is. However, certain other reasons prevailed at the time, when a family wrote: that is probably the case with one of the cases which was submitted here in an affidavit. The main reason was not that the man was a Social Democrat leader. No. He was blamed for other things, and they had to be cleared up. That is why my help took a little bit longer here, and I believe that the man was vindicated. The reproaches which they made to him, and which came from those greatest pests whom we had at the time, the informers, had to be refuted by bringing counterevidence.

Q. That's enough, Witness. Now such people were taken out of the camp by you. Then I'm sure that they came to see you and thanked you for it?

A. No. They didn't do that and I did not pay too much attention to that. I told their parents and their relatives to restrain them from doing that. Maybe they wrote a letter though, sometime, but I did not do it in order to get their thanks and appreciation.

Q. Witness, didn't you ever speak to anybody who had been released from a concentration camp and who then would have given you more details about the concentration camp?

A. I never spoke with anybody who had been released from a concentration camp—at least, not that I know of. I never spoke with anybody about his experience in a concentration camp. However, during my captivity, I heard through other people that no one else ever heard about such things either, because these people

were not only prohibited from speaking, but they were also so scared that they followed that order to the very letter.

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Q. Witness, you also visited factories, didn't you, and you saw eastern male or female workers there, didn't you?

A. Yes.

Q. What was your opinion about these people. Didn't they complain to you or anything?

A. I regarded it as absolutely natural that whenever I visited a factory it was natural for me to talk to these workers, even if, in my official capacity, I had nothing to do with that question. However, as a soldier I was accustomed to act in that way. On each occasion I asked them how they were, how the food was; I looked at the people and I saw how they were clad and what kind of an impression they gave, generally speaking, whether they looked healthy, whether they looked satisfied or not. I saw Russians, and also Russian prisoners of war. Then I saw Russian female civilian workers, namely, Ukrainians. I saw Frenchmen, namely French civilian workers. There could have been prisoners of war among them, but they were wearing protective overalls over their clothes. There could have been workers from Slovakia, who considered themselves our allies, but they were very, very few. Then there were quite a few Italian workers there, those who had come on a voluntary basis at the time; those so-called "Imis" (Italians who revolted against Mussolini and were sent as prisoners of war to work in Germany) I did not see.

Q. Did eastern workers, male or female, ever complain to you concerning their work?

A. No, they did not. On the contrary, the general impression of these female Ukrainians who worked on the Junker 52's was a very pleasing one. The girls were singing; they were well fed; they were well dressed; and they answered my questions in a nice, cheerful way. I spent about 20 minutes with these girls. There were quite a few pretty ones among them, and towards the end they flirted with me, and the girls were laughing all the time.

* * * * *

Q. Witness, I will now enter into the question of what the Central Planning Board has to do with labor questions at all?

A. The Central Planning Board had considerable difficulties connected with the question of getting raw materials. The acquisition of raw materials was originally the tasks of the Ministry of Economics and then of Speer in the Armament Ministry. On such raw materials depended the armament program.

The pacemaker among all these raw materials for the armament

program was steel, but the pacemaker in turn for steel was coal or coke production. That was the biggest bottleneck, since, unfortunately, during the first years of the war the youngest and strongest age groups of miners had been called up for military service. Hitler had given us the order to develop a steel production program amounting to 3.2 million tons per month. This was to be done by Speer, and Speer had succeeded in reaching the figure of 2.6 million tons, but that was the maximum. Hitler's armament program, however, had been based on the figure of 3.2 millions. Hitler had demanded these armament programs and the experts had calculated the amount of steel they needed for those programs.

We in the Central Planning Board discussed the possibilities of getting up to 3.2 million tons of steel, and Speer being the man for that part of the production, ordered the men from the steel manufacturers' union to come and see him in a conference in which all steel problems, through the self-administration of the industry, were dealt with. Speer was in agreement with me, this is an aside which I must add, to the effect it was a mistake to direct industry through the state, but that industry ought to govern itself through committees of their own, coming from their own ranks, and in this sense of course, these main committees and rings which we have talked about must be understood.

These gentlemen from the Reich Association Iron stated that the possibilities existed that 3.2 million tons of steel could be manufactured, subject to certain conditions. In that connection the main prerequisite was a very much larger allocation of coke. Apart from that they wanted certain additional matters for their own production, some labor too. I remember the question of smelters which was submitted at the time. I am not an expert, but at that time I did gather that we were concerned with specialists with very considerable ability and knowledge, since otherwise a few handful of men wouldn't have been brought into our conversation. At any rate, the main problem was coal.

Speer, anyhow, during one of our conferences, sent for the men representing the coal industry. Such a Reich Association Coal had existed for some considerable time. These people stated that there was enough coal in the mines but that human manpower was lacking to bring it up. Speer in his capacity as Armament Minister now asked them to tell him in writing what was needed. Now, these men apparently reported the figures regarding workers they had, and during those conferences with the coal representatives, always, of course with reference to the question of steel, it was stated that all efforts on the part of the Armament Ministry would have to fall down because of the labor shortage.

Speer, as he told me, mentioned this to Hitler dozens of times. It was here for the first time that various controversies arose between Speer and Sauckel.

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The first difficulties between Speer as Armament Minister and Sauckel came to Hitler for decision. Speer said, "I'm short of workers". Sauckel said, "I have fulfilled all your demands", and as proof he submitted his figures. Between the figures which Speer had and those which Sauckel had, no comparison was ever possible. They were based on different suppositions. Speer was unable to obtain the basis for the figures which were at Sauckel's disposal. In their conflict Hitler took the side of Sauckel. He wished thereby to exercise pressure on Speer to increase armament. Speer was unable to do so because he did not have the workers who had to produce coal.

This struggle went on through the years. At first Speer still hoped that Sauckel would still bring the workers into his factories until in the summer of 1943 he gave up this hope. In the Central Planning Board this, of course, was discussed, and it was also discussed how much steel we could obtain for the next three months and how we could distribute it. Always there was this contrast between the figures—Hitler wishes to have 3.2 million tons of steel; we can only distribute 2.6 millions because Speer is quite unable to produce more. The consequence was again that Hitler reproached Speer for not producing more steel although Sauckel had supplied the workers. The Central Planning Board was not responsible for the quantity of raw materials at his disposal. Speer asked me to give him my support in this question. I did so quite frequently in the meetings and also when I reported to Goering because we wished to convince Goering that we did not have the workers so that Goering would intervene with Hitler in that sense.

But I was unable to obtain Goering's support. Goering took Hitler's side, and he said, "The workers are there". All that was left now was for Speer in the first line and we ourselves who wished to help him in the second line to attack Sauckel. Sauckel escaped all meetings for a long time. Sometimes he sent a representative, and in some cases he himself appeared, but he and his representative pursued the same policy by giving us a lot of figures and alleging they had fulfilled everything. Our doubts in these figures increased. Hitler became more and more impatient and the reproaches for Speer towards the end of 1943 became insufferable. Whereas Hitler supported Speer until roughly the middle of 1943 and regarded him as one of the first collaborators,

the relations became much more cool later on, and I explain that mainly through this conflict. I myself had the same annoyance both with Goering and with Hitler, who maintained in opposition to me that I had been given all of the workers.

Our mood wasn't very nice about this, obviously because although we had no personal ambition we did not wish to be blamed for something that we were not responsible for, bad armament, and to have stated that because of bad armament the war had been lost. That reproach, of course, we could foresee, and it was obvious that we fought against it with every means within our disposal. We felt ourselves to be quite innocent in this field, but in order to prove our innocence, we were missing one link in the chain, and that was to show beyond doubt that Sauckel's figures were untrue. They were not wrong by accident; they were deliberately forged, in our opinion, because Sauckel wished to impress Hitler with his own efficiency in his ability to fulfill all the demands of Hitler in the sphere of labor.

Sauckel pursued that policy up to 4 January 1944. Only when there was a conference with Hitler on 4 January 1944, of which I was a participant, did he there say for the first time to Hitler, "Up to now I always fulfilled all your demands, my Fuehrer. Whether that will still be possible with the new demands of four million workers, I can no longer guarantee."

Q. Witness, we will come later to this conference. Now, I ask you to go back to answer one question. Did the Central Planning Board have authority to request labor and to distribute it?

A. A clear "no" to both parts of the question. The question of labor was discussed in the Central Planning Board only in the interest of Speer because Speer needed help and knew I would always give him my support. * * *

* * * I may claim, for example, that throughout my activities, anyway shortly after the beginning of the war, that is to say, on 9 November, there were about sixty production managers of factories—no, not managers but so-called men of trust [Vertrauensmaenner], elected by workers—these men came to me and I found out they wanted to ask me to get their rations increased. At that time the whole nutrition was based upon lower rations; these people in our high industries were not entitled to the supplementary rations for heavy workers, and these people explained to me that now that there was a war, and they were forced to work in different factories from peacetime, their housing was much further away from their places of work, and in the morning and at night they had to travel longer; and, therefore, their food was insufficient. That gave me the idea to apply for a new supplementary ration and as we became very set in

this question, it became possible to achieve that supplementary ration which was now for the benefit of all workers. And I have now gotten hold of documentary evidence that supplementary rations were also given to foreign workers; that was a supplementary ration for foreign workers working long hours. As this documentary evidence shows it is an affidavit actually the food of German and foreign workers was the same. But I also wanted to say that it is quite possible that there are cases where this principle was not observed, but that was against the will of the German Government if it happened.

Q. Witness, that means that neither the labor office nor the Armament Inspectorate were under your supervision, as the GL.

A. Yes that is quite correct.

Q. But Speer has testified that until the very end you did not renounce the command of the air industry. What could you say to this effect?

A. If Speer should mean that my personnel official, in the way I described before, talked with his, Speer's armament office, once a month, then it is quite correct; but my officials might have used these occasions, and how far he worked with my name on these occasions I do not know. I hope he did so in order to get his point through. I was never present. I never heard how these negotiations went on. Should Speer mean, however, that my work in that field was the same as his in his field, then he makes a mistake, for I did not have that organization nor did I have the task. My field was only a very specialized one compared to Speer's field. * * * I might add perhaps, that Speer did not know my organization; of course we never discussed it. He knew, of course, that I had a technical office; he knew that I had a planning office, and he also knew that I had an economic department for the contracts of industry. After all, he fought a battle to take the whole economic department into his sphere, and when I said he couldn't possibly do it, he waited until the whole armament industry came under his charge. We two always settled everything in a friendly manner after that up to the last moment. Even if there were a certain amount of conflicting interests, which sometimes were quite considerable, particularly between our subordinate officers—there were quite severe battles between those subordinate officers at times—but we always poured oil on the troubled waters, Mr. Speer and I.

Q. Witness, but couldn't it be, that in the sphere of the Central Planning Board in presenting the labor demands of your industry, you spoke for your own interests?

A. I cannot recall, and I have read some of the records, but in not one of them, there is not one word said that I had any special

demands for the Luftwaffe. Apart from the fact that once or twice I remarked that I was equally badly off, that I didn't get anything, but that doesn't mean that I was looking after my interests in the GL. If I talked about workers at the Central Planning Board, I did so at Speer's request, to give him in the armament industry all the support. Speer was particularly pleased when I played the wild man and became a little strong. He once told me, "you are much better at this than I am; I am only a civilian; I can't do it as well as you can". And sometimes he pepped me up and said "Speak a little more fiercely, please", which I was only too delighted to do for him. That was meant to achieve something which you may wish to ask me about a little later on: How we could get Sauckel to speak clearly. How we could get rid of the suspicion that we through our inefficiency cannot bring German industry up to the high level, to the right level.

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Q. Witness, during these conferences of the Central Planning Board did it happen that the bulk of the workers was discussed, or was it rather a question of bringing new workers into Germany?

A. No, it was only the labor question as such, only inasmuch as it was important for the increase of raw materials in accordance with Hitler's order, and indeed always as an attack on Sauckel in order to get him to give us the people or to say he cannot do it. As we knew he could not supply them, our main demand which we wished to achieve was an open statement by Sauckel, "I haven't got the workers whom you need".

Q. Witness, but if your air force industry, for instance, either the labor offices or the Armament Inspectorates had made requests to Speer, and when your planning office had checked these demands in order to find out what was really necessary and what was unnecessary, was it a matter of proposing what kind of workers you wanted to have and what kind of workers should be distributed into these different production programs? Was it a question of deciding whether you needed German workers or rather more foreigners?

A. We did that in one sense, that for certain factories we simply had to have skilled workers, which we asked for, but never did we ask, "Give us foreigners; give us prisoners of war", and so forth. Our wishes were to the effect to have Germans, but it was quite clear to us that there weren't enough German workers to fulfill the demands. Had they been available, one needn't have used prisoners of war or recruited foreign workers or sent the prisoners of war to work unless they volunteered for it.

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[March 14]

JUDGE PHILLIPS: The Tribunal understands you to say that Polish prisoners of war were changed into civilian workers and that you no longer considered them to be prisoners of war. How were they changed into civilian workers from prisoners of war?

A. Personally I cannot give you many details about this because that happened as early as 1939, and at that time I was not connected with the armament question. How it was worked I do not know. All I can imagine is that there was no longer a Polish Government and that the Governor General gave the order; whether any Polish office was asked, I don't know; it is only in the files here that I found something about some Polish regional authority. I cannot give you any more clear details.

DR. BERGOLD: May it please the Tribunal, perhaps I can clarify the matter.

PRESIDING JUDGE TOMS: Let's let the witness clarify it. Witness, you are an old soldier. You have been a soldier for many years. How do you transfer a prisoner of war into a civilian, by discharging him?

A. Yes, he must be released from being a prisoner of war, and then there are various possibilities. One possibility would be—and this was resorted to by Germany—to make him a free worker and tell him that "You are being released, but you must do some work. That is the conditions which we put to you. You are being paid properly, and otherwise you live as a free man."

There is also another possibility, which was the way chosen by the Americans, by which a prisoner of war is released and then regarded as an internee. I think that that procedure is not quite so favorable for the man concerned.

Q. You just transposed them from prisoners of war to civilian prisoners, then?

A. No, they were no longer prisoners. They were properly released, but they signed a document which obliged them to do some work for Germany.

Q. You imprisoned them by a document instead of in a stockade?

A. They were no longer locked up, Sir. The Polish workers—I saw them in the country, for instance—live quite freely.

Q. Could they go where they liked?

A. They could not change their places of work without permission. For instance, if they were allocated to a farmer, they had to stay with that farmer. Only if there were special reasons could they change their place of work. Then they were transferred.

Q. That is what you call freeing them?

A. It was not complete freedom, but it was a better status than previously when they were prisoners of war.

Q. What would happen to one of these free workers if he walked away from his place of employment?

A. Sir, that is what I do not know myself. But may I say something else? A German worker was not allowed to change his place of work either. Freedom for a German was not any bigger than freedom for a Pole, as long as the war lasted.

Q. The German went home to his family every night, did he not?

A. These Polish soldiers—I cannot speak comprehensively because I am not particularly well informed here—but those I saw were young people, and they lived with the farmer's family.

Q. Witness, you don't mean to tell this Tribunal seriously that the Polish worker, the former prisoner of war, had the same freedom of movement that the German civilian had?

A. I cannot speak on all fields of life because I do not know. All I do know was that he was under the obligation to remain with his employer, but, as I said before, the German worker had to remain with his employer.

Q. Oh, well, we had that in the United States, for that matter. I still don't remember your answering my question: What would happen to a Polish worker who chose to walk away from his place of employment?

A. I am unable to answer that. I know of no such cases, nor was I told about one.

DR. BERGOLD: May it please the Tribunal, the defendant cannot know, because he was a soldier, what the Polish worker had to do. Like the German worker, the Polish worker would have been punished and brought before a tribunal because he broke his contract, and he would have received a small punishment. Thousands of German workers have been punished for the same reason, and I have defended many a German worker for the same charge. That would have happened—nothing else.

PRESIDING JUDGE TOMS: Let me ask you, Dr. Bergold. Did you ever defend a Polish worker for walking away from his employment?

DR. BERGOLD: Yes, I did.

PRESIDING JUDGE TOMS: I have no inclination to dispute you.

DR. BERGOLD: I defended quite a few foreign workers in wartime, not only Poles, but Frenchmen, Belgians, and Dutchmen.

PRESIDING JUDGE TOMS: Oh, maybe Belgians, Dutchmen, but Poles—?

DR. BERGOLD: Yes, definitely. I am prepared to make that statement on oath, Sir.

DEFENDANT MILCH: May I supply an observation of my own on the Polish question? Shortly before I was taken prisoner, I was in the country in Schleswig-Holstein. In that region the only foreigners there were Poles. Those Poles on the estate where I was, perhaps 30 or 40 of them, said that they did not wish to return home, that they would ask to be allowed to remain on the estate just as did their colleagues in the neighborhood. These people were dressed very neatly on Sundays. They looked very clean and healthy. They could not be told from any German in the neighborhood there except for certain racial distinctions. All of them had bicycles. On that bicycle they went on Sundays to the nearest pub and met their girl friends and danced, and they told me themselves that never before had they been so happy as they were in Germany. That was at a time when the British were 50 kilometers away from their village.

PRESIDING JUDGE TOMS: Perhaps that is why they were so happy.

A. No. They said that they did not want to leave there now. They wished to remain.

Q. I think you misunderstood my point. Perhaps their happiness arose from the fact that the British were only 50 kilometers away.

A. No. I understood what you were trying to say, Sir, but I also talked to the German employers there. I was there in a totally private capacity, and I knew these people quite well. They were friends of mine, and they told me that they were quite satisfied with their Poles, and they also said that the Poles had done very good work and that the Poles had asked to be allowed to remain after the collapse, because in those days they did not wish to return to Poland and they were quite well looked after here.

May I ask the Court to believe me that we in Germany were not all of us hangmen and people who delighted in other people's misery. I may say here that I think that the majority of the German people are good-hearted and that they treat other people well and that these people did not know that in some isolated places there were isolated criminals who polluted our good name for a long time to come. The people are suffering from that now, and they will suffer in the future. That is what depresses all of us the most. Otherwise, one has to take the point of view that all Germans are criminals and then it might be justified to hang the lot. Then, please start on me.

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DR. BERGOLD: Witness, after this question was discussed, you received information that this employment of foreign workers

was admissible. Could you tell me now what you knew before, prior to that moment, concerning this question?

A. I know that after the First War, the question of deportation of Belgium workers had been examined by a committee of the German Reichstag. I know that this parliamentary committee examined people like Hindenburg, Ludendorff, I think also Mackensen and others; and that many questions were discussed, including that of Belgian civilian workers. As far as I can recall, that committee was presided over by a man who had been given the Nobel Prize, Professor Schuecking; I think that was his name. However, I was very interested in it, and closely followed it because Hindenburg whom I worshipped, was put before a court; and as far as I can recall, no sentence was passed upon that score; and nobody was reproached that international law had been violated. At that time the Hague Convention existed and the first Geneva Conference had taken place. I am not very well informed, but I think that was so.

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Q. Witness, I shall now come to the 54th meeting, concerning two points there. Witness, during that meeting * Sauckel mentioned that only a very small percentage of those sent to Germany came on a voluntary basis. This statement has been mentioned repeatedly in this trial and I want you to say something about that.

A. I might say that I do not remember having heard these words from Sauckel. It is possible that I was not there at the moment when he said that. However, it is possible that I overheard that remark, because during those long meetings, we had discussions among each other. We were also interested in other questions. During those long meetings there was at least one meeting, probably more, during which our concentration was not quite what it should have been. Had I heard it, I would have believed Sauckel just as little as I believed all the figures he gave us, because Sauckel had stated the contrary not long before. I know exactly it was not so long before that he had declared how well his system functioned and how he brought all these laborers on a voluntary basis.

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Q. Witness, I shall now leave the meetings of the Central Planning Board and come to single questions in that connection. What do you know about the use of British and American prisoners of war?

* Doc. R-124, Pros. Ex. 48-A, Conference of 1 March 1944, pp. 484-498.

A. According to my opinion and as far as I know, they went into the respective camps and they were not used for labor. I never saw such a prisoner of war any place.

Q. * * * What orders did you have toward the middle of January 1943? What orders did you receive from Hitler?

A. On 15 January 1943, in the evening I was called up and summoned to go to Hitler's Headquarters the next day for a special mission. As far as I know, I believe that it was General Bodenschatz who called me to the Fuehrer's Headquarters. The following morning I reported to Goering, who happened to be in Berlin at that time. Goering knew that the question of food for Stalingrad was involved. Stalingrad had been encircled for months, and the whole Sixth German Army was in it. On the 16th, in the morning, I flew to Hitler's Headquarters in East Prussia; and then Hitler either in the afternoon or in the evening gave me the information that I should proceed to Czechoslovakia immediately by air in order to supervise Stalingrad's food supplies from there.

Q. Witness, make it a little more brief, please.

A. Yes. I tried to carry out this mission. When I received the mission, the last airfield had been lost. The Russians had taken them. We looked for smaller places which were rather difficult to find there in those mountainous areas; and within the next few days we succeeded in carrying out a considerable air lift of supplies. However, it was too late. The resisting force of the defenders had broken down; the people were starving; they had hardly any vehicles or horses. They could not get the food from the landing places for the planes because they were too weak to do so. They could not carry the containers so that the air lift of supplies in the case of Stalingrad could not be kept up after the end of January or the beginning of February.

Q. Did you have a serious accident then?

A. Yes. At that moment when I wanted to fly into Stalingrad, before I hit the airfield, I was hit by a railroad engine, and I was seriously injured.

Q. Then you went back to Hitler?

A. I carried out the mission first. Then when Stalingrad had fallen, I withdrew and went to see Hitler and told him that I could not complete my mission. He told me, however, that it was not I who had not carried out the mission but that it was his fault. He said he gave me the orders too late; he had wanted to give the orders to me much earlier but had been talked out of it.

Q. Witness, during that occasion, did you tell Hitler your opinion about the war and the general situation of the war?

A. It was on 4 February when I reported back to Hitler. Hitler on that particular day was very crushed due to the loss of Stalin-

grad. It was not possible to have a quiet talk with him. He did not receive me at first, or my chief of staff, namely, General of the Tank Corps Model, who had a corps within that fortress. We both were under the impression that day that we would not be able to speak to him. However, he told me in a few words, "Now, go right ahead to your GL task, manufacturing. Now we will have transport planes in the first line, transport planes, and more transport planes." He was talking about Stalingrad. He thought that had he had more transport planes he would have been able to keep Stalingrad.

With respect to Stalingrad, I had a long discussion with him on 5 March. That was the last time I saw him. That was about a month later. I was ordered to see him because he wanted to give me the mission to build high-altitude and fast bombers and put them in the first line of production. Those now were more important than transport planes. I availed myself of that opportunity on that day and had prepared myself in order to tell him my opinion about the general situation. That discussion took place in the evening. I had dinner with him alone. That was shortly before 9:00 o'clock; and it lasted until 3:15 a.m. Then in contrast to all other discussions I had with him, I was the one who was speaking all the time.

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I told him first of all the truth about Stalingrad; and I told him that the question of leaving an army was a military mistake, when according to military and strategical points of view it should have withdrawn, something which had been suggested both by myself and by the army. It was a mistake; and it did end with the loss of 350,000 men on the German side. However, a withdrawal in time would have saved the greatest part of these soldiers. I told him that, after all, the Russians were not as anxious to attack as that; that in the winter they themselves were in a difficult position for attacking a German army and they would not have dared. I told him then that that point was the last turning point in the fate of the war. I told him that I had tried to reach him before the Russian campaign. However, I had been unable to do so because it had been forbidden. I said that the time was now five minutes past twelve. We use that expression in Germany when something is completed; when it is finished. I told him that by that I meant that the war was lost. I apologized for not considering his nervous condition. There was no time for that any more. I thought it my duty to tell him my sincere opinion; as a field marshal I thought myself entitled to do so.

I knew that he did not want to hear this. However, I wished

that he would hear me in spite of that. He could do with me whatever he wanted to afterwards. I remembered, however, that he himself before the war had used strong words against the bad advisers of Wilhelm II, who out of cowardice, had not told him the truth. In no case did I wish to stand before my own conscience with such a reproach on myself. He told me then, "Yes, you can say today whatever you wish to say."

I told him then that he was no more in a position to attack in the East. That those attacks which had already been developed, he should stop. That he could only defend himself, and I was of the direct opinion that instead of building great fortification works in France and Norway, that during the whole of the spring, summer, and autumn, he should concentrate on fortifying the Dnieper position, which lay about 800 kilometers behind the Russian front, with all the means at his disposal, with fortifications of concrete, etc., in a great width, between two-hundred and three-hundred kilometers depth, and in that way there would be strong fortifications and good shelter for soldiers, with good equipment and food and ammunition, and that then he should take the troops back to that position for the winter, and that he should give up the whole territory in front of that fortification, out of which he would not get anything at all, neither oil, coal, nor ore. By doing that he would shorten the length of the Russian front, and in such a way that the maintenance of those soldiers on the line would be much easier. Apart from that he should take more care of the eastern forces, and I am quite sure that on the whole eastern front of two-thousand kilometers, of about ten million German soldiers, not one million of them were fighting and he should take measures to change that. That was the only point he carried out later on, and unfortunately only towards the end of November of that year and the result was that the fighting infantry units on the whole eastern front amounts to 265,000 men of the army. It was impossible to hold that front with such a small number.

I furthermore suggested to him that a great personnel change should be made, namely, he himself should give up command over the army, that he should place a simple general in that position. As it was, he held before the German people a responsibility, which he could not bear. He was no soldier in that sense, since he was not trained for that. I suggested to him to dissolve my own branch as an independent Wehrmacht unit and to put the Luftwaffe entirely under the Wehrmacht, since there was no strategic air force any longer.

Now what I had to say was special for the army, and this was certainly of a personal nature, namely, to remove Reich Marshal Goering from the Luftwaffe, and give him a different task. I said

also that it was now the opportune moment for the Reich Foreign Minister also to be removed from his position.

Q. Would you give the name?

A. Von Ribbentrop. I suggested to him that the Field Marshal be put in charge of the units at the front, and I gave as a reason that Keitel was too lenient in reference to Hitler, and did not know how to get his ideas across to Hitler; that he should have somebody who would force him to observe correct military measures. I told him then that the most important task in my opinion was the home defense of Germany; the air home defense of Germany, and to consider as having the highest priority; and also the fighter production should be placed in the first place, and armaments. I showed him the figures of the English, the American and the Russian armaments explicitly, and I showed him how these armaments would have their effect over Germany, and also at what point, or at what time this would happen. I reported to him that many false reports were made to him, and I gave him an exact instance. I told him that he overestimated himself, and his allies, and that he also underestimated the Russians, and the attitude of Stalin personally, and that that had led to the Stalingrad collapse, and he should be quite clear as to the facts if the attack was continued in the East; that he could hold the Dnieper position, and that if he held that position, the air defense would be able to prepare a military preparation for peace if the enemy would see that this crushing of Germany from the air was no longer possible and if the Russians would see that they would not be able to cross the Dnieper without being crushed; that I am sure with that preparedness which should be started at once, we ought to be coming to a peace. It might be possible to get away with bearable peace terms if they would act immediately.

Then I also discussed the peace question, and I told him he might make a real peace with France without taking territory, and I was sure that France would still consider that. The same applied to Belgium, and also Holland, as well as Norway. A peace with these countries would then induce the greater powers of the Western countries to be able to conclude peace with Germany which would be enduring.

Those were the main points of my opinion. I do not wish to recite details. He listened to and interrupted me only once, and that was on the question whether he could or could not attack in 1943, and I remember exactly that I said to him more than twenty times, "You cannot attack" and first he said in a quiet way, then got more excited and more excited until he was very cross, and knocked on the table, "I must attack." I told him at the end, "I know I am very impolite, I don't want to discuss this

question of attacking anymore. But be convinced I shall not change my opinion."

Then he waited for a short while, and I began to speak of something else, and then suddenly he said, "What would you say, Milch, if I would only make a short attack in order to be able to push through the Russian preparations before they can start developing." I answered, "Wait a minute, it is a defensive measure, because a soldier carries out his defense by attacking in turn," and he said, "Then we agree on that point." I said, "No, I don't think we do. If you are successful you will continue. I would say all the troops should go back after forty-eight hours that no matter what. Think of Verdun in 1916 when the same mistake was made; when they did not succeed in getting through on a surprise attempt, they went doggedly on."

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Q. Witness, what was the development after Stalingrad of your relationship to Hitler and Goering?

PRESIDING JUDGE TOMS: Before you go on, will you ask for the date of this conference of Hitler's again?

A. It was on 5 March 1943.

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On the question of how my relationship to Hitler and Goering developed later on I have to say the following: It became worse and worse from time to time. It was due to a struggle which I had about the German air defense which contradicted Hitler's idea of waging war, for this was the specific field of the Luftwaffe and I as Inspector General of the Luftwaffe was forced to make suggestions. I did not let this matter drop, and I repeatedly brought it to the front, in contrast with political proposals or proposals in the field of the army and navy, which were outside of my field of tasks and which I could not bring to anyone's attention unless Hitler gave me his permission or if he wished me to.

Q. With respect to this conference, did you inform him of the fact that you wanted to have Goering gone?

A. Yes. I did. I told Goering about that. I did not want to stab him in the back.

Q. Then, what happened to your relationship with Goering?

A. I do not believe that this single incident had any influence on our relationship, which was bad anyway. Goering was not the kind of a man who would hold it against me. He had a certain understanding of the circumstances. There were other things that he did not like about me.

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[March 17]

Q. Witness, the last time you were giving us a description of the suggestions you made with Hitler with regard to achieving a change. What was the impression you had afterwards as to whether he was going to follow your suggestions or not?

A. At that time I first of all hoped that he would somehow react to my suggestion, because in the case of the Stalingrad assignment which had been given to me although too late, I saw indications that at that time he still had confidence in me, and also in my military ability. During the following weeks and months I waited for something to happen, but nothing did. In the spring of 1943, after my conference, new attacks were ordered by him on the eastern front. He was not making an attack for the purposes of defense, he was going to try to reestablish the front along the Volga River. He was also going to try again to advance towards the Caucasus. It was only in November 1943 that he followed one of my suggestions, namely, to ascertain how many men were fighting in the East, as I said last Friday, and I need not repeat it. The attack was catastrophic, but in spite of that, no basic changes were made after that. All the other suggestions, political, military, and those regarding the personnel, were not followed. Through that I lost my last hope, namely, that a final basis favorable to Germany could be established to bring an end to this war through political means, in other words, peace negotiations, which might have had certain prospects of success.

Q. Witness, now I shall have to put to you this question. Why, after you recognized that fact did you continue your activity at all. What were the reasons which made you place your service at their disposal at all?

A. The main reason was that I was responsible to my people, and even if all the plans failed to materialize, I, nevertheless, still had one last hope at least, that a proper air defense could be arranged for Germany in order to protect our home country and the people from the worst, and the destruction of their homes and places of culture. That was my main reason.

Q. What then are the steps that you took in order to achieve your last final aim for the German people?

A. After 1941 I had a constant struggle, I would like to say, with Goering and with Hitler in order to achieve an air defense which I considered necessary. My last effort then was the foundation of the Jaegerstab.

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Q. Witness, you have just testified that you had founded the Jaegerstab in order gradually to leave your post. Did that further

have any other purpose, for instance, the removal of existing difficulties outside your own department?

A. Yes. Air armament within the entire armament program had very small, very negligible powers. As Hitler especially demanded army and naval rearmament, Speer's Ministry for years had encroached on a large scale in all matters which were important for my industry. As a result experts and other workers had been simply taken away from us. The armament inspectors and district military administrative authorities, both of whom were under Speer, were able to carry this through. It was merely by accident that I learned of this in individual cases, when, for instance, one of the industrialists happened to come to see me. We raised objections but we could not alter the situation, I mentioned this the other day. I wanted to use the Jaegerstab in order to transfer part of this responsibility for air armament to Speer and his ministry so that such encroachment, which was particularly noticeable where materials were concerned, should no longer happen.

The man who had approximately the same task as my own in Speer's Ministry was Mr. Saur. Saur was a very clever man, very able, very energetic, and since he was always sent to report to Hitler personally, he knew Hitler and his intentions very well, and he knew therefore that Hitler was not so keen on air armament, and from that he drew the conclusion which led to these encroachments into our sphere. I was very anxious to have him join the Jaegerstab so that there too he would share in the responsibility. There was a struggle about this with Speer until it finally came about that Saur joined the Jaegerstab. I did not want to found the Jaegerstab without him, and it turned out that Saur now tackled this new task very energetically and he did in fact succeed to some extent in bringing Hitler at least to a standstill. But Hitler's views and Hitler's orders he could not change. Apart from that it was necessary, if I wanted to transfer armament work to Speer, for the final armament would have to go through Saur's hands eventually, so it was essential that Saur should be included right from the start.

Q. Thank you. Did you give him responsibility to a small or a large extent within the Jaegerstab?

A. Let me answer that like this: I gave him as much freedom of action as possible, since he was going to take it over later, and it was his nature that when any matter was placed in his hands he took it up very energetically, and I was happy to see that he was going ahead so vigorously.

Q. Witness, you have made notes about everything you did during the war. Can you tell this high Tribunal whether you

gradually withdrew from the Jaegerstab and how many meetings you participated in each month?

A. In March, I participated in 15 meetings—they took place daily—and two trips. In April, I participated in eight meetings, and one journey. In May, I attended five meetings and took part in two journeys. In June I attended two meetings only, and had also two journeys. In July, I didn't attend any meetings at all, neither did I participate in any journey. I took more active interest in the journeys, totaling seven, in order to go into the provinces and show that the handing over of my task to Saur was taking place with my agreement. These are the figures: March 15, then eight, then five, then two.

Q. You mean the meetings?

A. Yes; that applies to meetings. In other words, I participated in a total of 30 meetings.

Q. But there was one more on 1 August 1944, wasn't there?

A. That was after my retirement. It was a meeting when Speer was in the chair, in which the Jaegerstab was now finally discontinuing its work, as the tasks of the Jaegerstab were now being incorporated with ordinary armament under Speer in the armament staff. It was a purely formal meeting of handing over, and I deliberately took part, so as not to create the impression that I was leaving reluctantly or that I was angry about anything, for, of course, the exact opposite was the case.

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Q. Witness, did the Jaegerstab have anything to do with workers?

A. Do you mean building workers?

Q. I mean generally speaking, for the moment.

A. I see. Well, you have to draw a clear dividing line. There were two completely different conceptions for us, armament workers and building workers. Armament workers came through the existing channels; in other words, requests were made to Sauckel by the industries, and Sauckel fulfilled, or did not fulfill such requests. Information about this first of all went to Speer's Ministry through the Armament Inspectorates, and secondly, there were statistical reports monthly from industry to air force. Building workers, on the other hand, did not concern any of us at all, not even statistically speaking; that is, insofar as the GL was concerned and his representatives on the Jaegerstab. This was entirely a problem for Todt's Organization. We knew absolutely nothing about this problem as far as we were concerned.

Q. Witness, did the Jaegerstab include a representative of the

GBA, the Plenipotentiary General for Labor, Sauckel, on its board?

A. I cannot at this moment recollect that accurately, but I believe not. As far as I know, for these questions there was only a representative from Speer's Ministry. That was Mr. Schmelter, who has been a witness in this trial, and who on his part used to hear our requests and take our requests to his ministry to help as far as he could.

Q. In order to help in labor problems did Schmelter have to go to Sauckel on his part?

A. Yes, quite decidedly. He, on his own initiative, could not distribute workers because he did not have any workers reserves of any kind.

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Q. Witness, the construction work which Hitler stated had to be constructed either by Kammler or Dorsch, was that all for the purpose of the Jaegerstab or also for other armament purposes?

A. I know that these constructions were meant for many other purposes because if these questions were discussed in the Jaegerstab I repeatedly heard Saur or some of his representatives saying, "We wish to change this; we want to use this for making tanks; or here, for instance, we will have V-2 rockets." That is how it fluctuated. In any case, I know that the subterranean constructions or tunnels were meant for other armament purposes.

Q. Witness, did you ever hear about the fact that for the construction of the surface concrete factories concentration camp inmates were to be used?

A. I heard about that in the Jaegerstab, I believe; and that is how we can explain Kammler's task.

Q. Witness, in your capacities as GL, as member of the Central Planning Board, or member of the Jaegerstab, what did you have to do with the concentration camp inmates? Did you apply for those?

A. No, we had nothing whatsoever to do with it. But they were requisitioned for industry through channels which I did not know at the time. At that time I knew from a conference that in Oranienburg, at Heinkel's, people were being used from the concentration camps which were near there. I heard one of my men say that the work that was being done over there was good work, I myself did not see these inmates working. However, at that time I was convinced of the fact, through my visit to the concentration camp of Dachau in 1935, that these were, in the main, only German criminals.

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Q. Witness, did you hear in connection with labor for concrete construction work, that Hitler gave orders for the use of one hundred thousand Jews, or did the Jaegerstab request this?

A. I am sure that the Jaegerstab did not do that. I cannot say for sure if before the collapse I knew anything at all about this matter. I know from the record that Hitler is said to have had a conference on 4 January 1944 about this question. However, I know that that conference lasted for quite a few days, I believe, from 1 to 4 January. I participated for a very short time in that conference on 4 January. I do not know, or I cannot recall, if during the time I was there they discussed that point.

Q. Did you later on find out that Jewish concentration camp inmates were used in this construction?

A. I never found out for sure.

Q. However, in the sessions of the Jaegerstab they had discussed that point?

A. I cannot remember anything about it. Many things were discussed there every day, so that it is not quite possible to remember every detail that they discussed.

Q. During those conferences or meetings, the number of which you had mentioned, did you always participate in these conferences?

A. No. I was called out very often. I left on my own initiative sometimes in order to make certain arrangements in connection with my other fields of work; otherwise, I should not have been able to do any work whatsoever in my other spheres. At that time I had the whole set-up of General Foerster under my orders, and also the entire training of the Luftwaffe; on top of that were the questions of the Inspectorate General and his problems.

Q. Witness, I shall come now to your speech of 25 March 1944, which has been repeatedly mentioned here, Document NOKW-017, Prosecution Exhibit 54. It is your speech to the chief engineers of the Luftwaffe and the chief quartermasters. It says here at one point that for construction a few hundred thousand laborers were being used who had been withdrawn from other places. By that don't you mean those 100,000 Jews we just mentioned?

A. No. Under no circumstances. At that time workers had been transferred for these purposes from many other constructions which were already under way.

Q. Witness—

A. May I add to that, this: I could not possibly imagine why Jews should be used as construction workers. Therefore, I am sure that it would have struck me if I had heard that, for Jews are not used as carpenters and bricklayers. They are mostly people who work in offices, and one could hardly expect construction work

from them. I don't believe that I myself, as a man who has never done that kind of work, would be of any use for it.

Q. Witness, explain to us now the purpose of this speech of yours, which uses rather strong language.

A. During the severe air raids we had lost many stocks of material, mainly of parts. The new output of these parts could not possibly keep pace with the destruction. There was only one way left, namely, to take these parts from troops' stocks. The troops had large stocks over which the GL himself had no power of disposal whatsoever. He just gave the orders for the manufacture of them. The requests of the troops, in my opinion, were always too high—4.2 billion marks' worth of parts were being ordered at that time, that is proof of it. If we wanted to have these planes, which were half ready, in time, it was possible only if the troops would give us some of their parts. Prior to this conference many attempts to that effect had been made, but the Quartermaster General, because of the veto of his chief quartermasters and chief engineers, had refused my wishes. I was very annoyed about that. Saur came to see me and stressed once more that the completion of the planes was impossible. He thought that in the army that would have been taken care of long ago, but in the Luftwaffe there did not seem to be any definite power to give orders, and he would take this matter up with the higher authorities. That, for the second time, made me very cross, and when this conference took place immediately after these things, I spoke in very strong terms in order that the Quartermaster General with his staff should give me the parts that were needed. That was the purpose and the aim of the whole thing, and contrary to what had happened before, when they had refused me those parts, the harsh military speech I made was crowned with success.

Q. Witness, in this speech there are certain passages which in themselves have nothing to do with those aims you just mentioned. I would like to show you these passages. At one spot you come to the question concerning labor, and you say that the portion assigned to the Luftwaffe in the allocation of labor had been constantly diminished, that the foreigners were running away and not keeping their contracts, and that if a foreman reprimanded or beat one of these young laborers who was engaged in sabotage, he, the foreman, got into trouble; and that the international law could not be applied here and that you would see to it yourself that the prisoners, with the exception of the Americans and British, were removed from the power of the military organization—then, if a man committed sabotage, he should be hanged in his

own factory or workshop. What does that have to do with this speech and these aims that you mentioned?

A. As far as prisoners of war were working with the Luftwaffe itself, the Quartermaster General and the Chief Quartermaster had something to do with it. This was to be a threat to that department, namely, that certain rights would be withdrawn from them. Of course, I could not do that. I don't believe that Goering would have followed such a suggestion of mine either.

I have no excuse whatsoever for these words which I used. I have now had the time to read this passage in peace, and I cannot understand it myself. I can only repeat that I myself was in an impossible position. I could see what was coming, and I could no longer help my people. At that time—I do not wish to say this as an excuse, but just in order to explain—I was still suffering very badly from my accident, and I could not quite get over the concussion, because at that time I could not possibly be absent for one minute. I knew that because my doctor was worried about me and he tried to help me with all sorts of drugs and medicines.

Q. Witness, a number of witnesses who were here have stated that very often you had outbursts of rage. At the time when you made that statement did you have the sincere wish to carry through these measures?

A. No. I can say that with a good conscience. Never, never in my life did I do such a thing, and I believe that he who really knows me knows exactly that, on the contrary, I was different. However, at that time I simply had to give vent to my feelings, and I could not use strong words to the people I really wanted to use them on. That was not consistent with the discipline you have in an army. I also have to say that immediately after such a discussion I myself no longer knew what I had said during one of those outbursts of rage. Even today I could not say for sure that I said that. However, I cannot deny it.

Q. Witness, did you at that time use such wild expressions with reference to these Luftwaffe gentlemen, and did you threaten them as well?

A. Yes. I did. I read now that I did so. I am very sorry even today that I used such strong words against my comrades.

Q. Later on in another place you said that people who acted as if they were sick ought to be whipped to work and that the whip should be used as a medicine. That is a similar statement?

A. That was just silly talk, so to speak, and I also used strong words about myself and called myself an idiot once in a while.

Q. Did you ever issue orders to drive people to work with the whip?

A. Never, and I am sure that I myself would have intervened in such a case.

Q. Did you ever have anybody hanged because of sabotage at any time.

A. No. First, I did not do it. Second, I could not do it. I never had anybody punished for sabotage in any way because that was not within my competency, not even in the few instances where sabotage had actually taken place.

Q. Witness, weren't you afraid, however, that if you spoke like that before this circle of men, that those people would actually act according to your words?

A. In this circle there was nobody who could possibly have the power to carry out such things, and second, I believe that everybody knew me, because my friends even at that time had told me that I had lost my control over myself. It was a very good thing that nobody took me seriously at such a time. I also always promised myself that I would not burst into rage again. However, at that time I did not have full control over myself because the situation was becoming more serious every day. Moreover, I knew that all this could have been avoided, that it had never been necessary to go to war, but if so, that the war could have been terminated long ago, and apart from all this, if nothing else, the destruction of Germany could have been avoided. That thought did not leave me alone day or night, and that actually contributed to these explosions. When everything was over, from that day I became more quiet.

Q. Witness, those people you spoke to were soldiers, were they not?

A. Yes.

Q. Could those soldiers, according to your knowledge, have possibly been led to carry out these orders which were against international law?

A. No, never. They quite rightly thought, as people often told me, that I was crazy during such outbursts. I myself was in no position to judge that, however.

Q. Witness, however, a certain number of measures in contradiction to international law were carried out in Germany. Did you know anything about that, could you have thought then that maybe you were also causing such measures against international law?

A. No. I did not know about that, with the very few exceptions that were discussed here. However, I never connected them with myself. There never was any connection at any time.

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[March 18]

Q. Witness, after you received the Knight's Cross in 1940, did you receive any distinctions from Hitler, any decorations?

A. Yes, I did, in 1940 I received the promotion to a field marshal, and that was also in 1940. After 1940 I did not receive anything which I considered a distinction as a soldier, because the bonus I received in 1942—yes, I will refer to that later—I couldn't see any distinction in that as a soldier.

Q. Will you now talk of this bonus which you received? Give us some details about it.

A. Hitler sent his adjutant on my 50th birthday, with a picture of Hitler, that is, a photograph, with a dedication, and a letter in which he congratulated me, and there was a check inside to the amount of 250,000 marks. Hitler wrote in his letter that he knew I was leading a very modest life and he would like to give me in this way the possibility of making it a little pleasanter.

I thanked Hitler, and I told him that I gladly accepted the money, because after all I could not refuse it, as a compensation for the fact that I had earned a little less by this amount than I would have earned if I had remained with the Lufthansa, because my salary in the Lufthansa was twice as high, and even later on, three times as high as the money I received from the State. Consequently, I did not consider that as a gift exceeding my merits.

Q. Witness, did the Air Ministry not offer you a bonus, also?

A. That was not a bonus but the President of the Air Ministry told me that the industry wanted to give me a present to the value of 50,000 marks. I told him that I rejected this present; it looked to me like bribery. He immediately withdrew the offer, especially as he knew that never in my life had I accepted a present from industry while I was in government service.

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Q. Was it possible for you to remove directors of industry, or to appoint them?

A. No. Either there were limited companies [G.m.b.H.], or shareholder companies, and they had their own organizations, their own administrations. The shareholders appointed the board of directors and the board of directors decided who was to be the general manager, and we never interfered with that.

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Q. Witness, will you explain to the Tribunal how overburdened you were with work during all these years?

A. May I refer to my field of tasks which is shown in one exhibit?

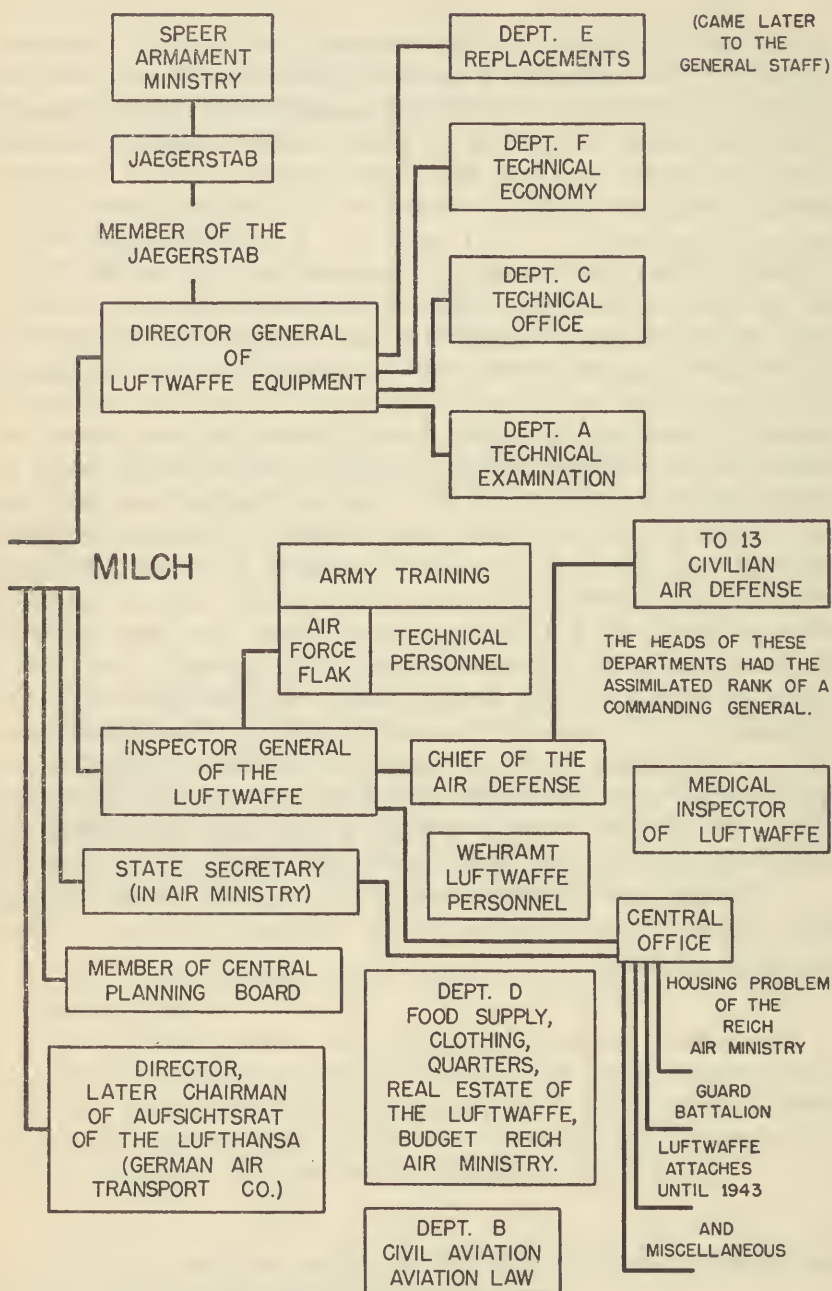
DR. BERGOLD: May I ask this Tribunal now to see the charts which are in the document book—the first document?

* * * * *

A. Until the end of 1941 my main task was that of Inspector General of the Luftwaffe. From that point onward, the work as GL took the first place, while in my capacity as Inspector General I was continuously travelling by plane. But as Inspector General I was tied more closely to the Berlin ministry. Oh, I beg your pardon, I mean to say as GL. There we had meetings every day; and in my capacity as GL I took over a technical staff in the Ministry of over four thousand. I reduced this staff to about half; but in spite of that the number of conferences and meetings could not be reduced. Therefore, I had to go through the incredible amount of papers which were to be read and also the papers which had to be signed; and I had to take them home in the evening. I think that always amounted to two large suitcases and sometimes even three of them. On the average I would work at home until 2:00 o'clock, a.m. The reading was the main task because in all technical matters I had to be up to the mark myself; and that was not very easy for me because, after all, I had not studied technique but rather was a self-taught man as a soldier who had been a pilot. In the morning I would start my duties at 9:00 o'clock or at 9:15. Generally I would eat my lunch at my desk, and often I even ate my dinner at my desk, so that I had the impression that I was overburdened with work. Even apart from these two functions, as GL and Inspector General of the Luftwaffe, the direction of the different other offices in the Ministry made quite a lot of work for me, though in my last position the excellent General Foerster took most of the work off me.

Q. Witness, are the offices correct as they are shown on this chart which I have submitted to the Tribunal, and can you confirm them as such?

CHART OF MILCH'S POSITION SUBMITTED BY DEFENSE



IN THE REICH AIR MINISTRY APPROXIMATELY 5000-6000 PERSONS (OFFICERS, CIVIL SERVANTS, ENGINEERS, EMPLOYEES,) WITHOUT FIELD OFFICES.

A. Yes.

DR. BERGOLD: May it please the Tribunal, this concludes my interrogation; and I make room now for the prosecution.

CROSS-EXAMINATION

MR. DENNEY: You testified as a witness before the International Military Tribunal on behalf of the defendant Goering, did you not?

A. Yes, I did.

Q. And in the course of your testimony before the Tribunal you stated that you were the second highest officer in the air force?

A. Yes, that was my rank.

Q. So that the only one who ranked higher than you was Goering?

A. Yes.

Q. And that continued up until the time when you told us this morning that you completely withdrew, which, I believe was some time in January of 1945?

A. Yes. May I remark here that from 1937 several officers were in the second place. That is to say, the chief of the general staff, the chief of the personnel office, and also the GL. We were all of the same rank, as it were, but I was the most senior officer among them.

Q. And under Goering there were really four echelons; that is, the chief of staff, the inspector general, the GL, and the director of the personnel office?

A. Yes. They were all equal to each other.

Q. Goering was on top, and then came these four in a parallel line below him; is that right?

A. Yes, under Goering.

Q. And you, from 1941, November, following Udet's death until sometime in the middle of 1944, held both the office of GL and inspector general?

A. That is correct.

* * * * *

MR. DENNEY: If your Honor pleases, I ask that this be marked Prosecution Exhibit 133 for identification. This is a letter, dated 1 April 1943. The writer of the letter is Sauckel, and the letter is addressed to the defendant.

"Most honored Field Marshal,

"I take the liberty of enclosing in confidence three copies of the speech I gave in Poznan on 5 and 6 February 1943, on the occasion of the Reich and Gauleiters meeting and beg you kindly

to peruse it. The figures contained in this speech refer to the end of the year 1942. Of course, the figures given concerning utilization of labor have again increased in the meantime. I would ask for your continued sympathetic understanding of the interests of manpower utilization, and your understanding and assistance in my task as far as possible. On my side, I can assure you that I always have asked the offices of the labor allocation administration subordinate to me for close and successful cooperation with all departments, and that I will do so for the future too.

"Heil Hitler,
"Yours respectfully,
[Signed] "Sauckel"

And, on the 7th, the last page, the defendant acknowledges receipt of this letter:

"Most esteemed Gauleiter,

"I thank you most cordially for kindly transmitting to me the speech you made in Poznan on 5 and 6 February 1943 on the occasion of the Reich and Gauleiters meeting.

"Heil Hitler! Yours."

* * * * *

Q. Do you recall receiving it from Sauckel on 1 April 1943?

A. No. At the beginning of April I wasn't there the first few days. I see a remark, by somebody else, on this document. It probably says—I can't read it very well—"for the files of the Central Planning Board". Perhaps this letter may have been submitted to me later on—I do not know whether I replied myself. I certainly did not read the report because otherwise I would be able to recall the figures.

Q. But you did initial the letter, didn't you?

A. I do not know. I do not recall it at all.

* * * * *

MR. DENNEY: On the copy that your Honors have, I believe it's apparent in the upper left-hand corner of the first page, the defendant's initials appear there, as well as on the original letter.

* * * * *

Q. Now, do you ever recall saying that you would put the German workers into concentration camps, the ones who did not work well?

A. When I talked about slackers, I referred to education by Himmler, but not to sending them into concentration camps.

Himmler had other training places for workers where such people who were disinclined to work were being trained by making their supplementary rations dependent on their production.

Q. Don't you recall that you asked that certain camps be set up especially to take care of these German workers who weren't doing well?

A. I did not say that we should make a special camp, but that they should go to the training camps which already existed and we could get them back from there. I do wish to emphasize here these were people, Germans, who did not do their duty towards their Fatherland. I thought it justified that such people should be trained.

* * * * *

MR. DENNEY: Witness, I believe you said you kept a diary?

A. A diary? You could not call it exactly a diary, I only took some short notes concerning my stay, and I jotted down a few key words which conveyed generally the most important matters.

Q. That was lost, was it, or destroyed, when you were captured?

A. It has not been lost. I still have it here.

Q. That is what you are referring to?

A. If I look up where I was at a particular day or what personalities I met, I refer only to the most important questions, not to everything, I can see whom I was with. Sometimes there is a table of contents, too, which is more detailed, according to the interest I had in those questions. For instance, for 28 October, which you referred to a while ago, I only have the following: My dispute with Goering he had reported to Hitler; he had not obtained anything, and now he started to vent his bad humor on me. Then comes a short note again that there was a conference afterwards with Goering. That was in Karin hall. It went on for the whole day. It was one hour from Berlin by car. I noted down that Speer was there, that Sauckel was there, Grawitz, von der Heyde, and some others. There is no mention what subjects were discussed, but the attendance of Sauckel clarifies the matter for me. That is an example of how I would enter these notes in this book.

Q. Insofar as you recall, you were at that meeting on 28 October?

A. Yes, indeed. I have found it here in my book.

* * * * *

PRESIDING JUDGE TOMS: Mr. Denney, let's get an unequivocal answer to this. Did you put the initials on the letter from Sauckel?

MILCH: The "Mi", yes, indeed.

Q. You wrote that?

A. Yes, I did. I wrote it. Somebody else wrote "to the files—"

Q. Never mind what somebody else wrote. Now, on the first page of the pamphlet, the printed speech, there are some initials. Did you write those?

A. On the cover, yes; I did, "Mi, 6/4", that is what I wrote.

Q. All right.

MR. DENNEY: Do you recall saying that Americans were never assigned to work in any of the airplane factories?

MILCH: Yes, I said that.

Q. This is Document NOKW-364, which is a partial translation of the minutes of the Jaegerstab, held on 19 June 1944. The cover page, which is photostated here in the German, which will be given to the Secretary General, bears the initials of the defendant.

PRESIDING JUDGE TOMS: Is this a new exhibit?

MR. DENNEY: Yes, your Honor. This will bear Prosecution Exhibit Number 135 for identification, if your Honor pleases. Document NOKW-364, a partial translation of the minutes of the Jaegerstab of a meeting held 19 June 1944. On the covering page there appear the initials of the defendant. Perhaps the Secretary General would be good enough to let Mr. Blakeslee have the original so the cover page can be shown to the defendant. Just show it to him, Mr. Blakeslee.

(The document was handed to the defendant.)

* * * * *

MR. DENNEY: Do your records show that you attended a conference of the GL on 4 August 1942?

A. Yes, indeed. These discussions were twice a week. (NOKW-409, *Pros. Ex. 140.*)

* * * * *

JUDGE MUSMANN: Curiosity consumes me as to what would happen if an officer inferior in rank to yourself took you at your word and actually executed a number of these workers or prisoners of war. Would that officer then be punished?

A. No one was there who would have been in a position to do that. Apart from that, all those who were under my orders knew me and my way of handling things. They knew that I didn't mean it, and apart from that they always laughed about my remarks when I let myself go, as they said.

Q. In other words the comment of the Field Marshal in a matter of this seriousness was really of no value?

A. Because the people knew that I got excited very easily about certain things, and these incidents here have been selected and produced. From every one of these meetings which took place

twice a month, there was a long report and owing to one or other of these reports, maybe once or twice, there would be a certain outburst or explosion, and then, as we soldiers were accustomed to do, we would just get mad, that is all. However, I didn't intend to do anything about it and I spoke to those under my orders when the opportunity offered. They pointed the matter out to me. They knew exactly from my words that this was not meant seriously. They knew exactly that no such order had been given and that I myself would never cause anybody to be punished, not even then when it might have been justified, for the very simple reason that I did not have the power to administer punishments.

JUDGE PHILLIPS: Mr. Denney read this paragraph to you, Document NOKW-409, Prosecution Exhibit 140. I understood you to say this, that the paragraph did not contain your attitude there, that you never gave such an order, that when you were worried you sometimes used strong language as a soldier would. Didn't you say that?

A. Yes.

Q. Well, now whether you meant it or not, you would say these things, and by so doing you counseled and advised others under you at a meeting over which you presided to do such things. Whether you meant it or not you did that, didn't you?

A. No, I never gave an order by using these words, because my people spoke with me, and they knew afterwards from my words that I never meant it earnestly.

Q. Didn't you say, "I would band the workers together and have fifty percent of them shot. I would then publish this fact and compel the other fifty percent to work by beating if necessary." Did you say that or not?

A. I do not remember having said that. However, three days ago I believe I said that, when I had such a rush of blood to my head, due to that injury I had, and I couldn't remember what I had said at that particular moment. I just burst out with rage.

Q. Well, if you did say that, you were advising and counseling others to do that, were you not?

A. No, that was not a counsel or an advice to anybody else. On the contrary, it was known that if someone had done such a thing I would have intervened myself.

* * * * *

[March 20]

JUDGE MUSMANN: Since we are on the subject of Jews, I would like to refer to something which occurred at the first trial. Now

you are not compelled to discuss this matter if for any reason you prefer not to, but you will recall that you were cross-examined by Justice Jackson on the subject of your being Aryanized. Do you recall that?

A. Yes, I recall it.

Q. Now you gave an explanation at the trial which, however, was not definite, it seems to have left something in mid-air, and since you have given us quite a long autobiographical sketch of yourself, if you would care to enlighten us on this point, you are free to do so.

A. My point of view is as I stated at the time.

Q. Yes.

A. That point of view I still adhere to.

Q. Let us see. You were asked certain questions and gave certain answers as follows:

“Question: At that time” (Goering had referred to 1933) “Goering had you—we will have no misunderstanding about this—Goering made you what you call a full Aryan; was that right?”

“Answer: I do not think he made me one; I was one.

“Question: Well, he had it established, let us say.

“Answer: He had helped me in clearing up this question, which was not clear.

“Question: That is, your mother’s husband was a Jew; is that correct?”

“Answer: It was not said so.

“Question: You had to demonstrate that none of your ancestry was Jewish; is that correct?”

“Answer: Yes, everybody had to do that.

“Question: And in your case that involved your father, your alleged father, is that correct?”

“Answer: Yes.” [There the inquiry rested.]

A. Yes.

Q. Just what had to be done to demonstrate that you were a full Aryan, and why did the question arise?

A. The first time that question arose was in 1933, and the occasion was the following: The president of the German Aero Club was reported as being adverse to the Hitler regime, and I protected that man. Following that, a man who was a member of the SA sent a letter to Goering, and I may add that this was a man who was trying to become a state secretary in the Air Ministry, and he had been deeply hurt when he, an old Party member, had to take second place to me. In this letter he said that State Secretary Milch was not a full Aryan. This happened in the summer of 1933. Goering forwarded this letter to me, and I went

to Goering. Following that I was asked to submit my family tree. That is how this matter arose.

Q. In other words, you had to establish that no Jewish blood flowed in your veins, is that correct?

A. Yes, that is what I was supposed to do.

Q. And you established that to their satisfaction?

A. That was established.

* * * * *

Q. * * * Now, I understand you to say that the first time you learned of the proposed war against Poland was on 21 August, and even then it was not very clearly indicated that a war could actually be unleashed, and that further it was not until the very end of the day, that is to say, at five o'clock in the afternoon of 31 August that you were directed to put the Luftwaffe, or all your forces, in readiness for the attack. Is that correct? Is that what you said?

A. On 31 August, not to get ready, but I received the order: "The attack starts tomorrow," that was the order for an attack, whereas, over-all preparations had been made previously at the meeting which took place with Hitler on 22 August, only then there was still the possibility of negotiations which were still going on. These negotiations came to an end on 31 August at 1700 hours.

Q. Did you not tell this Tribunal that after the meeting of 23 May 1939 you were convinced that war was not intended?

A. 23d of May?

Q. Yes, 23 May 1939?

A. Yes.

Q. That you had no intimation that Hitler intended an aggressive war on Poland?

A. Yes, because at that time, according to my recollection, Hitler stated again and again that he was certainly going to settle the Polish problem, but that he would not allow war to break out.

Q. And that you had called to his attention the necessity of manufacturing bombs, because you believed that hostilities might break out?

A. That was before that date, before the 23d, and also after the 23d, because I myself did not share Hitler's optimism. Although he may not have intended to wage war, his policy might nevertheless have led to war, for he alone was not the deciding factor, the others would have something to say as well.

Q. And that assumption lulled you into the conviction that there would be no war, since he refused you authority to manufacture bombs?

A. Today I must assume that, at that time I was not aware of it.

* * * * *

Q. When did you first learn that an attack on Russia was intended?

A. At the beginning of January 1941—I beg your pardon—yes, that is right, 1941, on 13 January actually. It was then that Goering, during a conference with a large circle of commanding officers, informed us that one's attention should be turned to the East, as Hitler was fearing an attack by the Russians.

Q. Yes, and you finally came to the conclusion that the declaration of war, or rather, the undeclared war against Russia was a crime against Germany.

A. Yes.

Q. Did you think it was a crime against Russia?

A. Yes, against Russia also.

Q. Also?

A. Yes.

Q. Now, you endeavored to see Hitler to persuade him not to enter this war.

A. Yes.

Q. And your immediate circle, your military friends, realized that it was foolhardy to provoke a war with Russia and thereby establish two fronts?

A. Exactly the way I saw it, yes. My immediate circle were of the same opinion as I was.

Q. And all the generals were of the same impression—that it was hopeless for Germany, and that further it was tragic and suicidal to Germany to allow Hitler to take over the control of the armed forces? You were practically unanimous in that belief, were you not?

A. This was never discussed in any larger circles.

Q. But you have testified—it is in the record—that you were all of that belief.

A. It transpired at a later stage, when it was discussed, that they were all of the same opinion.

Q. When was that?

A. Later on in the course of the war.

Q. When did you realize that it was a mistake to have Hitler as Commander in Chief of the Armed Forces?

A. I, personally?

Q. When was it thoroughly recognized, even though not expressed at a public meeting among the generals, that it was suicidal, a great mistake, to have Hitler as Commander in Chief?

A. That was the general point of view after Stalingrad. That is when it became general.

Q. And when was that?

A. That was the end of January 1943.

Q. Yes. You still had two and a half years of war ahead of you?

A. Yes.

Q. Why didn't you do something about having Hitler removed?

A. It was my duty toward my people to keep allegiance to him. I had sworn an oath of allegiance to Hitler. I am only a human being who can see this world subjectively and I cannot presume to be an impartial judge on such questions. Moreover, I believe that in the whole of Germany's history there is not one instance of soldiers rising against their military commander. I certainly do not know of one.

Q. Even though you realized that Hitler was leading Germany into stark annihilation and unspeakable hardship, and even though all the generals were of that same belief, yet you upheld this fetish of an allegiance which was destined, and very clearly so, to bring unparalleled misery to the people that you professed to be faithful to?

A. Your Honor, I personally did not presume to say that my judgment was right, and that Hitler's judgment, and the judgment of all those around him, was wrong.

Q. Then, you modify your statement that Hitler was wrong? You say that he might have been right?

A. No, no, I am not saying that. What I am trying to say is that it was my point of view that the question whether the head of the state was to be overthrown or not was a matter for the constitution, and that for this eventuality the constitution and the state must surely have powers, means through which in such cases there could be intervention; but then it could not be the task of any individual general to take steps in such questions, which were, after all, unlawful.

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V. CLOSING STATEMENTS

A. Closing Statement of the Prosecution *

MR. CLARK DENNY: We close today the trial of a major war criminal—a leader in a slaving operation, the enormity of which is without historical parallel; a principal in a crime of murder in the ironic masquerade of scientific progress which has shocked alike the world of medicine and the world of laymen. The evidence set forth before the Tribunal has shown that Erhard Milch was primarily implicated as a leader in a program to bring laborers into Germany by force, of allocating them to the various segments of the German war economy, and of munitions.

We deal here with a top military and economic planner who at all times was fully informed as to the aims and objectives of the Nazi plan. Unlike his colleagues Speer and Sauckel, Milch entered the conspiracy early. The defendant was one of a small group of men who constituted the leadership of the Reich.

Before dealing directly with the responsibility of the defendant for the crimes charged in the indictment, as shown by the evidence, we should like to review, briefly, the law applicable to these crimes.

THE LAW

The indictment charges and the evidence has connected the defendant with a wide variety of crimes incident to the enforced labor program of the Nazi regime. In themselves, these crimes are not new except in their enormity. In domestic law they have, from ancient times, borne such familiar titles as assault, battery, murder, kidnapping and pillage. In international law the principles which protect the individual from undue interference with his person and his personal freedom have given rise to a series of kindred precepts governing the conduct of a nation which has gained factual control over the citizens of another state. We shall consider briefly some salient precepts and prohibitions of international law up to, and including the provisions of Control Council Law No. 10.

Much of the labor which supplied Germany with the tools of total war was exacted from people who had been uprooted from their homes in occupied territories and imported to Germany. Displacement of groups of persons from one country to another

* Mr. Clark Denney delivered the closing statement before the Tribunal on 25 March 1947, Tr. pp. 2435-2488.

is the proper concern of international law insofar as it affects the community of nations.

The law has recognized that some conditions may justify the transfer of people from one country to another. Correspondingly, and with much more relevance to the present case, international law has enunciated certain conditions under which the fact of deportation becomes a crime.

If the transfer is carried out without a legal title, as is the case where people are deported from a country occupied by an invader while the occupied enemy still has an army in the field, the deportation is contrary to international law. The rationale of this rule lies in the supposition that the occupying power has prevented temporarily the rightful sovereign from exercising power over its citizens.

Articles 43, 46, 49, 52, 55, and 56 of the Hague Regulations, which limit the rights of the belligerent occupant, do not *expressly* specify as a crime the deportation of civilians from an occupied territory. However, Article 52 states the following conditions under which services may be demanded from the inhabitants of occupied countries:

1. They must be for the needs of the army of occupation;
2. They must be in proportion to the resources of the country;
and
3. They must be of such a nature as not to involve the inhabitants in the obligation to take part in military operations against their own country.

Insofar as this section limits the conscription of labor to that required for the needs of the army of occupation, it is clear that the use of labor from occupied territories outside of the area of occupation is forbidden by the Hague Regulations.

The illegality of the deportation of civilians in territories under belligerent occupation was demonstrated in the First World War when the Germans attempted a deportation program of Belgian workers into Germany. This measure met with world-wide protest and was abandoned after about four months.

Among the voices raised in protest against the deportation of Belgians by Germany in 1916-1917 was that of Lansing, Secretary of State. He wrote:

“The Government of the United States has learned with the greatest concern and regret of the policy of the German Government to deport from Belgium a portion of the civilian population for the purposes of forcing them to labor in Germany, and is constrained to protest in a friendly spirit but most

solemnly against this policy which is in contravention of all precedent and all principles of international practice which have long been accepted and followed by civilized nations in their treatment of noncombatants in conquered territory.”

Other protests were lodged with the German Government by Spain, Switzerland, Netherlands, and Brazil, all neutral countries. International lawyers all over the world condemned Germany's action in the strongest terms.

The opposition in the German Reichstag accused the government of violating the Hague Convention and refused to vote for the war budget.

It is worthy of note, in passing, that the defendant has testified at this trial that he knew of this effort at deportation of labor on the part of Germany in the First War and that he was much interested in the investigation conducted by a Reichstag Committee concerning this matter. He could not have followed this investigation, as he admits he did, without learning that the deportation in question was a violation of international law.

The second condition under which deportation becomes a crime occurs when the purpose of the displacement is illegal. A conspicuous example of illegality of purpose is found when the deportation is for the purpose of compelling the deportees to manufacture weapons for use against their homeland or to be assimilated in the working economy of the occupying country.

An attempt has been made by the defense in this trial to show that persons were deported from France into Germany legally and for a legal purpose, by pointing out that such deportations were authorized by agreements between Nazi and Vichy French authorities. This defense is both technically and substantially deficient. Many of the Vichy Government's highest officials, who held office by reason of and under the protection of Nazi power, have been punished for treason by the present legitimate government. And, too, the agreements themselves were illegal—because they were exacted under duress, and because they were void *ab initio* because of their immoral content. It is common knowledge that even the puppets of Vichy did not of their own accord agree to the Nazi deportation measures. It is equally clear that these agreements were *contra bonos mores*. Then, too, it was illegal for any French Government to conclude agreements which provided for the compulsory mass deportation of French workers to aid the enemy's war effort. At the time of the agreement between Germany and Vichy there was merely a state of suspension of hostilities. French resistance had not ceased, and the outcome of the war continued to be uncertain. Lastly, the deportation agree-

ments were invalid because their manifest purpose was to aid Germany in the commission of the crime of aggressive war. That an agreement in furtherance of an act which is illegal in international law is invalid has been stated by various authorities. For example, Professor Charles Cheney Hyde, of Columbia University, defines as internationally illegal "agreements which are concluded for the purpose of, and with a view to, causing the performance of acts which it (international law) proscribes."

Professor Hall, page 382 of the 8th Edition of International Law (1924), declares:

"The requirement that contracts shall be in conformity with law invalidates, or at least renders voidable, all agreements which are at variance with the fundamental principles of international law and their undisputed applications * * *."

Lauterpacht on International Law by L. Oppenheim, in volume I, page 706, states:

"It is a unanimously recognized customary rule of international law that obligations which are at variance with universally recognized principles of international law cannot be the object of a treaty."

The final condition under which deportation becomes illegal occurs whenever generally recognized standards of decency and humanity are disregarded. This flows from the established principle of law that an otherwise permissible act becomes a crime when carried out in a criminal manner.

A study of the pertinent parts of Control Council Law No. 10 strengthens the conclusions of the foregoing statements, that deportation of the population is criminal whenever there is no title in the deporting authority or whenever the purpose of the displacement is illegal, or whenever the deportation is characterized by inhumane or illegal methods.

Article II (1) (b) lists under war crimes "ill-treatment or deportation to slave labor or for any other purpose, of civilian population from occupied territory." It is clear that Law No. 10 establishes the following separate and distinct crimes: ill-treatment of civilians from occupied territories; deportation to slave labor of such civilians; and deportation for any other purposes of such civilians.

The prohibition of deportation of civilians from occupied territories irrespective of the purpose, as stated in Control Council Law No. 10, is a recognition of the principle of international law that a power in belligerent occupation has no right or authority (title) to deport the citizens of the occupied territories. The sepa-

rate specification as a war crime in Law No. 10 of ill-treatment of civilians from occupied territories is a recognition of the rule of international law, as heretofore discussed, that even an otherwise lawful deportation (by an authority having title and for a legitimate purpose) is rendered illegal where the deportees are ill-treated.

Without entering into a detailed discussion of the evidence, it should be pointed out at this point, that all these conditions for criminal deportation were abundantly present in the enforced labor program of Germany during the 2d World War, and that the *knowing connection* of the defendant with all phases of illegal deportation has been established.

Article II (1) (c) of Control Council Law No. 10 specifies certain crimes against humanity. Among these is listed the "deportation * * * (of) any civilian population * * *". The general language of this sub-section, as applied to deportation, indicates that Control Council Law No. 10 has indeed unconditionally condemned, as a crime against humanity, every instance of the deportation of civilians. Under this sub-section, there would seem to be no room for argument as to the legality of any agreement on the part of any government, legitimate or illegitimate, which allows deportation of its subjects in time of war.

We come now to a consideration of the crime of enslavement. Whereas Article II (b) names deportation to slave labor as a war crime, Article II (1) (c) states that the "enslavement * * * (of) any civilian population" is a crime against humanity. Thus, Law No. 10 treats as separate crimes, and different types of crime, "deportation to slave labor" and "enslavement."

Article II (b) does not specify as a crime the detention (as distinguished from the deportation) of civilians for use as slave labor or for any other purpose. However, the section does stipulate that any atrocities or offenses against persons which constitute violations of the laws or customs of war, *including but not limited to* deportation to slave labor, are war crimes. Use or detention of persons from occupied territories for slave labor or for any other purpose, in and of themselves, *do* constitute violations of the laws and customs of war. Ergo, such use or detention is a *war crime* within II (1) (b) of Law No. 10.

The *crime against humanity* which is termed "enslavement" in Article II (1) (c) of Law No. 10 is susceptible of two meanings. It can be understood to embrace the initial act of deprivation of the freedom of another, and an act whereby such deprivation is continued, or either of them, or it may be interpreted as referring only to the initial measures whereby a person is deprived of his freedom.

It is the contention of the prosecution in this case that all phases of the slave labor program, the taking, the transportation, the detention, the use and the inhuman treatment of foreign workers as practiced by the Nazi state and participated in by the defendant, constitute enslavement within the meaning of Article II (1) (c). No sufficient reason appears for the limitation of the crime to the mere initial act. In every true and complete sense a person is enslaved from the moment when his liberty is taken from him until the time when it is restored to him. It is more than probable that if Law No. 10 is intended to limit the crime of enslavement to the initial measures under which a person was deprived of his liberty, there would have been some definite indication, either in the language or in the context of the statute.

Even if we were to concede the narrowest possible meaning for the term "enslavement" in Article II (1) (c), so as to understand by it only the first acts of deprivation of liberty, all acts under which such people were kept in an enslaved status would be crimes against humanity, because the same section defines as such any atrocities and offenses committed against the civilian population. By express proviso "enslavement" and "deportation" are only illustratively mentioned, and "other inhuman acts committed against any civilian population" constitute crimes against humanity.

The result is that whether we adopt the broad interpretation of the term "enslavement" or the narrower one, the deportation, the transportation, the retention, the use and the inhuman treatment of civilian populations are crimes against humanity. The prosecution charges that the defendant was criminally connected with all the phases of the slave labor program, whether these divisions be comprehended within the technical term "enslavement" or be divided between the crime of "enslavement" and that of "other inhuman acts."

We shall now make brief comment on the subject of the treatment and use of prisoners of war. The Hague and Geneva Conventions merely codify the precepts of the laws and usages of all civilized nations. Article 31 of the Geneva Convention provides that "labor furnished by prisoners of war shall have no direct relation to war operations." Thus the Convention forbids:

1. The use of prisoners of war in manufacture or transportation of arms or munitions of any kind, and
2. The use of prisoners of war for transporting material intended for combat units.

The Hague Regulations contain comparable provisions.

The essence of the crime of the misuse of prisoners of war derives from the kind of work to which they are assigned—in other words, to work directly connected with the war effort. The prosecution would like to recall to the court the evidence which connects the defendant with both the *illegal employment* of prisoners of war and with their abusive treatment. The Tribunal will recall that the defendant ordered the murder of prisoners of war who attempted to escape. We will discuss this crime more fully later. It will be remembered that there never has been a substantial denial of the fact that prisoners of war were used to man German anti-aircraft batteries. Nor is it subject to doubt that prisoners were used in air armament industries over which the defendant exercised supervisory control.

We now come to the consideration of the basic charges and the law governing the defendant's complicity in, and responsibility for, the Medical Experiments Program. The fundamental crime with which the defendant is charged in this connection is murder. Also involved are various atrocities, tortures, offenses against the person, and other inhuman acts.

The applicable provisions of Control Council Law No. 10, Article II, are (b) war crimes, (c) crimes against humanity. In connection with the criminal Medical Experiments Program, the prosecution submits that the defendant is guilty of—

(a) War crimes, namely violations of the laws and customs of war, as the medical experiments performed upon involuntary persons, some of them nationals of countries at war with the German Reich, involved the commission of murders, tortures, and other inhuman acts.

(b) Crimes against humanity, namely medical experiments performed upon involuntary German nationals and nationals of other countries, in the course of which, brutalities, murders, and other inhuman acts were committed.

Before we pass from the law involved in this case to a consideration of the evidence, we wish to mention the legal basis for the prosecution's contention that the defendant must share the guilt which attaches to the slave labor program and the conduct of medical experiments upon unconsenting human beings. Control Council Law No. 10 defines for us the theory upon which this trial proceeds in Article II, paragraph 2, when it says:

“Any person without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in paragraph 1 of this Article, if he was (a) a principal or (b) 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. * * ** [Emphasis added.]

Without wishing to limit the scope of the testimony in this case, the Tribunal's attention is directed to the evidence which has established that the defendant, as a member of the Central Planning Board, and the Jaegerstab, and as Generalluftzeugmeister, and in every one of his capacities, was connected with "plans and enterprises" for the commission of war crimes and crimes against humanity, and was a "member of organizations and groups", within the meaning of subdivisions (d) and (e) of paragraph 2, "connected with the commission of such crimes".

Count One, paragraph 6, of the indictment charges the defendant Milch with guilt in the murder of prisoners of war who had attempted to escape from enforced labor in German war industry. The gist of this crime is murder, which is, and always has been, prohibited by every country which laid any claim to civilization. It was specified as a war crime under the Hague and Geneva Conventions and under the provisions of Article II of Control Council Law No. 10. The evidence which connects the defendant with this crime will be discussed in another part of this summation.

Law Number 10, Article II, paragraph 3 provides that the death penalty or lesser sentences may be prescribed for the commission of war crimes and crimes against humanity as defined in the statute.

We turn now from the law to the evidence. In the presentation of its case in chief, the prosecution first offered evidence to describe the slave labor program in Germany in all its stark terror. It then turned to a presentation of the proof which connected the defendant with the slave labor program in two of his principal capacities, as member of the Central Planning Board and as member of the Jaegerstab. Next there was put in evidence the documents which established the defendant's connection with the medical experiments, and finally, after the defense had put in its case, the defendant was confronted with the evidence of additional documents which connected him with the detention and mistreatment of slave labor in his capacity as Generalluftzeugmeister. In summing up the evidence the prosecution wants to keep roughly the same order. It will deal in turn with the evidence of the defendant's activities as member of the Central Planning Board and as member of the Jaegerstab. The documents relating to the defendant as Generalluftzeugmeister will then be dealt with and,

in conclusion, the defendant's implication in the criminal medical experiments will be discussed.

When, in the course of presenting the evidence, we first turned our attention from the general documents which established the body of the crime of slave labor to the documents which were to prove the the defendant's connection with that crime, we asked the Court's attention to certain key words which we said would run like small threads through our proof. These words were cited to be "procurement, allocation and use". It was stated that we would often use them. We offered many documents to prove Milch's connection with each of the functions described by these key words. Once again, we ask the Tribunal to keep these words in mind.

The Central Planning Board, which was established in April 1942, served as a means of consolidating in a single agency all controls over German war production. The minutes of the Central Planning Board which have been submitted to the Tribunal reflect the dominant role played by the defendant at meetings of the Board.

The best evidence of the scope and authority of the Central Planning Board is contained in the Board's own minutes. The first conference of the Central Planning Board was held on 27 April 1942. The duties and responsibilities of the Board were announced in these words:

"The Central Planning in the Four Year Plan (decree of the Reich Marshal of Greater Germany [Goering] of 22 April 1942) is a task for leaders. It encompasses only principles and executive matters. It makes unequivocal decisions and supervises the execution of its directives. The Central Planning does not rely on anonymous institutions difficult to control but always on individuals and fully responsible persons who are free in the selection of their working methods and their collaborations, as far as there are no directives issued by the Central Planning."

Then, six months later, on 20 October 1942, the statutes of the Central Planning Board were published and distributed. A portion of these states:

"The Central Planning Board created by the Fuehrer and Reich Marshal in order to unify armament and war economy deals only with the decision of basic questions. Professional questions remain the task of the competent departments which in their field remain responsible within the framework of the decisions made by the Central Planning Board."

It is addressed to: "The highest Reich authorities, the Reich Protector, the Governor General and the executive authorities in the occupied countries." The letter of transmittal stated in part:

"Enclosed I send you for your information the statutes of the Central Planning Board with the request to support the office of the Central Planning Board in every possible way in its work, and to direct, more particularly, your section chiefs and reporters to forward all information requested orally, or by writing, in the shortest possible time. By this collaboration by your section chiefs and reporters, the building up of larger machinery in the framework of the Central Planning Board is to be avoided."

The International Military Tribunal found that the Central Planning Board "had supreme authority for the scheduling of German production and the allocation and development of raw material".

It needs no emphasis that the effective performance of these functions necessarily involved the Board in the requisitioning and distribution of labor, and the records of the Board, which have been submitted, leave no doubt that the Board exercised the authority conferred upon it in the field of labor. The International Military Tribunal in its opinion found that the Board requisitioned labor from Sauckel with full knowledge that the demands could be supplied only by foreign forced labor, and that the Board determined the basic allocation of this labor within the German war economy.

In assessing the guilt of the defendant Funk, the Court said: *

"In the fall of 1943, Funk was a member of the Central Planning Board which determined the total number of laborers needed for German industry, and required Sauckel to produce them, usually by deportation from occupied territories. Funk did not appear to be particularly interested in this aspect of the forced labor program, and usually sent a deputy to attend the meetings, often SS General Ohlendorf, the former Chief of the SD inside of Germany and the former Commander of Einsatzgruppe D. But Funk was aware that the Board of which he was a member was demanding the importation of slave laborers, and allocating them to the various industries under its control."

Bearing in mind the fact that Funk was a minor member of the Board, how much greater is the responsibility of the defendant

* Trial of the Major War Criminals, vol. I, p. 306, Nuremberg, 1947.

who was a dominant figure on the Board throughout its existence.

There is no need to review in historical detail the defendant's personal participation in the criminal activities of the Board. A few references to the pattern for 1944 will suffice. The Tribunal will recall that Albert Speer, the other dominant member of the Board, was ill during most of this period.

On 4 January 1944, demands were made at a Hitler conference that Sauckel produce four million new workers from the occupied countries. The defendant was present at the conference, and at this meeting, Sauckel, in pledging himself to perform his recruitment tasks, indicated that the demands could be met only by Himmler, and the promise of assistance was forthcoming from the Reich Leader SS.

The allocation of this labor to the various sectors of the German economy was determined by the Board at its 53d meeting. The defendant was the presiding officer at this meeting. The chart compiled by Milch and found in his files shows his personal knowledge of the sources of the labor being allocated.

Sauckel was, however, unable to satisfy completely these demands. He reported this inability at its 54th meeting. This meeting of the Board was presided over by the defendant, and the minutes which we have submitted show the subordinate position occupied by Sauckel with respect to the Board. The Tribunal will recall Sauckel's opening statement:

"Field Marshal, gentlemen, it goes without saying that we shall satisfy as far as possible the demands agreed upon by the Central Planning Board."

And then later on in the meeting:

"If I am to fulfill the demands which you present to me * * *."

We shall not review in detail the minutes of this meeting, but the Tribunal's attention is again directed to the fact that Sauckel was questioned closely by the defendant who suggested that the Wehrmacht be assigned to the task of assisting in the recruitment drive. The defendant suggested that French workers be coerced by a system of premeditated starvation. In dealing with the problem of Italian laborers, the defendant suggested that only those who went to Germany or worked in protected factories be given food.

As a further means of meeting the manpower shortage, consideration was given to possible measures for increasing the productive power of prisoners of war. Accordingly, on 5 March 1944, a conference was held at the Fuehrer Headquarters. It is evident from the minutes which have been submitted to the Tribunal that

the defendant was in attendance. The Tribunal will recall that the decision was made to give the direction of the Stalags to the SS, in order to increase the production power of the prisoners. This was not to apply to the Americans or the English. The Tribunal will take judicial notice of the methods of the SS.

On 7 July 1944, Sauckel issued a report showing new manpower placed at the disposal of German war industry during the first half of 1944. We shall not review in detail this report, but merely state that it is proof of the Board's directive to Sauckel.

This report, however, showed a deficit, and on 11 July 1944 a further conference was held to solve the question of how greater compulsion could be exerted on persons to work in Germany. The defendant has testified that he was in virtual retirement from production matters since late June 1944. Yet the record of this conference shows that he was present. The result of this conference was the greater utilization of the Wehrmacht in the recruitment of forced labor. The directive of Field Marshal von Kluge, which has been submitted in evidence, makes specific reference to the results of this conference.

Here, in brief, we have the picture. The defendant and the Board, of which he was a dominant member, requisitioning forced labor from Sauckel, allocating this labor to the various sectors of the German war economy, and later improvising new and more brutal techniques of force and terror for the recruitment of new labor.

The defense, besides denying the power and authority of the Central Planning Board, has challenged the authenticity and accuracy of its transcripts. The prosecution has been compelled to rely upon these minutes for much of its proof.

In this connection, it might be said that these same transcripts constituted the basis for findings of fact by the International Military Tribunal. They are quoted in the decision of that Court.

The statutes of the Central Planning Board, mentioned a few minutes ago, show the extreme care taken to insure the accuracy of reporting these meetings, as well as action taken or ordered to be taken. The statutes of the Board provide in part:

"In order to have the conferences properly prepared and to have the execution of the decisions supervised, the Central Planning Board appoints an office. This office consists of the deputies appointed by each of three members of the Central Planning Board; one of these three deputies shall be appointed chief of the office."

Then follows a handwritten marginal note which I shall omit.

"In accordance with the attached distribution of work the

office appoints reporters. These reporters are at the disposal of all members of the Central Planning Board. The office appoints one reporter to keep the record."

And then, tasks of the office:

"The office prepares the meetings of the Central Planning Board in such a manner that the members of the Central Planning Board have the agenda and the material of discussion 24 hours in advance. For this purpose the office conducts preliminary talks with the competent departments, etc.

"On the strength of the record made by the reporter, the office sees to the execution of the decisions of the Central Planning Board by the competent agencies, and sees to it that the deadlines fixed are complied with.

"The members of the office keep the members of the Central Planning Board informed between the sessions."

The minutes of these meetings which have been submitted to this Tribunal show that these proceedings were recorded and transcribed with characteristic German detail and accuracy. We need only refer to the charts and tables, and the remarks quoted in the transcripts. Of the 59 meetings fully covered by these official reports, 41 were prepared and signed by Ministerialrat Steffler, who was personally responsible for the accuracy and completeness of these reports.

Without the Central Planning Board the slave labor program could not have functioned.

THE JAEGERSTAB.

Here we have the defendant in immediate contact with the slave labor program at its peak. By the testimony of the defendant, it was he who conceived and instigated the formation of the Jaegerstab. Speer and the defendant constituted its leadership. Speer's participation was nominal and it was the defendant who directed its activities and acted as its chairman. Speer was ill during part of the Jaegerstab's existence and has stated to the Court that he did not preside at a meeting.

The Jaegerstab assumed control over fighter production when the exploitation of foreign forced labor in air armament had already reached unparalleled heights. On 16 February 1944, the defendant had told his colleagues in the Central Planning Board that "our best new engine is made 88 percent by Russian prisoners of war." On 25 March, he told his engineers that soon the percentage of foreign personnel in the aircraft industry would

reach 90 percent. Reich Leader SS Himmler, reporting to Goering on 9 March 1944 on the employment of concentration camp personnel in the aircraft industry, stated that nearly 36,000 prisoners were employed and that an increase to 90,000 was expected. The formation of the Jaegerstab is partly explainable in terms of the battle to increase the manpower resources available for fighter production.

The Jaegerstab was assigned top priority. Projects for the recruitment and commitment of manpower were discussed by the Jaegerstab. The evidence presented before the Tribunal has shown that questions of manpower were time and time again referred to the defendant. We have seen him agreeing to use his prestige and influence upon Sauckel in efforts to obtain new workers for aircraft production. When manpower in sufficient numbers was not forthcoming through normal channels, the Jaegerstab did not shrink from other methods of obtaining its labor. When necessary the Jaegerstab recruited its own labor, either directly or by engineering "snatching" expeditions for the seizure of manpower arriving on transports from the East.

The defendant's frank admission to his subordinates that "international law cannot be observed here" characterizes best his own participation in the activities of the Jaegerstab. Where, as was the case with France, transfers of production facilities were concerned, the defendant advocated the stripping of the country and the deportation of its people as prisoners of war. When the discussion turned to PW's, the defendant was quick to suggest their transfer to places under air attack. When the transportation of Italian civilian conscripts directly recruited by the Jaegerstab for service in Germany was in question, it was the defendant who advocated the shooting of those who attempted to escape.

The Jaegerstab was no mere discussion group. As an agency with absolute authority over fighter production, the Jaegerstab acted by orders and directives. The Jaegerstab fixed hours of labor and conditions of work. It was the Jaegerstab, for example, which established the 72-hour work week in the aircraft industry.

In addition to its jurisdiction over fighter production, the Jaegerstab was charged with the program for the decentralization of the German aircraft industry, both to above-ground bombproof installations and to subterranean locations. Much of the labor employed in both phases of the project was concentration camp labor. The defendant must have known this fact.

One phase, the transfer to new installations underground, was under the immediate supervision of SS Gruppenfuehrer Heinz Kammler. Kammler was a member of the Jaegerstab. Where, as was the case in some instances, labor was not forthcoming in suf-

ficient quantity, Kammler informed the Jaegerstab of his intention to take large numbers of persons into protective custody for use on his projects. Members of the Jaegerstab knew that manpower shortages on the construction projects were at least in part due to the high death rate. The conditions of employment on the projects have not been substantially disputed. The Jaegerstab was well informed of these conditions. While on trips with the Jaegerstab, Kammler visited these projects and his fellow members of the Jaegerstab were well advised as to the manner in which workers employed on them were treated. Where it was necessary to hang thirty people merely as an example to others, Kammler reported this fact to the Jaegerstab.

A second phase of the program, the transfer of fighter production to bombproof factories above ground, was carried out for the Jaegerstab by Stobbe-Dethleffsen and later Xaver Dorsch. While Stobbe-Dethleffsen and Dorsch were immediately in charge, it was the Jaegerstab which received the funds and raw materials necessary for the carrying out of this project. When sufficient progress had not been made under Stobbe-Dethleffsen, the Jaegerstab demanded that Dorsch carry out this program. The defendant was a leader in the planning which preceded Dorsch's appointment.

By the testimony of Dorsch, Milch was one of a small group which worked out with Goering the details of the project, including the question of manpower. Dorsch was represented on the Jaegerstab by Schlempp, and later Knipping, deputies designated for this particular purpose. Schlempp informed the Jaegerstab on the progress of the work, both orally and in writing. Dorsch received manpower from the Jaegerstab. This was the immediate concern of Schmelter.

Early in April 1944 the defendant represented the Jaegerstab at conferences with Hitler where the decision was first taken to carry out deportations. Shortly thereafter, the defendant received written confirmation of the results of this conference, as did Himmler, who was to procure the workers. Progress reports were made and delivery dates agreed upon. Then came the disappointing news that the first transports arriving at Auschwitz consisted primarily of old men, women, and children. Later on there were reports as to the successful allocation of this personnel. The testimony of Dorsch shows that these Jews were used on the construction projects, that the conditions under which they lived were intolerable, and that the death rate on the project was excessive.

In closing this phase of the case, it is submitted that the defendant never resigned from the Jaegerstab. While it is true that the defendant at Goering's behest was removed from certain offices in

the Air Ministry in the summer of 1944, he retained his membership in the Jaegerstab until its dissolution, the prosecution contends.

As Generalluftzeugmeister the defendant had complete control over aircraft production. In this field his authority was unlimited. In particular it has been shown that the defendant requisitioned labor for the aircraft industry with knowledge of the brutal and inhumane techniques employed in recruiting these laborers, and that he gave directives for the criminal treatment of these laborers at the centers of production.

There is evidence that the defendant presented the labor demands of the aircraft industry to Sauckel. The Tribunal will recall that in his affidavit Sauckel stated that it was the defendant who produced the manpower figures for aviation. In view of the position occupied by Sauckel in the slave labor program, this statement is of special importance.

The statement of Sauckel is in agreement with the statements of Hermann Goering, the defendant's superior in the Luftwaffe. In his interrogation the former Reich Marshal stated that the defendant was in charge of the division for labor employment in the Air Ministry and that the industry demands for labor in air armament were made by the defendant.

Even the defendant's collaborator Albert Speer testified to the same effect when he stated:

"The requests of the air armament industry for laborers were presented by Milch and he did not permit anyone to take this right away from him until March 1944."

The defendant as Generalluftzeugmeister was acquainted with the methods employed in recruiting this manpower. In fact, many of the practices indulged in by Sauckel were formulated at conferences at which the defendant was in attendance. The Tribunal will recall that the defendant was present at a conference in which Goering announced his plan to use the Luftwaffe in the recruitment drive to capture laborers in Holland. The Tribunal's attention is also drawn to the Generalluftzeugmeister meeting of 25 January 1944 in which methods for the more expeditious deportation of young Czechs for work in the Luftwaffe were discussed.

The defendant also knew that prisoners of war and concentration camp personnel were included in the manpower he was requisitioning and distributing to the aircraft industry. We have seen him trying to increase their numbers in the industry under his control, and we have seen him ordering and abetting the inhumane treatment of this labor.

As chief of aircraft production, the defendant regulated the treatment of foreign forced labor in the German aircraft industry. The defendant fixed hours of labor and conditions of work and by directives to his subordinates set basic policies for the handling of this labor within the industry.

Where foreign workers refused to work, the defendant ordered that they be shot. When these wretched slaves attempted to revolt, the defendant directed that some of their numbers be killed, regardless of personal guilt or innocence. In the case of prisoners of war who attempted to escape, the defendant ordered that they be shot.

When the "contracts" of workers under his control expired, the defendant ordered their compulsory extension, and when workers attempted to change jobs, he advocated that they be put in concentration camps.

In the case of Italians who refused to work, the defendant ordered that they be beaten and so informed his chief, Goering. And where Frenchmen refused to work in French factories under his control, the defendant stated that he would deport them by force and bring them to Germany or to the East. Similar policies were applied by the defendant in the case of Polish workers.

No more need be said about the Generalluftzeugmeister. The Tribunal has seen the documents containing the minutes of the meetings. The documents dealing with this phase of the case are particularly revealing in showing the fanaticism of the defendant and the enthusiasm with which he recommended ruthless treatment of the hapless victims of German occupation policies.

We will now restate the pattern originally presented in terms of the proof brought forward at the trial in order to ascertain to what extent the defendant's culpability has been established with reference to the medical phase.

First, the body of the crime. The prosecution contends that in violation of the laws of war and all the laws of humanity criminal high-altitude and freezing experiments were carried on by Luftwaffe physicians.

The testimony of Dr. Erich Hippke, the Medical Inspector of the Luftwaffe, is of interest on this subject. Hippke stated that Dr. Rascher, a Luftwaffe physician at the time, came to Hippke with a proposal to use prisoners as high-altitude experimental subjects in May 1941.

Hippke was in a receptive frame of mind, for it was essential that the scope of these experiments be widened and new human subjects were needed. The researchers working on the tests had developed a certain immunity so that results of self-experimentation did not give a true picture of the reactions.

With the aid of Himmler and the SS, the Luftwaffe was able to proceed with the experiments which were allegedly necessary in the interests of German military aviation medical knowledge. But lest one be inclined to believe that these pressure experiments were considered as minor nuisances to the subjects concerned, with no real dangers, note the words of Dr. Hippke:

"I asked him," speaking of Rascher, "how he would be able to obtain such persons for experimentation, and he justified himself by saying that he had connections with the SS who had charge of such penal prisoners. There were such penal prisoners in Dachau and he would be in a position to obtain them for these purposes. I myself, because of my inner personal feelings on the matter, was very much against these experiments and could not make up my mind whether I should approve such experimentation."

From the very beginning of the plan to conduct these experiments, Dr. Hippke had strong mental reservations concerning the moral principles involved in the task which the Luftwaffe doctors were about to undertake. During the coming year Hippke weighed the problem, and it was with some misgiving that he finally allowed his doctors to begin the experiments, saying to them: "Please, children, go carefully."

But, tragically enough, his "children" did not go carefully. Instead, they ran amuck with their scientific apparatus and tests. The pressure experiments which were supposed to have been helpful to fliers of the Luftwaffe degenerated into so-called "X-experiments", which meant "execution" experiments.

Seventy to eighty persons were murdered during the spring and summer of 1942 when the pressure experiments were carried on at Dachau.

During the subsequent freezing experiments a comparable number of concentration camp inmates forfeited their lives to the sadistic Dr. Rascher and his Luftwaffe associates.

Dr. Romberg himself admits having seen three persons die in the low-pressure chamber and concedes that at least nine other deaths may well have occurred when he was absent from his post at Dachau.

Wolfram Sievers,* the manager of the Ahnenerbe, the SS Research Institute, witnessed the death of an experimental subject in the freezing tank.

There is adequate evidence that the low-pressure and freezing experiments were carried out by Luftwaffe physicians for the

* Defendant in case of United States vs. Karl Brandt, et al. See Vol. I.

benefit of the Luftwaffe. There has been no valid denial of the fact that the defendant was the Luftwaffe official responsible for the deaths and cruelties suffered in these twin torture chambers, the pressure chamber and the freezing tank.

Now, let us examine in more detail the second basic charge of the prosecution, namely, that the defendant was officially connected with these experiments which violated the laws of war and humanity.

We have the "Wolffy" letter of 20 May 1942 in which the defendant tells Obergruppenfuehrer Wolff of the SS that "the altitude experiments carried out by the SS and the Luftwaffe at Dachau have been finished." In this same letter Milch announces that experiments in connection with perils on the high seas would be important; that the necessary arrangements have been made and, since the low-pressure chamber is no longer needed, it must be moved from Dachau. Thus the defendant has entered the picture and established his official connection with the high-altitude experiments and the low-temperature experiments, which proved to be considerably more than mere harmless chilling tests.

If, as the defendant contends, he was not officially responsible for these Luftwaffe medical experiments, then it should follow that other persons connected with them would not take cognizance of the defendant in this matter. The contention is ridiculous.

The witness Wolff had the following to say regarding a meeting he had with Milch in August or September 1942:

"Thereafter, we had discussed our official questions. I inquired about how he was, and if everything between the Luftwaffe and the SS was all right. During that occasion we also spoke about these experiments very shortly, if at all, and we spoke of the invaluable help which the SS was giving us by providing these voluntary inmates, which was helping us with our medical material which could be used at the front."

It is to be noted that they talked about the experiments and Wolff asked how the Luftwaffe SS relations were. It is submitted that this demonstrates that Wolff regarded the defendant as the top man in the Luftwaffe Medical Experiments Program, as indeed he was.

Then there are the two letters addressed to Milch by Himmler and Wolff, substantially alike in content; Himmler's, dated November 1942, in which he cites the opposition that exists among "Christian medical circles" to conducting experiments on helpless, involuntary concentration camp inmates. He refers to the narrow-mindedness of such medical men, which "will take at least an-

other ten years" to remove. But this narrow-mindedness did not trouble the consciences of Himmler or the defendant Milch. Decidedly not. In the words of the Reich Leader SS: "We two should not get angry about these difficulties."

The prosecution submits that Himmler would not have written a letter in this tenor unless he was certain that his good friend Milch would be in complete agreement with his views.

And how did Himmler regard Milch in connection with the experiments? As a casual onlooker, with a purely academic interest in the results obtained? No, Himmler knew that Milch possessed the over-all command, the ultimate authority in the Luftwaffe; that the Inspector General of the Luftwaffe was the man to refer to whenever a question arose as to the disposition of the pressure chamber or the status of Dr. Rascher. Witness Himmler's request in his letter:

"I beg you to release Dr. Rascher, Stabsarzt in the reserve, from the air force and to transfer him to me to the Waffen SS. I would then assume the sole responsibility for having these experiments made in this field and would put the results, which we in the SS need only for the frost injuries in the East, entirely at the disposal of the air force."

The logical corollary to this statement is inescapable. *If* Rascher was not transferred to the SS and remained with the air force, the responsibility would not be Himmler's alone. And we must remember that Rascher did not leave his Luftwaffe post until the year 1943 *after* the experimental atrocities had been largely completed. Then where did this responsibility rest? Himmler had no doubts; it was on the shoulders of the defendant.

Nor did Karl Wolff, Himmler's right-hand man, have any doubts as to the responsible person in the Luftwaffe, with reference to the medical experiments. He, too, wrote to Milch requesting that Rascher be released from the Luftwaffe and transferred to the SS. Here was a man, who, by his own testimony, "had a good comradely relationship" with the defendant. On the direct examination, Wolff testified regarding his connection with Milch:

"Q. In your position during the war did you have any official dealings with Milch?

"A. Yes.

"Q. In what connection?

"A. During peacetime—that is, from 1933 on, until 1939—there was a personal cooperation between Milch and me. *All difficulties between the Luftwaffe and the SS were handled at personal conferences in a very comradely way. This usage also took place during the war.*"

It is because of the situation above described, that the prosecution has called Wolff the liaison man between Himmler and the SS on the one hand, and the defendant and the Luftwaffe, on the other.

The testimony and affidavit of Walter Neff, the Dachau prisoner who later became a block leader in Dachau, is of interest. This man saw Rascher often. Was Milch's name mentioned by Rascher in connection with the medical experiments? It was. In his affidavit, which he did not repudiate when testifying before this Court, Neff said:

"The name of Field Marshal *Milch* was frequently mentioned in Dachau. Every time I asked Dr. Romberg how long the cars and the low-pressure chambers would remain in Dachau, he assured me that *Milch* would attend to everything. Dr. Rascher said to me that he had communicated with *Milch* personally and that the cars would remain in Dachau as long as he specified."

Dr. Siegfried Ruff,* an important figure in the medical experiments program, head of the research section of the DVL, recognized the defendant *Milch* as the supreme authority in the experimental program. In his affidavit Ruff said:

"The entire medical research for aviation was under General Dr. Erich Hippke, in his capacity as Chief of the Medical Service, until 1944, and subsequently under Professor Dr. Schroeder. As Chief of the Medical Service, General Hippke was immediately subordinate to Field Marshal *Milch* * * *. The chain of command for these experiments was *Milch*—Hippke—Ruff—Romberg."

Again there is the chart drawn up by Dr. Oskar Schroeder,* outlining the official Luftwaffe channels through which orders flowed from *Milch* to Hippke, and from Hippke to the various doctors engaged in the actual process of experimentation. Schroeder thus knew definitely that *Milch* was the Luftwaffe Chief in the medical experiments program. He later succeeded Hippke as Medical Inspector. Consequently, his chart is entitled to material weight in the proof offered by the prosecution.

Rudolf Brandt,* adjutant to Himmler, often had occasion to deal with correspondence between the Luftwaffe and the SS, regarding the experiments. In referring to Himmler's request that *Milch* order Dr. Rascher to be transferred to the SS, Brandt

* Defendant in case of United States vs. Karl Brandt, et al. See Vol. I.

wrote a letter to Wolfram Sievers, of the Ahnenerbe Society, stating—

“I assume that the *Field Marshal will of himself give the necessary orders*, and then confine himself to sending a brief answer to the Reich Leader SS.”

And Sievers writing to Brandt about the use of the low-pressure chamber says—

“The putting at our disposal of the low-pressure chamber, however, will be possible then *only if the Reich Leader SS writes in person to Field Marshal Milch concerning this.*”

These two men, Sievers and Brandt, were not uninformed of the course of the medical experiments nor of the competent personnel in the Luftwaffe and SS in this matter. On the contrary, Sievers admitted witnessing the death of an experimental subject in the freezing tank, and the subsequent autopsy, while Rudolf Brandt stated in his affidavit—

“Field Marshal E. Milch and Professor Hippke, Inspector of the Medical Service of the Luftwaffe, were fully informed about the low-pressure experiments. Actually these experiments could not have been conducted without the knowledge and approval of these men, as they were conducted for the benefit of the Luftwaffe and the experimenting persons were mostly Luftwaffe physicians.”

In the eyes of other persons, the defendant was the dominant force behind the Luftwaffe participation in the Medical Experiments Program. The defense has brought forward no adequate proof to show that they were mistaken. It is the conviction of the prosecution that no such proof exists.

The Commander in Chief of the Luftwaffe, Reich Marshal Hermann Goering, was thoroughly familiar with the organization which was his brain child, the Luftwaffe, and the way it functioned. What importance did Milch's position have in Goering's mind?

His affidavit reads—

“Included among the responsibilities of the Office of the Inspector General was the conduct of all research and experiments and of all matters pertaining to health and sanitation inspection * * *.

* * * * *

“That Generaloberstabsarzt Erich Hippke was the Sanitation Inspector of the Luftwaffe during the period from 1941 through 1944; that the Office of the Sanitation Inspector was directly responsible for the conduct of all research and medical experiments; that the Office of the Sanitation Inspector, of which Generaloberstabsarzt Erich Hippke was the head, was directly subordinate to the Inspector General, former Field Marshal Milch, and that former Field Marshal Milch was responsible for all action taken by Generaloberstabsarzt Hippke, or by the Office of the Sanitation Inspector or its subordinates.”

It has been established that criminal experiments, high-altitude and freezing, were carried on at Dachau by Luftwaffe physicians, working under the orders and supervision of competent Luftwaffe authorities.

We have shown that all Luftwaffe personnel connected with, or knowing about these experiments, from those closest to the place where the experiments were conducted—Dr. Rascher, and Walter Neff—to those high up in the positions of command—Goering and Schroeder—looked to Milch as the ultimate authority in the Medical Experiments Program. An investigation of the attitudes and convictions of the SS officials concerned in this program discloses the same picture.

Could all these men have been mistaken? Were they writing to and referring to the wrong man when they contacted the defendant? To put forward such a proposition is to deny the facts. There was no error, the facts are indisputable.

The defendant was and is officially responsible for the Medical Experiments Program of the Luftwaffe.

Lastly, we come to the question of the defendant's knowledge of the experiments which were being carried out at Dachau for the Luftwaffe.

Throughout direct examination by his defense counsel, the defendant has consistently denied receiving reports authored by Rascher or in any other way being informed of the criminal nature of those experiments, until the time of this trial.

However, he was very much interested in altitude experiments as such. The following excerpt is from his testimony under questioning by Dr. Bergold:

“Q. Witness, how far were you interested in these high-altitude experiments in question as GL?

“A. We were interested in the real altitude tests as I know it exactly, because I want to state this figure as 13,500 meters, and we added 500 meters in order to get a square figure. How-

ever, we knew that this last 500 meters, which I have mentioned, we were not too interested in that. We were only interested in the first place in cabin planes, too, after a certain test had been carried out on 388-cabin suits, whether it did not succeed or fail, because a person could not move properly the way those suits were, due to low pressure up there in the air is felt much more than here on the ground."

The Tribunal's attention is directed to this figure of 14,000 meters, which is approximately ten miles. Milch wanted that altitude simulated in the pressure chamber and the human reactions studied.

It was on 20 May 1942 that Milch wrote his letter to Wolff. Here he said that Hippke had reported to him that the altitude experiments carried out by the SS and Luftwaffe at Dachau were finished. Mention was made of Rascher's availability for the forthcoming experiments dealing with sea perils. And Milch stated that the low-pressure chamber could no longer remain at Dachau. In this one letter, the defendant demonstrates his knowledge that the SS and the Luftwaffe were conducting, and had completed, altitude experiments at Dachau and that Dr. Rascher was involved.

There is the letter of 4 June 1942 to Hippke, wherein the defendant exhibits his authority in regard to the low-pressure chamber and the tasks of Dr. Rascher.

On 25 August 1942, Himmler wrote to the defendant enclosing the report on the high-altitude experiments. Moreover, he asked Milch to receive Drs. Rascher and Romberg for a lecture and presentation of the film on the experiments. Himmler suggested that Milch refer the matter to the Reich Marshal "because of its importance".

This last statement should dispel any possible doubts as to the attention accorded these experiments by official German military circles. In fact, the defendant himself admitted discussing the experiments with Goering on 13 September 1942. The defendant spoke of Himmler's interest in the program, and the apprehension felt by the Medical Inspector Hippke, although "he did tell me that everything was all right." The disposal of the pressure chamber was settled in this talk with Goering.

The defendant has said that the experiments, reports, and other aspects of the matter were not known to him, partly because he had no time for this, and partly because he had no technical knowledge of the subject. He would have this Court believe that the experimental program was a minor matter—one that the Inspector General of the Luftwaffe would not pay close

attention to. Yet we have seen that it was important enough so that Himmler was frequently corresponding with the defendant or others on the subject. It was important enough for the defendant to bring the matter to Goering's attention, even to the details of the disposition of the low-pressure chamber.

On 31 August 1942, the defendant wrote to Himmler, acknowledging receipt of the report on altitude experiments, and telling Himmler that he was "informed about the current experiments".

While on the stand the defendant attempted to explain this letter by referring to the usage of German Ministries, where the form "I" means the Ministry as such. But he admitted that he had written the closing sentences of this letter "I remain yours, as ever, etc." Here he did not deny that "I" was used in its ordinary sense. It is neither logical nor capable of belief that in the same letter to Himmler, defendant would use the word "I" in two different senses.

It was also on 31 August 1942 that Hippke discussed the experiments with the defendant, expressing *doubts* and *misgivings*. In reply to Milch's question, Hippke told him that these doubts had not been substantiated.

Thus it can be seen, from Milch's testimony itself, that a cloud of suspicion and evil hovered over the entire Medical Experiments Program.

It is useless, indeed futile, to punish the perpetrators of criminal acts on the one hand, and to ignore those in high positions who have made possible the commission of the crimes. The defendant has belabored the term "duty" in the course of his testimony. He has spoken of his solemn oath to Hitler and to the German people. It would seem that it was incumbent upon the defendant to acquaint himself with the activities of his subordinates, at least to the extent that he should have known that people were being murdered in experiments, which from the evidence, were useless as far as the advancement of the knowledge of aviation medicine is concerned.

The present case is not without judicial precedent. A close analogy can be drawn between it and a recent case decided by the Supreme Court of the United States, *in re Yamashita* [U. S. Reports, Vol. 327, October term 1945, Nos. 61 and 672]. The procedural and jurisdictional questions therein decided are of no moment to us now, but the facts of the Yamashita case are similar to those of the Milch case, and the opinion rendered by the Court is particularly in point in the matter of responsibility for senior officers.

General Yamashita was the Commanding General of the 14th Army Group of the Imperial Japanese Army in the Philippines.

Upon surrendering to United States Forces, he was indicted and tried as a war criminal before a Military Tribunal on the following charge—"while commander of armed forces of Japan at war with the United States of America and its Allies, unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit brutal atrocities and other high crimes against people of the United States and of its Allies and dependencies, particularly the Philippines, and he * * * thereby violated the laws of war."

The Court summed up the issue as follows:

"The question then is whether the law of war imposes on an army commander a duty to take such appropriate measures as are within his power to control the troops under his command for the prevention of the specified acts which are violations of the law of war and which are likely to attend the occupation of hostile territory by an uncontrolled soldiery, and whether he may be charged with personal responsibility for his failure to take such measures when violations result."

The Court cited Articles 1 and 43 of the Fourth Hague Convention of 1907, Article 19 of the Tenth Hague Convention, and Article 26 of the Geneva Red Cross Convention of 1929. It then stated—

"These provisions plainly imposed on petitioner, who at the time specified was Military Governor of the Philippines, as well as commander of the Japanese forces, an affirmative duty to take such measures as were within his power, and appropriate in the circumstances, to protect prisoners of war and the civilian population. This duty of a commanding officer has heretofore been recognized and its breach penalized by our own military tribunals."

The Court thereupon denied the petition for certiorari and leave to file petitions, for writs of habeas corpus, and prohibition.

In the case of the medical experiments, we have a much less complex situation. There is no question of a senior officer in an occupied country, rather we are faced with a simple direct chain of command problem: Milch—Foerster—Hippke. Had Milch given the order, the experiments would have been terminated, but no order of termination was given—people were murdered and Rascher remained in the Luftwaffe until he was transferred to the SS in March 1943. The defendant had an affirmative duty to know what was going on, and an affirmative duty to act so as to

stop the experiments. That he was ignorant of the true state of affairs is unbelievable in view of the letters and the testimony of those who were below him. Field marshals are not made as are noncommissioned officers. The road is a long one in any army from the position of private to the lofty peak of a field marshal. The defendant would have you believe that his powers were similar to those of a private first class. Yet we have seen him, high in the councils, a confidant of Hitler, one who could disagree with Goering, whose deputy he was on occasion, a man who was so thoroughly skilled a soldier that he seriously requested an assignment as a division commander, although his service had been in the air force for a decade prior to the request. If the defendant was not the responsible officer in connection with the medical experiments, then the scourge of the Wehrmacht has not touched the continent of Europe. There is no one who knows better than the defendant the principle of responsibility in any army. By holding the office which he held, he had the duty to control the activities of those who were his subordinates, to insure that they conducted themselves as soldiers and not as murderers. He has failed woefully in the task.

We have concluded now our remarks regarding the criminal activities of the defendant in his various capacities with respect to the slave labor program and the medical experiments. It remains only for us to deal briefly with the defendant's participation in the murder of two Russian escapees, to discuss his defense of irresponsibility because of a bad temper, to discuss the use of PW's, and to touch upon the testimony of some of the witnesses who appeared in his behalf, and the record of the meeting of 23 May 1939.

The defendant has maintained that he knew nothing about the shooting of the two Russian officers who attempted to escape in February 1944. We have his own statement, made at a time when the general situation, from the Wehrmacht's point of view, was acute but not forlorn. The International Military Tribunal has stated in its judgment concerning Fritz Sauckel,* speaking of a statement made by Sauckel at a Central Planning Board meeting, "Although he now claims that the statement is not true, the circumstances under which it was made, as well as the evidence presented before the Tribunal, leave no doubt that it was substantially accurate." The word "circumstances" as there used refers to a meeting of the Central Planning Board on 1 March 1944. Milch made his statement at the prior meeting held on 16 February 1944 (53d). The letters submitted by the defense in

* Trial of the Major War Criminals, vol. I, p. 321, Nuremberg, 1947.

connection with this episode are interesting. The first and second from Schmidtke on 10 January, and from Gangolf on 13 January, refer to a similar incident other than that with which we are here concerned. The third letter from Winterstein on 12 January says nothing about the deaths. The affidavit of Prell, other than stating that the deaths occurred on a Saturday, is of no value. The witness Barthelmess, who made an affidavit though a resident of Nuernberg, was not called. The affidavits of Klein and Popp were offered; each is in a prison camp in the American Zone, yet neither was called. The letter of Janko recites the facts in a context suggestive of the words used by the defendant when he described the incident in the 53d meeting of the Central Planning Board on 16 February 1944. Here, too, it is submitted that the circumstances under which the statement was made leave no doubt that it was substantially accurate. The defendant boasted of his prowess as a commander who ordered executions when he would impress those who curried his favor at the Central Planning Board meetings, but now he says he had no authority to give orders and if he had given them, they would not have been obeyed.

The defendant has offered, as a plausible reason for the employment of Russian, French, and Italian prisoners of war, the fact that various historical events made it unnecessary to abide by the terms of the convention concerning prisoners of war. The witness von Neurath testified that Russia had renounced the conventions in question, and hence Germany could renounce them as to Russia. As for France, it is contended that the alleged government headed by Pierre Laval had concluded an arrangement with the Reich which made it legal to employ prisoners of war in tasks forbidden by the Conventions. A similar reason is advanced for the use of Italian prisoners, the concluding of an arrangement between the Reich and Mussolini. The International Military Tribunal made a finding with respect to this matter.*

“The argument in defense of the charge with regard to the murder and ill-treatment of Soviet prisoners of war, that the U.S.S.R. was not a party to the Geneva Convention, is quite without foundation. On 15 September 1941 Admiral Canaris protested against the regulations for the treatment of Soviet prisoners of war, signed by General Reinecke on 8 September 1941.”

I might add that Admiral Canaris was a member of the German Navy. Resuming the quotation—

“He”—Canaris—“then stated, ‘The Geneva Convention for

* Ibid., p. 232.

the treatment of prisoners of war is not binding in the relationship between Germany and the U.S.S.R. Therefore only the principles of general international law on the treatment of prisoners of war apply. Since the 18th century these have gradually been established along the lines that war captivity is neither revenge nor punishment, but solely protective custody, the only purpose of which is to prevent the prisoners of war from further participation in the war. This principle was developed in accordance with the view held by all armies that it is contrary to military tradition to kill or injure helpless people * * *. The decrees for the treatment of Soviet prisoners of war enclosed are based on a fundamentally different viewpoint.'

"This protest, which correctly stated the legal position, was ignored".

The defendant was a soldier of some experience, he knew it was improper, even criminal, to have the Russian prisoners work in the Luftwaffe factories, but he paid no attention to the breach of this duty of the soldier. The manner in which the Reich bludgeoned a treaty from the French is too well known to warrant discussion. It cannot be contended with any seriousness that the French prisoners of war, who were negotiated into slavery by a puppet government, were voluntary employees of the Germans. Indeed the witness Le Fric has testified that when he was taken to work in the airplane factory, he was told that he would "work on baby carriages". The position of the defendant with reference to Italian prisoners of war and their illegal employment is still more absurd, if that is possible. The Wehrmacht had moved into Italy early in the war, and in 1943, when the Badoglio government concluded an armistice with the Allies, the Wehrmacht continued to occupy the northern part of Italy as an occupying power. They allegedly made a treaty with the by then tottering shadow of the former sawdust Cæsar and proceeded to bring the Italian prisoners of war to the Reich to work. Here again the soldiery had been sold into bondage by their former chief. The record shows that the Russian, French, and Italian prisoners of war were used to work in airplane factories. Whether they made the fighter plane, Me 109, or the jet fighter, Me 262, or the transport plane, Ju 52, is of little moment. In the total warfare in which the Reich was engaged, there is one certainty, that nothing was being constructed which was not part of the war armament program.

The International Military Tribunal stated in this connection—*

* Ibid, p. 246.

“Many of the prisoners of war were assigned to work directly related to military operations, in violation of Article 31 of the Geneva Convention. They were put to work in munitions factories and even made to load bombers, to carry ammunition and to dig trenches, often under the most hazardous conditions. This condition applied particularly to Soviet prisoners of war. On 16 February 1943, at a meeting of the Central Planning Board, * * * Milch said: ‘We have made a request for an order that a certain percentage of men in the Ack-Ack artillery must be Russians; 50,000 will be taken altogether. Thirty thousand are already employed as gunners. This is an amusing thing, that the Russians must work the guns’”.

That every aircraft factory in the Reich had antiaircraft batteries to protect it goes without saying. Who would know better than the defendant that such use was made of the Soviet prisoners of war? Further, this type of artillery was a part of the Luftwaffe and not a separate branch in the ground forces, as it is in the U.S. Army. The witness Foerster has testified that Soviet prisoners of war worked at the gun positions. If the number two man in the German air force could not have done anything toward arranging that the prisoners of war did not work in the factories, or work the guns, then no one in the Wehrmacht could have done anything about the situation.

We have heard much of the defendant's violent temper and the resulting statements which, witnesses assert, were never taken seriously by those who heard them. The explanations offered by the defense are as frivolous as the alleged outbursts were frequent. It would have been difficult, if not impossible, for one who occupied the positions held by the defendant, to accomplish anything if his subordinates had to sift all of the strong statements he made, in an effort to determine which of them were seriously said. Further, his strong statements about the procurement and treatment of laborers are closely aligned with the grim reality as we have seen it. We submit that this man of violent temper believed in, and consciously advocated, the ruthless measures he recommended, and that his subordinates, to the best of their ability, complied with his recommendations. It is not reasonable to assume that one with his power could have made statements, of the kind of which we have heard here, and that he would then rely on the good offices of those who were around him to insure that nothing was done as a result of these statements. The Reich was not a country of innocent victims of one tyrant, but rather it was composed of a series of tyrants, each like the master tyrant, each with his own group of subordinates, who carried out the

wishes and whims of their respective chiefs. If all men who held positions of authority in the Reich are to be believed when they say that they were personally opposed to criminal excesses, then we have the fantastic conclusion that these crimes were committed in the face of influential and unanimous opposition.

The witnesses produced by the defense left a little to be desired. Without indulging in exhaustive detail, a few statements made by some are worth comment.

The witness Koenig said that he didn't know Himmler was head of the SS until 1945.

The witness von Brauchitsch did not know families were broken up and sent to concentration camps. It was this man, the aid to Goering, who passed on the Terboven letter of May 1942 to the defendant. The Court will recall that the letter told of the attempted escape and the resulting concentration camp detention of the Norwegians. It was the defendant who said that an attempt to escape by a prisoner of war is an honorable thing. Would not a similar effort on the part of some Norwegians merit something less than a concentration camp? Brauchitsch had said a little earlier that he did not know that foreigners were in concentration camps.

The witness Felmy has stated that some Yugoslav partisans were sent to Germany as laborers.

The witness Schniewind, who was present at the conference of 23 May 1939, did not under any circumstances gain the impression that aggression was announced.

The witness Vorwald, a subordinate of the defendant and hence his concern for these proceedings, may be assumed as being something short of disinterested, was thoroughly glib and exceptionally agreeable. He even agreed with the statement, on cross-examination, that the forces of the Reich were no longer in Africa in 1943. It is a matter of historical record that the invasion of that Continent began in November 1942 and that the campaign was concluded in the spring of the following year.

The witness Koerner, still laboring under the spell of the former leaders, stated that he believed Goering to be the last great man of the Renaissance.

The last witness of whom we shall speak is Karl Wolff. In his affidavit he spoke of meetings between Himmler and Milch over coffee and cigars. He spoke of the great cultural works of the SS. Was he speaking of Dachau and Mauthausen? With some vehemence, he insisted that he had deported only 1,050 Jews from all of Italy. He knew nothing of Dachau that led him to believe that anything unusual was happening there; although he did say

that, in his visit there in 1942, the place was so clean that one could have eaten from the floor.

These represent a fair cross section of the witnesses, all of whom had roles of varying importance in the tragedy with which we are here concerned. Even as the defendant contends that he knew nothing of what went on, so do they echo the same refrain.

Much time has been spent in attempting to discredit the Schmundt record of the 23 May 1939 meeting. The Court is familiar with the findings which have been made by the International Military Tribunal on this subject. There has been no additional light thrown on the matter by the evidence here presented to indicate that the Schmundt record is anything other than a correct record of the events which transpired at the meeting.

We wish to discuss now in conclusion one document offered by the prosecution. This we have saved until the last because we believe that of all the evidence presented by the prosecution it is most typical of the defendant as a man and as a Nazi. We refer to the minutes of the conference of air force engineers and others which was presided over and was addressed by the defendant on 25 March 1944. This document, like so many others in this case, was initialed by the defendant.

The defendant stated that, as of the date of the conference, "We have in our employ today approximately 60 percent foreigners * * *."

He continued, "The ratio is gradually approaching 90 percent foreigners, with 10 percent German managers."

These are statements by a man who said he did not know about the extent to which foreign labor was used in his own industry, let alone in Germany. He stated that—

"The Fuehrer order provides clearly that the fighter plane program, which the Jaegerstab is starting, has priority over all other fields of armament * * *."

He showed knowledge of the production of tanks and infantry munitions. He spoke of having the air force production "to an extent safely underground" in four months' time. It is here that he stated that he was head of the Jaegerstab and that Saur was his deputy and Chief of Staff. Touching on his conferences with the various plant officials, he stated—

"On the spot the individual gentlemen are then told—supported by the combined authority of the State, the Wehrmacht, and the Party, that is Saur and me, Speer is unfortunately still on sick leave, otherwise he would also be present—what it is all about."

He commented on labor—

“Thus, all pertinent questions are dealt with in the conferences about the commitment of labor and all competent men, who have anything to do with the commitment of labor, meet, especially the president of the competent provincial labor office. Thus it is determined on the spot, in the individual spheres, what the factory lacks.”

This is the man who has constantly maintained that he had nothing to do with labor. One can readily imagine a session between the Luftwaffe field marshal and a labor office chief.

We have heard the defendant deny and redeny any knowledge of the slave labor program as such, let alone the extent to which it went. It is our contention that anybody who walked the streets of Germany could not have failed to have become aware of the activities which were being carried on by Sauckel and his henchmen.

He makes an interesting reference to bureaucracy:

“It is an error to believe that civilian offices are more bureaucratic than military offices. On the basis of my continuous and extensive experience, I can assure you exactly the opposite is true.”

This from one who would have the Tribunal believe that his staff and officers were one big happy family who ran things in a rather casual catch-as-catch-can fashion.

Speaking of the arrival of laborers, he said—

“In brief, the people arrive there and are put to work there. If any doubts exist as to whether a request is justified—for the people are not requested by numbers, but as electricians, blacksmiths, fitters, turners, as unskilled laborers, as foreigners—then this is settled. If the result shows that the request for people is not justified, then the matter is referred to a commission and this commission examines the facts within 48 hours. If it becomes apparent that dirty dealings are going on, my special court martial is called into play, and it hands down a quick decision.”

This from a man who has stated that he had no power to give orders. He stated further, “the normal work week in our industry is 72 hours.” The witness Krysiak testified that they worked 84 hours at the factory where the Mauthausen inmates were employed.

Speaking of the difficulties that resulted from the hoarding of spare parts by the various foremen, he said—

“Now it is your task to teach these people some sense and to put the entire system of hoarding on a sensible basis. I therefore ask you, as the senior authorities in the field: teach that to these people by force. There is no sense in writing letters. Such letters are not read. They would not understand them anyhow.”

The wish of a field marshal is as an order, and he advocated the use of force on his own people. The extent to which he urged that they go was expressed a few lines further on when he stated—

“Whoever hoards supplies must be punished immediately. By punishment I also mean shooting. For if these people are told what is at issue here, and they still try to hide parts of their supplies or to cover them up, that is dirty dealing and a crime against Germany. I want to say that very clearly and I want to say it in very sincere words, so that you yourselves will realize that we are dealing here with a question which is of decisive importance for Germany’s well-being, that we are not dealing with an ordinary point of discussion but with a question which decides about the life and death of Germany.”

He advocated killing Germans, not slackers but hoarders. He consciously used strong language, yet he would have it believed that he never spoke harshly except in a rage and that nothing ever came from his outbursts. He indicated knowledge of the overall figures on the break-down of working hours.

“In considering the figures one has to know that 52 percent of the total man-hours are spent in equipping a plane and only 48 percent in building the aircraft frame and engine.”

He has said that he was powerless to do anything about requests from industry, yet he stated—

“If I want something from industry, then industry comes and says, ‘Yes, I have those and those requests.’ Only then can I do what you want.”

He again speaks of the death penalty when he says—

“Gentlemen, in this connection I may call your attention to another important point. If I visit an office and find out that something is being hidden there, then I ask for the death pen-

alty for such a crime today. That is fraud. That is sabotage of the German armament industry.”

Can it be seriously contended that these words were regarded by the listeners as mere outbursts?

Next we have another illuminating passage on his attitude toward prisoners of war.

“Then there is still the human factor. We often had considerable difficulty with the human factor. The fluctuation there is very considerable. The quota of the Luftwaffe in the distribution of manpower was considerably lowered. The foreigners run away. They do not keep any contract. There are difficulties with Frenchmen, Italians, Dutch. The prisoners of war are partly unruly and fresh. The people are also supposed to be carrying on sabotage. These elements cannot be made more efficient by small means. They are just not handled strictly enough. If a decent foreman would sock one of those unruly guys because the fellow won't work, the situation would soon change. International law cannot be observed here. I have asserted myself very strongly and, with the help of Saur, I have represented the point of view very strongly that the prisoners, with the exception of the English and the Americans, should be taken away from the military authorities. The soldiers are not in a position, as experience has shown, to cope with these fellows who know all the answers. I shall take very strict measures here and shall put such a prisoner of war before my court martial. If he has committed sabotage or refused to work, I will have him hanged right in his own factory. I am convinced that that will not be without effect.”

These words are strangely reminiscent of his speech at the 53d meeting of the Central Planning Board. He knew he had advocated and participated in flagrant violations of international law and here he went on record on this subject.

We see the defendant making a “big request” of the Quartermaster General and calling for “energetic action” by the chief of supply. This was a meeting of considerable moment and these statements did not go unheeded.

He spoke of the laborers.

“* * * We in the Luftwaffe armament industry have Russians, French prisoners of war, Dutch, and members of 32 other nations. The obtaining of interpreters alone presents a big difficulty there.”

Then he adds—

"We, the Quartermaster General and Generalluftzeugmeister, have already agreed that we are to balance the personnel also. Above all it is necessary that the member of the troops be treated in exactly the same way as the industrial worker."

We have a strong statement concerning the feelings of the German worker. He said—

"By unjust treatment the German worker means that the treatment is not the same for all. That is what makes the German worker indignant. He wants everyone to be treated the same way. He wants justice and does not want to be ill-treated in words or any other way. He cannot stand it and he is right in not being able to stand it."

The defendant advocated that the German worker be carefully handled. The Tribunal has heard from the witnesses Ferrier, Le Fricc, and Krysiak how the foreign workers were handled.

He outlined the working program for the Easter week end—

"Finally I ask that the troops receive the fundamental order to work on Good Friday, the Saturday before Easter, and on Easter Monday in the same way as the people in the factories. The soldiers just do not have to go on furlough either. They must be told why."

Are these the words of a man who is without authority to issue orders concerning the troops?

He acknowledged his employment of Russian prisoners of war and advocated that shirkers among the factory laborers be whipped back to their jobs. He said—

"I further ask for support by the Luftwaffe physicians. With all the rabble that we have among the foreign workers there is of course a lot of shirking. At the moment the Russians—that is, the Russian prisoners of war—are feigning a lot of fatigue and illness. The incidence of sickness of one and a half to two percent which we have had up to now has at least doubled, and in some factories it has been increased to eight, nine, and ten percent. That is, of course, done by previous agreement. There the official physicians must undertake an examination and if the physicians, who have to be very strict, find out that it is not true, then we return the fellows to work by means of the whip. Then the whip serves as cure."

He again spoke of orders that have been given.

“If the factory knows: Now we are going to be attacked, and it has a few trench shelters but does not have a bombproof shelter or the like, then the people simply ran away from the factory automatically at each raid after the first one, and they could usually not be caught the next day either. That applies particularly to the foreigners. We have therefore now issued the following order, and have equipped the superiors accordingly with weapons and pistols: As soon as a factory which has already been attacked a few times can count on the raid’s being aimed at that particular factory again, then the personnel leave the factory, but in closed groups by shops, under the leadership of the man in charge of the shop, and, to the extent that they are German personnel, they leave singing military songs.”

Are superiors armed with weapons and pistols to lead contented German workers away from a factory in case of an air raid? Little wonder that the foreigners who had been brought in like chattels ran away when the opportunity presented itself. Were these workers who were fleeing, voluntary workers?

Commenting on the gravity of the task of fighter production, and the importance of the months of April and May 1944, he said—

“That will be decided in six to eight weeks. If we succeed in this, then we will once again have time to carry out all the other tasks and jobs of this war and can also achieve greater successes in other fields.”

Were the “other fields” tasks to be accomplished in the sowing of seeds of the Reich’s culture?

The defendant has said that he knew nothing about the living conditions of the foreigners. It is obvious that he knew something, for he said—

“I also ask you to be of considerable assistance in the question of lodging in connection with the question of the relationship between our military personnel at the airfields and the workers. If we bring the people over to work, we also have to provide them with places to live. As far as foreigners are concerned, this has to be done in some suitable way. They cannot be put together with our people, just like that. But they should not be so far away from the airfield that one cannot get them to work at all.”

No, don’t let them live with the native workers, but be sure that they live close enough to the factory so that they can put in their 72 hours a week!

The importance of the fighter program is emphasized when he said—

“There are no laws of bureaucracy, there are no regulations, there is nothing at all as important as the task of winning the war.”

The defendant could not agree with anything that Hitler stood for after March 1943. He was trying to get out, but here he speaks of Hitler and his henchmen—men who, he said, were leading Germany to certain catastrophe:

“It is quite surprising how the population has endured this thing so far and how it always gets on its feet again when it is led in the proper way by true leaders who, thank God, are present among the people through the Party and the rest of the leadership. But you must not forget, gentlemen, war nerves have reached a point which cause us in the leadership group worry.”

He has said that he was not a wholehearted Nazi, but here he referred to himself as one of the true leaders and this at a time when the hands on the clock tolling the hours of the Reich were approaching twelve. Yet he would have you believe that he was a minor man.

He did not confine his speaking efforts solely to the Luftwaffe; he was one of the leaders, and as such it was natural that he should address the armament feeder industry. On that subject he said—

“What I am telling you today was told the other day to the entire armament feeder industry—that includes the blacksmiths, foundries, crankshaft workers of the iron producing industry, etc. They were likewise exhorted to produce the maximum. In the same way the Gauleitungen, all of the provincial offices, wherever we were, were addressed by us to that effect. But everyone considers that if he does not do his duty, we do not ask whether there is a law, we ask only that he is the responsible one, and that we will seize him no matter who he is.”

His first peroration is indicative of his attitude.

“Please go wherever you are going and knock everybody down who blocks your way! We cover up everything here. We do not ask whether he is allowed to or whether he is not allowed to. For us, there is nothing but this one task. We are fanatics in this sphere. We do not even consider letting any-

thing at all distract us from that task. No order exists which could prevent me from fulfilling this task. Nor shall I ever be given such an order."

Yes, the defendant was a fanatic. Too, he was one who could cover up. It was a willful man who could say that.

There is an interesting statement concerning the number of employees of the Luftwaffe. The defendant set it at 1.8 million. This is somewhat in excess of the .5 million figure that one witness mentioned.

It has been insisted that he had nothing to do with labor, it has been insisted that he could give no orders, yet in his second peroration to the same speech, he said—

"We have given orders that will make you laugh. Some labor control office or other suddenly declared that the Jaegerstab was not entitled, according to paragraph so-and-so, to establish a 72-hour workweek; it was not valid. I said: The gentleman is herewith informed, if he should say such a thing once more, he will be picked up; I have excellent cellars in this house. Then the opposition disappears immediately. But you have to count on such things, and the difficulty for you is that, in order to get through all the junk, one should clean out, first of all, a whole lot of little pigsties. Something will come out of this whole affair with us, yet. Whoever of my technical people from the Ministry does not earn his keep with the Jaegerstab now, and does not cooperate, I guarantee that he will never appear again in this Ministry, in the machine where I give the orders."

Is this the man who said he could not have people sent to concentration camps? The witness Krysiak was "picked up" for having said in 1940 that Germany would lose the war. He was arrested by the Gestapo as the result of a private conversation. It is unbelievable that a field marshal could not, and did not, exercise the same power.

Today is the third anniversary of the speech of 25 March 1944 made by the defendant. His closing remarks on that day detail decisively the philosophy of the then field marshal of the Luftwaffe. Those assembled had been listening to their chief since midmorning. The hour was late. The hands of the clock were past twelve. Germany was in the fifth year of war. The defendant was concluding his speech. He said—

"Gentlemen, I know, not every subordinate can say: for me the law no longer exists, but he has to have someone who

covers up for him. Not out of cowardice, but if you act according to the spirit of the old field service regulation, 'Abstaining from doing something hurts us more than erring in the choice of the means', and if, moreover, you keep in touch and immediately clarify difficult points so that something can be done, then we are willing to accept the responsibility, whether this is the law or not. I see only two possibilities for me and for Germany; either we succeed and thereby save Germany, or we continue these slipshod methods and then get the fate that we deserve. I prefer to fall, while I am doing something that is against the rules but that is right and sensible, and be called to account for it, and, if you like, hanged, rather than be hanged because Papa Stalin is here in Berlin or the Englishmen. I have no desire for that. I would rather die in a different way. But I think we can accomplish this task, too. We are in the fifth year of war—I repeat: The decision will come during the next six weeks. Heil Hitler!"

The time is at hand for another decision, a decision which will follow the dictates of sound reason. The record which will be made by this Tribunal and its judgment will be one that shall give courage to peaceful free men everywhere. Indeed, the defendant is fortunate that the decision in the present case is in the hands of those who do believe that the law exists and will continue to exist. There is no place for passion or for prejudice in the ceaseless tasks, the seeking of truth and the establishing of justice.

B. Closing Statement of the Defense*

DR. FRIEDRICH BERGOLD: May it please the Tribunal. In my opening statement I drew a picture of the defendant Milch which differs considerably from the description given by the prosecution. It is my hope that in the long course of producing evidence I have given proof that my conception is the full truth.

According to the testimony of the witness Richter, the affidavit of the witness von Mueller and according to the defendant Milch's own testimony, nobody can doubt that Milch has never been a good National Socialist. His love for peace and his longing for a final understanding between the nations of Europe, especially between Belgium, France, England, and Germany, became completely obvious. No one who believes in justice would refuse to believe him if he states that he regarded the war as a misfortune. He was also one of the few intelligent men to admit Germany's defeat in the First World War. There was no proof supplied that in any way prior to 1933 he supported any armaments. His testimony and military affidavit from von Mueller have shown that under his management the Luftwaffe was always a peaceful instrument of communication among the nations. It is to be regretted that the examination of foreign politicians, such as Van Zeeland, Pierre Cot, and Delbos, were not permitted, because only then the personality of Milch would have been shown in its true light. He must have been a peaceful and just man; otherwise, all these statesmen would not have had confidence in him. Even the witness delegate Messersmith, whose affidavit, Document 1760-PS, was introduced in the International Military Tribunal proceedings, affirmed that Milch condemned the coercive methods of the Nazis. He was different from the other Party members, so that after 1937 he lost Goering's confidence. At that time he asked to be allowed to retire but in spite of his threat of suicide, he did not obtain that permission.

Such a man of such a past must be believed when he testified that even in 1939 he had no knowledge of Hitler's aggressive intentions. Milch had misgivings about Hitler because he regarded the measures taken against Czechoslovakia as a breach of peace, and he was sufficiently intelligent to see that Britain would no longer tolerate such violations. Hitler was dishonest with him and always put before him his intentions for peace, even forbidding him the manufacture of bombs. The defendant never requested the manufacture of bombs because he intended to lead a

* Defense Counsel Dr. Friedrich Bergold delivered the closing statement before the Tribunal on 25 March 1947, Tr. pp. 2377-2435.

war of offense, but only because, understanding the international situation, he was convinced that England would fight against the Nazi regime.

Up to that time, your Honor, nobody can find any inconsistency in the defendant's outlook. It was no offense if he requested a Wehrmacht for his country in view of the world situation, and therefore he favored a reasonable rearmament. As long as all nations were peace-minded and maintained armies, Germany had the right to maintain armed forces as well. I beg you to remember that the defendant demanded from his superiors that rearmament should be effected in a slow and reasonable manner and that he had differences with them on account of this.

It was not for nothing, your Honor, I repeat that. Only for one to keep all these things in mind will it be possible to judge whether or not the defendant's statement regarding the conference of 23 May 1939 is correct. A man who loves peace and works for peace was present at that conference and states today, or testified that the speech in question did not contain any mention of aggressive war against Poland or any other country. He even testified in this courtroom that this speech did not have the contents as it is laid down in the Schmundt protocol.

I realize that the International Military Tribunal came to the conclusion that the Schmundt protocol is correct. All defendants and witnesses who were heard at that time declared that the contents of the speech were not of so aggressive a nature as it is laid down in the minutes. The defense counsel made a mistake at that time of not calling all the witnesses which I requested. Nobody went to the trouble of critically examining the text of the record. I can understand why the IMT reached a different conclusion, having heard only the defendants' general objection, which remained unsubstantiated in detail. Nowhere is it yet permissible in law to maintain the verdict of a previous court when new and better evidence has been submitted.

The witnesses Warlimont, Schniewind, Engel, and Raeder stated that several passages of the Schmundt record contained a number of false assertions regarding Hitler's words. Warlimont testified that he was not present, although he is listed as among those present. Milch's testimony made it absolutely definite that Goering was not present. If there were only so few persons present and there were mistakes made concerning the presence of persons, the record must have been made up a long time after the event, otherwise no faults of that kind would have been possible. Schniewind testified that a number of points contained in the Schmundt record were never discussed at that time at all. He had the opinion that many ideas laid down in the record were borne out

at a later period, that is to say, 1940. These ideas concerned, for example, the use which could be made of war production after the defeat of France, the importance of aircraft carriers for convoys, the collaboration of Italy, and the break-through of the Maginot Line by this force, about Japan, and last but not least, the so-called Fuehrer Decree. By the statement of Felmy it is proved forever that the so-called Fuehrer order was given only on 12 December 1940. Even Raeder stated that the principles of the Fuehrer order were laid down at another occasion and that they were accordingly carried out afterwards. This other occasion was given by the statement of Felmy. Also Raeder did not hear anything about Japan; he considered it impossible that Italy and the break-through of the Maginot Line were discussed and he also states that nobody mentioned a better production of cruisers. He also testified that in that meeting a two-front war was not mentioned because he, as an officer, would have noticed that. Furthermore, he testified that Belgium and Holland were not referred to and that after the speech Goering did not open a debate. Even though the witness was not present at all times, it is rather strange that he should not have heard mention of any of the very points not heard by the other witnesses. The defendant Milch gave you the precise details of those points of the speech which were not mentioned at the time, and he was even in a position to tell you when these various points were first conceived.

Who, assuming responsibility for justice, can still seriously maintain the findings of the IMT now that these precise statements have shown us the errors of the Schmundt record? A record containing so many grave mistakes is no longer of probative value and can never be made the basis for any judgment. I am convinced that after this trial the historians of the whole world will regard the Schmundt record as the product of a later period, i.e., between the fall of 1940 and the spring of 1941 and that they will regard it as the result of time, drawn up to make Hitler, then regarded as the victor, seem possessed of a prophetic gift which in reality he never had.

The conference did take place on 23 May 1939; that is true. Its real topics, however, can no longer be stated on the basis of the Schmundt record. Thus, the statements made in the first Nuernberg trial gain a different and greater significance. Never again, therefore, will it be possible for anyone to say that on that occasion Hitler preached war and the enslavement of Europeans.

There is yet another argument possible against this record, which, it is alleged, also contains the plan for slave labor. Document EC-194, Exhibit 8, and 016-PS, Exhibit 13, submitted by

the prosecution, show in all clarity that the use of European peoples in German armament works was a measure forced by the emergencies of the war and that the idea was born and realized only by the military difficulties resulting from the war with Russia.

With clean hands and a pure heart, Milch entered the war in August 1939 having previously advised Goering to fly to Britain to prevent the war. He himself became the victim of Hitler's deception, and he himself believed that the war had been forced upon Hitler. Who can disregard justice to such an extent as to reproach Milch with having held that belief? It is his misfortune, but not his guilt, to have been deflected from the truth by misleading propaganda. Who would so misinterpret patriotism, heretofore regarded as one of man's noblest instincts, as to reproach Milch for having done in 1939 his duty as a soldier?

He never prepared any aggressive wars. In every case he was informed shortly before the event, and nothing is more typical of the opinion his superiors held of him than the fact that he chanced to hear about the preparations for the war against Russia through a subordinate, who had been told of Hitler's plan before the field marshal was told. The first Nuernberg trial has already shown that Milch saw Goering at once in an effort to prevent that war. Goering himself admitted this. Milch's good intentions were of no avail because Goering turned him down. As Milch's superior officer, he even went so far as to forbid Milch to see Hitler and to tell him that he, Goering, would prevent Milch from being admitted to Hitler's presence.

One of your Honors, in putting questions to the defendant, aimed to show that it might be regarded as incriminating to the defendant that he did not resign in 1941 or at least in 1943. Your Honors, only if one has lived in Germany these last years is it possible truly to judge that problem. As I said in my opening speech, one can judge the man only against his background, through his upbringing, from which usually nobody can escape no matter in what country he lives. Milch was brought up as a soldier. He absorbed ideas which for centuries were regarded as true and inviolate laws. It is no guilt for him not to have freed himself from them. I have said this once before.

At that time nobody in Germany was in a position to protest against certain events, against certain aims of the Party. All that one could do was to criticize things within one's own immediate circle and tell one's intimate collaborators how to improve matters. If in Germany anybody had attempted at any time to express criticism publicly, either by word or by publicly resigning, nobody would have been the wiser for it. This system was so

ruthless and its stranglehold over public opinion so great that it would and could suppress anything.

You need only remember that during the first IMT trial it was shown that von Papen's criticism in his Marburg speech was completely withheld from the German public. Had Milch done anything, nobody would have heard about it, and his action would have been useless, perhaps senseless, as nothing would have been changed for the better. Your Honors may not know that six to eight generals, including General von Falkenhausen, once Commander in Chief in Belgium, and Colonel General Halder, one of Germany's highest and best leaders, were thrown into concentration camps because they had deviated from Hitler's line. This is not connected with 20 July 1944. Nobody in Germany knew about this. Pictures of General Count Sponeck were sold as of a hero two years after this man had vanished into a concentration camp. Such were the lies and the deceptions of Goebbels' propaganda. We have learned since the end of the war that prior to 20 July 1944, there were 50 to 60 generals in Moabit prison, without anyone in Germany knowing anything about that. You will understand the full falsehood of propaganda when you recall the base distortions by which the dismissals of Generals von Blomberg and von Fritsch were announced to the German public.

Believe me, your Honors, protests in Germany were not possible at that time. The only result would have been the futile death of the protesting person. If Milch had attempted to fly abroad, his whole family—such were the detestable methods of those in power—would have been put to death on the basis of what was known as family responsibility.

Milch cannot be reproached with not having refused service and allegiance. No soldier could do this. Should a member of the Anglo-American Air Forces suddenly have refused to go out on an operation which would bring death to innocent women and children, he would not have been regarded as a hero. He would have been put before a court martial.

That Milch did not participate in an attempt on Hitler's life, who would accuse him of that? Although he was an energetic man, the defendant was, because of several concussions of the brain which he suffered, inclined to terrifying fits of rage, or ranting speeches, but the evidence has shown that in his heart of hearts he was kind and soft. He would ameliorate sentences already passed, and as the witness Richter testified, he compensated for a fine, which he inflicted himself, by secretly passing into the family of the punished man a very large sum of money, larger than the fine itself. The witness Vorwald expressly stated that basically Milch was a man soft of heart, who conducted him-

self as soft-hearted people would. He, whose character is basically soft, who only in a rage caused by disease and worry utters harsh words never followed by action, is not capable of murder. Thus, no just man will charge him with not liquidating Hitler, and Milch did what in his conscience he felt to be possible and necessary. He had the courage of telling the dictator to his face what he thought of the situation. He demanded that Hitler desist from his plans, dismiss the most important men, such as Goering, Ribbentrop, and Keitel, give up the supreme command, and establish a cabinet of equal powers, and he finally desired that peace should be brought about.

Your Honors, it would be easy to say that as a field marshal he did not thereby endanger himself. The statement of the next witness Krysiak, the fate of the generals which I mentioned to you, show what was done in Germany to men who did such things, but the defendant went one step further. He succeeded in inducing Goering also to demand the end of the dictatorship and the instituting of a Reich cabinet. Your Honors, this means that this defendant thereby risked his life. He could not foresee that nothing would happen to him. That nothing did happen to him was not due to his rank, but to Hitler's opinion that this man was not yet dispensable. Everybody can only be sentenced according to his potentialities. Your Honors must not compare conditions in your free and noble country to those in Germany. Only the German world as it was should be the basis of your judgment here. It is not true to say that Milch gave his continued support to the objectionable aims of the Party. He continued to do his duty because, as he testified, he wished to prevent the worst from happening to his people, the total destruction of the cities and of Germany's culture. It was his constant hope to organize the defense in such manner as to prevent bombing warfare from taking its full effect, that same bombing warfare which is the scourge of mankind, whatever one may think of its military value. Would it be for us to judge him on the fact that he did not obtain his aim because of the stupidity and failings of his superiors? Milch furthermore testified before you that by an improved defense he hoped to achieve better peace terms for his people. I can assure your Honors that since 1941 Goebbels' propaganda told the German people time and again of the horrible terms the enemy would impose on them in the event of peace. That included an item to the effect that the whole of the German male population would be castrated should Germany lose the war so that the German people would perish. Who has the courage to say it is despicable for a man of battle to organize a defensive system under the news impact of such items in order to obtain better peace terms?

It would be a distortion to say that Milch thus believed Hitler's aim of destroying Europe, for he knew that the war was lost. He was intelligent enough to see that with the lost war the end of Hitler's ideology would come. It was not the Party he wanted to serve when he hoped for less severe peace terms with a better defense, but a lost war that would not mean the loss of the legal rights of a whole nation as is the case unhappily today. Only he who comprehends and understands all these things can appreciate Milch's actions and judge them fairly. And later, when he saw that his objective of saving the German people from the worst would fail, Milch withdrew from the regime. He could not resign on his own. That, for a soldier in Germany, was an impossibility. He did not choose to act dishonorably, which no one can expect from a decent man. In Germany soldiers are removed from their offices only by their superiors. Thus, as he put it himself, Milch could only organize his own elimination from office by gradually transferring his tasks to Speer's Ministry. As his superiors thereupon regarded him as superfluous and were glad to be rid of this man, Milch was finally free. Then began the scheme on the part of his superiors to liquidate him. Such was the position of Milch, the man, and such by and large were his motives. For him to have acted in this and no other way is not dishonorable, and only he can cast the first stone who never in his born days gave in to public opinion in defiance of his better judgment, who has never considered his superiors, and who proved himself to be above his upbringing, and had the courage of fighting for his convictions even with the most brutal methods.

Before dealing with the details of the indictment I should like to make these basic points. The prosecution created the impression that under the conspiracy count it would hold Milch responsible for everything in totality that was done in connection with labor assignments and experiments within the confines of the Luftwaffe, nay, within the confines of the German government departments. This is not admissible. The indictment may be referred to Control Council Law No. 10. Nothing is mentioned there that conspiracy to commit crimes against humanity or war crimes constitutes a punishable offense. Only conspiracy against peace is punishable. The way the law is formulated, particularly count 2 of Article 2, makes it clear beyond doubt that activities listed therein only concern participation but no independent types of crime. Where there is an independent crime then also in the case of war crimes and crimes against humanity there would have to be a provision similar in count 1-A, Article 2 of the Control Council law where a crime is defined as "participation in a common plan or conspiracy for the purpose of committing one of the crimes

above set forth." In this connection the verdict of the IMT must also be considered. At the end of the sixth part of the verdict it states: ¹ "Count one, however, charges not only the conspiracy to commit aggressive war, but also to commit war crimes and crimes against humanity," but the Charter does not define as a separate crime any conspiracy except the one to commit acts of aggressive war. Article 6 of the Charter provides: "Leaders, organizers, instigators, and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan." In the opinion of the Tribunal these words do not add a new and separate crime to those already listed. The words are designed to establish the responsibility of persons participating in a common plan. The Tribunal will therefore disregard the charges in count 1, that the defendants conspired to commit war crimes and crimes against humanity, and will consider only the common plan to prepare, initiate, and wage aggressive war. And under figure 8, the IMT states further: ² "As heretofore stated, the Charter does not define as a separate crime any conspiracy except the one set out in Article 6(a) dealing with crimes against peace." The verdict was so formulated because the Charter was unclear at this point. As above stated, the Control Council law contains no such provisions, so much the less because in this case conspiracy does not constitute a separate crime. The provision set forth in Article 2, paragraph 2, No. 6, "whoever was connected with this planning or execution", is only a form of individual defense and cannot be put on a par with the concept of the common plan or conspiracy. Article 2 defines clearly the type of crime referred to in paragraph 1, namely (1) the individual crime of violation of peace; (2) conspiracy against peace; (3) individual war crimes; (4) individual crimes against humanity; and finally, the form of participation in paragraph 2. Therefore, it is rendered that a so-called conspiracy to commit war crimes and crimes against humanity is not a punishable offense.

It has to be examined therefore whether Milch made himself guilty of any individual type of participation. It would have to be shown that either as a principal or accessory he participated in a crime or that he especially ordered or initiated it. It would have to be proved that he gave his approval for a definite crime. That approval, however, cannot refer to a general approbation but can only be considered as participation in crime if, by his

¹ Trial of the Major War Criminals, vol. I, p. 226.

² Ibid. p. 253.

approval, he strengthened and stiffened the criminal will of the perpetrators. It must therefore be made clear that he knew of the individual crimes and that he intended to put them into action by means of his approval. Even in that case his subsequent approval would not suffice; since still nowhere in the world is anyone punished because of an inner or moral attitude. Finally, it must be examined whether Milch was connected with the planning or commission of such crimes. Here again it must be understood, of course, that this connection must be capable of causing the crime, and that Milch knew about the connection and therefore the crime. The question of membership in any organization or association which was connected with the execution of crimes requires special examination. It is clear that mere membership, as such, in any organization wherein any member may at one time have committed a punishable act cannot make every other member of that organization punishable. Otherwise a monstrous situation would arise where the commander in chief of a large army was punishable if any member of that army committed a war crime. Where in this world in all time has it happened that in such a huge organization as wartime armies' soldiers did not at one time or another commit punishable acts? This is inevitable and it occurs in all armies. It can therefore only be a question here whether the organization or the association of which the defendant was a member had as its particular purpose the commission of war crimes or crimes against humanity.

Letter (f) of Article 2, paragraph 2, must be considered here. Since Milch is not charged with a crime against peace, it would also have to be especially proved that he participated in the common plan of conspiracy for the commission of crimes against the peace. That he held high office cannot of its own make him punishable. This is also evident from the Tribunal of the IMT who acquitted three persons who held equally high office in Germany.

Bearing in mind these points of view, one has to examine the individual counts of the indictment. In answer to the prosecution's charge that Milch in February 1944 had ordered two Russian officers to be shot, Exhibits Milch 40 to 44, and the testimony of the witness Vorwald have proven that the said officers were shot on the basis of an expressed order by Hitler who received, through political channels, the report of the incident earlier than Milch. Exhibits Milch 40 to 44 and the testimony of Vorwald have made it clear that Milch, first of all, had no possibility of issuing such an order, and secondly, that he did not cause its being ordered, and thirdly, that he only gained knowledge of the incident after the officers had been shot.

The witness Vorwald was in a position to testify that Milch even angrily protested against such an order.

The passage in the record of the 53d meeting of the Central Planning Board of 16 February 1944 contained in Defense Exhibit 11, can therefore not be made the basis for a judgment. Whoever, knowing the German language, reads the text critically must realize that the utterances of Milch recorded therein are contradictory in themselves and, therefore, cannot possibly contain the real statements made by Milch. They are contradictory to the true course of events; they are contradictory to Milch's real authority, and finally, they are contradictory to the inner attitude of the defendant who himself angrily described this act as a crime.

It is significant for the question of the probative value of all verbatim records submitted to consider that such recording of the true events is found here. Such records containing such mistakes cannot be made the basis for a judgment. If we assume, however, that Milch really made these utterances which are so wrong, then this passage would remove all doubt that Milch during moments of excitement was no longer master of his thoughts and words and, therefore, cannot be held responsible for them. It would be a serious offense against justice, however, if judgment was to be pronounced on the basis of such stenographic notes taken by an unknown person who may have been in error.

Milch is furthermore accused of having abetted, participated in, and been connected with cruel and inhuman experiments carried out on concentration camp inmates at Dachau. I believe that here, too, evidence has shown that Milch is innocent. It has been proved by the clear, although long-winded, deposition of the witness Hippke that the defendant had heard for the first time on 31 August 1942 that human experiments were being carried out on others than the volunteering members of the Luftwaffe; that is, at a moment when the high-altitude experiments were already completed and when the freezing experiments were about to be completed.

In this connection I recall that the final report on freezing experiments was available in print already on 10 October 1942, so that these experiments too must have been completed a considerably earlier date. On 31 August 1942, the defendant learned merely from Hippke that human experiments had been carried out on criminals who had been sentenced to death and who had volunteered to obtain a pardon. He was told expressly that nothing had happened so far during these experiments. It is obvious that experiments as such do not in themselves constitute an offense against humanity, whether or not they are in use in some foreign

countries. At any rate much evidence has already been submitted by the defense in the medical trial, proving that, also in democratic states of the world, experiments have been carried out and are being carried out on volunteering criminals, experiments which constitute a danger to the life and health of the experimental subject.

The prosecutor has submitted in evidence his last exhibit, Document 1971-PS, Prosecution Exhibit 161, showing irrefutably that Himmler too had ordered that only men sentenced to death are to be used for these experiments. Hippke did not even misinform Milch. That, besides the experiments which were of importance to the Luftwaffe, Himmler had also started secret experiments is shown from this very Exhibit 161 because therein Himmler directs Rascher to continue these special experiments on which he had reported to him and even to carry out revival experiments.

Both witnesses Ruff and Romberg have testified unanimously that nothing has happened during these experiments. Death casualties had occurred during Rascher's own experiments which he carried out on Himmler's behalf. Only the aim of these experiments remained unclear to the witness, which is now being clarified by Exhibit 161, but Milch had no knowledge of all this. He fully believed what Hippke told him, nor did he ever have any cause to distrust Hippke and he could not distrust him more as he knew that high-altitude experiments had already previously been carried out on Luftwaffe personnel of his own air force without any danger being involved. Not even Hippke has had any knowledge of cruelties and death casualties. How much the less can be proved that the defendant could have had any knowledge. It does not say anything against the defendant that he had signed already before 31 August 1942 some letters which had been submitted to him by his offices. Nobody has been able to state that Milch had dictated these letters at all. It could not even be proved that he had seen or read the letters from the SS to which these letters refer. It is impossible for a man who has such a burden of work and such a large sphere of tasks as the defendant to take care of every trifling matter in his office, that these letters—which to anybody who has no knowledge of the underlying facts appear harmless and unimportant—could also not arouse the defendant's suspicion. Should he be charged with responsibility for them then, this would be a responsibility which could not be borne by anybody. This would mean to overestimate human working capacity. It is the very idea of any great organization to relieve the chiefs or the heads of attentions to details in order to make them free for the main tasks. If such a man were to be asked to take care of everything, then the organization would be unsuccessful and

no man in the world could form a great work comprising many people, and no man in the world would be willing to head such an organization if the chief of the organization should be held responsible for everything that his subordinate agencies commit. Everybody has the right generally to trust his subordinates as long as he has no reason to distrust them.

Hippke's descriptions were unimpeachable and gave no reason for misgivings. His tenure of office at that time was irreproachable so that Milch had not to distrust Hippke's activities and all the less so because already at an earlier date human experiments had been carried out by the Luftwaffe in a manner above reproach. Milch has testified to the effect that he had not read the report on high-altitude experiments. Evidence has shown that he has not seen the film nor could he have cause for this film to be shown, only if he would have stayed in Berlin, but he was not even in Berlin on that day; therefore, he could not become suspicious from what occurred. Likewise Milch never received the report on freezing experiments nor did he ever get a final report on this matter.

Finally, Milch had no reason to distrust the fact that the SS participated in the experiments. He knew that Hippke was part of it and was therefore entitled to believe that everything was in order. Therefore, Milch was neither a principal in nor an accessory to, nor has he ordered or instigated these experiments. He has never given his consent to the crimes committed because he had no knowledge whatsoever of them nor was he connected with their planning or their execution, nor was he a member of any organization aiming at the commission of such crimes. It is not the aim of the Luftwaffe to carry out such criminal experiments, and with the DVL he had nothing to do at all. It is irrelevant that at that time Rascher was a member of the Luftwaffe. Exhibit 161 proves that Rascher received the orders to execute the crimes as a member of the SS from Himmler himself and also carried them out in that capacity. Finally, it must be said that the Wolff letter of November 1942 was only written after the crimes were committed. It has not been proved that Milch ever saw this letter. He was not in Berlin when the letter arrived. That he has testified. The letter was sent to the Medical Inspectorate which only answered it in 1943 as Hippke has testified. Also, the fact that Rascher was transferred to the SS had nothing to do with the defendant. That was a matter settled outside of his competency. The personnel chief of the Luftwaffe was at no time subordinated to him, and it must also be taken into consideration that, according to the evidence, Milch had no knowledge of Rascher's having committed any crimes. One cannot charge Milch with the fact

that Rascher referred to him. The testimony of Neff and Defense Exhibit 56, the affidavit of Punzengruber, have shown to this Tribunal that Rascher was a confirmed liar whose statements have no probative value and, therefore, I believe that Milch in this matter too has shown to this Tribunal his complete innocence.

Before I go into the charges against Milch for his participation in the so-called slave labor program, I must make a few fundamental statements. I shall begin by examining the question as to what extent the Hague Convention on land warfare and the Geneva Convention of 1929 were valid for the treatment of Russian prisoners of war. By the statements of witness von Neurath, it has been confirmed that the U.S.S.R. in 1919 specifically withdrew from the Hague Convention on land warfare as well as the former Geneva Convention. Jurists will not dispute the fact that a formal withdrawal from agreements is of greater importance in the relations between states than the act of joining such a convention. Even if one were of the opinion that the Hague Convention on land warfare and the Geneva Convention represented merely the codification of already existing international law, so that the state that did not join the conventions would also be bound to this already existing international law in all details, even in such a case the expressly stated withdrawal from such a convention must mean also a withdrawal from the natural international law. If this were not the case, the withdrawal from such conventions would be an act without meaning which such intelligent politicians as those found in the U.S.S.R. would never undertake. Nor is this conception of mine contradicted by the expert opinion offered in the first Nuernberg trial (*Canaris Doc. No. EC-338*) * because this expert opinion is only concerned with the order of Hitler and Keitel regarding the killing and cruel treatment of prisoners. It is, of course, clear that inhumane acts do not become permissible because of withdrawal from conventions. What we must examine here, however, is purely the question whether or not, and for what activities, such prisoners of war may be used. Detailed regulations of international law, which in themselves do not contain atrocities, can in my opinion be nullified by expressly withdrawing from a convention codifying existing international law. Finally, we wish to draw attention to Article 82, paragraph 2, of the Geneva Convention of 1929 which contains the following regulation: "If in wartime one of the belligerents is not a member of the convention, the regulations of this convention remain valid, nevertheless, for the belligerents who

* Memorandum of 15 September 1941 from Canaris to Keitel concerning an OKW order regulating the treatment of Soviet prisoners of war, contained in *Nazi Conspiracy and Aggression*, vol. VII, p. 411, U.S. Government Printing Office, Washington, 1946.

have signed the convention." This does not mean that the signatories are bound to the Geneva Convention also with regard to the treatment of soldiers of a nonsignatory power, but only with regard to soldiers of the signatories who are at war. Article 82, paragraph 2, of the Geneva Convention, therefore, states that with regard to the relations of nonsignatories the convention is not valid. The regulation was made so that it should not be thought that if a nonsignatory participated in the war the Geneva Convention would not apply to that war.

That my opinion was shared by the U.S.S.R. becomes clear beyond doubt from Defense Exhibit 49 presented by me, which contains the decision of the Council of the Peoples Commissioners of the U.S.S.R. of 1 July 1941. This decision does not mention any limitation with regard to the use of prisoners of war for labor except for the regulations under number 25. According to this, prisoners of war may not be used as workers in the battle zone nor for the personal needs of the administrations, or by other prisoners of war (orderly services). Defense Exhibit 51, concerning employment of German women prisoners of war in Russia, also reveals the same conception of the U.S.S.R.

The objections that not Russia's conception but that of the United States of America matters here is not justified. Existing regulations between two states can only be judged on the legal relations valid for those two states. If both states regulate a given question in agreement with conclusive acts in the same way, that regulation becomes international law valid for the relations of those two states and must be taken into consideration by all other states. It is the right of sovereign states to regulate their relations as they wish. Other states have no right to interfere in the right of sovereignty and they must acquiesce in the legal conception existing between those two states regarding any issue concerning their citizens. Therefore, legal opinions of another state must not be taken as a basis for the judging of actions which occurred between the nationals of these two states.

As in Milch's sphere of competency Russian prisoners of war were used neither at the front nor as orderlies, he cannot be found guilty so far as the treatment of Russian prisoners of war is concerned.

All this also applies to the treatment of the Russian civilian population whose rights could have been cared for by the Hague Convention for land warfare alone. Here, too, Russia's express withdrawal from the convention is of great importance.

In my opinion it cannot be argued that Germany attacked Russia and that, for the reason, employment of the civilian population would be illegal even if this were not illegal in itself. That

alone would mean that Germany would be bound to the regulations and that Russia was not. From the point of view of international law, this is an impossible situation. For two belligerent states, there cannot be a different international law.

Moreover, the validity of the regulations laid down in the Hague Convention for land warfare can be cancelled by a special factor which precludes lawlessness. In all codes of law of the civilized world, the law of so-called emergency situations exists. This conception of law must also be applied to international law. That Germany was in an emergency situation in the sense that the use of the civilian population for labor in the occupied territories was only caused by the emergency situation, I showed in detail a little while ago. Modern war means total war and as such has suspended, in several points, international law as it existed up to now. It is uncontested that according to the Hague Convention for land warfare actions of combat against the civilian population are forbidden. Modern air warfare, having as its aim total annihilation of armament and production of the enemy, brought with it to a great extent warfare against the civilian population without any of the belligerents regarding such combat actions as forbidden according to the Hague Convention on Land Warfare. This also applies to the total blockade of a country which aims at starving the population of that country. These comprehensive ways of waging war which hit all classes of the population permit, in my opinion, to a state which is at war, especially on account of the fact that its civilian population is brought into the strife, to use for its purposes labor from occupied countries so as to maintain its production and armament.

Concerning the relations of the other nations involved in the war, there is no doubt that for the above the Hague Convention on Land Warfare and the Geneva Convention of 1929 are valid. But it is just as clear that it is left to the nations to change and abolish these regulations by special agreements between one another. A good example here is the Armistice Treaty signed in 1944 between the Russian and Romanian governments according to which Romania had to pledge itself to put at the disposal of Russia a large number of people for reconstruction purposes. Complying with this agreement, in January 1945 many thousand members of the Romanian state were deported to Russia by compulsion and against their will. This case shows what, in such matters, may be legal and valid. Moreover, that agreement was made under some force of bayonets, as in all history is usually the case with every treaty between a conquered and conquering state. The Defense Exhibit 47 proves that in the case of Germany the Control Council (*see sec. VI, number 19 of the Proclamation No.*

2) imposed on the German authorities even without a treaty, but simply on unilateral orders, the same obligation, i.e., to put at disposal labor for personal services inside and outside Germany. That such orders could naturally only be fulfilled by the German authorities by means of a labor service law will not be contested by anybody.

These one-sided orders given by the victor to the vanquished, whether they be issued on the basis of an armistice brought about by force of arms or on the basis of command or law following the unconditional surrender of a state, are not contrary to law.

It should, therefore, be stated that the rules of the Hague Land Warfare regulations can be suspended between two states. I have given proof for the fact that there were between Germany and France agreements whereby the French population had to make themselves available for work in Germany, first, by volunteering, and later, on the basis of a law for compulsory labor issued by the French Government. No restrictions were laid down to what extent and for what purpose these people were to be employed.

The objection has been raised that the Vichy Government was a government of traitors, but it was that government which concluded the armistice with Germany, and throughout the war all Frenchmen, including those in de Gaulle's camp, would raise passionate protests when they thought that one of its articles had been violated. Thus, they all acknowledged that an armistice could be concluded and was concluded. Once you acknowledge the existence of an armistice agreement, you cannot, logically or legally, deny the legality of the government which has concluded the armistice. You must eat your cake as it is and you must not pick out the plums alone.

As for the situation in Holland and Belgium, both those countries surrendered unconditionally. According to international law Germany was, therefore, in a position in its dealings with the authorities of these countries to regulate the labor commitments of the civilian population unilaterally in the same manner as this has now been handled in regard to the German population by the Control Council.

As far as Poland is concerned, that country, on the basis of the partitioning agreement between Russia and Germany, had lost its sovereignty. That such partitioning agreements can abrogate the existence of a state has already been historically proved by the former partitioning agreements of the bordering countries in regard to the Polish state. Moreover, the agreements concluded between the victorious nations after this war have abrogated the sovereignty of the German state over very large areas in the East and thus have created new sovereignty for the population of these

territories. Germany released the Polish prisoners of war and could at any time issue legal labor directives as regards the Polish civilian population since the latter were under German sovereignty.

So far as the Italian prisoners of war are concerned, the evidence has shown that the Mussolini Government, which at the time was the covenant government in that part of Italy not occupied by the allied forces, made them available for work in the armament industry, especially after Germany had to manufacture armaments for Mussolini's Italy. Here it should also be mentioned that Milch's opinion that Italian prisoners of war who fled from a transport should be shot does not mean a cruelty. All countries of the world have prisoners shot who attempt to escape as proved by me in Defense Exhibit 26. So far as the civilian population of other southeastern states are concerned, they were only recruited and employed as free workers based on approval by the legally existing governments of these countries.

In addition, it is interesting to point out that the agreement between France and Germany, according to which France was supposed to allocate French civilians for the labor commitment in exchange for the release of prisoners of war, had a parallel in the discussion of the question regarding the fate of German prisoners of war still in allied countries. In France, in particular, the request has been made to make possible the release of German prisoners of war by making available German civilians as workers in place of the prisoners of war. This, too, is evidence to the effect that such an agreement is not contrary to international law.

That, your Honors, is the legal position as I must present it.

In regard to the question of guilt, a special point has still to be considered. All legal theories consider that the defendant is not liable for punishment if after careful consideration and careful inquiries he has gained the conviction that his action was permissible. It has been shown that in Germany prisoners of war and foreign civilians were being employed within the war production even at the time when Milch had not yet taken over the office of the GL (Generalluftzeugmeister—Air Ordnance Master General). In other words, he was already confronted with the situation, the exploitation of which he is being reproached for today.

The testimony of the witness Vorwald and that of the defendant himself showed that Milch made inquiries from the competent authority as to whether the employment of prisoners of war and foreign civilians which he planned to use was admissible under the existing regulations. He has testified here that he received an affirmative answer. Furthermore, he testified that the admissibility of the utilization of foreign civilian workers was discussed soon

after the First World War in a large staff committee of the German Reichstag. The chairman of that staff committee was Prof. Dr. Schuecking, a legal authority of repute, who had become known throughout the world as a passionate champion of pacifism and democracy. This committee, as the defendant gathered from the discussions held at the time, could not and did not find that employment of foreign civilian workers in armament industry was inadmissible.

Impressed by his earlier experience, the defendant had the right to believe the information given to him by his superior office that employment of foreign manpower and of prisoners of war was admissible. Moreover, this information was not issued without reason. The reasons given for it were rather in accordance with the reasons which I have described in detail above. How should Milch, who is not a legal expert, who as a layman did not understand anything about applicable international law, how could he form a different opinion? It is the right of every citizen to believe the legal information supplied by his superior and the concomitant authorities, for no one can impose upon a citizen the duty to undertake on his own independently an examination of the legal questions involved. In a modern state this would result in an untenable situation whereby every one of the citizens would acquire his own conception of law. Differing opinions abroad Milch was not in a position to hear since he was not allowed to read foreign newspapers nor listen to foreign broadcasts, nor did he do so.

He acted in good faith, and that has to be considered in his favor today, the more since he knew and may well have assumed that these measures were only temporary and were forced by the necessities of war.

[At this point the following discussion took place:]

PRESIDING JUDGE TOMS: Is it a principle of the German law that ignorance of the law is an excuse for violating it?

DR. BERGOLD: It is a principle inasmuch as if somebody has been misled by his superiors on the significance of the law. Everybody must inquire what the law is, but if his superior authorities give him certain information, he can rely on that.

Q. Suppose a person is advised by his own counsel as to the law, and counsel is wrong, does that excuse the client?

A. The client's lawyer is not sufficient. The authority must be a government official.

Q. Well, suppose a high government official, a man in high authority who was not a lawyer, advised his subordinate as to his legal rights and duties, and that advice was wrong?

A. That would mean that there would be an excusable error, an excusable legal error.

Q. If, for example, Goering, who was a person in high authority, advised Milch that he had the legal right to go out and shoot a person, would that be justification for Milch's doing so, legally?

A. No. Because as to the question of whether you can commit murder or not everybody knows about that; but the point as to whether the employment of foreigners was admissible under international law is a very tricky legal point, and there, of course, there is a difference.

Q. You mean that every one is supposed to know that he cannot shoot a man.

A. Yes. Everybody knows that.

Q. But everyone is not supposed to know that he can force a man to unwilling labor?

A. No. He is not obliged to know that. That is why Milch applied to receive this information about international law.

Q. You make a distinction between homicide and slavery?

A. Yes. I make a difference not, perhaps, as in this exact example, but I make a difference between the natural knowledge of law, which everybody has, and special questions and special knowledge not shared by everybody in the state. The point whether you can kill or steal is common knowledge, but the question whether international law permits the employment is not something which everybody knows. This question is one which only specialists and legal experts can decide, and if any man concerned tries to obtain information as to whether it is permissible, and obtains that information from a specialist of a governmental department who says, yes, then it does not become permissible in itself, but we have what is known as an excusable legal error.

Q. Would you take the same position as to enforced civilian labor?

A. Yes, on the whole question whether anyone can employ foreign workers or prisoners of war.

Q. I would like to get this straightened out.

A. There are a number of other difficult legal points which I need not go into here. This is certainly an example of what occupies us here.

Q. That is true. I want to get your position perfectly clear. I think it is—

A. Let's take, for example, the question whether, in any foreign country which is occupied, the occupier may issue occupation money; let's assume that this is punishable according to some international regulation which is difficult to interpret and which a layman is not in a position to know. Now, if the Reich Bank, as expert, told the governor of the occupied country that it was permissible, then the chief of this occupied country, the military au-

thority, would have an erroneous opinion for which he could not be held guilty.

Q. Now, that theory of law becomes a very uncertain guide, does it not? It depends upon interpretation of not the lawyers, nor the professors, but of high government officials; they make the law.

A. No. My client inquired of the competent offices, not of Goering, but of the competent offices, namely the legal departments. In all the ministries there were legal departments, also in the Reich Air Ministry and in the Wehrmacht itself. They employed specially trained experts. I draw your attention to—

Q. Just a minute. Then the head legal experts make the law as far as the defendant is concerned?

A. No, no, he does not make the law but he tries to, and that is, of course, the legal error that—

Q. He makes the law by which the defendant may govern himself?

A. Yes, for this special case, as long as he does not hear an opinion to the contrary, let's assume.

Q. Oh, what happens after he does hear the opinion to the contrary, then which law does he abide by?

A. In that case he can act no longer at all. If he acts, he acts on what is known from the Roman law as "eventual dolus", an evil intention, in case he comes up against the law. I assume that the term "eventual dolus" is known to your country, too.

Q. Supposing that he gets two conflicting opinions from the legal ministry, or one of the legal advisers in a high place tells him he may do a thing, and another in an equally high place says he may not, how does that solve the dilemma?

A. In that case he must not commit the act, because his attention has been drawn to the difference in the legal opinions, and that is where we have the "eventual dolus". If he does not depend on it, and does it on his own risk, then in that risk he committed a wrong.

Q. I am frank to say that this is a new and startling legal theory. Did you understand that?

A. Yes. I understood.

PRESIDING JUDGE TOMS: Well, we have your position.

[Dr. Bergold continues.]

His good faith, however, was reinforced by the fact that all the measures against English and American prisoners of war, which are being objected to, were not carried out. That the reasons expressly stated for this were that no agreement except a change in the regulations had been conveyed normally to the British and

American prisoners of war. Whoever has the least psychological insight will understand that the observing of the Geneva Convention principles towards those two countries must have made the deviation from them in respect to other countries appear to the defendant as authorized, all the more as this deviation had been based on presence of other agreements, or the lack of other protective measures.

As far as the question of actual recruiting and using of manpower is concerned, a differentiation must be made between recruiting, bringing foreign laborers to the country, and their treatment on the whole on the one hand, and on the other hand their use within Germany in the labor assignment.

May it please the Tribunal, the case in chief, and the submitted documents of the prosecution, especially the Exhibits No. 13, 14, 14-A, 15, 15-A, and 17 eliminated any doubt as to the fact that Sauckel alone was competent for the recruiting of foreign laborers and their transport to Germany and for the treatment of the foreign workers, and that Hitler over and over again confirmed against the attacks of Speer that he was the only competent man. Not one single document has been submitted which would show that Milch participated in the recruiting, transfer to Germany, and treatment of the workers. The witnesses Speer, Koerner, Richter, Hertel, Eschenauer, Pendele, Vorwald, as well as Milch himself, have testified under oath that neither they nor the defendant knew anything about all the abuses which have become evident in the sphere of Sauckel's work.

I call your attention to Document 407-II-PS, Defense Exhibit 3, which reveals how Sauckel always and everywhere emphasized that he took care of the foreign workers to the best of his ability. In this exhibit he makes the assertion that foreign workers have never in the history of the world been treated as well as they were treated by him in this most severe of all wars. The testimony of the witness Schmelter and of Milch has shown that Sauckel had made the same declarations and told the same lies to them also. There is no need for any further statement to the effect that the recruitment and even the forced transport of the workers into the Reich on the basis of an order could have been carried out in an absolutely humane manner and that all these atrocities, murders, and tortures which took place need not have occurred. Such actions are not of necessity connected with such events. The fact that in the East and in France, parts of the population were called up and drafted by classes by means of labor service decrees could not and did not have to make Milch suspicious. Forced drafting of people occurs in all countries which have a compulsory military service or labor service. Examples of

the latter are Germany and Bulgaria. The latter state had ordered service according to each group before the Hitler regime existed, and how could Milch, after all, have found out about the inhuman acts in the recruitment and transport into the Reich and the treatment within the Reich? Obviously, only if he had observed such incidents himself or if complaints reached him through his subordinates or through these foreign workers themselves.

Milch testifies here in a creditable manner that during the entire course of the war he had never observed such conditions. During all these years he made his trips by plane and, in some exceptional cases, by special train; that in this way he could naturally not observe such facts is quite clear. The witnesses have confirmed that they never reported abuses to him. The only things he heard were isolated complaints that the food was inadequate at times or that there was a lack of clothing and shoes. In themselves, these were conditions which resulted at the time from the wartime emergency and applied also to the German civilian population. All of the above-mentioned witnesses and Milch have, however, confirmed that Milch on his own part immediately ordered that the conditions should be remedied.

These incidents, however, cannot be called inhuman acts or atrocities, cannot be called crimes. The witnesses Pendele, Hertel, and Vorwald, as well as the defendant himself, have testified that the foreign workers never brought any complaints to the defendant. They all expressed their happiness. It may be that they shied away from complaining to Milch. That, however, was not Milch's fault. He had the right to believe the assurances of the persons he questioned, the more so because his conversations with them were carried out in the friendliest, even the most cheerful manner.

Now, how could Milch have found out about these incidents? I have already mentioned that he could not obtain knowledge about that from foreign reports, because he did not receive such reports. Thus, it should be established that Milch was not responsible, first, for the directive for the so-called slave labor; secondly, the recruitment of manpower; third, the inhuman acts perpetrated in connection with this, the transport to Germany, and the crimes connected therewith, and finally, fifth, the treatment of foreign workers in Germany and the atrocities committed in connection therewith.

He knew nothing at all about them. He did not commit these crimes; neither as a principal nor as an accomplice. He neither ordered such crimes nor instigated them. He did not take a consenting part in them either. On the contrary, he always eliminated minor abuses and constantly saw to it that the conditions

of the foreign workers were ameliorated by special gifts. He was in no way connected in a causative manner with the planning or execution of these crimes, and here I refer you to my earlier legal statement, for he would have had to know about them, that such atrocities, murders, and other inhuman acts occurred in connection with the recruitment, transfer to Germany, and treatment within Germany if he is to be held responsible for them. Neither did he belong to the organization which was connected with the recruiting, transport, and treatment, namely, the Organization Sauckel. If at all, he could be charged only with the utilization of foreign workers.

No just man who values that name can, by virtue of knowledge subsequently acquired, condemn the actions which a defendant committed at an earlier time in ignorance of what later became known. Today the whole world is full of the horrors which have been brought to light. It is not true, however, that these horrors were desired by the supreme leadership. That Sauckel acted independently here and that he alone bears the guilt is shown by Defense Exhibit 3, in which Sauckel lied to Hitler, saying that workers had never been treated so well as by him.

I do not wish to defend Hitler. As a German, I myself have every reason to raise the most bitter and serious charges against the man whose account of guilt can never be paid up, but here it must be said that Hitler could hardly have included the commission of atrocities and murders in his plan for the foreign workers, for if that had been the case, Sauckel would not have had to lie as he did. Then he would not have had to pretend to his lord and master that he was treating the foreign workers so well. Such lies, such deceit, are practiced only by the subordinate who is aware that he has violated instructions and that he can be punished by his superior.

Document R-124, Defense Exhibit 32 shows clearly that in two cases Sauckel acted against Hitler's instructions in committing his crimes. Therefore, even Sauckel's labor organization was not created for the purpose of committing atrocities, murders, and other inhumane acts. Sauckel and a number of his subordinates made themselves guilty on their own accounts, and as guilty persons they strove to keep secret and to cover up their crimes. That the defendant cannot be responsible for these secret acts is hardly to be doubted.

I realize that in answer the prosecution will remind me of all the documents with severe statements by Milch which have been submitted to the Tribunal. This is a serious count of the indictment, but one can achieve clarity on the complex of questions thus brought up only if one considers whether Milch made these

severe statements only against foreign workers and prisoners of war or whether they were simply a part of his nature.

The witnesses Richter, Foerster, Hertel, Eschenauer, Pendele, and Vorwald have confirmed that Milch in his tantrums threatened even his German subordinates, his best workers, with hanging and shooting, and here in this room several men have appeared on the witness stand whom the defendant shot or hanged in words. This clearly shows that the defendant was not one-sidedly filled with hatred of the members of foreign nations; besides, this was hardly to be expected in the character of a man who for years energetically worked for peaceful collaboration with other peoples and who despised the racial doctrine and the idea of the "master race". Rather, it makes it clear that he threw out such wild expressions only when he was excited, so that his subordinates acquired the habit of laying bets on the number of people who would be shot, when they knew that exciting matters were up for discussion. I read a number of passages to you from the notorious speech before the quartermasters and fleet engineers, in which he raged against those present and against himself in the same terms as he used against the foreigners. And in other documents submitted by the prosecution, one can find such expressions used against Germans, against members of the leading class of the German people, and against German workers. All this proves that an unfortunate inclination of Milch is here expressed for which, like a sick person, he cannot be held responsible, especially since he never carried out the punishments which he threatened. All the witnesses whom I have called to the stand from Milch's entourage have testified that he used such terms only in tantrums. These tantrums occurred frequently, and always when he had met with major difficulties in the way of his work to save Germany from complete destruction. He was a sick man. He suffered several very serious accidents, all with severe brain concussions. It is an old experience of medicine that such people are easily excitable, and you must not forget how much this man had on his mind. He was a clairvoyant. He knew that the war was lost for Germany. He realized what horrors Germany was doomed to through the increasingly violent air war. He knew what help was possible in the distress of his people, and he had to stand helplessly by while his short-sighted and perhaps malevolent superiors frustrated, hampered, and prohibited all his precautions. In such severe physical distress, even a healthy man would become so irritable that he would be subjected to violent outbursts of anger. How much more violent would these outbursts be in the case of the sick defendant. His distressed soul housed

in a suffering body, helplessly exposed to its worries, reacted in this way to relieve the tension.

Many witnesses, in particular the witness Vorwald, have told you that when such excitement occurred the defendant even changed physically, that the back of his neck became red and swollen and that afterwards he no longer knew what he said while he was in such a state. That this testimony, especially that of the witness Vorwald is true, is shown with actual certainty by the incidents between the defendant and Goering on the occasion of the report on the crimes committed by Terboven in Norway on the civilian population, and Document R-134, Exhibit 159 of the prosecution. The prosecution without justification bitterly reproached the defendant for failure to protest against this monstrosity. The defendant in his defense was not able to answer that he had done so. Vorwald has testified that this process took place in connection with an outburst of anger about precisely that incident, and because the testimony of Vorwald that the defendant did not remember afterwards what had happened during his period of excitement is true, the defendant was not able to carry out a full answer in his own defense because of his excitement. He did not remember. Your Honors, it is clear you have achieved deep insight into the souls of men. Therefore, surely you are able to judge that this incident has revealed the truth of what the defendant and his witnesses have told you. Otherwise he would be able to cite his protest as a defense against the charge of the prosecution.

Now, I assume that the prosecution will object that these fits of rage occurred much too frequently and that they are therefore not a pathological symptom but a normal expression of his character. Your Honors, this can be disputed by a very simple consideration. The so-called GL (Generalluftzeugmeister—Air Ordnance Master General) meetings took place twice a week. That means that from the time when the defendant took office there were a total of about 160 meetings. In addition, there were 60 meetings of the Central Planning Board. Finally there were about 30 Jaegerstab meetings, altogether about 250 meetings in which the defendant participated. The meetings lasted many hours. According to my concept the average number of pages of verbatim transcript of the GL was about 200 for a single meeting, or about 30,000–32,000 pages for the GL alone. If one includes the transcripts of other meetings then one comes to figure approximately at least of about 35,000 pages for all the transcripts at a conservative estimate. This is an enormous figure from all these many meetings. From all these many, many pages of transcript, the prosecutor has been able to submit only a very few pages with

only very occasional extravagant statements. Therefore, the question is asked whether this was the normal tone of the defendant. It is also significant that in the meetings of the GL, such outbursts occur much more frequently than in the transcripts of the Jaegerstab or the transcripts of the Central Planning Board. In the GL meetings the defendant was in his own realm among us "parson's daughters", as the witness Vorwald said. Such outbursts naturally occurred there more often because according to experience a human being can let himself go more easily among his most intimate friends than among his subordinates. Nevertheless the outbursts remained isolated.

How curious is it that the emotional disturbances of the defendant occurred repeatedly in connection with the same subjects of discussion, for example, in the question of the work done by the French industry, the French people, the question of so-called slackers, or the discussion of threatening and inciting remarks made by foreigners. Sometimes several outbursts occurred at brief intervals, one after the other. Why, your Honors? Because the matters that excited the defendant were not settled. But this leads us to the question of whether the defendant followed up these wild words with deeds. He never did. Just consider, for example, the question of slackers or the question of the work done by the French industry, the French people. These apparently so malevolent orders issued in anger were not carried out. These stones were repeatedly laid in the path of the defendant. Here, your Honors, I ask you to penetrate into the depth of the circumstances with the understanding that characterizes a legal person. The defendant repeatedly became excited, for example, over the so-called slackers, Germans unwilling to work whom he considered to be traitors. Each time he issued strict orders, expressed wild threats, but would it not have been the most natural thing for this excitable man on all these occasions, which followed one on the heels of the other, to shout at his subordinates and to reproach them, to ask them why the orders which he had given and supported before in anger and which he had advanced repeatedly had not long since been carried out? Would that not have been the most natural and the first thing that he would have done in his anger if he had really expected and wanted his wild orders carried out? Your Honors, look at it from the human point of view. Revive all the experiences of your long and no doubt rich lives and examine with me whether I am not right in what I say.

I challenge my learned opponent to show me in all these instances, which are really appalling, one single expression indicating that the defendant objected to the failure to carry out his earlier threatening orders. Not a single word can be found and

here, your Honors, the truth becomes so obvious that no intelligent man can ignore it. It sounded incredible in the mouth of the witnesses when they said again and again that no such orders were carried out. It has been put to the defendant that it is improbable that a field marshal did not expect his orders to be carried out and that all his subordinates did not immediately rush to carry out his orders, but the man who is sitting before you told the truth in spite of all appearances to the contrary, for if he as a field marshal had expected his orders issued in anger to be carried out then he would surely at one time or another have expressed dissatisfaction because they had not been carried out. But he did nothing except to get angry from his sickness and his anxiety about his people. It is clear not only from the Terboven case that he actually knew nothing about what he had screamed out and that he never seriously pressed home his demands. The Court has questioned him repeatedly about these expressions. He always supplied that he did not remember them and he did not believe that he had said so. He has often had to tell you that what he shouted was wrong if he had actually said it. That too seemed incredible at first, but as this man afterwards no longer knew what he said in these attacks then he cannot testify about them. It is also clear that a man in such a fit speaks many untruths and one cannot assert that he lied deliberately. The man, as I say today, has told you the truth as far as he can know it to the best of his knowledge and belief. These transcripts cannot convict him of untrustworthiness. Moreover, in many cases the transcripts are no doubt full of mistakes, distortions, and errors. I have shown you a number of passages which must be wrong. I have shown you transcripts such as NOKW-359, Exhibit 75, which speak of Milch's presence and statements although on that day he could not have been present in the Jaegerstab. This is also true of some records of ostensible GL meetings. I have also proved that other transcripts make no logical sense in German and that several statements must have been run together there. Today, of course, no one can say whether these various statements were all made by the defendant. Many witnesses which I have examined on this matter, for example, to name but a few, Richter, Pendele, Hertel, Speer, and Vorwald, have testified that the transcripts contained many errors and that they were never corrected, that they were sometimes even intentionally distorted when the defendant attacked his superiors. Such passages were either left out or changed in such a way that the attacks on the person in question were no longer recognizable. But who would seriously consider it permissible to use such faulty transcripts as evidence?

All the witnesses from the entourage of the defendant have told you finally that in these Central Planning Board, as well as in the Jaegerstab and GL meetings, that in addition to transcripts reproducing the individual speeches and opinions so-called records of results were drawn up which contained only the really important decisions, orders, and regulations. They alone were valid for the subordinates. Those concerned acted according to them alone. It is noteworthy that the prosecution has not submitted a single one of those records of results containing any inhuman orders issued by the defendant. I beg of you, your Honors, not only to give severe consideration to the weaknesses of the defense, I beg you to draw your severe conclusions from the weaknesses of the prosecution as well. The fact that no incriminating records of results have been submitted proves once more that these threats were never carried out.

Your Honors, in disturbed times other men, too, sometimes say things which cannot be taken seriously. Men can be charged only according to their deeds, not according to their chatter. If you have access to Churchill's speech made in his first excitement after Dunkirk, you can see what violations of international law he recommended to the civilian population of England when he called upon them to prevent a German airborne landing. But he never actually issued any such orders, and so no one will try him for that. When the late General Patton said at one time that he intended to continue to collaborate with such of the German Nazis as were specialists, some excited American newspaper ran this headline: "Patton Should Be Shot." Who would be so stupid as to call these newspapers inhuman? No one in the world; no one takes such excited words seriously. No one can say that these outbursts of anger meant that Milch approved the atrocities which occurred elsewhere in Germany.

The affidavits of Kruedener, Defense Exhibit 37, Lotte Mueller, Defense Exhibit 38, the testimony of witnesses Koenig, Vorwald, Pendele, have all shown that this man always and everywhere tried to help people in distress. He, who ostensibly wanted to force the foreign workers and concentration camp inmates to work by means of starving them, had the concentration camp inmates supplied with food from his estate near Rechlin in order to improve their diet. Thus, in his actions, he did the opposite of what he shouted in his anger. But one could raise a very serious charge to the effect that Milch by his thoughtless manner of speaking incited the elements throughout the country which committed such misdeeds. But this again, your Honors, is untrue. You have not heard one single example here of anyone having acted according to Milch's words and having referred to having done so. These

displays of fury only occurred among people who knew Milch and knew that he could not be taken seriously in such moments. All witnesses have stated for you that these fits only became known to the circle of intimates.

I lived in Germany throughout the war. Although the sins of the high ranking leaders of the Reich were eagerly discussed among the people, I never heard one word about Milch's fits of rage. In reply to my question the witness Vorwald stated convincingly that nobody spoke about these incidents to other persons because they did not wish to expose their superior to whom they were attached. His loyal followers surrounding him with a cordon of silence. Nothing could be more understandable, and every decent person who respects his superior will and must act in the same manner, for, in spite of his occasional fierceness, Milch was popular with his subordinates. The witnesses Richter, Hertel, Pendele and Vorwald, among others, testified before you that Milch was highly esteemed. Richter actually called him the best and fairest superior whom he had ever met in all his life. Here, your Honors, in this praise Milch's true nature appears before our eyes.

I believe, therefore, to be justified in saying that one cannot and must not judge Milch by his wild talk. To infer guilt from that would mean to pass a judgment which could never be upheld before justice. Nobody may be judged by empty phrases. I would like to tell you a true story here which occurred in Germany during the discussions about a new, more stringent National Socialist penal code. At that time the Party took the point of view that criminal intent in itself was punishable, and thus, during a meeting of the Penal Law Commission in connection with the question of the meaning of murder, a long debate developed as to whether a person who intended to bring about the death of an enemy by prayer was to be punished by death for murder. The majority of Party members concurred with this mad opinion on the punishment of criminal intent. The sensible ones protested against it for a long time. When the debate was nearing its end, Dr. Guertner, the Reich Minister of Justice at the time, a clear-sighted man, rose and with one single sentence made reason prevail. These were his words: "Gentlemen, I do not understand you. All my life a corpse has been part of a murder." The narrow-minded Party doctrinaires had to give in to the scornful laughter that followed these words. And in that way I should like here to think of Milch's wild talk and exclaim, "Where is the corpse?"

In my opinion the only remaining question which needs serious discussion is merely that of the employment of foreign workers, of PW's, and of concentration camp inmates. To begin with, it

must be mentioned that the prosecution in its opening speech maintained that Milch more than anybody else in Germany was occupied with the employment of forced labor in Germany. That statement, however, is in no way correct. That, at least, has been clarified by the evidence beyond all doubt, it seems to me. There can be no doubt that Sauckel and Speer had considerably more to do with so-called forced labor than Milch, quite apart from Hitler and Goering themselves.

It is necessary to visualize clearly the scope of Milch's sphere of activities and of his authority. Your Honors, even if you were only to check the three part Defense Exhibit 55 which I submitted, even to a superficial scrutiny only, you would realize immediately that Speer alone had a great deal more to do with this work than Milch. Speer was in charge of all armaments for the army and navy which, measured in human beings, by far exceeded the Luftwaffe, and alone exceeded the volume of the Luftwaffe armament many times, in particular as Milch only dealt with the construction of airplanes and as all equipment for the crews, in fact were part of the army equipment. Furthermore, Speer was in charge of all other productions in the German Reich. Finally, after the establishment of the Jaegerstab, Speer was also placed in charge of all armaments for the Luftwaffe. This Defense Exhibit 55, to which the defendant has sworn and which is based on the prosecution's own Exhibit 58, reveals a much greater and more comprehensive scope of Speer's organization. It was he, who as the central authority, not only controlled an apparatus with considerably more tasks, he alone also had at his disposal the executive authorities in the country, who dealt with all matters which had to be taken, whereas Milch had no executive organs at his disposal. He had, therefore, no executive powers whatsoever. Speer alone was in charge of the powerful main committees, the main industrial rings, in which the captains of industry exerted their influence and power.

He was also in charge of the armament commissions and armament officials of the armament inspectorates and armament detachments in the defense districts. And lastly, the Gau plenipotentiaries and provincial economic offices in the whole country listened to him. He was with Hitler almost every week, and therefore, he possessed much more influence to which Sauckel's power—

[At this point, the following discussion took place:]

PRESIDING JUDGE TOMS: May I ask you what was Koerner's special interest?

DR. BERGOLD: I am not speaking about Central Planning Board here. I am only speaking about the GL.

Q. I know, but in the Central Planning Board what particular field was Koerner interested in—the navy?

A. Koerner? No. He was mainly in charge of agriculture. He testified to that effect.

PRESIDING JUDGE TOMS: Very well.

[Dr. Bergold continues.]

Speer was with Hitler almost once a week and had therefore much more influence to which Sauckel's power set the only limit. The man, Milch, never possessed such a machine. The GL was nothing but a technical agency in the Reich Air Ministry which generally, as the witnesses Vorwald and Hertel confirmed, was told by the General Staff of the Luftwaffe what was to be constructed. If Milch had really been the powerful man as the prosecution describes him, it would have been possible for him to carry out his plan for Germany's air defense. But the achievement of this goal for which this man worked with unbelievable effort and with all energy was denied to him simply because he was only in charge of a technical office which could not make any decisions whatsoever. Hitler, Goering, and the General Staff of the Luftwaffe decided what this man had to construct and what plans he was to carry out. He carried them out within the framework of the task with which he was entrusted, always being suspended in the middle, without ground under his feet, without the direct authority to give orders to industry, without influence on the supply of manpower and materials; he could only get influence through the Central Planning Board, and there too the fundamental decisions were made by Hitler, by the latter himself, on the advice of Speer. It is not necessary for me to name all the witnesses. All his collaborators have testified to that effect.

May it please the Tribunal, if you examine the statements made by Hertel and Vorwald, you will gather from them beyond any doubt that the GL had nothing to do at all with the question of labor, with the recruiting, transportation, and assignment of workers. The GL, and this cannot possibly be doubted by anyone after hearing all these witnesses and especially after Milch's testimony, had merely to make the blueprints for airplanes and the construction necessary for this purpose, and then to place the orders with the completely independent industry, following in all this the instructions of the General Staff and the orders given by Hitler and Goering. All witnesses from the GL have confirmed before you that the GL had nothing to do at all with the labor question; that he did not request one single worker or exert any influence on Sauckel. It is true that requests for labor

passed, for statistical reasons as well as for control purposes, through the GL office. But it is important to remember and never to forget that industry submitted its real labor requests throughout the country to the labor exchange offices which were Sauckel's agencies and to the armament inspectorates and armament detachments which were Speer's agencies.

Vorwald and the defendant himself have shown you with unmistakable clearness that the only thing which the GL had to do with these requests was merely that he examined these requests of industry concerning the material point as well as the labor point, and that he then reported to the Speer Ministry whether and in how far the requests of industry were exaggerated and false and if the GL considered fewer material and less manpower to be adequate.

Now, what does such an activity actually mean? Surely not, as the prosecution submits, the enslavement of new workers, but exactly the contrary; namely their reduction. If the GL had not exercised this activity, Sauckel would have got much larger requests from industry and he would have procured this labor by means of more forceful methods than he actually did. That industry had to request workers in order to carry out its tasks assigned by Hitler, Goering, and the General Staff of the Luftwaffe, who were the authorities who decided on the extent of the construction program of air armaments, was however not caused by the GL. He was nothing else but an executive organ in the chain of command from Hitler, Goering, and the General Staff. He was merely the technical agency which had to make the blueprints and constructions, and then, after approval by higher authorities, had to submit them to industry for the undertaking of the orders.

This, your Honors, is the recital of the evidence produced on the activity of the GL, and the only thing which the GL did in the framework of this activity was to reduce to the lowest level the requests for labor made by industry, for the many reasons that he was sufficiently expert to look through the exaggerated requests of industry which could never get enough workers. It is significant that the GL minutes which have been submitted nowhere reveal a discussion of real manpower guidance, but, at the utmost, that once a few questions were discussed for information purposes. It is furthermore highly significant that among the entire organizations of the GL there were no offices for labor assignment and labor research as was the case in the Armament Ministry of Speer (*see Defense Exhibit 55*), but merely for statistics of the personnel. There is nothing to clarify the real situation better than this fact.

Has the fact that industry, which had to carry out Hitler's construction program, employed foreign workers, prisoners of war, concentration camp inmates, been caused by the defendant? Industry had employed these people before the beginning of Milch's tenure; it employed them because Hitler had ordered through Sauckel that industry had to employ these people—not in order to obtain slave labor for slave labor's sake—but only for the reason to be able to throw still more Germans into the greedy jaws of the fiendish war and thus surely causing disaster for Germans as well as for other peoples.

As far as the GL is concerned—the least reproach can be cast upon Milch, of all the reproaches that can be cast upon him. It only consists in that he passed orders on to the air armament industry (and where did this not occur during the war?), and that he saw to it that no exaggerated requests for material and manpower were made.

The prosecution has proved nothing which could contradict these statements. But Milch has—and this, too, has been proved—not only curtailed exaggerated labor requests of industry by means of his statistics, thus preventing the increase of foreign labor, but in addition to that, as was stated by the witnesses Brauchitsch, Pendele, Hertel, Vorwald, and others, he always endeavored seriously and successfully to maintain the German workers in the factories; and in doing so he even saved German workers who should have been drafted, at least to the amount of 70,000 for the air armament factories, keeping thus on a lower level further requests for foreign workers and their assignment. A man who, as the prosecution means, is keen on slave labor does not act in that way.

Finally, there is another point to be mentioned in this connection. The International Military Tribunal—which, by the way, states expressly in its verdict against Sauckel that there is no doubt of Sauckel having had the over-all responsibility for the slave labor program—that Tribunal stated in its verdict against Speer that it has to be considered as a mitigating circumstance in his favor, that by setting up protected factories Speer had kept many workers in their homelands. Your Honors will remember the depositions of Hertel, Vorwald, and Milch, of which it results that as early as 1941 Milch, first together with Udet and later on alone, had factories working in France on the basis of a free agreement with the French plants in order to employ French workers in their home country. These agreements were, as has been testified to by Foerster, completely free, because in 1941 the industry of that part of France which at that time had not yet been occupied had concluded them. Therefore, Milch was the

inventor of the idea to have labor employed on the spot in foreign countries. It was not only in France that he, being the first, carried that out. You have heard that this occurred also in Holland and in Hungary. Now, if the International Military Tribunal counted this circumstance as a mitigating one for Speer, it must all the more be credited to the defendant who acted that way not merely from 1943 onward, as did Speer according to his own statement in this trial, but already as early as 1941, and was the first to do so. In this instance again the defendant proved to be a man who endeavored to mitigate as much as possible the difficulties which had arisen from the prevailing emergency. That much as far as the defendant's activity as GL is concerned.

When I come to consider in how far Milch's activity on the Central Planning Board could be charged against him, I am aware that some of the minutes of the Central Planning Board could, in themselves, be interpreted as a charge against Milch. But if your Honors consider that out of sixty meetings of the Central Planning Board the prosecution could only list fifteen meetings in which labor questions were discussed—this being done in some instances in a perfunctory and casual way—it results from this fact already that the Central Planning Board, as to its aim, was not charged with the guiding of manpower, which at that time was the focal point of many schemes in all countries and, above all, in Germany.

In this trial there was much argument between the prosecution and the defense as to the significance and the essence of the Central Planning Board until, eventually, with the help of the key Document NOKW-245, Prosecution Exhibit 157, the argument was decided. There it says literally, "Speer and I (that is, Milch) are of the opinion that he (Sauckel) has to be incorporated somehow in the Central Planning Board in order to get the labor assignment, as well as the material, into our hands. At the present time we have no possibility to steer it." These words were voiced on 23 February 1943 after the Central Planning Board had been in existence for already one year. These words were not voiced at that time for the purpose of *ex post facto* whitewashing, but they expressed the complete truth and have characterized the situation in quite simple and clear words for always and unmistakably. No decree has been submitted, nor order of Hitler has been proved, to show that this situation was changed. At no time, indeed at no time, was Sauckel a member of the Central Planning Board. If the prosecution wants to consider the wish Milch uttered at that occasion as incriminating, they are at liberty to do so. However, this is not a punishable deed, and nobody can tell what amount of good Milch could have done if he had factually been

in charge of the labor assignment. His other deeds account for the assumption that he would certainly have stopped abuses and would have mitigated all that was necessary as far as possible. The members of this trial would not believe, at first, in the depositions of all the witnesses who have been heard here, including Koerner, stating that the Central Planning Board dealt with labor questions merely for reasons of information. The wording of the speeches seemed to contradict it. But, your Honors, the witnesses have also testified before you that the speeches could only be understood if they are read. Prosecution Exhibit 157 has put an end to all such doubts. Whoever wants to pronounce here the verdict with all the necessary seriousness cannot bypass this document. Nobody can contend any longer that the defendant has not told you the full truth. Therefore, his statement under oath is to be believed, which agrees with Speer's statement in that the so-called labor assignment meetings were held with Sauckel always with the sole aim to obtain from Sauckel, who had reported so many false figures and was not scrupulous about telling the truth, eventually and for once, clear figures. Likewise, Document NOKW-195, Prosecution Exhibit 143, the report on the meeting of 28 October 1943, held at Goering's place, shows a constant struggle with Sauckel in order to obtain true figures because Hitler would not believe that Sauckel's figures were completely false. It has been proved that factually both Speer and Milch have been reproached because they did not fulfill the program made by Hitler, although many millions of workers had allegedly been at their disposal. Alone for air armament, according to Goering's calculation based on Sauckel's figures, five million workers should have been available—whereas the entire air armament employed a much lower total of people. As Hitler was a dangerous man and his reproaches could have disagreeable consequences, Speer and Milch cannot be blamed for wanting to get this subject clear; consequently, if they discussed this problem in detail—especially during the 53d and 54th meetings of the Central Planning Board—this has nothing to do at all with labor procurement. That these meetings have not been summoned by Milch—that they have been summoned by Speer and his ministry—has been proved. Milch presided over these meetings only because Speer was ill. But he only carried through the order of his friend Speer. But even these discussions do not alter the fact that the Central Planning Board as such had nothing to do with labor procurement. These very discussions were of a purely informative nature. By them the Central Planning Board did not obtain any influence on the carrying out of labor procurement nor on its distribution. How characteristic it is, however, for the personality of Milch

that he used even this discussion about Sauckel's figures in order to reduce the millions of new workers whom Hitler had ordered in January 1944 to quite a considerable extent.

In all the discussions submitted there is nowhere a word to be found, either to the effect that Milch had requested workers for his air armament. If the need for workers was under discussion, then always only, as the defendant himself confirmed, in regard to the basic industries—that is, mining and the iron industry and in regard to agriculture. It was always a question, as the records show, of the commitment of prisoners of war. But even according to the Geneva Convention prisoners of war may be employed in mining, in the production of iron, and in agriculture. These places of work are not actual armament industries.

That Milch did not have anything to do with the commitment of Russians in anti-aircraft defense, which was not under him at all; that, on the contrary, he even opposed it, and that that part of the minutes of the 33d meeting of the Central Planning Board must be incorrect here, too, has been stated by the witnesses Hertel, Koenig, as well as others equally incontestably. It has now been proved that this order was issued by the OKW directly via Goering.

Thus Milch, in his capacity as member of the Central Planning Board, was neither perpetrator of, nor accomplice in, crimes; nor did the Central Planning Board have as its purpose the commission of such crimes. Its sole purpose was the distribution of raw materials—an activity which is not prohibited under any conditions.

The third activity of Milch which could bring him in connection with the so-called slave labor was the activity on the Jaegerstab. Were one to view this membership in the Jaegerstab from the point of view of the prosecution, one could perhaps maintain the previously formed opinion that this activity was limited to the increased use of slave labor. The testimony of Speer, Vorwald, and Milch, however, have shown that the Jaegerstab had two main aims, namely, first, to raise the production of fighter planes and, secondly, to facilitate Milch's resignation from his office by transferring the entire air armament industry to the ministry of Speer.

Formerly, to be sure, Milch was one of the chairmen of this Jaegerstab, but the witnesses—among them Schmelter, Hertel, Eschenauer and Vorwald—have testified that the actual chairman of this Jaegerstab was Saur. Milch very soon withdrew from the Jaegerstab; in March 1944 he still participated in fifteen meetings, in April only eight, in May only five, and in June only two. Nothing proves the veracity of the testimony of the defendant more than the quite obvious decrease in his participa-

tion. If one considers the fact that the Jaegerstab held its meetings daily one realizes how rapidly the decrease in the activity of the defendant was. If one considers furthermore that he was not always present at the meetings at all, that he did not hear most of the details of the discussions at these meetings, one can say with certainty that he was really not the man who had the biggest influence in the Jaegerstab, and who performed the practical work there. The expression "breakfast director", which the witness Dorsch applied to the defendant, characterizes the situation excellently. The Jaegerstab was concerned with labor questions only insofar as it guided the so-called transfer of workers who were already working in industry, in the event changes in production occurred, especially effecting, as far as possible, their transfer from closed down bomber factories to fighter plane factories. However, in this connection it is almost exclusively a question of so-called skilled workers, as the witness Schmelter, a specialist in this field, has confirmed. In this process no new workers of any kind were introduced into industry. The witness Schmelter, however, finally expressly confirmed that no real influence was exerted on Sauckel and his offices. Wishes regarding the transfer were merely referred to the Organization Sauckel. This fact in particular was emphasized in the statement of Schmelter with all the clarity desirable.

Thus, it has been proved in regard to this committee, too, that it had nothing to do with the bringing of workers into Germany from abroad, nor dealt with their redistribution. Thus, it was also not the purpose of the Jaegerstab to decide labor questions. Finally, it has thus been clarified that the ministry of Speer was the office which handled labor questions, insofar as it was necessary in the framework of the transfers. On the basis of the submitted documents, it seems at first as though the Jaegerstab had initiated and carried out the building of underground factories or of concrete protected factories above ground. The witnesses Speer, Hertel, Eschenauer, Koenig, Pendele, as well as Milch, himself, however, all clearly and decisively confirmed that these constructions were ordered directly by Hitler and Goering, and that the defendant had opposed these orders because he considered them senseless. It has furthermore been declared that Hitler himself, handled the needs of workers for these undesirable constructions. The Jaegerstab was connected with these constructions, according to all the testimony, only to the extent that it had to examine which ones of the fighter plane factories had to be installed in them. In this connection it must be remembered that a number of these constructions were also allocated for armament factories of the Wehrmacht. Thus,

Milch also cannot be charged with any responsibility in this count. He was neither formally nor actually in a position to prevent Hitler's and Goering's orders.

Nor had Milch anything to do with the allocation of Hungarian Jews to these factories, quite apart from the fact that it has been made clear that these Jews were allocated only in the summer of 1944, which was stated by the last prosecution witness, Krysiak, that is, at a time when Milch had withdrawn from his office for some time. It has been proved that Hitler issued relevant orders here and that the Jaegerstab trip to Hungary was entirely unconnected with this matter because it was undertaken solely for the purpose of a conference with the legal Hungarian government. These consultations were merely concerned with agreements regarding aircraft production by the Hungarian industry in the large caves near the Danube. Not one single document has shown that Milch either agreed to or welcomed the employment of Hungarian Jews.

To sum up, I may say then that even within the Jaegerstab Milch was neither a principal nor an abetter in the crimes listed in the indictment. I might add that it was not the purpose of the Jaegerstab to carry out such crimes. In any case he was by no means the leading man on that board. It has been found with certainty beyond all doubt that the Jaegerstab served the purpose of helping the defendant to withdraw from office.

Mention must also be made of the question of concentration camp inmates working. Before going into details, I should like to make a few basic remarks. From all the trials in which I acted as counsel, from the questions asked in this courtroom, from various discussions I have had with citizens of your country, I have, your Honors, attained the certainty that in your circles no one believes in the truthfulness of the defendants' and all other witnesses' statements, namely that the average German knew nothing about the happenings in the concentration camps and that the defendant did not know of the existence of such camps, with the exception of Dachau and Oranienburg. As most Germans certify to this and as all witnesses swear to this under oath, it is first of all difficult to understand why such statements are not believed. It can only be explained by the fact that the citizens of your country have been so much influenced by press propaganda and the newly discovered facts that they put more trust in the reports of their newspapers than in the assurances of the citizens of a country which is now known throughout the world as the place of origin of many atrocities.

But should such prejudice which does not originate from [one's] own and actual experience influence the judgment? I believe and

always have believed that it is one of the essential laws of justice to base one's judgment strictly on facts which have become evident during a trial. It is a proven fact that in Germany no one was allowed to write about concentration camps; that the rules of secrecy which had been imposed by the dictatorial regime had to be kept very strictly; and that even the German authorities in case of their violating these rules of secrecy, were threatened with death, as I have proved by the submission of Defense Exhibit 36.

From the statement of the witness Roeder, who, incidentally, explained that the defendant had neither the power of passing a death sentence nor of sending people to concentration camps, you have learned that the concentration camp inmates spoke to nobody about their condition. Even the prosecution witness Krysiak has told you that the prisoners did not dare to lodge complaints to anybody. How could the Germans generally learn about conditions in concentration camps? Milch, too, could not and did not learn about them, as he has told you, for the secrecy was kept even among the highest authorities. May the propaganda of your country insist on the contrary as much as it likes, what I have stated here still remains true, and I can certify it myself.

I myself who during the time of the so-called Third Reich often enough defended men who were accused because of their political views, I, who was watched by the Gestapo, who was attacked in the public newspapers of Nuernberg and especially was mentioned with name in the notorious "Stuermer" on account of my defense of unhappy Jews, I, too, didn't learn anything about these camps, although clients came to me after their release from the concentration camp Dachau. I always asked them and I always received the answer that they had nothing special to report. It was, of course, no pleasant life, but they reported that it was not so bad.

I would ask you, your Honors, to consider how we could have learned of these conditions.

May I remind you in this connection that deeds have been committed in the east of the former German territory, in the Sudeten-German border territories of Czechoslovakia, and other countries, deeds which, even if one imagines them at their worst, remain far behind the truth. About these atrocities the international press has kept silent although one day history will speak and one will learn about them with horror. I have refused to give proof of the events which were brought about by your armies after the collapse. I could have mentioned many deeds which can be called nothing but grave infringements against the Geneva Convention. I could have given you a picture of how in the

prisoners' camps in the early days hundreds of German prisoners died of starvation. I am not accusing anyone. Shortcomings of organization and of human nature but not express orders and rules account for it.

I only mention this, your Honors, in order to point out that you did not learn about this and that it is only our unhappy and wretched people who know about it. But we who have had the bitter experience of the power of propaganda and of the force of secrecy know that ignorance of such matters can be excused and believed. Therefore, no one may say from the outset that all the unanimous statements by witnesses and the declarations of Milch are to be disbelieved. They have been sworn to; and the verdict must take them into consideration.

According to these it is certain that Milch only knew of the employment of concentration camp inmates in the Heinkel plant in Oranienburg and that he was of the opinion that these were German criminals and German political prisoners, of whose mistreatment, however, he had no knowledge. The use of prisoners and convicts is not a crime against humanity. This, however, should not have to be mentioned. In all countries in the world it is customary for prisoners to be obliged to work. In Germany this was even regulated by law to such an extent that the prisoners who were condemned to prison, that is, not to the penitentiary, also had to work. For a prisoner to have to work is not an atrocity. An atrocity can be seen only if the prisoner has to do this work under conditions which injure his health or which are inhuman.

But Milch did not know that the food, the housing, and the treatment of the prisoners were inhuman. One would have to prove such knowledge before one could punish him for it. You have heard, on the contrary, that he always did everything possible when he heard of individual cases of abuse. He even tried to help, as the Kruedener affidavit, Defense Exhibit 37, proves, in a case where he was not competent. As the testimony of Kruedener revealed this was a case of inadequate accommodations. Moreover, as the witness Koenig has testified, he instituted an improvement in the food given the prisoners at Rechlin on his own initiative, and he generally saw to it that workers got better rations.

But that does not mean that he knew that those prisoners were starving. It was unfortunately so that because of the total blockade of Germany by the Allied forces the food available to the civilian population of Germany was very poor. I myself had only had the minimum ration card; and I could tell you a long story about how difficult it was to work on such rations. Milch, how-

ever, obtained better food for everyone working under him for armament. It was he who was the first to obtain extra rations for his air armament industry because the workers worked overtime. As a number of records of the Central Planning Board and the Jaegerstab show, he obtained additional rations for the prisoners of war and, for example, sent the Russians into agriculture so that they might get better food there and be padded a little. He had an office set up in the Jaegerstab in order to obtain additional food and clothing for the workers, as the witness Schmelter has testified.

The improvement in the food of the inmates of Rechlin concentration camp was part of these measures. If he did this through his estate, it was because he had no influence with the administration of the concentration camps in respect of the issue of additional ration cards.

It would not correspond with justice if he was pronounced punishable for the employment of concentration camp inmates under these conditions. The compulsory labor of prisoners has always been lawful in Germany even before the Third Reich. He knew nothing of cruelties and atrocities or inhuman treatment. Therefore, his consent to these cannot be proved.

If I may summarize then, I believe that my opening statement for the defense had correctly revealed that Milch was not a slave holder, moreover that he never aspired to be one, that he was of the opinion that the employment of such workers was permitted, and finally that he had done everything to keep down the employment of foreign workers as much as possible and to make it as humane as possible. At any rate the prosecution's description of him is in no way accurate, and could only originate from a misunderstanding of the man, his speeches, and of his background. Sauckel and Speer had far greater responsibility in this connection. It was they who had real influence, and not Milch, but even in the case of Speer who was higher than Milch in his position, the International Military Tribunal has granted extenuating circumstances in connection with the manpower issue. I am convinced that Milch thought employing such labor was permissible, and that he did everything in his power to keep such employment to the lowest level and as human as possible.

I am conscious of the fact that the verdict of the International Military Tribunal is a great obstacle for me, and nevertheless the Tribunal was merely composed of human beings, and it had passed judgment under particularly difficult circumstances, and in composition it opened the door to politics into the courtroom. I do not need to remind you that in the English speaking countries, several verdicts of the Tribunal were subjected to very

serious criticism. I myself here attacked one point of this verdict with better witnesses and better evidence, that with regard to slave labor, for example, the International Military Tribunal based itself upon a wrong assumption. Nobody stated there that the U.S.S.R. had called off the Hague Convention of Land Warfare. I checked up on those features of defense, and I found that all the time it was only talk that the U.S.S.R. had not become a partner of the convention. The statement of von Neurath revealed that notice of withdrawal was expressly given.

Here we not only pronounce penalty verdicts or judgment, but also political judgments, whether we want to or not. Especially in politics there is always some fluctuation. Every day new facts turn up, which throw different light upon things. The distance of time which always grows greater and greater and separates us from the irritating events of the past allows an ever clearer judgment. The man who returns from battle is always confused. The more he becomes calm the more he admits justice towards his enemy.

Honorable Judges of this Tribunal, when you judge please don't forget the whole personality of Milch. He always concerned himself as a good and noble man, and I am not only convinced of that as his counsel but also as a human being. The world would have a different outlook if his superiors had listened to his advice, which was intended to serve the people of this world, and the common will of the people, and peace. In his heart he always took the side of the fighter who fought for united Europe, which now has been joined also by his former enemy number one, Churchill. May this statement of Milch which has thrown new light upon things serve this aim. Poor and tortured Europe needs an enduring peace. May his statements also open the eyes of those among the German people who still cannot give up their misconceptions of many years, and show them what crime has been committed against them.

But you, Honorable Judges, must recognize from the attitude of the defendant Milch that he never became unfaithful to himself, and even if he had been perhaps under the spell of erroneous conception, he has always wanted the best for his and other people.

I have profound confidence in you, Honorable Judges, that you, equally detached from your own people, will find an independent, true and righteous judgment that corresponds to the truth. I shall consider it as an honor for my person if I have contributed to this through my painstaking labor.

VI. FINAL STATEMENT OF THE DEFENDANT, 25 MARCH 1947*

DEFENDANT ERHARD MILCH: Since I became a soldier in 1910 my work has been devoted to my German people. In the First World War I was at the front from the first to the last day. Then with others I built up the German air lines, and when in 1933 the government asked me to enter the Air Ministry, despite many misgivings, I could not refuse to take up that task because it was pointed out to me that I could not turn a deaf ear to this call of the German people.

I have remained faithful to the idea which I conceived at the time of the air lines, that all nations must collaborate, particularly the European nations. Pressed together in a small area, and whenever possible, mostly outside my actual sphere of work, I dedicated myself to that task. I was opposed to war because my experiences from the First World War showed me that the living standard of any people would not be improved by war, and on the contrary everybody would be grievously harmed.

It was for me a matter of course, even in the late great war, the planning of which was unknown to me, to do my duty in my post. My full effort was dedicated to the air defense of the German homeland. This I conceived to be the only possibility to obtain bearable peace terms. Even though I had nothing to do with the employment of workers, including foreign workers, I considered it to be my duty to make precise investigations into the admissibility of work by foreigners, investigations which were answered in the affirmative; I also made efforts to keep the numbers as low as possible and to see to it they would work in protected factories in foreign countries.

I always made efforts to improve the living conditions of all types of workers.

My statements made to the best of my knowledge and conscience to this Tribunal were directed to the world at large, and above all to the German people, in order to show that only by peaceful understanding of the nations among each other could life and civilization be secured in future and that understanding was not only necessary but also possible if good will prevails. But I also wanted to show my fellow Germans quite clearly that an autocratic government which is not controlled must end in disaster.

My personal fate is of no consequence in this connection. I am interested only in one thing—that the German people should, as soon as possible, be relieved of their untold suffering and should join the community of nations as an equal partner.

* Tr. pp. 2489-90.

VII. JUDGMENT

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

The indictment in this case contains three counts, which may be summarized as follows:

Count One: War crimes, involving murder, slave labor, deportation of civilian population for slave labor, cruel and inhuman treatment of foreign laborers, and the use of prisoners of war in war operations by force and compulsion.

Count Two: War crimes, involving murder, subjecting involuntary victims to low-pressure and freezing experiments resulting in torture and death.

Count Three: Crimes against humanity, involving murder and the same unlawful acts specified in counts one and two against German nationals and nationals of other countries.

For reasons of its own, the Tribunal will first consider counts two and one, in that order, followed by consideration of count three.

COUNT TWO

More in detail, this count alleges that the defendant was a principal in, accessory to, ordered, abetted, took a consenting part in and was connected with, plans and enterprises involving medical experiments without the subjects' consent, in the course of which experiments, the defendant, with others, perpetrated murders, brutalities, cruelties, tortures, and other inhuman acts. The so-called medical experiments consisted of placing the subject in an airtight chamber in which the air pressure is mechanically reduced so that it is comparable with the pressure to which an aviator is subjected at high altitudes, and in experimenting upon the effect of extreme dry and wet cold upon the human body. For these experiments inmates of the concentration camp at Dachau were selected. These inmates presented a motley group of prisoners of war, dissenters from the philosophy of the National Socialist Party, Jews, both from Germany and the eastern countries, rebellious or indifferent factory workers, displaced civilians from eastern occupied countries, and an undefined group known as "asocial or undesirable persons."

* Concurring opinions were filed by Judge Musmanno, see pp. 797-859, and by Judge Phillips, see pp. 860-878.

In approaching a judicial solution of the questions involved in this phase of the case, it may be well to set down seriatim the controlling legal questions to be answered by an analysis of the proof.

(1) Were low-pressure and freezing experiments carried on at Dachau?

(2) Were they of a character to inflict torture and death on the subjects? (The answer to these two questions may be said to involve the establishment of the *corpus delicti*.)

(3) Did the defendant personally participate in them?

(4) Were they conducted under his direction or command?

(5) Were they conducted with prior knowledge on his part that they might be excessive or inhuman?

(6) Did he have the power of opportunity to prevent or stop them?

(7) If so, did he fail to act, thereby becoming *particeps criminis* and accessory to them?

The periods during which these experiments were conducted become extremely significant in determining the responsibility of the defendant. The evidence is uncontradicted that the low-pressure experiments were inaugurated in March 1942, and were concluded by the end of June 1942. The cold water experiments extended from August to October 1942, and the freezing experiments from February to April 1943. During all of these periods the defendant was Under State Secretary of the Reich Air Ministry, Inspector General and Second in Command under Goering of the Luftwaffe, to which post he was appointed 19 November 1941. In these various capacities, certain military duties devolved upon him, especially as Inspector General. For example, he was ordered by Hitler to take an air squadron to Norway on a purely military expedition, and during the siege of Stalingrad, early in 1943, he was ordered by Hitler to attempt to transport into Stalingrad by air food and supplies for the beleaguered German Army. His high military standing is indicated by the fact that he was one of the twelve field marshals of the German armed forces. The major part of his duties, however, revolved around the production of aircraft for the Luftwaffe. He was primarily a production man, charged with the duty of keeping military airplanes supplied in sufficient quantity to the air arm of Germany's military machine. This naturally involved the procurement in large quantities of the two essential ingredients of production—labor and raw material

—and an over-all supervision of any efforts having to do with that arm. One of the defendant's immediate subordinates was Professor Hippke, who held the post of Inspector of the Medical Services of the Luftwaffe. Hippke was a physician, and had supervision of all matters involving the health and physical welfare of the personnel of the Luftwaffe.

The low-pressure experiments at Dachau were conducted by three physicians, Dr. Romberg, Dr. Ruff, and Dr. Rascher. It is quite apparent from the evidence that Dr. Rascher, who was attached to the Luftwaffe but made frantic efforts to have himself transferred to the SS, was principally responsible for the nature of the experiments. Dr. Ruff and Dr. Romberg were also attached to the Luftwaffe and were, therefore, remotely under the command and control of the defendant, but the evidence is persuasive that, although they were interested in and helped conduct the experiments up to a certain point, the excesses which resulted in torture and death are attributable to Dr. Rascher. It is quite apparent that the actual activities of these three physicians were far removed from the immediate scrutiny of the defendant even though their activities were conducted within the orbit of the Luftwaffe, over which the defendant had command.

Approaching now the determinative questions listed above, some progress can quickly be made in arriving at judicially satisfactory answers.

(1) As to the first question, the evidence is overwhelming and not contradicted that experiments involving the effect of low air pressure and freezing on live human beings were conducted at Dachau from March through June 1942.

(2) Approaching the second question, it is claimed by the defendant that only legitimate scientific experiments were conducted which did not involve pain or torture and could not ordinarily be expected to result in death. It is remotely possible that so long as the experiments were under the guidance of Dr. Ruff and Dr. Romberg some consideration was given to the possible effect upon the subjects of the experiments. But it is indisputable that the experiments conducted by Dr. Rascher involved torture and suffering in the extreme and in many cases resulted in death. Under the specific guidance of Dr. Rascher, the air pressure was reduced to a point which no flier would ever be required to undergo (14,000 meters). The photographs of the subjects undergoing these experiments indicate extreme agony and leave no doubt that any victim who was fortunate enough to survive had undergone a harrowing experience. The Tribunal does not hesitate to find that these experiments, performed under the specious guise of science,

were barbarous and inhuman. It has been urged by the defendant that the only persons used as subjects of these experiments were habitual criminals who had been sentenced to death and who were given the dubious option of offering themselves for the experiments and receiving as a reward, if they survived, a commutation of the death sentence to life imprisonment. This claim scarcely merits serious consideration. A number of witnesses stated that they had a vague understanding that this was the case, but the record is entirely barren of any credible testimony which could possibly justify such a finding of fact.

(3) The prosecution does not claim (and there is no evidence) that the defendant personally participated in the conduct of these experiments.

(4) There is no evidence that the defendant instituted the experiments or that they were conducted or continued under his specific direction or command. It may perhaps be claimed that the low-pressure chamber, which was the property of the Luftwaffe, was sent to Dachau at the direction of the defendant, but even if this were true it could not be inferred from that fact alone that he thereby promulgated the inhuman and criminal experiments which followed. The low-pressure chamber was susceptible of legitimate use and, perhaps, had Dr. Rascher not injected himself into the proceedings, it would have been confined to that use.

(5) Assuming that the defendant was aware that experiments of some character were to be launched, it cannot be said that the evidence shows any knowledge on his part that unwilling subjects would be forced to submit to them or that the experiments would be painful and dangerous to human life. It is quite apparent from an over-all survey of the proof that the defendant concerned himself very little with the details of these experiments. It was quite natural that this should be so. His most pressing problems involved the procurement of labor and materials for the manufacture of airplanes. His position involved vast responsibilities covering a wide industrial field, and there were certainly countless subordinate fields within the Luftwaffe of which he had only cursory knowledge. The Tribunal is convinced that these experiments, which fell naturally and almost exclusively within one of his subordinate departments, engaged the attention of the defendant only perfunctorily, if at all.

(6) Did the defendant have the power or opportunity to prevent or stop the experiments? It cannot be gainsaid that he had the authority to either prevent or stop them insofar as they were being conducted under the auspices of the Luftwaffe. It seems

extremely probable, however, that, in spite of him, they would have continued under Himmler and the SS. But certainly he had no opportunity to prevent or stop them, unless it can be found that he had guilty knowledge of them, a fact which has already been determined in the negative. As early as 20 May 1942, the defendant wrote to Wolff, Himmler's Adjutant, stating:

"* * * our medical inspector [Dr. Hippke] reports to me that the altitude experiments carried out by the SS and Luftwaffe at Dachau have been finished. Any continuation of these experiments seems essentially unreasonable * * *

"The low-pressure chamber would not be needed for these low-temperature experiments. It is urgently needed at another place and therefore can no longer remain in Dachau."

Certainly the defendant did not have the opportunity to prevent or stop the experiments if he had been told and was convinced that they had terminated on 20 May 1942, and there is no reason to believe that he did not rely upon Dr. Hippke's report as to their termination. Considerable emphasis is laid upon the testimony that a motion picture of the experiments was brought to Berlin and exhibited in the Air Ministry Building, where the defendant had his office. It may even be said that the picture was brought to Berlin for the defendant's edification. But it appears that he was not present when it was shown and that, in any event, the showing was long after the experiments were concluded, at which time the defendant certainly could do nothing toward preventing them or stopping them.

(7) In view of the above findings, it is obvious that the defendant never became *particeps criminis* and accessory in the low-pressure experiments set forth in the second count of the indictment.

As to the other experiments, involving subjecting human beings to extreme low temperatures both in the open air and in water, the responsibility of the defendant is even less apparent than in the case of the low-pressure experiments. The same letter of 20 May 1942 to Wolff does indicate that the defendant was aware of the proposed sea-water experiments. In it he says—

"* * * the carrying out of experiments of some other kind, in regard to perils at high seas, would be important. These have been prepared in immediate agreement with the proper offices; Oberstabsarzt Wertz will be charged with the execution and Stabsarzt Rascher will be made available until further order

in addition to his duties within the medical corps of the Luftwaffe. A change of these measures does not appear necessary, and an enlargement of the task is not considered pressing at this time."

It is true that Rascher wrote interminable reports as to the results of these experiments, but there is no proof that they ever reached the defendant. On the contrary, they were addressed to Himmler and to Rudolf Brandt, his adjutant. At the Nuernberg conference in November 1943, which was held after all experiments had been finished, reports were made which even to a mildly curious lay person might have indicated that the experiments had been tinged with excesses and fatalities. But two facts are striking. First, the defendant was not present at the conference and only received a report of it later; and, second, the experiments were at that time all over.

It must be constantly borne in mind that this is an American court of justice, applying the ancient and fundamental concepts of Anglo-Saxon jurisprudence which have sunk their roots into the English common law and have been stoutly defended in the United States since its birth. One of the principal purposes of these trials is to inculcate into the thinking of the German people an appreciation of, and respect for, the principles of law which have become the backbone of the democratic process. We must bend every effort toward suggesting to the people of every nation that laws must be used for the protection of people and that every citizen shall forever have the right to a fair hearing before an impartial tribunal, before which all men stand equal. We must never falter in maintaining, by practice as well as by preachment, the sanctity of what we have come to know as due process of law, civil and criminal, municipal and international. If the level of civilization is to be raised throughout the world, this must be the first step. Any other road leads but to tyranny and chaos. This Tribunal, before all others, must act in recognition of these self-evident principles. If it fails, its whole purpose is frustrated and this trial becomes a mockery. At the very foundation of these juridical concepts lie two important postulates (1) every person accused of crime is presumed to be innocent, and (2) that presumption abides with him until guilt has been established by proof beyond a reasonable doubt.

Unless the court which hears the proof is convinced of guilt to the point of moral certainty, the presumption of innocence must continue to protect the accused. If the facts as drawn from the evidence are equally consistent with guilt and innocence, they must be resolved on the side of innocence. Under American law neither

life nor liberty is to be lightly taken away, and, unless at the conclusion of the proof there is an abiding conviction of guilt in the mind of the court which sits in judgment, the accused may not be damnified.

Paying reverent attention to these sacred principles, it is the judgment of the Tribunal that the defendant is not guilty of the charges embraced in count two of the indictment.

COUNT ONE

Count one of the indictment charges the defendant with the commission of specified war crimes, as defined by Article II of Control Council Law No. 10, in that he was a principal in, accessory to, ordered, abetted, took a consenting part in and was connected with, plans and enterprises involving slave labor and deportation to slave labor, resulting in the enslavement, torture and murder of civilians of foreign countries. The indictment further charges that he similarly participated in the use of prisoners of war in war operations and work having a direct relation to war operations, resulting in inhuman treatment and death to captured members of the armed forces opposed to Germany. The indictment alleges that these acts were in violation of international law and the recognized principles of civilized warfare and in specific violation of numerous treaties and conventions to which Germany was a party.

It is claimed by the prosecution that the defendant's responsibility for these alleged crimes arises from his activities in three capacities (1) as Aircraft Master General (Generalluftzeugmeister); (2) member of the Central Planning Board; and (3) chief of the Jaegerstab. The Central Planning Board was established by a decree of the Fuehrer, dated 29 October 1943. That decree fitted the task of production of material goods of every kind into the framework of the Four Year Plan and charged the Central Planning Board with the procurement and distribution of material of every description. The Board consisted of Reich Minister Speer, Under Secretary Koerner, and the defendant. On 1 March 1944, the Jaegerstab was established, consisting of Speer, Saur (a subordinate of Speer), and the defendant. The Jaegerstab concerned itself exclusively with the material needs of the Luftwaffe, and was headed, naturally, by the defendant. It became apparent that neither of these two bodies could adequately deal with the problems of production without constantly dealing with the question of labor supply. Meetings of the Central Planning Board were held at least weekly and the minutes of those meetings which were offered in evidence show a constant and unremitting con-

cern with the problem of labor. Fritz Sauckel was in supreme command of the procurement of labor for the entire war effort, and his conduct in carrying out his task has been vividly portrayed in the judgment of the International Military Tribunal: *

“* * * As local supplies of raw materials and local industrial capacity became inadequate to meet the German requirements, the system of deporting laborers to Germany was put into force. By the middle of April 1940 compulsory deportation of laborers to Germany had been ordered in the General Government; and a similar procedure was followed in other eastern territories as they were occupied. A description of this compulsory deportation from Poland was given by Himmler. In an address to SS officers he recalled how in weather 40 degrees below zero they had to ‘haul away thousands, tens of thousands, hundreds of thousands.’ On a later occasion Himmler stated:

“‘Whether ten thousand Russian females fall down from exhaustion while digging an antitank ditch interests me only insofar as the antitank ditch for Germany is finished * * *. We must realize that we have 6-7 million foreigners in Germany * * *. They are none of them dangerous so long as we take severe measures at the merest trifles.’

“During the first two years of the German occupation of France, Belgium, Holland, and Norway, however, an attempt was made to obtain the necessary workers on a voluntary basis. How unsuccessful this was may be seen from the report of the meeting of the Central Planning Board on 1 March 1944. The representative of the defendant Speer, one Koehrl [Kehrl], speaking of the situation in France said: ‘During all this time a great number of Frenchmen were recruited, and voluntarily went to Germany.’

“He was interrupted by the defendant Sauckel: ‘Not only voluntary, some were recruited forcibly.’

“To which Koehrl [Kehrl] replied: ‘The calling up started after the recruitment no longer yielded enough results.’

“To which the defendant Sauckel replied: ‘Out of the five million workers who arrived in Germany, not even 200,000 came voluntarily.’ And Koehrl [Kehrl] rejoined: ‘Let us forget for the moment whether or not some slight pressure was used. Formally, at least, they were volunteers.’

“Committees were set up to encourage recruiting, and a vigorous propaganda campaign was begun to induce workers to volunteer for service in Germany. This propaganda campaign

* Trial of the Major War Criminals, vol. I, pp. 243-47, Nuremberg, 1947.

included, for example, the promise that a prisoner of war would be returned for every laborer who volunteered to go to Germany. In some cases it was supplemented by withdrawing the ration cards of laborers who refused to go to Germany, or by discharging them from their jobs and denying them unemployment benefit or an opportunity to work elsewhere. In some cases workers and their families were threatened with reprisals by the police if they refused to go to Germany. It was on 21 March 1942 that the defendant Sauckel was appointed Plenipotentiary-General for the Utilization of Labor, with authority over 'all available manpower, including that of workers recruited abroad, and of prisoners of war'.

"The defendant Sauckel was directly under the defendant Goering as Commissioner of the Four Year Plan, and a Goering decree of 27 March 1942 transferred all his authority over manpower to Sauckel. Sauckel's instructions, too, were that foreign labor should be recruited on a voluntary basis, but also provided that 'where, however, in the occupied territories, the appeal for volunteers does not suffice, obligatory service and drafting must under all circumstances be resorted to.' Rules requiring labor service in Germany were published in all the occupied territories. The number of laborers to be supplied was fixed by Sauckel, and the local authorities were instructed to meet these requirements by conscription if necessary * * *.

"* * * the evidence before the Tribunal establishes the fact that the conscription of labor was accomplished in many cases by drastic and violent methods. The 'mistakes and blunders' were on a very great scale. Manhunts took place in the streets, at motion picture houses, even at churches and at night in private houses. Houses were sometimes burnt down, and the families taken as hostages, practices which were described by the defendant Rosenberg as having their origin 'in the blackest periods of the slave trade.' The methods used in obtaining forced labor from the Ukraine appear from an order issued to SD officers which stated:

" 'It will not be possible always to refrain from using force * * *. When searching villages, especially when it has been necessary to burn down a village, the whole population will be put at the disposal of the commissioner by force * * *. As a rule no more children will be shot * * *. If we limit harsh measures through the above orders for the time being it is only done for the following reason * * *. The most important thing is the recruitment of workers.'

"The resources and needs of the occupied countries were completely disregarded in carrying out this policy. The treatment

of the laborers was governed by Sauckel's instructions of 20 April 1942 to the effect that—

'All the men must be fed, sheltered and treated in such a way as to exploit them to the highest possible extent, at the lowest conceivable degree of expenditure.'

"The evidence showed that workers destined for the Reich were sent under guard to Germany, often packed in trains without adequate heat, food, clothing, or sanitary facilities. The evidence further showed that the treatment of the laborers in Germany in many cases was brutal and degrading * * *. They were subject to constant supervision by the Gestapo and the SS, and if they attempted to leave their jobs they were sent to correction camps or concentration camps. The concentration camps were also used to increase the supply of labor. Concentration camp commanders were ordered to work their prisoners to the limits of their physical power. During the latter stages of the war the concentration camps were so productive in certain types of work that the Gestapo was actually instructed to arrest certain classes of laborers so that they could be used in this way. Allied prisoners of war were also regarded as a possible source of labor. Pressure was exercised on noncommissioned officers to force them to consent to work, by transferring to disciplinary camps those who did not consent. Many of the prisoners of war were assigned to work directly related to military operations, in violation of Article 31 of the Geneva Convention. They were put to work in munition factories and even made to load bombers, to carry ammunition and to dig trenches, often under the most hazardous conditions. This condition applied particularly to the Soviet prisoners of war. On 16 February 1943, at a meeting of the Central Planning Board, at which the defendants Sauckel and Speer were present, Milch said:

" 'We have made a request for an order that a certain percentage of men in the ack-ack artillery must be Russians; 50,000 will be taken altogether, 30,000 are already employed as gunners. This is an amusing thing, that Russians must work the guns.' "

And on 4 October 1943, at Poznan, Himmler, speaking of the Russian prisoners, captured in the early days of the war, said:

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

"The general policy underlying the mobilization of slave labor was stated by Sauckel on 20 April 1942. He said:

"The aim of this new gigantic labor mobilization is to use all the rich and tremendous sources conquered and secured for us by our fighting armed forces, under the leadership of Adolf Hitler, for the armament of the armed forces, and also for the nutrition of the homeland. The raw materials, as well as the fertility of the conquered territories and their human labor power, are to be used completely and conscientiously to the profit of Germany and her allies * * *. All prisoners of war from the territories of the West, as well as the East, actually in Germany, must be completely incorporated into the German armament and nutrition industries * * *. Consequently it is an immediate necessity to use the human reserves of the conquered Soviet territory to the fullest extent. Should we not succeed in obtaining the necessary amount of labor on a voluntary basis, we must immediately institute conscription or forced labor * * *. The complete employment of all prisoners of war, as well as the use of a gigantic number of new foreign civilian workers, men and women, has become an indisputable necessity for the solution of the mobilization of the labor program in this war.'"

Continuing with the quotation from the IMT decision: *

"* * * As the dominant member of the Central Planning Board, which had supreme authority for the scheduling of German production and the allocation and development of raw materials, Speer took the position that the Board had authority to instruct Sauckel to provide laborers for industries under its control and succeeded in sustaining this position over the objection of Sauckel. The practice was developed under which Speer transmitted to Sauckel an estimate of the total number of workers needed. Sauckel obtained the labor and allocated it to the various industries in accordance with instructions supplied by Speer.

"Speer knew when he made his demands on Sauckel that they would be supplied by foreign laborers serving under compulsion. He participated in conferences involving the extension of the slave labor program for the purpose of satisfying his demands. He was present at a conference held during 10-12 August 1942 with Hitler and Sauckel at which it was agreed that Sauckel should bring laborers by force from occupied territories where this was necessary to satisfy the labor needs of the industries under Speer's control. Speer also attended a

* Ibid. pp. 381-38.

conference in Hitler's headquarters on 4 January 1944, at which the decision was made that Sauckel should obtain 'at least 4 million new workers from occupied territories' in order to satisfy the demands for labor made by Speer, although Sauckel indicated that he could do this only with help from Himmler.

"Sauckel continually informed Speer and his representatives that foreign laborers were being obtained by force. At a meeting of 1 March 1944, Speer's deputy questioned Sauckel very closely about his failure to live up to the obligation to supply four million workers from occupied territories. In some cases Speer demanded laborers from specific foreign countries. Thus, at the conference 10-12 August 1942, Sauckel was instructed to supply Speer with 'a further million Russian laborers for the German armament industry up to and including October 1942.' At a meeting of the Central Planning Board on 22 April 1943, Speer discussed plans to obtain Russian laborers for use in the coal mines, and flatly vetoed the suggestion that this labor deficit should be made up by German labor.

"Speer has argued that he advocated the reorganization of the labor program to place a greater emphasis on utilization of German labor in war production in Germany and on the use of labor in occupied countries in local production of consumer goods formerly produced in Germany. Speer took steps in this direction by establishing the so-called 'blocked industries' in the occupied territories which were used to produce goods to be shipped to Germany. Employees of these industries were immune from deportation to Germany as slave laborers and any worker who had been ordered to go to Germany could avoid deportation if he went to work for a blocked industry. This system, although somewhat less inhumane than deportation to Germany, was still illegal. The system of blocked industries played only a small part in the over-all slave labor program, although Speer urged its cooperation with the slave labor program, knowing the way in which it was actually being administered. In an official sense, he was its principal beneficiary and he constantly urged its extension.

"Speer was also directly involved in the utilization of forced labor as Chief of the Organization Todt. The Organization Todt functioned principally in the occupied areas on such projects as the Atlantic Wall and the construction of military highways, and Speer has admitted that he relied on compulsory service to keep it adequately staffed. He also used concentration camp labor in the industries under his control. He originally arranged to tap this source of labor for use in small out-of-the-way factories; and later, fearful of Himmler's jurisdictional ambi-

tions, attempted to use as few concentration camp workers as possible.

"Speer was also involved in the use of prisoners of war in armament industries but contends that he utilized Soviet prisoners of war only in industries covered by the Geneva Convention.

"Speer's position was such that he was not directly concerned with the cruelty in the administration of the slave labor program, although he was aware of its existence. For example, at meetings of the Central Planning Board he was informed that his demands for labor were so large as to necessitate violent methods in recruiting. At a meeting of the Central Planning Board on 30 October 1942, Speer voiced his opinion that many slave laborers who claimed to be sick were malingerers and stated: 'There is nothing to be said against SS and police taking drastic steps and putting those known as slackers into concentration camps.'"

Under the provisions of Article X of Ordinance No. 7, these determinations of fact by the International Military Tribunal are binding upon this Tribunal "in the absence of substantial new evidence to the contrary." Any new evidence which was presented was in no way contradictory of the findings of the International Military Tribunal, but, on the contrary, ratified and affirmed them.

The next question to be answered is whether or not the defendant Milch in this case knew that foreign slave labor and prisoners of war were being procured by Sauckel and used in the aircraft industry, which the defendant controlled. The defendant's own words, as gleaned from the minutes of the Central Planning Board and from his own testimony, conclusively answer this question in the affirmative. He testified that he knew that prisoners of war were employed in the airplane factory at Regensburg and that some twenty thousand Russian prisoners of war were used to man anti-aircraft guns protecting the various plants. He stated further that he saw this type of war prisoners manning 8.8 and 10.5 [centimeter] anti-aircraft guns at airplane factories in Luftgau 7 near Munich. Sauckel, the Plenipotentiary for Labor, sat in on at least fifteen meetings of the Central Planning Board, over which the defendant presided, and discussed at great length and in elaborate detail the problems involved in procuring sufficient foreign laborers for the German war effort. He frankly disclosed the cruel and barbarous methods used in forcing civilians of the eastern countries into the Reich for war work. He related the difficulties and resistance which confronted him and the

methods which he used and proposed to use in forcibly rounding up and transporting foreign workers. The advisability of using prisoners of war and inmates of concentration camps in the Luftwaffe was frankly discussed, with the defendant offering advice and suggestions as to the most effective methods to be used. In the face of this overwhelming evidence, disclosing page after page of discussion between Speer, Sauckel, and the defendant in which the defendant urged more severe and coercive methods of procuring foreign labor from the East, it would violate all reason to conclude that he had no knowledge of the source of this labor or of the methods used in procuring it. His voice is constantly heard, pleading for more laborers from this source and clamoring for a larger share in Sauckel's labor pool. Hildebrand and Sagemeyer for the coal mines, Rohland for the foundries, Kehrl for the coal and iron industries, Bruch and Becht for the rubber industry, Speer for the armament industry, and Milch for the aircraft industry—all these and others joined in a pagan chorus, in which the harmony was frequently strained, but all singing the same song, "We need laborers, men and women. We don't care where you get them, but give us more."

At the 54th meeting of the Central Planning Board, Sauckel stated in the defendant's presence:

"* * * Thereupon I even proceeded to employ and train a whole batch of French male and female agents who for good pay, just as was done in olden times for 'shanghaiing', went hunting for men and made them drunk by using liquor as well as words, in order to dispatch them to Germany. Moreover I charged some able men with founding a special labor supply executive of our own, and this they did by training and arming, with the help of the Higher SS and Police Fuehrer, a number of natives, but I still have to ask the Munitions Ministry for arms for the use of these men. * * *"

"* * * I and my assistants in fact have sometimes seen things happen in France that I was forced to ask, is there no respect any more in France for the German lieutenant with his 10 men? * * * We Germans must make an example of one case, and, by reason of this law, if necessary put Prefect or Burgomaster against the wall, if he does not comply with the rules; otherwise no Frenchman at all will be dispatched to Germany."

The defendant contributed to the discussion by saying:

"* * * As soon as you arrive the men run away to protect themselves from being sent to Germany * * *. The men even then will be whisked away unless quite another authority and power is on the watch, and this can only be the army itself. * * *"

I can find no remedy but that the army should assert itself ruthlessly."

As indicating that the defendant was not indifferent to the problem, at the same meeting, in referring to procuring labor from Italy, he offered the following suggestion:

"We could take under German administration the entire food supply for the Italians and tell them: only he gets any food who either works in a protected factory (that is, a factory in Italy manufacturing German war material) or goes to Germany."

Later in the same conference, the defendant made another contribution to the solution of the problem of foreign labor, saying:

"Now during the transfer it is necessary to see that the people really do arrive and do not run away before or during the transfer. If a transport has left a town and has not arrived, 500 to 600 persons from this place must be arrested and sent to Germany as prisoners of war. Such a thing is then talked about everywhere. If actions like this and other similar ones are carried out often, they would exert a certain pressure. The whole thing would be made easier, if we had control of food."

At the 53d meeting of the Central Planning Board (16 February 1944), the defendant stated:

"Our best new engine is made 88 percent by Russian prisoners of war and the other 12 percent by German men and women."

Instances could be multiplied in which the defendant not only listened to stories of enforced labor from eastern civilians and other prisoners of war and thereby became aware of the methods used in procuring such labor, but in which he himself urged more stringent and coercive means to supplement the dwindling supply of labor in the Luftwaffe. As Germany's plight became more desperate, her loss of military personnel presented an alarming dilemma, resulting in the defection of thousands of workmen to the armed forces. This resulted in a shifting of the dilemma to industry, and spurs were put to the labor procurement officers to fill the widening gap in the industrial labor ranks. Every branch of war industry constantly clamored for replacements and each vied with the others for a greater quota from the labor pool. Confronted by the desperate situation, the labor procurement officers, headed by the implacable Sauckel, cast aside all restraint and set

out systematically to herd into the Reich any human being who could contribute to Germany's war effort. Under Sauckel's whip, no means however harsh were overlooked, and no person however exempt was spared.

The defense on this count is ingenious but unconvincing. As to the use of prisoners of war, the defendant testified that he had been advised by some unidentified person high in the National Socialist Councils that it was not unlawful to employ prisoners of war in war industries. The defendant was an old and experienced soldier, and his testimony revealed that he was well acquainted with the provisions of the Geneva and Hague Treaties on this subject, which are plain and unequivocal. In the face of this knowledge, the advice which he claims to have received should have raised grave suspicions in his mind. Presenting an entirely different aspect to his defense, he testifies that many of the Russian prisoners of war volunteered to serve in the war industries and apparently enjoyed the opportunity of manufacturing munitions to be used against their fellow countrymen and their allies. Other Russian prisoners of war, he states, were discharged as such and immediately enrolled as civilian workers. The photographs introduced in evidence, however, show that they still retained their Russian army uniforms, which makes their status as civilians suspect. Be that as it may, it does not adequately answer the charge that hundreds of thousands of Polish prisoners of war were cast into concentration camps and parceled out to the various war factories, nor the further fact that thousands of French prisoners of war were compelled to labor under the most harrowing conditions for the Luftwaffe.

As to the French civilian workers who were employed at war work in Germany after the conquest of France, it is the contention of the defendant that these workers were supplied by the French Government under a solemn agreement with the Reich. It is claimed with a straight face that the Vichy Government, headed by Laval, entered into an international compact with the German Government to supply French laborers for work in Germany. This contention entirely overlooks the fact that the Vichy Government was a mere puppet set up under German domination, which, in full collaboration with Germany, took its orders from Berlin. The position of the defendant seems to be that, if any force or coercion was used on French citizens, it was exerted by their own government, but this position entirely overlooks the fact that the transports which brought Frenchmen to Germany were manned by German armed guards and that upon their arrival they were kept under military guard provided by the Wehrmacht or the SS.

It was sought to disguise the harsh realities of the German foreign labor policy by the use of specious legal and economic terms, and to make such policy appear as the exercise of conventional labor relations and labor law. The fiction of a "labor contract" was frequently resorted to, especially in the operations of the Todt Organization, which implied that foreign workers were given a free choice to work or not to work for Germany military industry. This, of course, was purely fictitious, as is shown by the fact that thousands of these "contract workers" jumped from the trains transporting them to Germany and fled into the woods. Does anyone believe that the vast hordes of Slavic Jews who labored in Germany's war industries were accorded the rights of contracting parties? They were slaves, nothing less—kidnapped, regimented, herded under armed guards, and worked until they died from disease, hunger, and exhaustion. The idea of any Jew being a party to a contract with Germans was unthinkable to the National Socialists. Jews were considered as outcasts and were completely at the mercy of their oppressors. Exploitation was merely a convenient and profitable means of extermination, to the end that, "when this war ends, there will be no more Jews in Europe". As to non-Jewish foreign labor, with few exceptions they were deprived of the basic civil rights of free men; they were deprived of the right to move freely or to choose their place of residence; to live in a household with their families; to rear and educate their children; to marry; to visit public places of their own choosing; to negotiate, either individually or through representatives of their own choice, the conditions of their own employment; to organize in trade unions; to exercise free speech or other free expression of opinion; to gather in peaceful assembly; and they were frequently deprived of the right to worship according to their own conscience. All these are the sign-marks of slavery, not free employment under contract.

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

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

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

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

During the First World War, an order of the German Supreme Command (3 October 1916) provided for the deportation of Belgian vagrants and idlers to Germany for work, but specified that such labor was not to be used in connection with operations of war. The order resulted in such a storm of protest that it was at once abandoned by the German authorities.

It cannot be contended, of course, that foreign workers were entitled to comforts or luxuries which were not accorded German workers. It is also recognized that, especially during the latter part of the war there was a universal shortage of food and fuel throughout the Reich and in the discomforts arising therefrom foreign workers were bound to share. But it is an undoubted fact that the foreign workers were subjected to cruelties and torture and the deprivation of decent human rights merely because they were aliens. This was not true in isolated instances, but was universal and was the working out of the German attitude toward those whom it considered inferior peoples. If any decent human consideration was shown these workers, it was merely to maintain their productivity and did not stem from any humanitarian considerations.

The Tribunal therefore finds the defendant guilty of the war crimes charged in count one of the indictment, to wit, that he was a principal in, accessory to, ordered, abetted, took a consenting part in and was connected with, plans and enterprises involving slave labor and deportation to slave labor of the civilian populations of countries and territories occupied by the German armed forces, and in the enslavement, deportation, ill-treatment and terrorization of such persons; and further that the defendant was a principal in, accessory to, ordered, abetted, took a consenting part in, and was connected with, plans and enterprises involving the use of prisoners of war in war operations and work having a direct relation to war operations.

COUNT THREE

Count three of the indictment charges the defendant with crimes against humanity committed against “German nationals and nationals of other countries.” Sufficient proof was not adduced as to such offenses against German nationals to justify an adjudication of guilt on that ground. As to such crimes against

nationals of other countries, the evidence shows that a large number of Hungarian Jews and other nationals of Hungary and Romania, which countries were occupied by Germany but were not belligerents, were subjected to the same tortures and deportations as were the nationals of Poland and Russia. In count one of the indictment these acts are charged as war crimes and have heretofore been considered by the Tribunal under that count in this judgment. In the judgment of the International Military Tribunal (*Vol. I, Trial of the Major War Criminals, p. 254*), the court stated—

“From the beginning of the war in 1939, war crimes were committed on a vast scale which were also crimes against humanity.”

This is a finding of law and an interpretation of Control Council Law No. 10, with which this Tribunal is in full accord.

Our conclusion is that the same unlawful acts of violence which constituted war crimes under count one of the indictment also constitute crimes against humanity as alleged in count three of the indictment. Having determined the defendant to be guilty of war crimes under count one, it follows, of necessity, that he is also guilty of the separate offense of crime against humanity, as alleged in count three, and this Tribunal so determines.

In exculpation, the defendant states that he was a German soldier and that whatever was done by him or with his knowledge or consent was done in pursuance of a national military policy promulgated by Hitler and in obedience to military orders. He protests that, no matter how violently he disagreed with the methods used by the German Reich in the furthering of its policy of aggressive war, he was helpless to extricate himself and had no alternative except to stay with the venture to the bitter end. It is true that withdrawal may involve risks and dangers, but these are incidental to the original affiliation with the unlawful scheme. He who elects to participate in a venture which may result in failure must make his election to abandon the enterprise if it is not to his liking or to stay as a participant, and win or lose according to the outcome.

Much significance must be attached to the meeting of 23 May 1939, at which the defendant was admittedly present and in which Hitler spoke at great length as to his plans for the subjugation of friendly minor nations and the ultimate conquest of Europe. A purported record of the events at this meeting has been introduced in evidence and has been found to be reliable and accurate by the International Military Tribunal. The defendant has through-

out insisted that this record is spurious and was made by Schmundt long after the occasion which it records. Of course, it was never anticipated that this record, which was marked "Top Secret, To be Transmitted by Officer Only," would ever be captured and its contents become known. It is not surprising that those who sat and listened to the astounding program of the Fuehrer now wish that they had been absent. It cannot be denied that there was a meeting of some kind which the defendant attended and at which the Fuehrer spoke, and further that it was held a few short months before the actual invasion of Poland, as forecast in the report of the meeting. The Schmundt paper does not pretend to be a verbatim report of Hitler's exact words, but certainly all of the diabolical plans which it reveals were not manufactured by Schmundt out of thin air, attributed to Hitler, and then marked "Top Secret". Even if Hitler said only a small part of what is attributed to him by Schmundt, there was enough said to advise and warn a man of the defendant's intelligence and experience that mischief was afoot. Every sentence shrieks of war. The record hints at nothing else, and, if all references to conquest and war and world domination are eliminated, Hitler did not speak at all. At this early date, the defendant must be charged with knowledge that a war of aggression, to be ruthlessly pursued, was planned. This, then, was the time for him to have made his decision—the decision which confronts every man daily—to be honorable or dishonorable. Life consists quite generally in making such decisions. As an old soldier, schooled in the code of war and well aware of the principles to which an honorable soldier must adhere, he sat complacently and listened to a proposed program which violated national honor, personal integrity and the moral code of an honest soldier. He made his choice and elected to ride with the tyrant.

When the defendant joined the National Socialist Party in 1933, Germany was in the throes of dire economic and political distress and was burdened by a myriad of political parties, each with its separate program and all functioning at cross-purposes. The defendant elected to affiliate with the NSDAP because, he testified, he believed it offered the most likely agency for bringing order out of chaos. But very soon he must have realized that he had joined a band of villains whose program contemplated every crime in the calendar. The Nazi code was not a secret. It was published and proclaimed by the Party leaders in long harangues to the people; decrees and directives were broadcast; the infamous Streicher was spreading anti-Jewish obscenities throughout the Reich in "Der Stuermer"; Roehm and a large number of the SA were murdered by Hitler's orders; hundreds of German citizens were

cast into concentration camps for "political re-education," without hearing or opportunity for defense; the iniquitous Gestapo stormed through the land, with power over life and liberty which could not be questioned; in public view Jews were beaten and killed, their synagogues burned and their stores destroyed. The Party proclaimed its objectives from the house-tops and verified them by open public conduct throughout the Reich. The significant fact which must not be overlooked is that all these things happened *before* the war was launched, at a time when there was no claim upon the loyalty of the defendant as a soldier to protect his homeland at war. He protests that he never subscribed to the master race philosophy, but 13 years before he joined the Party in 1933, its precepts and demands had been proclaimed, among which was Point 4—

"Only a member of the race can be a citizen. A member of the race can only be one who is of German blood, without consideration of creed. Consequently no Jew can be a member of the race."

The humblest citizens of Germany knew that the iniquitous doctrines of the Party were being implemented by ruthless acts of persecution and terrorism which occurred in public view. Thousands of obscure German citizens were only too well aware that they were living under the scrutiny of an army of spies and saw their friends and relatives summarily dispatched to concentration camps for the slightest suspicion of dissidence. The defendant did not live in a vacuum. He was not blind nor deaf. Long before 1939, long before his military loyalty was called into play, long before the door of withdrawal was closed, he could have seen the bloody handwriting on the wall, for murder and enslavement of his own countrymen was there written in blazing symbols. But he had taken on the crimson mantle of the Party, with all its ghastly implication, and he wore it with glory and profit to himself to the end. Others with more courage and higher principles and with more loyalty to the ancient German ideals rebelled and withdrew from the brutal crew—von Clausewitz, Yorck von Wartenburg, Schlegelberger, Schmitt, Eltz von Ruebenach, Tesmer. These men in high positions had the character to repudiate great evil, and if in so doing they took risks and made sacrifices, nevertheless, they made their choice to stand with decency and justice and honor. The defendant had his opportunity to join those who refused to do the evil bidding of an evil master, but he cast it aside and his professed repentance now comes too late.

What a sordid picture of a civilized nation—the nation of

Goethe and Heine, of Beethoven and Schubert, even of Bismarck and von Hindenburg—fawning and cringing at the feet of a small man with delusions of grandeur. Even when madness crept in to intensify his frenzy and fear of defeat put spurs to his ferocity, they still said, "We are his people. He is our immaculate leader." Men of large capacities, even of genius, prostituted their talents before a puny renegade who used them impiously and paid off his puppets with medals and pelf. But the strutting menials stayed with him. So long as success was on the horizon, they bowed and scraped and sought to outdo each other in supine adulation. They tell us now, "Hitler was wrong." But they never told him that. Right or wrong, their only concern was, "Can he win the war? And what will it mean for me?" They heard him proclaim as early as November 1937, "The question for Germany is where the greatest possible conquest could be made at the lowest possible cost," and they nodded and shouted, "Heil Hitler," and maneuvered to get closer to him. Before the invasion of Poland, they heard this bloodthirsty tyrant say, "In starting and making a war, not the right is what matters, but victory." And this defendant, as part of the unholy array, rolled up his sleeves and said, "Let me help. Give me men and more men, no matter where you get them."

In a civilized state which recognizes the sanctity of human lives and human rights, no man—no group of men—should be endowed with omnipotence. The history of human relations, from Herod to Hitler, has repeatedly demonstrated this to be true. Omnipotence is only for God. Be a man ever so wise, ever so benevolent, ever so trustworthy, there still exists in him the frailty, the fallibility, the susceptibility to temptation that is inherent in every man. If the only protection against the tyranny of an autocrat is his own self-restraint, that is not enough, for power feeds on power, and the temptation to stretch authority to its limit is irresistible.

What, then, of the responsibility of those who bask in the reflected radiance of omnipotence, who get their sustenance from it and who arrogantly carry out its mandates and crush any resistance to it? Are they not the hands and limbs of the monster, carrying out the orders of the head? Surely, they cannot be allowed to detach themselves from the corpus by saying, "These arms and legs are innocent—only the head is guilty?"

In an authoritarian state, the head becomes the supreme authority for woe as well as weal. Those who subscribe to such a state submit to that principle. If they abjectly place all the power in the hands of one man, with no right reserved to check or limit or repudiate, they must accept the bitter with the sweet. This is especially true of those in high places in the state—those who choose to enjoy the honor, the emoluments and the power of such

high stations. By accepting such attractive and lucrative posts under a head whose power they know to be unlimited, they ratify in advance his every act, good or bad. They cannot say at the beginning, "The Fuehrer's decisions are final; we will have no voice in them; it is not for us to reason why; his will is law," and then, when the Fuehrer decrees aggressive war or barbarous inhumanities or broken covenants, to attempt to exculpate themselves by saying, "Oh, we were never in favor of *those* things."

One cannot escape the conviction that, had the war terminated in victory for Germany, all of the acts of Hitler, including those related to the charges in this indictment, would have been hailed as strokes of genius, and that this defendant would now be elbowing his way into the front row of those claiming to have successfully and victoriously carried out Hitler's orders and policies—in fact, claiming co-authorship in many. But with Germany defeated and Hitler dead, it becomes naively convenient to take refuge in the flimsy claim that no one except Hitler was in favor of the invasion of Poland and Russia and France and the rape of Holland and Belgium and Norway and Denmark.

The defendant insists that he knew nothing of the atrocities and violence which were cumulating day by day throughout Europe. Being a good German, he says, he supinely obeyed the decree which forbade listening to foreign broadcasts or reading foreign periodicals. He surrendered to a political philosophy which outlawed the ordinary means of knowledge and which prevented the formation of rationalized opinion or judgment. No one might read or listen or talk except in predetermined channels. Ignorance was prescribed by law. The first weapon of tyranny is to keep its victims in darkness. The Germans were an intelligent, cultured people; they were not ignorant serfs. What a travesty to say that a people which has produced some of the greatest intellects in human history is not fit to be told the truth.

Desperate and discouraged peoples, distraught with the crushing problems of hunger and insecurity, have always cried out for a miracle worker to lead them out of the wilderness. Then is the golden opportunity for the mountebank with bland promises and soothing phrases to provide a poisonous panacea for their distress. In their desperation they fail to realize that despotism has a way of beginning with benevolence and ends by being merely despotic. Masquerading in the mantle of a messiah, the wily opportunist lulls them into subscribing to some glib Fuehrerprinzip which means, "Ask no questions; leave everything to me." And when the debacle comes, they realize that they *have* left everything to him—honor, dignity, self-respect, liberty, even life itself—and they end up degraded, ashamed, impoverished, and hopeless. But

have they ended up wiser? The universal fear today is that in their desperation they will repeat the vicious process by saying, "Last time we picked the wrong man. Let us seek a new messiah. He will save us." The lessons of one generation are quickly forgotten by the next, but the inexorable laws of nature are immutable. The tragic fruits of tyranny and intolerance will always be the moral decay of peoples and the degradation of human dignity.

Over the heavy gates which shut in the hapless victims at Dachau is a legend reading, "Work will set you free." The toil of slaves cannot set them free; it only serves to further enslave them. Some day an enlightened German people will storm those gates and all others like them and recast them into an image of Truth—an imperishable figure with eyes open and unbandaged. So long as Truth stands free and untarnished, no future Hitler will ever arise to deceive and degrade the German nation. Then there will never be another Dachau.

[Signed] ROBERT M. TOMS
PRESIDING JUDGE
FITZROY D. PHILLIPS
JUDGE
MICHAEL A. MUSMANNO
JUDGE

SENTENCE

This Tribunal takes no pleasures in performing the duty which confronts it, but the deliberate enslavement of millions must not go unexpiated. The barbarous acts which have been revealed here originated in the lust and ambition of comparatively few men, but all Germans are paying and will pay for the degradation of their souls and the debasement of the German honor, caused by following the false prophets who led them to disaster.

It would be a travesty on justice to permit those false leaders, including this defendant, to escape responsibility for the deception and betrayal of their people. It would be even a greater injustice to view with complacency the mass graves of millions of men, women, and children whose only crime was that they stood in Hitler's way. Retribution for such crimes against humanity must be swift and certain. Future would-be dictators and their subservient satellites must know what follows their defilement of international law and of every type of decency and fair dealing with their fellow men. Civilization will be satisfied with nothing less.

It is the sentence of this Tribunal that the defendant Erhard Milch be confined to the Rebdorf Prison for the remainder of his natural life.

B. Concurring Opinion by Judge Michael A. Musmanno

The defendant is Erhard Milch, Field Marshal in the German Luftwaffe, Inspector General of the Luftwaffe, State Secretary in the Air Ministry, Generalluftzeugmeister, representative of the Wehrmacht on the Central Planning Board, Chief of the Jaegerstab and member of the Nazi Party. He stands indicted of war crimes and crimes against humanity as defined in Control Council Law No. 10, enacted by Allied Control Council on 20 December 1945.

The indictment contains three counts which may be briefly summarized as follows:

COUNT ONE

Erhard Milch is charged with having knowingly committed war crimes as principal and accessory in enterprises involving slave labor and having also willingly and knowingly participated in enterprises involving the use of prisoners of war in war operations contrary to international convention and the laws and customs of war.

COUNT TWO

The defendant is accused of having knowingly and willfully participated in enterprises involving fatal medical experiments upon subjects without their consent.

COUNT THREE

In the third count the defendant is charged with responsibility for slave labor and fatal medical experiments, in the same manner as indicated in the first two counts, except that here the alleged victims are declared to be German nationals and nationals of other countries.

The defendant has entered a general denial of Not Guilty to all counts. To the charges of slave labor he has answered in effect—

1. That the term slave labor is a misnomer and that all foreign workmen in Germany during the war were there of their own free will.

2. That if they did not come voluntarily they were treated humanely, considerately, and were not subjected to any ill-treatment either in transportation or while actively employed for the Reich.

3. That if ill-treatment, fatal or otherwise, of foreign workmen occurred, the defendant was in no way responsible for such ill-treatment.

To the charges of responsibility for fatal medical experiments inflicted on involuntary subjects, the defendant replies substantially—

1. That the high-altitude and freezing experiments were not painful to the subjects, nor did any illegal deaths result therefrom.

2. That if fatalities did occur, they were suffered by those already condemned to death, or were caused by persons over whom the defendant had no control.

3. That in any event, Milch was in no way officially connected with the illegal and fatal experiments.

I. SLAVE LABOR

(a) Methods of Recruitment

The defense has affirmatively asserted that there was no slave labor in Germany during the war, or that if it did exist, its scope was negligible. The Tribunal finds that this assertion is not supported by the testimony in the case. It concludes, on the contrary, from the evidence presented at this trial that the German Reich during World War II did actively and plenarily employ slave labor. It further is of the opinion that the Third Reich used and abused slave labor to an extent and in a manner hitherto unknown in either modern or ancient history. The exploitation of human beings by Germany during the years of the war must take its place, in point of cruelty and inhumaneness, with the most iniquitous slave practices of the ancient Egyptians, Babylonians, Assyrians, and Persians. The building of the Pyramids, the Hanging Gardens of Babylon, and other ancient landmarks under whip and lash have their modern counterpart in the German building of the Western Wall, the Gothic Line, military fortifications, concentration camps, and munitions factories. The guilt of the German Reich is greater than that of the ancient empires because in that area of antiquity the immorality of human bondage was not universally accepted, whereas in 1939 no country in the sisterhood

of civilized nations had failed to condemn and outlaw involuntary servitude in its every form.

It is submitted in behalf of the defendant that foreign workers came to Germany of their own will. It is true that in the early stages of the European conflict, Germany offered such inducements in foreign countries as to persuade numbers of their subjects voluntarily to proceed to that country for remunerative employment. In those first days of Blitzkrieg when nation after nation fell helplessly under the invincible Nazi war machine, workers accepted employment in Germany not only because of promises made, but because exterior evidence to their bewildered minds seemed to portend that soon the frontiers of Germany would be coterminous with the boundaries of Europe itself. Thus, but small choice remained to them; whether they worked at home or in Germany the master was destined to be the same.

However, when the subjugated peoples perceived at Stalingrad that the unbeatable German army could be beaten, when they heard the roar of American propellers in the sky and the clank of British tanks returned once more to the battle, a light of hope gleamed that it might not be true, as Hitler had said, that his rule and order were to endure a thousand years, and then these people refused the coin and currency of the German Reich. From then on the feet of foreign workers were not turned willingly toward Germany. And in the face of this defiance, Sauckel, German Plenipotentiary for Labor, declared, "Should we not succeed in obtaining the necessary amount of labor on a voluntary basis, we must immediately institute conscription or forced labor." (*T-58.*)¹

There is no adding machine tape to which one can turn to determine the exact total number of foreign workers impressed into German industry, but Fritz Sauckel, Plenipotentiary General for Labor, declared, "Out of 5,000,000 workers who arrived in Germany, not even 200,000 came voluntarily." (*T-149.*) Heinrich Himmler placed the number of foreign workers at from 6,000,000 to 7,000,000. (*IMT 243*)².

On 9 November 1941, Hitler declared in a speech—

"The territory which now works for us contains more than 250,000,000 men, but the territory which works indirectly for us includes now more than 350,000,000. In the measure in which it concerns German territory, the domain which we have taken under our administration, it is not doubtful that we shall succeed in harnessing the very last man to this work."

¹ The reference "T" is to the page of the mimeographed transcript.

² "IMT" refers to Trial of the Major War Criminals before the International Military Tribunal, Vol. I, Nuremberg, Germany, 1947.

Hitler was never quite able to achieve the fullness of this ambitious program, but it was not due to any relinquishment of efforts in that direction by himself or his criminal coadjutors. Of course, this program was in direct violation of Article 52 of the Hague Convention which declares—

“Requisition in kind and services shall not be demanded from municipalities or inhabitants, except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.”

In the very initial stages of the German invasions, the officiating agents phrased their demands for labor in language which gave the recruitment an aspect of voluntary action on the part of the workers. Thus, when the German forces entered Lithuania, male and female farm workers were called upon by the military administration to sign up for six months' employment on large estates, but after the signatures were obtained the promises were not kept. (*T-97.*) And it was not long until all pretense at voluntary recruitment was abandoned and then Lithuanians, ordered to official agencies “only for registration”, were held there and taken away under military guards to the local barracks where they had neither the opportunity to bid their families good-by nor to put their most personal affairs in order. (*T-97-98.*)

There were other pacific methods to “persuade” foreign workers into employment for the Reich. Thus, Governor General Frank of Poland recommended that one way to force Polish workers into Germany was to withhold their unemployment insurance. (*T-112.*)

However, these genteel methods in Poland soon gave way to means more direct. Recruitment now degenerated into a fierce man hunt with unsuspecting victims being seized on the streets, in railroad stations, from their homes, even in churches. (*T-83.*)

“Everybody is exposed to the danger of being seized anywhere and at any time by members of the police, suddenly and unexpectedly, and being brought into an assembly camp. None of his relatives knows what has happened to him; only weeks or months later, one or the other gives news of his fate by a post-card.” (*T-83.*)

In Ukrainia skilled workers whose names had been furnished to the police by corrupted village elders were “dragged from their beds at night to be locked up in cellars until shipped.” (*T-67.*)

As neither the male nor the female workers were given time to gather up their belongings they often arrived at the collecting center without shoes or other adequate clothing for the long and torturing journey ahead. (T-67.)

A directive applying to recruitment in White Ruthenia declared—

“All permissible means shall be used to obtain manpower from White Ruthenia. Do not hesitate to apply extraordinary measures.” (T-91.)

In the same directive “the recruiters” are told, “Everything you do for Germany is right, everything else is wrong.” (T-93.) So wide-sweeping was this recruitment drive waged by the SS and police in one area of White Ruthenia that 115,000 hectares of farm land became useless because the whole population had been removed. (T-93.)

Goering bluntly declared in a speech at the Reich Ministry of Air on 7 November 1941, in connection with the Four Year Plan that Poles, Dutchmen, etc., were to be taken, “if necessary as prisoners of war and employ them as such, if work through free contract cannot be obtained. Strong action.” * * * “Foreigners not to be treated like German workers.” (T-53.)

One Leyser in making a report to Rosenberg on the situation in his district of Zhitomir gives the answer to the assertion of voluntary labor when he says—

“It is certain that a recruitment of labor, in the sense of the word, can hardly be spoken of. In most cases, it is nowadays a matter of actual conscription by force. The population has been stirred up to a large extent and views the transports to the Reich as a measure which does in no way differ from the former exile to Siberia during the Czarist and Bolshevist system.” (T-94.)

A report on recruitment measures taken in Holland reveals—

“All Jewish Netherlanders, whom the Germans could lay their hands on, with the exception of a small group of exempted persons, were brought together here; hospitals, old age homes, institutions for the blind and other disabled persons were emptied in order to concentrate the inmates in Westerbork for deportation. Even the inmates of lunatic asylums did not escape deportation.” (T-125.)

On the subject of workers from the Netherlands, Goering said on 28 October 1943, in the presence of the defendant—

"After that has been done once, one has to modify the system for the second blow. Then the Dutch people will be no longer out in the streets on Sunday for pleasure promenades * * *. First, all the people must be brought together in a pen. Then they will be asked individually who works where. Then the men will be selected accordingly." (T-2094.)

And on the subject of foreign exchange at that same meeting, Goering contributed this bit of wisdom in finance—

"All we need to do is to fix the rate of exchange * * * today the German mark equals 20 francs, tomorrow 23, then 27, then 40, and so forth, up to one million, or one billion. We have had all that. The same holds true for the guilder. One cigarette now costs in Holland 1.50 guilders; formerly it cost 10 cents. I merely have to say, 1.50 guilders equal 10 pfennigs or one mark equals 15 guilders." (T-2095.)

It may be well to note at once that all quotations from the transcript represent excerpts from records and documents located in the official files of the German Reich. The evidence advanced by the prosecution in this case was almost exclusively documentary. Thus, if any observation in this opinion seems overly emphatic and appears to go beyond the restraint usually found in judicial pronouncements, it will still fall short of the force of language employed in some of the original reports made by German officials to their own superiors at the time of the events described. A top secret memorandum on conditions in occupied Russian territory declared—

"It is no longer a secret from friend or foe that hundreds of thousands of them literally have died of hunger or cold in our camps * * * We now experience the grotesque picture of having to recruit millions of laborers from the occupied eastern territories, after prisoners of war have died of hunger like flies, in order to fill the gaps that are formed within Germany. Now the food question no longer existed. In the prevailing limitless abuse of the Slavic humanity, *recruiting methods were used which probably had their origin only in the blackest periods of the slave trade.*" (T-121.)

Even Rosenberg acknowledged the severity and harshness of the recruitment program and protested, not, to be sure, on humanitarian grounds, but because "endangered persons prefer to escape their fate" by going over to guerilla bands. (T-78.)

The fury with which the man hunt for workers was prosecuted

reached such extremes that in many instances villages were burned down as "retribution for failure to comply with the demand for the appropriation of labor forces directed to the communities." (T-80.)

And it was not only where large numbers were demanded that savage reprisals occurred. In a little village where 25 workers had been ordered but none reported, the German militia set fire to the houses of those who had fled. Then—

"The people who had hurried to the scene were forbidden to extinguish the flames, beaten and arrested, so that seven homesteads burned down. The policemen meanwhile ignited other houses. The people fell on their knees and kissed their hands, but the policemen beat them with rubber truncheons." (T-80-81.)

All because the mighty Reich needed 25 men to throw into its vast workshop of millions turning out the steel teeth of war.

In the same instance the German militia continued into other villages and where they did not find the workers they seized the parents. "The workers who had not appeared until then were shot." Then, in the report we are quoting from, appears the damning phrase which shows more than anything else to what a low ebb the dignity of man had been reduced and degraded by the German Reich. "*They are now catching humans like the dog catchers used to catch dogs.*" (T-81.) The report closes on a statement which must needs bring a blush of shame to the cheek of every member of the civilized human race—

"People from many villages went on a certain day to a pilgrimage to the monastery Potschaew. They were all arrested, locked in, and will be sent to work. Among them there are lame, blind, and aged people." (T-81.)

It has been asserted that the defendant and others holding high office cannot and should not be held responsible for the acts of subordinate officers in far away places, and of whose activities they could have no knowledge. But these smaller officers were only putting into effect the policies publicly declared over and over by the chieftains. Thus, when a certain Koch spoke in Kiev and declared—

"I will draw the very last out of this country. I did not come to spread bliss. I have come to help the Fuehrer. The population must work, work, and work again * * * for some people are getting excited that the population may not get enough to eat. The population cannot demand that. One has only to remember

what our heroes were deprived of in Stalingrad * * * We definitely did not come here to give out manna; we have come here to create the basis for Victory." (T-86.)

He was only repeating what had been said by Hitler, Himmler, Goering, and Milch, in varying forms. The defendant claims that he did not literally mean the blood and thunder declarations admittedly authored by him, and that phase of the case will be discussed in detail later. But underlings who heard these wild, inflammatory utterances did not know that Milch was only barking, if in fact we are to assume that his ferocious words were only purposeless growlings. The men in the field did not stop at words, because they were in a position to act and did act—directly on the people. Koch was not voicing a concept original with him when he said in that same speech—

"We are a master race which must remember that the lowliest German worker is racially and biologically a thousand times more valuable than the population here." (T-86.)

Unfortunately, however, his utterances were not confined to rhetoric, but being in a position to put them into flesh and blood effect, he did so.

Quotations from documents furnishing further proof of involuntary foreign labor in Germany are too numerous to repeat in the judgment. Reference, however, will be made to but one more before proceeding to the next item for discussion. In the recruitment of 1 million workers demanded in the Ukraine, SS Major Christensen, in charge of operations, declared that whatever harsh treatment was required should be controlled. He thus orders that in arresting communist functionaries it is no longer necessary to arrest all the close relatives of a member of the communist party. He decrees further that in searching for workers "when it becomes necessary to burn down a village, the whole population will be put at the disposal of the commissioner by force." (T-129.)

This is regarded as a concession, and then comes what must be classified as the most heart-rending utterance which has come out of this war—

"As a rule, no more children will be shot."

Not an out-and-out prohibition against shooting children; not that more care should be exercised in the handling of children; but only a general, vague suggestion that this SS battalion of murderers must not fire at children on sight just as one might mow down sparrows or rabbits. However, if the situation requires, then of course, children will be shot with everybody else, for the

order goes on to say, "Slavs will interpret all soft treatment on our part as weakness." "The most important thing," the directive concludes, "is the recruitment of workers." (T-129-130.)

(b) Treatment of Workers

On 20 April 1942, Fritz Sauckel announced his labor mobilization program which contained the one supremely cruel proposition regarding treatment of foreign workers—

"All the men must be fed, sheltered, and treated in such a way as to exploit them to the highest possible extent at the lowest conceivable degree of expenditure." (T-58.)

After the announcement of this inhuman decree of maximum work with minimum sustenance, Sauckel followed with—

"It has always been natural for us Germans to refrain from cruelty and mean chicaneries towards the beaten enemy, even if he has proved himself the most bestial and most implacable adversary, and to treat him correctly and humanly, even when we expect useful work of him." (T-58-59.)

It can be imagined with what kindness an underling of Sauckel's would treat a worker whom Sauckel has already characterized as a "bestial and most implacable adversary".

As a result of the minimum sustenance directive it is not difficult to understand the report of a Dr. Hupe who stated—

"During the last few days we have established that the food for the Russians employed here is so miserable that the people are getting weaker from day to day. Investigations showed that single Russians are not able to place a piece of metal for turning into position, for instance, because of lack of physical strength. The same conditions exist at all places of work where Russians are employed." (T-55.)

Wilhelm Jager, senior camp director at the Krupp Works, reported that diet prescribed for eastern workers was 1,000 calories less per day than the minimum prescribed for any Germans. Further, that while German heavy workers received 5,000 calories a day, eastern workers in comparable jobs received only 2,000 calories. Such meat as was allowed the foreign workers was that which had been "rejected by the veterinary, such as horse meat or tuberculin infested". (T-103.) The clothing allowed the eastern workers was likewise entirely inadequate. They had no overcoats and, because of the shortage of shoes, many were forced to go to

work barefoot even in winter. In the work camps tuberculosis was widespread among the eastern workers, caused by bad housing, insufficient and poor food, overwork and insufficient rest—

“These workers were likewise afflicted with spotted fever. Lice, the carrier of this disease, together with countless fleas, bugs, and other vermin tortured the inhabitants of these camps. As a result of the filthy conditions of the camps nearly all eastern workers were afflicted with skin disease. The shortage of food also caused many cases of Hunher-Oedem, Nephritis, and Shighakruse.” (T-103.)

These conditions became infinitely worse, of course, during the time of air raids—

“The French prisoner-of-war camp in Nogerratstrasse had been destroyed in an air raid attack and its inhabitants were kept for nearly half a year in dog kennels, urinals, and in old baking houses. The dog kennels were three feet high, nine feet long, and six feet wide. Five men slept in each of them. The prisoners had to crawl into these kennels on all fours.” (T-105.)

A Dr. Stinnesbeck reports on 12 June 1944—

“The PW camp at Nogerratstrasse was in most deplorable condition. The people live in ashcans, doghouses, old baking stoves, and self-made huts.” (T-106.)

Visiting camp Humboldtstrasse, Dr. Stinnesbeck found 600 Jewish women who worked at the Krupp factory. They suffered from festering wounds and other diseases. They had no shoes and went about in their bare feet!

“The sole clothing of each consisted of a sack with holes for their arms and head. Their hair was shorn. The camp was surrounded by barbed wire and closely guarded by SS guards.” (T-106.)

Concentration camp inmates were made to work, to which there can be no objection on the grounds of inhumanity. In fact, some useful toil is preferable to idleness in prison. But camp commanders were instructed that the “employment must be, in the true meaning of the word, exhaustive, in order to obtain the greatest measure of performance.” (T-61.)

“There is no limit to working hours. Their duration depends on the kind of working establishments in the camps and the kind of work to be done. They are fixed by the camp commanders alone.” (T-62.)

Certain "antisocial elements" were by special order "to be worked to death". In the literal Gestapo language "death" was never used rhetorically or figuratively. Those who were to be killed through work were listed as "under protective arrest". This included Jews, gypsies, Russians, and Ukrainians; Poles with more than three-year sentences; Czechs and Germans with more than eight-year sentences. (T-63.)

In these work camps frequently children of tender age were forced to toil.

"An indication of the awful conditions this may lead to is given by the fact that in the camps for eastern workers, camp for eastern workers 'Waldlust', Post Office Lauf, Pegnitz, there are cases of eight-year old, delicate and undernourished children put to forced labor and perishing from such treatment." (T-99.)

Those who were imported for farm work fared no better than their factory brothers. A directive issued by the Ministry of Finance and Economy at Baden on the control of Polish farm workers in Stuttgart and Baden directed that farm workers were to be quartered in stables, and the employer was urged that "no remorse should restrict such action." (T-47.) "Fundamentally", this extraordinary document proclaims, "farm workers of Polish nationality no longer have the right to complain, and thus no complaints may be accepted any more by any official agency." (T-46.)

To deprive a human being of the right to complain is in effect to classify him lower than an animal because even a beast of burden is privileged to announce his objections to harsh and cruel treatment. Nor were the Polish workers permitted the consolation and comfort in adversity which religion affords. "The visiting of churches, regardless of faith, is strictly prohibited." The edict of the Ministry of Finance said further that this prohibition against attendance at churches even excluded the visiting of churches when no service was in progress. The visiting of theatres, motion picture shows, or other cultural entertainment also was prohibited. (T-46.)

"Gathering of farm workers of Polish nationality after work is prohibited, whether it is on other farms, in the stables, or in the living quarters of the Poles. The use of railroads, buses, or other public conveyances by farm workers of Polish nationality is prohibited." (T-47.)

The difference between slave labor of this type and outright slavery is a margin faint and indistinguishable. There was no

limit to the hours of work, and the employer was invested with the right, bestially inherent in the proprietorship of slave owners, to inflict corporal punishment on the worker "if instruction and good words failed". Nor was there any one to determine whether good words had failed because the "employer may not be held accountable in any such cases by an official agency." (T-47.)

Heinrich Himmler took a very active part in the slave labor program. Concerning commitment of manpower from the East, he laid down strict rules which, if violated, brought severe punishment. He decreed that—

"In severe cases, that is in such cases where the measures at the disposal of the leader of the guard do not suffice, the state police office has to act with its means. Accordingly, they will be treated, as a rule, only with strict measure, that is with transfer to a concentration camp or with special treatment." (T-53.)

We learn further on in the directive that the "special treatment" so casually referred to as if it were some slight deprivation of comfort or convenience means nothing less than hanging!

"Special treatment is hanging. Hanging should not take place in the immediate vicinity of the camp. A certain number of the manpower from the original Soviet Russian territory should attend the special treatment; at that time they are to be warned about the circumstances which led to this special treatment." (T-53.)

If workers sought to escape, search measures were to be decreed locally, and when caught the fugitive must receive special treatment. (T-54.)

Heinrich Himmler was one of the most relentless pursuers of slave labor, as, of course, he was the most notorious executant of all that was inhuman, indecent, cruel, and vulgar in the entire Nazi program. Himmler does not defy description, he invites it. He stands out in the whole hideous camp of Hitler barbarians as the most savage of them all. A fiend in human shape, a monster in the clothing of man; there is no wild beast, bound only by jungle code, which, in point of honor, was not his superior; there is no slimy, maggoty larva, wriggling in the stagnancy and stench of the foulest cesspool which could be regarded his inferior. His creed was murder, his religion massacre, his belief kidnapping, his faith treachery, and his dogma oppression in every form. Only one thing mattered and that was German blood—

"What happens to a Russian, to a Czech, does not interest me in the slightest. What the nation can offer in the way of good

blood of our type, we will take, if necessary by kidnapping their children and raising them here with us. Whether nations live in prosperity or starve to death interests me only insofar 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 * * *. 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 sons of German mothers. They are our own blood.' That is what I want to instill into this SS and what I believe I 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." (T-145.)

When hundreds of thousands of Russian prisoners of war died from exhaustion and hunger, his regret was not that they died, but that it was deplorable "by reason of the loss of labor." (T-144.)

The defense in this case denied that foreign workers and prisoners of war were maltreated, and produced some evidence to dispute the prosecution's contentions in this regard, we quote from the affidavit of one Albin Schirmer, a resident of Nuernberg—

"From the year 1929 onwards, I was employed by the Hercules Works, Ltd. at Nuernberg (Nuernberger Herkuleswerke G.m.b.H.), and worked there in the capacity of foreman throughout the war. The necessary workers were requested by the firm from the Labor Office. The Labor Office allocated French prisoners of war, free French, and Czech workers to the firm. The free foreign workers, who also cooperated in executing the commissions of the Luftwaffe, were treated in every respect in exactly the same way as the German workers. Some lived in furnished rooms. Some lived in a camp as it was cheaper there. Working hours, wages, ration cards, and the supplementary ration cards for workers, whose hours were long, were the same as for any German. Equally, freedom of movement during leisure hours, permission to attend theaters, churches, and cinemas, the protection of the Labor Front and of strength-through-joy, permission to visit public houses and German families were available to free foreign workers as well as to German workers. Intercourse with German girls was also

permitted to free foreign workers. This, however, did not apply to prisoners of war. The sanitary installations of the firm were good, and were available for the use of foreign workers, as well as of the German workers. The prisoners of war had fixed times for taking showers whereas the free foreign workers had their showers at the same time as the Germans. The free French workers were allowed free postal communication with France, and they also went there on leave. I know of only two cases in which free French workers did not return from their leave in France.

Many French prisoners of war volunteered as free workers, in order to be eligible for the resultant advantages. Even the prisoners of war had beer sent to them every day.

During air raids, the free foreign workers played their part with devotion, a thing which they would certainly not have done if they had not considered that they were well-treated.

After the arrival of the American troops most of the French workers said good-bye to me in a friendly fashion, shaking hands with me, and wishing me luck. The female workers from the Ukraine too liked it here according to their statements."

Why should one doubt that in the vast German workshop which employed a score of millions, here and there some foreign workers were not abused but in the long run fared well? It would need to be someone wearing spectacles of pitch and groping in a Cimmerian night of prejudice and pique to assert that the German people are incapable of hospitality and generosity. The very fact that there were concentration camps in the land attests to the fact that not everybody accepted Hitler's and Himmler's crackpot master race ideology. However, even accepting Albin Schirmer's affidavit at face value, it is but one little flower in a jungle of evidence establishing that only a very few foreign workers were so fortunate as to be showered with the care and comforts and allowed to revel and luxuriate in the liberties vouchsafed those who were so lucky as to be employed in the Hercules Works, Limited, at Nuernberg.

As against this idyllic picture of happiness in a powder plant or strength-through-joy in Nuernberg, there is recalled the image of the last witness at this trial. He also was a German, Joseph Krysiak, and he too worked in a war factory. In December 1940, he remarked in a conversation to some friends that if America entered the European conflict, Germany could not win. The ubiquitous Gestapo learned of his observation and he was committed to a concentration camp, from which he went daily to work at the Me[ssersmitt] 109 plant at Gusen I. His living conditions

were a trifle less felicitous than those described by Schirmer. Krysiak worked twelve hours a day, he had coffee for breakfast, watery soup for lunch, and at night seven men shared a loaf of bread. If he did not reach the quota of work assigned him for the day, he was beaten. Later he was sent to another factory, and of working conditions there he said—

“We were working at Saint George, Gusen II, for twelve hours. Also, the transport to and from work and back to this camp occupied two to three hours as well, so that these people altogether had only four to five hours sleep under the worst imaginable conditions. Four people had to sleep in one bed.

“Q. Did you work seven days a week?

“A. Yes, and the day and night shift, and Sundays, too.”
(*T-2366.*)

When asked what effect these conditions had on the health of the workers, he replied—

“The most dreadful effect, the majority died in Mauthausen and Gusen II. It was a rule no one was released, but transports which were filled were where detainees would die.”

And as to his own particular condition, he stated—

“All I can say now is that I suffer from TB and I am medically being treated, and this is what those five years did to me.

“Q. What was your condition before going to the concentration camp?

“A. I was active in sports, and I was a long distance runner. I can say my lungs were not blemished at all.”

The shattering of this man's health is perhaps only a small part of the disaster which has befallen him. From the witness stand he gave the impression of one who had been spiritually crushed by his five years' ordeal. His voice faltered, his shoulders drooped, his eyes looked out into distance. He was alive, but something within him had perished. Perhaps he reflected on the tragedy that this awful thing which had happened to him had been inflicted by his own countrymen, not for opposing his country but for speaking a truth which, if listened to, could have averted not only his own ruin but the misery of millions of his brethren.

II. PRISONERS OF WAR

Article 31 of the Geneva Convention provides—

“Work done by prisoners of war shall have no direct connection with the operations of the war. In particular it is forbidden

to employ prisoners in the manufacture or transport of arms or munitions of any kind, or on the transport of material destined for the combatant units."

The Hague Convention of 1907, Article 6 provides—

"The State may utilize the labor of prisoners of war according to their rank and aptitude, officers excepted. The tasks shall not be excessive and shall have no connection with the operations of the war." (*T-155.*)

These prohibitions on the use of prisoners of war were flagrantly violated by the Germans in World War II. On 7 November 1941, Hermann Goering, speaking at the meeting in the Reich Ministry of Air, already referred to, declared that "it would be ideal if entire factories could be manned by Russian prisoners of war." (*T-52*). Then, insofar as feeding these prisoners was concerned the notes of the speech report: "Food is a matter of the Four Year Plan. Supply their own food (cats, horses, etc.)." (*T-52*).

On 20 April 1942, Fritz Sauckel, Plenipotentiary General for Labor Mobilization, proclaimed that—

"All prisoners of war, from the territories of the West as well as of the East, actually in Germany, must be completely incorporated into the German armament and nutrition industries." (*T-58.*)

On 26 August 1941, the Reich Labor Ministry directed the presidents of the Regional Labor Offices as follows:

"Upon personal order of the Reich Marshal, 100,000 men are to be taken from among the French prisoners of war not yet employed in armament industry, and are to be assigned to the armament industry (airplane industry). Gaps in manpower supply resulting therefrom will be filled by Soviet prisoners of war. The transfer of the above-named French prisoners of war can be utilized only in quite large concentrated groups under the well-known tougher employment conditions." (*T-49-50.*)

In a discussion with Sauckel, the defendant, and others on the subject of manpower available for the armament industry, Goering stated on 28 October 1943, that out of 2,200,000 in armament production, 770,000 were prisoners of war. (*T-2093.*)

On 14 April 1943, Sauckel reported to Hitler that "1,622,829 prisoners of war are employed in the German economy." (*T-90.*)

Noting that the utilization of prisoners of war in the war pro-

gram was a very profitable enterprise for the Reich, Goering regretted that any had ever been released. However, it was a mistake easily rectified.

"I should like to see that the prisoners of war who have been released, Norwegians and so forth, be taken again. Insofar as officers are concerned, this has been done to a certain extent. It was the greatest nonsense ever committed by us and for which nobody thanks us. We have made prisoners of entire armies and we let them go again. We do not get anything from Norway." (T-2096.)

At a Jaegerstab meeting on 19 June 1944, it developed that 300 American prisoners of war were assigned to work at the Dornier airplane factory at Oberpfaffenhofen, but with good Yankee obstinacy, knowing their rights, they refused to work. Lange, of the Speer Ministry, complaining about this said—

"They simply sat down, drank coffee, and ate corned beef, and could not be persuaded to work in spite of threats of shooting. Now, the question has been asked if we should not start a shooting action." (T-2102.)

And the only reason they were not shot is that the Fuehrer feared reprisals.

III. PARTICIPATION OF MILCH IN THE SLAVE LABOR PROGRAM

It was not contended by the prosecution at the trial that the defendant was aware, nor would it have been physically possible for him to have had knowledge, of all the excesses, inhumanities, and illegalities encompassed in the far-flung slave labor program which spread its cruelties into practically every part of Europe. However, its very bigness and the great production power which it generated in every department of the German war plant negates the defendant's position that he was utterly ignorant of its existence. This opinion has gone to some length in pointing out the numbers involved in the compulsory work program, and the heinousness of some of its operations, and has quoted from official decrees promulgated in its unfoldment, not only for the purpose of demonstrating the basis for condemning the whole illegal enterprise, but also for the purpose of laying the foundation for consideration of Milch's responsibility in this phase of German war guilt.

On 23 May 1939, Hitler outlined his plans for war to his fourteen most trusted and important military chieftains. Milch attended that then secret, and now notorious, conference. Hitler

there said, "The population of non-German areas will perform no military service and will be available as source of labor." (T-37.) This statement is taken from the memorandum made by adjutant Lieutenant Colonel Schmundt, who was present and preserved a drastically condensed record of the speech for the Reich files. The accuracy of the Schmundt record was attacked in the IMT trial and came under fire here. The defendant goes so far as to conjecture that the Schmundt statement was prepared months, perhaps even a year, after Hitler's speech, and was intended to demonstrate Hitler's uncanny and possibly supernatural powers of prophecy by the undeniably sure method of writing up the prophecy subsequent to the happening of the event predicted. The memorandum obviously is not definitely precise because it consists of only ten pages whereas the speech lasted four and one-half hours. As the memorandum manifestly cannot be complete, neither can human recollection (unaided by notes) be infallible. Milch, who made no notes at all, testified that labor was not mentioned in the speech, but Admiral Schniewind, also present, and who testified in court, stated that he did not exclude the possibility that labor was discussed. (T-1326.)

In any event, whether Hitler did or did not mention labor in his utterances of that day is not so important as it is that Milch was present when Hitler made crystal clear his intentions to attack Poland, and, if it became necessary or expedient, to fight other countries as well, with the inevitable subjugation of the conquered peoples. Slave labor was an inescapable concomitant of the type of total war Hitler intended to wage, and the character of which Milch could not fail to appreciate.

As a field marshal in the German Reich, Milch could not ignore the existence of Sauckel's proclamation on 20 April 1942 that "the raw materials as well as the fertility of the conquered territories and their human labor power are to be used completely and conscientiously to the profit of Germany and her allies." (T-57.)

But in the evaluation of Milch's criminal responsibility for Germany's use of slave labor something more is needed in a court of law than presumptions of his assumed general knowledge of what was taking place. It must be established that he, himself, participated in the slave labor enterprises, or knowing that such illegal practices were being committed, he, having the power to do so, made no effort to curb or halt them. The prosecution contends that the defendant, as a member of the Central Planning Board and of the Jaegerstab, and as Generalluftzeugmeister (Aircraft Master General), was thoroughly cognizant of Sauckel's program and that he, Milch, actively participated in slave labor practices.

(a) Central Planning Board

The Central Planning Board was made up of three members, Speer, Milch, and Koerner, each having equal authority, although, as it developed, Speer and Milch dominated the proceedings. The function of the Central Planning Board in the main was the distribution and allocation of raw materials necessary for the entire conduct of the German war economy, the planning of intended construction or enlargement, and the systematization of transportation industry independent of the shortage of raw materials. During the war this Board had 60 meetings and much time was given to consideration of the manpower problem confronting the various departments in the huge German war workshop. Sauckel often appeared before the Central Planning Board to report on the foreign labor situation. Various other officials came before the Board to express their needs in connection with foreign workers. Milch often presided at these meetings. He was absent on several occasions but all quotations from the minutes of the Central Planning Board meetings, cited in this opinion, are from meetings where he was present, and he is therefore chargeable with knowledge of their contents.

Wehrmacht representatives were often in attendance at the Central Planning Board meetings, and on 25 July 1944, Field Marshal von Kluge, Commander in Chief West, issued an order on labor recruitment—

“As the only limitation, the Fuehrer has ordered that no forcible means shall be employed against the population in the actual combat area as long as it shows itself prepared to assist the German Armed Forces. However, recruiting of volunteers from among refugees from the combat zone is to be carried out vigorously. Moreover, every means is justified to seize as much labor as possible, apart from the powers granted to the armed forces.” (T-271.)

It will be noted that the Fuehrer orders that forcible means shall not be used if the population assists. This is comparable to saying that the armed robber is thoroughly peaceful in his intentions because he will not shoot if the victim surrenders his valuables voluntarily.

The proof in this case that foreign workers were brought into Germany against their will generally does not come from them, but almost exclusively from their abductors. At one of the meetings of the Central Planning Board, Mr. Timm, representing the Plenipotentiary General for Labor, reports that they are encountering resistance to recruitment—

“In all countries we have to change over more or less to registering the men by age groups and to conscripting them in age groups. They do appear for registering as such, but as soon as transport is available, they do not come back so that the dispatch of the men has become more or less a question for the police. Especially in Poland the situation at the moment is extraordinarily serious. It is well known that vehement battles occurred just because of these actions.” (T-197-198.)

The word “recruitment” will be used in this opinion not in its literal sense of voluntary enlistment, but in the broad sense of both voluntary and involuntary gathering up of workers.

It is the contention of the defense that Milch had nothing to do with the actual recruitment. It is, of course, true that he did not go into France, Italy, Hungary, Russia, and other countries, to physically rope the workers and drag them into Germany, but is the guilt any less if one sits back in his office and signs the order which casts the uncoiling rope for the far-reaching lasso?

Goering, in an interrogation conducted 6 September 1946, stated that after the death of Udet it was Milch, as Chief of Supply for the air forces, who put forward the needs of the Luftwaffe for workers. The requests were forwarded to Speer, and Speer would ask Sauckel for the workers for the entire armament branch. Sauckel, on 24 September 1946, made a very important declaration in an affidavit on the part Milch played in the matter of obtaining workers—

“Milch produced the figures for aviation. The same was done by Speer in his sphere of activity. Speer and Milch, however, also exerted influence on the allocation of workers. How far this came within their capacity as members of the Central Planning Board I cannot say; in any case they did this in their ministerial capacity.” (T-281.)

Thus, if Milch knew how workers were actually being recruited, how they were being transported, and to what they were being transported, he cannot claim exoneration in the assertion that he did not take them in hand personally. And, if this knowledge is established, then he, when he asked for workers, was, in effect, consigning foreign workers to the suffering and torture of which he had cognizance. Behind each requisition for foreign labor there shone the inevitable backdrop of the lurid scenes of labor camps with their “special treatment,” disease, vermin, starvation, whipping, illness, and death.

On 8 April 1943, Milch wrote Sauckel and Goering, announcing that in certain sections he had proclaimed an 84-hour week in

the air force industry. (T-196.) The defendant has explained that this applied only to those engaged in guard work. Witness Krysiak testified that he worked 84 hours a week.

At the 1 March 1944 meeting of the Central Planning Board, Sauckel particularly addressed himself to Milch who was presiding, and said—

“Thereupon I even proceeded to employ and train a whole batch of French male and female agents who for good pay, just as was done in olden times for ‘shanghaiing’, went hunting men and made them drunk by using liquor as well as words, in order to dispatch them to Germany.” (T-228.)

As evidence that he was encountering difficulty in obtaining foreign workers, Sauckel pointed out that several dozen of his very able labor executive officers were shot. (T-228.) In France he wrung from Laval the concession “that the death penalty be threatened for officials who tried to sabotage the labor supply.” And then he adds that “if the Frenchmen despite all their promises do not act, then we Germans must make an example of one case, and by reason of this law, if necessary put Prefect or Burgomaster against the wall.” (T-232.)

It is a long speech which Sauckel makes, and then Milch replies, analyzing in his turn the foreign labor question. He complains bitterly that more men have not been called up from France—

“Four whole age groups have grown up in France; men between 18 and 23 years of age, who are therefore at that age when young people moved by patriotism or seduced by other people are ready to do anything which satisfies their personal hatred against us—and of course they hate us. These men ought to have been called up in age groups and dispatched to Germany; for they present the greatest danger which threatens us in case of invasion.” (T-236.)

“If one had shown the mailed fist and a clear executive intention, a churchyard peace would reign in the rear of the front at the moment the uproar starts. This I have emphasized so frequently, but still nothing is happening, I am afraid.” (T-237.)

When Sauckel complains about the trouble he is having in getting workers from Italy, Milch recommends—

“We could take under German administration the entire food supply for the Italians and tell them, only he gets any food who either works in a protected factory or goes to Germany.” (T-240-241.)

When on another occasion one Kehrl declared that it would be difficult to control the food situation in France because food was delivered by parcel post, Milch made the extraordinary pronouncement, "I personally as military commander would confiscate all goods sent by parcel post." (T-295.)

The Tribunal has not been shown any statement wherein the defendant advocated that foreign workers be induced to come to Germany by offering them good wages, good working conditions, pensions, security, and the usual attractions held out to prospective employees. When he speaks on the importation of foreign workers it is invariably in an aggressive and domineering manner. At the 54th meeting of the Central Planning Board, held on 1 March 1944, he explained that force had to be exercised because there was nothing to attract the workers to Germany since they believed that Germany would soon be defeated, and furthermore they were attached to their families and their own countries. A very cogent observation indeed.

Speaking on the French situation, he said—

"Even if Bichelonne and Laval have the best intentions there will be resistance from the mayors, the gendarmes, and the prefects, just because these people are afraid that firstly, they will be called to account afterwards for this affair, and secondly, because of their national point of view, which makes them say, 'We must not work for the enemy of our country.' Therefore I would like to have an authority in our administration which would force these people to do it, because then the French could say, 'If you force us, we will do it, but voluntarily we will not do it.' The same applies to Italy." (T-292-293.)

Once the transportation of workers got under way it was not always certain that they would all arrive. Aside from the unsanitary conditions under which they travelled, frequently without food and in the wintertime without heat, many in desperation escaped. To offset these defections en route, Milch recommended—

"If a transport has left a town and has not arrived, 500 to 600 persons from this place must be arrested and sent to Germany as prisoners of war." (T-294.)

The defense has asserted many times that the foreign workers were not all treated as badly as the prosecution's evidence might indicate. It is unquestionably true that not all foreign workers were starved and tortured, because if this were so they could not

have worked at all, and the German war machine would have ground to a stop long before the spring of 1945. Thus, there is no reason to disbelieve the statement made at one of the Central Planning Board meetings—

“The performance of the Soviet Russians so employed is to be raised by a premium system. For this purpose, the ban on pay restrictions is to be lifted and the manager be allowed to distribute among the workmen, according to his duty and discretion, RM 1 per head per day as premium for particular services rendered. Furthermore, care will be taken, that workmen can exchange these premiums, which will be paid out in camp money for goods. It is intended to put at their disposal various provisions—beer, tobacco, cigarettes and cigars, small items for daily use, etc.” (T-219.)

If the defendant has much to explain in this case it is principally because of declarations made by himself. On 16 February 1944 at a meeting of the Central Planning Board, he announced that the armament industry employed foreign workmen to the extent of 40 percent, and that in maximum production the foreign workers prevailed to the extent of 95 percent and higher. He said further that the Germans' best new engine was made 88 percent by Russian prisoners of war and the other 12 percent by German men and women. “Only 6 to 8 German men are working on this machine. The rest are Ukrainian women who have beaten all the records of trained workers.” And yet, despite this apparently creditable performance on the part of foreign workers, he complains bitterly—

“The list of the shirkers should be entrusted to Himmler's trustworthy hands who will make them work all right. This is very important for educating people and has also a deterrent effect on such others who would likewise feel inclined to shirk.” (T-223.)

When Milch recommends entrusting anyone to Himmler's “trustworthy hands”, the world well knows how bloody and homicidal those hands were.

The charges of maltreatment of foreign workers leveled against Milch could be taken almost literally from his own words—

“It is, therefore, not possible to exploit fully all the foreigners unless we compel them by piece work or we have the possibility of taking measures against foreigners who are not doing their bit. But, if the foreman lays hands on a prisoner of war or smacks him there is at once a terrible row, the man is put into

prison, etc. There are sufficient officials in Germany who think it their most important duty to stand up for human rights instead of war production. I am also for human rights. But if a Frenchman says, 'You fellows will all be hanged and the chief of the factory will be beheaded first,' and if then the chief says, 'I am going to hit him', then he is in a mess. He is not protected. I have told my engineers, 'I am going to punish you if you don't hit such a man; the more you do in this respect the more I shall praise you. I shall see to it that nothing happens to you.' This is not yet sufficiently known. I cannot talk to all factory leaders. I should like to see the man who stays my arm because I can settle accounts with everybody who stays my arm. If the little factory leader does that he is put into a concentration camp and runs the risk of losing the prisoners of war. In one case two Russian officers took off with an airplane but crashed. I ordered that these two men be hanged at once. They were hanged or shot yesterday. I left that to the SS. I expressed the wish to leave them hanged in the factory for the others to see." (T-223-224.)

On the stand Milch denied that he had anything to do with the fate of the two Russian prisoners of war mentioned above. He further claimed that his reference to this episode was made at another meeting (a GL meeting), and that possibly the two stenographers got their notes confused. The defense also introduced affidavits to the effect that Milch was in no way implicated in this happening and that if the two Russians were executed, the execution was performed by shooting and not by hanging. It is probably true that Milch did not order the hanging of these men, but did author the remarks attributed to him because they are in keeping with his many other admitted and proved statements.

Did Milch know that prisoners of war were being used in violation of international convention, and the laws and customs of war?

On 6 March 1944, Milch, Speer, General Bodenschatz, and Colonel von Below conferred with Hitler. Hitler was informed of the Reich Marshal's wishes for the further utilization of the production power of prisoners of war, by giving the direction of the Stalags to the SS. The Fuehrer considered the proposal good, and asked Colonel von Below to arrange matters accordingly. (R-124, p. 168.)

At the 42d meeting of the Central Planning Board, held on 23 June 1943, the intensive discussion on labor needs seemed to settle on the use of Russian prisoners of war as the solution to the problem. It was recommended that the Fuehrer be advised that 200,000 Russian prisoners of war, fit for the heaviest work, should

be made available from the Wehrmacht and Waffen SS through the intermediary of the Chiefs of the Army Groups (T-218.)

However, Milch's participation in the illegal use of prisoners of war is not confined to his knowledge that it was being done. At the meeting on 30 October 1942, Sauckel suggested that as soon as the army took prisoners in operational territories they should be immediately turned over to him as Plenipotentiary for Labor. Instead of objecting to this procedure as contrary to international law, Milch added—

“The correct thing to do would be to have all Stalags transferred to you by order of the Fuehrer. The Wehrmacht takes prisoners and as soon as it relinquishes them, the first delivery goes to your organization. Then everything will be in order.” (T-176.)

Nothing can be more precise and definitive in international law than that prisoners of war may not be compelled to fight against their own country. But Milch treats this matter rather lightly at one of the meetings of the Central Planning Board—

“We have made a request for an order that a certain percentage of men in the antiaircraft artillery must be Russians. Fifty thousand will be taken altogether; 30,000 are already employed as gunners. This is an amusing thing that Russians must work the guns.” (T-192.)

On this statement the defendant has various explanations. One, that the German word which has been translated into “amusing”, should really have been rendered “mad”. Thus, it is a mad thing to make Russian prisoners work guns against their own allies. In support of this interpretation Milch argues that since he needed these prisoners in his armament program, he could not have approved their use as gunners. He then also denies that they were in fact used as gunners, and if they were, he was not responsible for the deed. But other witnesses called by the defense clearly established that the Russian prisoners were stationed at the guns, either for servicing the pieces, hauling ammunition to them, or actually firing them. It is clear that the Russian prisoners were utilized at the guns and that this type of use of prisoners of war represents an extreme violation of the laws and customs of war.

It has been argued by the defense that since Russia had denounced adherence to the Geneva Convention, Germany was not compelled to treat Russian prisoners with the limitations laid down in that convention. German Admiral Canaris on 15 September 1941, in a memorandum of counsel to the German High

Command, declared that despite Russia's attitude on the Geneva Convention her prisoners were yet entitled to immunities guaranteed under the rules and customs of war—

“The Geneva Convention for the treatment of prisoners of war is not binding in the relationship between Germany and the U.S.S.R. Therefore, only the principles of general international law on the treatment of prisoners of war apply. Since the 18th century these have gradually been established along the lines that war captivity is neither revenge nor punishment, but solely protective custody, the only purpose of which is to prevent the prisoners of war from further participation in the war. This principle was developed in accordance with the view held by all armies that it is contrary to military tradition to kill or injure helpless people * * *. The decrees for the treatment of Soviet prisoners of war enclosed are based on a fundamentally different viewpoint.” (*IMT 222.*)

Admiral Canaris' position was entirely correct and in accordance with accepted international law. In the episode of the Russian gunners adverted to by Milch, he could not help but know the physical facts and could not escape being aware that such use of prisoners of war violated international law. His responsibility here is unequivocal.

On 25 March 1944, the defendant complained that prisoners of war were not being treated with sufficient severity—

“If a decent foreman would sock one of those unruly guys because the fellow won't work, then the situation would soon change. *International law cannot be observed here.* I have asserted myself very strongly, and with the help of Saur I have represented the point of view very strongly that the prisoners, with the exception of the English and the Americans, should be taken away from the military authorities. The soldiers are not in a position, as experience has shown, to cope with these fellows who know all the answers. I shall take very strict measures here and shall put such a prisoner of war before my court martial. If he has committed sabotage or refused to work, I will have him hanged, right in his own factory. I am convinced that that will not be without effect.” (*T-249.*)

When a German field marshal, speaking to men subordinate in rank, declares that “international law cannot be observed here”, it can only mean to those under his command that in the execution of their duties, international law should go overboard and, thus being unlimited in their treatment of prisoners of war, the rights of the prisoners of war must sink also.

Defense counsel insists that Milch had, as a matter of fact, a mild and lenient disposition. Testimony was introduced to show that on several occasions when he sat on courts martial, his judgments were tempered with mercy. Note will be taken of this occasional yielding of an apparently implacable and unyielding spirit, but one must also remark the incongruity that one who, in his references to foreign workers and prisoners of war, had constant harshness on his lips, could have possessed in his make-up no harshness at all. In one of his speeches he complains because the workers collapsed, and that they receive a furlough of three or four days every eight weeks. This he calls "dirty business of the first order, and treason to the country!" (T-249.)

Then he adds—

"I further ask for support by the Luftwaffe physicians. With all the rabble that we have among the foreign workers, there is of course a lot of shirking. At the moment the Russians—that is, the Russian prisoners of war—are feigning a lot of fatigue and illness. The incidence of sickness of one and a half to two percent which we have had up to now has at least doubled and in some factories it has been increased to eight, nine, and ten percent. That is, of course, done by previous agreement. There the official physicians, who have to be very strict, find out that it is not true, and then we return the fellows to work by means of the whip. Then the whip serves as a cure." (T-250.)

Recommending the employment of so merciless an instrument as a whip can hardly be regarded as evidence of a mild disposition. Then he says—

"Let everyone consider that if he does not do his duty, we do not ask whether there is a law; we ask only whether he is the responsible one and then we will seize him no matter who he is * * *. Please go wherever you are going and knock everybody down who blocks your way! We cover up everything here. We do not ask whether he is allowed to or whether he is not allowed to. For us, there is nothing but this one task. We are fanatics in this sphere. We do not even consider letting anything at all distract us from that task. No order exists which could prevent me from fulfilling this task." (T-251.)

Then comes the outburst which is an out and out defiance of all law—

"Gentlemen, I know that not every subordinate can say, 'For me, the law no longer exists,' but he has to have someone who covers up for him, not out of cowardice. But if you act accord-

ing to the spirit of the old field service regulation, 'Abstaining from doing something hurts us more than erring in the choice of the means,' and if, moreover, you keep in touch and immediately clarify difficult points, so that something can be done, then we are willing to accept the responsibility, whether this is the law or not. I see only two possibilities for me and for Germany. Either we succeed and thereby save Germany, or we continue these slipshod methods and then get the fate that we deserve. I prefer to fall while I am doing something that is against the rules but that is right and sensible, and be called to account for it, and if you like, hanged, rather than be hanged because Papa Stalin is here in Berlin, or the Englishmen. I have no desire for that. I would rather die in a different way. But I think we can accomplish this task, too. We are in the fifth year of war. I repeat, the decision will come during the next six weeks!" (T-251-252.)

(b) Jaegerstab

We now come to a consideration of the Jaegerstab, formed on 1 March 1944, for the purpose of increasing production of fighter aircraft to meet the incessant and ever increasingly effective bomber attacks of the Americans and British which had seriously damaged the entire airplane industry in Germany. Every airplane factory with the accessory workshops had been hit at least three times. The Jaegerstab became essentially a concentration of experts drawn from various ministries. Its programs envisaged a decentralization of plane factories by transferring them in part to above-surface localities and in part to subterranean localities. Milch and Speer were joint chiefs of the Jaegerstab, and Karl Adolph [Otto] Saur functioned as Chief of Staff. SS Obergruppenfuehrer Kammler had supervision of the construction program. So far as this trial is concerned, we are interested in the work of the Jaegerstab only to the extent that it involves employment of foreign labor and prisoners of war. Did the Jaegerstab employ labor prohibited under international law, and if so, can Milch be held responsible for such illegal use?

In order to resolve this question we must review the documents submitted in evidence.

On 6-7 April 1944, Milch and Saur reported to Hitler on the achievements, up to that time, of the Jaegerstab and discussed with him the plans for further construction on a second work project. Hitler declared that he desired this project be set up in the Protectorate and, at this point, the minutes read, "If it should prove impossible there too to get hold of the necessary workers, the Fuehrer, himself, will contact the Reichsfuehrer SS and will

give an order that the required 100,000 men are to be made available by bringing in Jews from Hungary." (T-318.) Here Milch is put directly on notice that forced labor is being contemplated.

Fritz Schmelter, director of the Central Department for Employment and Distribution of Labor, and because of that a member of the Jaegerstab, declared in an affidavit on 9 December 1946, that Kammler utilized concentration camp prisoners placed at his disposal by the SS in order to carry out his share of the Jaegerstab construction program. Also, that Xaver Dorsch of the Todt Organization used foreign workers, part of whom were Hungarian Jews, to accomplish his part of the Jaegerstab construction program. Then Schmelter states, "Milch, as one of the two responsible chiefs of the Jaegerstab, personally directed, ordered or approved decisions made in the interests of Jaegerstab undertakings." (T-322.)

On 13 November 1946, Saur, Chief of Staff of the Jaegerstab, declared in an interrogation that in the decentralization program Kammler divided 30 factories into 700 individual workshops, and that the workers used in the project were concentration camp prisoners. (T-323.)

Speer, in an interrogation made shortly after his capture, declared that Hungarian Jews were used in the building program. (T-325.)

At one of the Jaegerstab meetings, presided over by Milch, Stobbe-Dethleffsen, in discussing the matter of labor needed for the Jaegerstab program, requests a few German key personnel to supervise the concentration camp inmates "with the other *subjugated people*." (T-328.)

At a Jaegerstab meeting on 6 March 1944, a Sturmabfuhrer of the SS declared he had 5,000 prisoners in readiness for work, but needed 750 guard personnel. To this statement Milch commented, "We must distribute our German people as key personnel. That is, out of three construction companies we can probably make ten complete ones by introducing 70 percent foreigners." (T-331.)

At a meeting on 2 May 1944, Kammler, in Milch's presence declares he had 30 men hanged—

"As usual it is because the people have noticed that they are no longer treated severely enough. I had 30 people hanged as a special measure. Since they were hanged, everything has been to some extent in order again. It is the same old story, whenever people notice that they are not being treated so severely as before, they take all sorts of liberties. It is not surprising that a normal soldier, standing guard on people who were previously

always harmless, does not suspect anything of the kind. They are not, however, harmless people." (T-333-34.)

The minutes of the meeting do not indicate that Milch in any way protested Kammler's deeds and utterance, although at the trial he doubted that Kammler had actually hanged 30 people as he had stated.

Although Milch was not present at the meeting on 25 May 1944 of the Jaegerstab, he approved the minutes of that meeting which revealed a discussion among Schmelter (labor expert for Jaegerstab), Schlempp (deputy of Jaegerstab) and Lange, in charge of machinery for Jaegerstab.

Schmelter said—

"The Hungarian Jews are expected now, and they will require some kind of key personnel. Altogether I need about 250,000 construction workers for the large bunkers and for Schlett's installations." (T-334.)

To this Lange remarked—

"You can get them all in Hungary. There are still Jews running about Budapest." (T-334.)

It is to be noted that Lange uses phraseology that one would employ in speaking of dogs or other animals. There are still dogs running around Budapest. There are still Jews running about Budapest.

At the meeting on 26 May 1944, Schmelter reported that two transports of Hungarian Jews had arrived at the SS in Auschwitz, but that they consisted primarily of children, women, and old men. Kammler then declared that he had conscripted his own men by taking 50,000 people into protective custody.

Schlempp, in outlining Dorsch's needs for labor, states—

"Dorsch said yesterday that he wanted to bring 100,000 Jews from Hungary, 500,000 Italians,* 10,000 men from bomb damage repair, also 1,000 from Waldbrohl; then he wanted to get something from Greiser's zone by negotiation, then 4,000 Italian officers, 10,000 men from south Russia, and 20,000 from north Russia. That would be 220,000 altogether." (T-335-36.)

As early as 20 March 1944, we find Chief of Staff Saur asking Milch to inform Sauckel that the group mobilization in Hungary

* Original German document read 50,000 but, due to clerical error, translation of document which was submitted in Court read 500,000. Incorrectness is obvious by total figure of 220,000 in last sentence.

must be placed primarily at the disposal of the Jaegerstab. "Large, heavy labor companies must be formed. The people have to be treated like the prisoners. Otherwise it won't work." (T-342.)

In the face of all these uncontradicted documents and stenographic records of meetings, it would be fatuous for anyone to say that Milch was unaware that forced labor and prisoners of war were being used in the Jaegerstab construction program.

However, there is more than this passive evidence. Milch, himself, contributes the positive evidence of his full knowledge of and unrestrained participation in the Jaegerstab slave labor activities.

On 25 April 1944, he said—

"It will only work if we put these workers into barracks. We cannot exactly treat them as prisoners. It must appear otherwise, but it must be so in practice. * * * I am personally convinced after talking to the Fuehrer that he will agree as soon as it is made reasonable. The people should not be able to mingle with the population and to conspire. Nor should they be allowed to run around free, so that they can cross the frontier every day. Both practices must be stopped. * * * I am of the opinion that that must be done at once. It's all the same to me if individual people do object. Protest does not interest me at all, whether from the Chief of Prisoners of War Affairs or from our side. Kleber, would you be so good as to take care of this?"

KLEBER: "As far as prisoners of war are concerned I can take care of it, but not where it concerns the air force. That must be handled separately."

MILCH: "Naturally. This must be handled by us. There was, in fact, another proposal but we do not want it. Otherwise someone else will come complaining."

KLEBER: "I should like to transfer the prisoners further off to Brunswick."

MILCH: "I think it is an excellent idea for the prisoners to go there if Brunswick continues to be attacked." (T-356-57.)

Article 9 of the Geneva Convention of 1929 provides—

"No prisoner of war may be sent to an area where he would be exposed to the fire of the fighting zone."

At the 4 May 1944 meeting, Saur reported that the Jaegerstab itself, independent of Sauckel, had organized an expedition for the procuring of workers in Italy. On 5 May 1944, Schmelter reported that the Jaegerstab transport from Italy had been delayed because of the lack of guards, whereupon the defendant said—

"Is there someone at the escort detachment headquarters in Italy responsible for seeing that people do not get out and run away during the journey? That is what the escorting personnel is there for. Someone of standing? Dr. Wendt is responsible for the whole undertaking. I am of the opinion that, if anyone jumps out, he should be shot; otherwise a thousand will get on and only twenty will arrive there. The gendarmerie and all military posts must look out for those who abscond on the journey. They will be arrested at once and will appear before a court martial." (T-349-50.)

At a conference held on 22 February 1944, one Rautenbach says—

"That refers to Wernigerode. In Solingen we had the best results with Frenchmen and the worst with Italians, meaning the Italian workers and not the prisoners of war. For that reason we do not employ any Italians here in Wernigerode. They are only 50 to 60 percent efficient." (T-2180.)

And the defendant then remarks—

"Could not the following be done; give the Italians in principle only half of their food rations, letting them earn the other half when they do their work well?" (T-2181.)

It is obvious that, as one of the chiefs of the Jaegerstab, the defendant actively, willingly, and knowingly countenanced, ordered, and participated in slave labor practices and the use of prisoners of war in activities prohibited by international law. Aside from his other statements, the one made on 13 June 1944, where he advocates the exportation from France of machinery and men would, in itself, be enough to convict him of such participation.

"We must write off these areas in France completely, and above all the factories which are situated further into the country towards the south and west. For when the invasion begins, the guarding neither of a stretch of land, nor of a line will be possible, nor will anything function because of sabotage * * *. No Frenchman will work when the invasion begins. I am of the opinion that the French should be brought over again by force, as prisoners."

SAUR: "I should prefer to do it sooner."

LANG: "We have machines there too, in particular the presses."

MILCH: "Everything must come out; machines and men."
(T-358.)

The Jaegerstab functioned from 1 March 1944 to 1 August 1944 and then it expanded into the Ruestungsstab. When the Jaegerstab concluded its efforts a report was made to the Fuehrer, which declared that Jaegerstab had, in spite of air attacks, doubled its aircraft production. (T-360.)

(c) Generalluftzeugmeister

In his capacity as Generalluftzeugmeister, Milch held periodical meetings and conferences in connection with the Luftwaffe armament production. Labor, its procurement, disposition, and treatment, was inevitably a subject for frequent discussion, and in these discussions Milch portrayed himself an intransigent, implacable taskmaster, uninhibited neither by law nor custom, and unrestrained by moderation or regard for the helpless vanquished.

At one of these meetings on 5 May 1942, presided over by the defendant, one Fridag reported—

“The French become worse and worse. I threw out 80 of them who will be sent to concentration camps in Russia. They refused to work. The French say at 4 o'clock: ‘I won't work another hour’, and you cannot make them work another hour. This happened four weeks ago all of a sudden when the first bombing attack on Paris took place, while before that the French were the best people.” (T-2106.)

The fact that the bombardment of the beloved Paris of these Frenchmen would naturally emotionally disturb them was not weighed or considered by the defendant in spite of the fact that Frydag had reported that prior to the bombardment they had been excellent workers. Implacable and unyielding as some story book pagan god, the defendant turns to von Gablenz, Chief of the Planning Office, and declares—

“I demand if the people refuse to work they immediately be placed against the wall and shot before all the other workers.” (T-2107.)

Further—

“I ask you to get in touch with the Reich Fuehrer SS [Himmeler] and to ask him to discuss the matter with the Fuehrer. Now is the right time; unless we do something effective now, the others will become bothersome. I ask that their being sent to concentration camps be taken into consideration too. I will tell you afterwards how you should act in such a matter.” (T-2107.)

Later, on 7 July 1942, he indicated a willingness to try more peaceable methods, but if they did not succeed, then—

“I intend to fill the new Heinkel Plant in the East entirely with Frenchmen brought down there by force. If they don't work in France, they may work as prisoners in Poland. After all, we have to remember that it is we and not the French who have won the war.” (T-2116.)

On 28 July 1942 we find him again complaining about French production—

“At the present time we receive six to nine planes from the French. I could well imagine that they would get out 45 for themselves. I shall close up the shop with a single stroke and have the workers and the machines come to Germany. If it does not work on a voluntary basis, then we do it by compulsory contracts. Perhaps I shall first give them a week to think it over. It is a fact that, on the whole, these people work in silent opposition. One cannot blame them for it either, it is true, but they should not have started the war.” (T-2117.)

In this outburst we discover two strange utterances. One, “compulsory contracts”, and the other the statement that the French started the war. Since the word “contract” means a willing agreement between two or more people, a “compulsory contract” is, of course, meaningless because one cannot be forced into a contract. If there is any compulsion, then the operation becomes a matter of outright coercion. With regard to the French starting the war, the defendant had the grace to state during the trial that he now knows that France did not initiate hostilities, although he believed to the contrary at the time.

The defendant has declared repeatedly that he had no connection with, or even knowledge of, concentration camps. He only visited one of them (Dachau) in 1935. At the end of the war he was aware of the existence of but two concentration camps, although 200 were flourishing in all their ghastliness at the time. Yet despite this blissful ignorance of concentration camps the phrase rippled easily from his tongue. At the same meeting above-mentioned he stated that if two certain individuals, Schneider and Bergen, “make difficulties” he would put them into a concentration camp for the duration of the war (T-2118.)

When one Petersen, on 30 November 1942, spoke of obtaining 500 men from a concentration camp, Milch said, “For this purpose we should come to an agreement with Himmler.” (T-2148.)

On 27 April 1943, when one Stahms indicated that concentration camp inmates are almost 3,000 strong, Milch declares that

against a withdrawal of 3,000 foreign workers from the Luftwaffe industry, he attached importance to the assignment of these 3,000 concentration camp inmates to the Luftwaffe. (NOKW-413.)

At the GL meeting of 4 August 1942, someone reported that the French might strike in the event of a British attack. This provoked Milch into the thunderous outburst—

“In such a case I would ask to be appointed military commander myself. I would band the workers together and have fifty percent of them shot; I would then publish this fact and compel the other fifty percent to work by beating if necessary. If they don't work, then they, too, will be shot. I would get the necessary replacement somehow. But I hope the military commander will do his duty. I'm not worried about it. The word 'strike' must never be used. For us there is only 'living or dying' but not 'striking'. That goes for the educated man as well as for the worker, for the German as well as for the foreigner. The word 'strike' means death for the man who uses it.”
(T-2121-2122.)

On this quotation in court the following colloquy occurred between a member of the Tribunal and the witness [Milch]:

JUDGE MUSMANN: Curiosity consumes me as to what would happen if an officer inferior in rank to yourself took you at your word and actually executed a number of these workers or prisoners of war. Would that officer then be punished?

THE WITNESS: No one was there who would have been in a position to do so. Apart from that, all those who were under my orders knew me and my way of handling things. They knew exactly that I didn't mean it the way I said it, and apart from that they always laughed about my remarks when I used such strong words.

JUDGE MUSMANN: In other words, the comment of a field marshal in a matter of this seriousness was really of no value?

THE WITNESS: Because the people knew that I got excited very easily about certain things, and these incidents here have been selected and submitted of course. From every one of these meetings, which took place twice a month, there was a report—about this thick—and perhaps, at some time or another, sometimes once, sometimes twice, due to the many reports which I received, there was a certain outburst, and then I would lose my temper as we soldiers used to. However, I didn't intend to do anything about it and I spoke to those under my orders once in a while. They pointed out to me that I used such strong words, and they knew exactly

that this was not meant seriously. They knew exactly that no such order had been given and that I myself would never cause anybody to be punished, not even when it would have been justified, for the very simple reason that I did not have the power to give punishments. (T-2124-2125.)

Then Judge Phillips inquired—

JUDGE PHILLIPS: Well, now, whether you meant it or not, you would say these things, and by so doing you counselled and advised others under you at a meeting which you presided over to do such things. Whether you meant it or not, you did that, didn't you?

THE WITNESS: No. I never gave the order by using these words, because my people spoke with me, and after all they knew from my words that I never meant it earnestly.

JUDGE PHILLIPS: Didn't you say, 'I would band the workers together and have fifty percent of them shot? I would then publish this fact and compel the other fifty percent to work by beating if necessary.' Did you say that or not?

THE WITNESS: I do not remember to have said that. However, three days ago I believe I said that I never knew afterwards when I had such outbursts of rage because I had that rush of blood to my skull due to that injury I had, and I couldn't remember what I said at that particular moment. I just burst out in rage. (T-2125-2126.)

The defendant has constantly denied that he was a moving factor in the foreign workers program. But at the GL meeting on 18 August 1942, we find him asking for a complete report on the labor question, how it has developed, what nationalities are involved, how great is the fluctuation—

“What real requests we now have to make in the different sectors in order to cover the needs for specialists and for skilled and unskilled labor, how many of them are foreigners, etc. What happens to those who leave the industry? Are they compelled to work elsewhere? Are they, *as I proposed, under control in the camps supervised by the SS* and considered as being in mild concentration camps or are these gentlemen allowed to remain outside and do as they please?” (T-2127.)

When questioned as to the significance of “mild” concentration camps, he explained that these were camps to which people were sent for a short time for “education”.

Complaining about “antisocial elements” who “moved from one factory to another,” Milch rejected the suggestion that the armed

forces should take care of these people in camps. This could not be done because "they have not been condemned and in no way violated the existing laws."

"That is why Himmler should get these people into his clutches because he can treat them *outside the law*." (T-2134.)

At the GL meeting on 19 October 1943, the defendant spoke on the subject of a possible foreign workers' uprising. He said that he had discussed this eventuality with Himmler, and that he, Milch, had already given orders to the Chief AW * and to the training stations to get military training in this field.

"If for instance in the locality X, an uprising is started, then a sergeant with a few men, or else a lieutenant with 30 men is to turn up in the plant, and first of all shoot into the crowd with a machine gun. What he should do after is to shoot down as many people as possible in cases of revolt. I have given orders to that effect even if our foreign workers are involved. But first of all he must succeed in getting them all laid out flat on the ground. And then every tenth man is to be singled out and shot, while the others are lined up and see it. If our machines are being wrecked, etc., then such measures have to be applied. I said to Himmler: 'I'll go along with you in your efforts.'" (T-2153.)

Milch denied at the trial that he had talked to Himmler about this matter and endeavored to argue incorrectness in the minutes. But the weakness of his attempted exculpation here lies in the fact that he could well have argued the necessity for drastic action in such an emergency, without excesses of course. In fact, he had explained, "If our planes are destroyed in the workshops, an energetic measure should be taken." But in the desire to extricate himself completely from the situation, he challenges the record, he refutes the Himmler conference, and then adds the usual explanation that he was excited at the time.

At a GL conference on 2 March 1943, the defendant was commenting on the fact that foreign workers were becoming hostile.

"On principle I have to be informed of every case of swinishness. I do not understand at all why Germany should put up with it when Poles and Frenchmen explain to the people—today, indeed, you are still sitting in this work; but later we shall be the owners; and if you treat us properly we shall see to it then that you are shot dead immediately and not tortured first. In

* Chef Ausbildungswesen (Chief of Training).

all these matters energetic interference must be made. I am of the opinion that there should be only two types of punishment in such cases; firstly, concentration camps for foreigners, and secondly, capital punishment. If a certain number of such hostile elements are removed and the others are informed, they will then work better. Their love for us certainly won't become any greater; but neither will their hate, for it is already strong enough. In this respect, too, energetic interference must be made and in no case must the works put up with it. The best method is to give one blow with a sledge hammer to the person concerned; and I shall treat with distinction every man who does something like that whenever he hears such stupid nonsense. We are living in total war; and the workers must be told that they don't have to put up with anything." (*T-2169.*)

When the above was read to the defendant in court, he stated that he did not recall the utterance and explained, "that once again it is my well-known rage. I simply let go." However, upon further cross-examination he seemed to recall what it was all about and said, "Yes, and I was enraged here through the report which had been submitted to me as to the fact that our people were being threatened with death. That enraged me considerably; and I blew up." This is an interesting observation. This man, from whose lips death threats fell like acorns from an oak, asks that all his fulminations be ignored. Although he sat on the victors' bench at the time, yet because a worker who had been dragged from his home hundreds, or perhaps thousands, of miles away, blurted from the depth of his misery, that if he got the opportunity he would kill his captor, the captor felt morally justified in recommending the use of a sledge hammer on the head of the defenseless captive. The sledge hammer blow was to be delivered not for a deed committed, but merely for the use of words. To fortify this point, defense introduced an affidavit which declared that the servant girl in the Milch household repeated certain statements as to what her people (she was a Ukrainian) would do in the event they became victorious. On this subject they were so sensitive that even the gossip and chatter of a maid servant threw fear into their hearts, but it is solemnly averred in court that the imprecations of a field marshal were always ignored.

At the same meeting above indicated the defendant said—

"But in the abstract, I see no difficulties in the way of getting 100,000 or 200,000 French workers to Germany, nor do I see any difficulties in the way of keeping them in order. If a case of sabotage occurs in one area, every tenth man in the area

will be shot. Then such acts of sabotage would cease of themselves. The western peoples are very much afraid of death, while it is quite different matter with the Russians." (T-2172.)

In explanation of this remark the defendant said that he did not recall making it. "That was still part of my madness."

On 4 November 1943, Milch conferred with Goering at the Junkers Works at Dessau. Discussing the Italian workers, the defendant said—

"We have to let certain plants go on working in Italy, such as ball bearings, steel castings, and others, and we cannot take the people from there. The same applies to the technical sphere. The people there are working for us. All depends on our policy toward the Italians. I have ordered that they can be beaten up if they do not work. I have also given permission that Italians caught sabotaging be sentenced to death. If this measure is not desired by the higher authorities, which seems to be the case, we are powerless. Then the Italians in the Reich will not be of any use to us." Further, "We could count on millions all together, if we let them starve if they do not work!" (T-2193-2194.)

The defendant denies that he ever gave the order specifically mentioned here, and since he was talking to Goering, he places himself in the position of having lied to his superior officer, something of which, considering his vehement professions of soldier's loyalty to military hierarchy, it would never be expected he could be guilty.

On the subject of French prisoners of war, the defendant said—

"Don't forget that not even 1,000,000 Frenchmen are here as PW's while we have 7 to 8 million soldiers. Therefore, the French are still in a very favorable position. But they must realize that they will be brought to Germany all together if they don't work hard enough at home." (T-2198.)

As Vichy was working hand in glove with Berlin at the time, the defendant contends that coercion was not involved since it was the French Government who had issued the orders for this movement.

Addressing himself on another occasion to the subject of French workers, the defendant stated, "There is no good will in France, and you can really not expect it from these fellows. But we will force them to work by not feeding them." Goering then said, "I can do this here much better." And Milch replied, "That will get us nowhere. We shall then have to shut down the plants in France." (NOKW-245.)

At the GL meeting of 27 May 1942, von Gablenz reported, "Yesterday, the first * has exploded in France, at the Arado plant, an explosive, a float, but no damage has been done." Milch commented, "What measures have been taken in consequence? I want to have a report on what has been done—How many people have been shot and how many hanged. If that guy cannot be found today, fifty men should be selected and if I were you I would hang three or four of them whether they are guilty or not. It is the only way!" (NOKW-407.)

IV. MEDICAL EXPERIMENTS

(a) High-Altitude Tests

On 15 May 1941, Dr. Rascher, medical officer in the Luftwaffe and member of the SS stationed at Munich, wrote Heinrich Himmler asking that Himmler furnish to him two or three professional criminals to be used as subjects in high-altitude experiments. He stated that tests had been made with monkeys, but since their reactions differed from those of human beings, he preferred to work with live men, it being understood that these individuals could, of course, die in the experiment. Himmler replied through his adjutant, Rudolf Brandt, that he would gladly make prisoners available for such high-altitude research, and authorized that the experiments be carried out by Dr. Rascher, a Dr. Kottenhoff, and Dr. G. A. Wertz, who was Chief of the Institute for Aviation Medicine in Munich.

In March 1942, with a low-pressure chamber furnished by the Luftwaffe, the experiments began at Dachau. The apparatus used for these tests was simply a wood and metal cabinet in which air pressure could be increased and decreased, the purpose of the tests being to ascertain the subject's capacity and ability to take large amounts of pure oxygen, and to observe his reaction to a gradual decrease of oxygen approaching infinity. In this manner high-altitude atmospheric pressure would be simulated, and from the results the experimenters were to be able to determine methods and means of maintaining and saving lives among aviators compelled to rise to extreme altitudes, and at times because of war hazards obliged to parachute to the earth. The subjects for these experiments were to be individuals already sentenced to death.

Stated in strictly academic fashion, one could without too much difficulty be persuaded that these experiments were not entirely irrational or inhuman. The subjects were to die anyway, and if in dying they could furnish scientific data not obtainable other-

* A word is missing here in the German original.

wise, data which would save the lives of others, the project would not seem as criminally homicidal as it might appear when stated bluntly that experimenters would kill experimentees.

Whether the project was criminal and inhumane depends upon answers to the inevitable questions:

1. Were the prisoners actually condemned to death previously?
2. If so, for what reasons were they condemned to capital punishment?
3. Were the experiments painful to the subjects?
4. What scientific benefits resulted from the experiments?

If any prisoner used in the experiments was condemned to death merely for opposing the Nazi Regime without actually having committed any physical crime, it does not answer the criminal charge to say that the subject was already doomed to die, because by using that argument the experimenter or his SS superior could easily take any concentration camp inmate and, by merely pointing a finger at him, condemn him to death. Obviously in such a case the slayer could not, after the death, plead innocence on the grounds that the victim was to die anyway. Exculpation from the charge of criminal homicide can possibly be based only upon bona fide proof that the subject had committed murder or any other legally recognized capital offense; and, not even then, unless the sentencing Tribunal with authority granted by the State in the constitution of the Court, declared that the execution would be accomplished by means of a low-pressure chamber.

It has been asserted by the defense in this case that pardons were promised the subjects of these experiments in the event they survived. But the whole record reveals but one such shadowy case. It was also stated by one of the witnesses for the defense (General Wolff of the SS) that the subjects of these experiments were men who, because of their criminal records, had been denied the honor of fighting for the Fatherland, but that by submitting to these experiments they would be allowed, if they survived, to join combat forces at the front. General Wolff furnished no names or specific instances in this connection, nor does it appear that he, at any time, was in attendance upon the experiments at Dachau.

Dr. Romberg, under indictment for these same and kindred offenses, said on 1 November 1946, that he personally witnessed the death of three of Dr. Rascher's subjects, and that he knows that other experimental subjects were killed while he was not present. He estimated that the fatalities totaled between five and ten. He was silent on the character of the victims.

Rudolf Brandt, who is currently on trial in Tribunal I, declared in an affidavit dated 30 August 1946, that Rascher wrote Himmler asking for concentration camp subjects for his high-altitude experiments. "Volunteers could not very well be expected, as the experiments could be fatal under the circumstances." (T-475.) Also "many experiments ended with the death of the experimental subject." (T-477.)

Brandt declared further that after Rascher submitted a report on his first experiments, Himmler ordered him to continue the experiments and authorized the commutation to life imprisonment of those subjects, previously condemned to death, who survived the experiments. However, Poles and Russians were excluded from this declared clemency. For Himmler, to be a Russian or a Pole or a Jew was an offense that could be expiated only with death. Both Romberg and Brandt are interested witnesses since they are defendants in another trial on similar charges. The testimony of one Anton Pacheleff, however, is not burdened with this possible defect as he is not answering to any charges. An Austrian patent lawyer, he was an inmate of Dachau, and while his testimony must still be carefully scrutinized, it does not need to be evaluated on the basis that the affiant has something to gain in exaggerating the nature, extent, and effect of the medical experiments. He declared under oath that Dr. Rascher chose the victims for his researches from the punishment company at Dachau, a group made up of political prisoners marked for extermination. "A few convicts were among the political prisoners, having been placed there merely to depress the morale of the political prisoners, and so a few convicts were killed along with the others." (T-408.)

The most complete account of this entire operation was contributed by Walter Neff, an Austrian who had been committed to Dachau because, prior to the Anschluss, he had testified in an Austrian court against certain Nazi terrorists. Only by coincidence were the experiments enacted in a ward to which he had been assigned as an untrained nurse, and thus he became an unofficial observer. He testified that from 180 to 200 concentration camp inmates were subjected to the high-altitude experiments, and of these, 10 were volunteers. Of all these subjects only one man was ever released, and that was an individual called Zopota.

It was Neff's conclusion that over a period of three months from 70 to 80 persons were killed in the high-altitude experiments. He declared further that approximately 40 of the persons killed were persons not previously condemned to death. One man, according to Neff, was deliberately killed in the low-pressure

chamber by Dr. Rascher so that he could perform an autopsy on him after his death at the atmospheric pressure of 10,000 meters altitude. During one autopsy it was discovered after the breast had been opened that the heart was still beating. "This experiment," Neff said, "caused many cases of death because many more experiments were made in order to see how long the heart of a man could beat thus autopsied." (*T-419.*)

In this connection, reference must be made to one of the most cruel and fiendish decrees scratched by the claw of Himmler on the horror-filled parchment of his diabolic ingenuity. On 13 April 1942 he wrote Dr. Rascher, "these experiments should above all be evaluated for the purpose of seeing whether it is not possible, through this long functioning of the heart, to bring such people back to life. Should such an experiment of bringing back to life succeed, then it is understood that the person condemned to death will be commuted to lifelong imprisonment in a concentration camp." (*1971-B-PS.*) Thus, if the lifeless and mutilated body of one of these tortured victims of cold-blooded homicide should be made to function again, its owner would receive from the benevolent Heinrich Himmler the assurance of the luxuries of a lifelong imprisonment in an SS concentration camp!

But this is not the end of the hilarious game of these two death-head players, as they toss human life back and forth. On 20 October 1942, Rascher queries Himmler's adjutant on this subject. He desires to know if, amongst the mythical survivors of his lethal experiments, there should be any Poles or Russians, whether they were also to receive the boon of lifelong imprisonment in a concentration camp. Incidentally, Rascher adds, the only ones he has experimented with have been Poles and Russians. And the reply comes back from Himmler's adjutant that Dr. Rascher, "please," is to be informed that "the decree of the Reichsfuehrer SS Himmler concerning pardoning (they called it pardoning!) of experimental subjects does not apply to Poles and Russians." (!!!)

The manner in which some of the victims were selected is material fit for an Edgar Allen Poe story or a horror magazine. One day after 16 Russian prisoners had been used as experiments, two Jews were scheduled to be killed. Curious as to the identity of the two scheduled for extermination, Neff watched the first victim being placed in the experimental chamber. Something in the man's features forcibly brought to his mind the image of the prison tailor. Hurrying to the tailor shop he learned that indeed it was the tailor, and that he had not been condemned to death, but that an SS-man, one Endres, had placed him among the list of those scheduled to be killed because this tailor had refused to make a civilian suit for Endres!

Neff further testified that at one time the chamber became damaged, but after being repaired more deaths occurred, and on the last day Rascher killed five persons. (T-421.)

On 16 April 1942, Rascher wrote Himmler describing an experiment which he repeated four times "with the same results."

"When Wagner, the last VP (experimental subject) had stopped breathing, I let him come back to life by increasing pressure. Since the VP was assigned for a terminal ('Terminal' meaning 'death-resulting' in this case) experiment, since a repeated experiment held no prospect for new results, and since I had not been in possession of your letter at that time, I subsequently started another experiment through which VP Wagner did not live. Also in this case the results obtained by electrocardiographic registration (Herzstromabschreibung) were extraordinary." (T-431-32.)

Here Rascher, in a macabre demonstration worthy of his record, repeated an experiment four times knowing what the result would be, and then finally killed the subject because he had been marked for extermination anyway.

(b) Were the Experiments Painful to the Subjects

The defense contends that the experiments, even though often fatal, were not accompanied with actual pain to the subjects, and therefore the experiments could not be characterized cruel or inhuman. Anton Pacheleff often stood by the apparatus during the experiments and looked through the observation window of the chamber. He testified—

"I have personally seen through the observation window of the chamber when a prisoner inside would stand a vacuum until his lungs ruptured. Some experiments gave men such pressure in their heads that they would go mad, and pull out their hair in an effort to relieve the pressure. They would tear their heads and face with their fingers and fingernails in an attempt to maim themselves in their madness. They would beat the walls with their hands and head, and scream in an effort to relieve pressure on their eardrums. These cases of extreme vacuums generally ended in the death of the subject. An extreme experiment was so certain to result in death that in many instances the chamber was used for routine execution purposes rather than an experiment." (T-409.)

One report made up by Doctors Ruff, Romberg, and Rascher graphically described the reactions of the subject as he fell from

a height of 47,000 feet. Some of the more unusual reactions are noted:

- 47,200 ft. . . . Lets the mask fall, severe altitude sickness, spasmodic (klonische) convulsions.
- 45,580 ft. . . . Opisthotonus.
- 44,950 ft. . . . Suspended in opisthotonus.
- 44,920 ft. . . . Arms stretched stiffly forward; sits up like a dog, legs spread stiffly apart.
- 43,310 ft. . . . Agonal convulsive breathing.
- 40,030 ft. . . . Dyspnea, hangs limp.
- 23,620 ft. . . . Uncoordinated movements with the extremities.
- 19,690 ft. . . . Clonic convulsions, groaning.
- 18,080 ft. . . . Yells aloud.
- 9,520 ft. . . . Still yells, convulses arms and legs, head sinks forward.
- 6,560 ft. . . . Yells spasmodically, grimaces, bites his tongue, does not respond to speech, gives the impression of someone who is completely out of his mind.
- 5 minutes . . . (after reaching ground level) Reacts for the first time to vocal stimulation.
- 11 minutes . . . Holds his head turned convulsively to the right; tries repeatedly to answer the first question concerning his birth date.
- 28 minutes . . . Sees nothing; runs against open window sash upon which the sun is shining, so that large lump is formed on his forehead; says "Excuse me, please." No expression of pain.
- 37 minutes . . . Reacts to pain stimuli.
- 75 minutes . . . Still disoriented in time; retrogressive amnesia over three days.
- 24 hours Normal condition again attained; has no recollection of the experiment itself. (*T-455-56.*)

(c) Results Achieved

On 11 May 1942, Rascher made his first report to Himmler on the high-altitude experiments—

"As practical result of the more than 200 experiments conducted at Dachau the following can be assumed. Flying in altitudes higher than 12 kilometers without pressure-cabin or pressure-suit is impossible even while breathing pure oxygen. If the airplane pressure machine is damaged at altitudes of 13 kilometers and higher the crew will not be able to bail out of

the damaged plane themselves since at that height the bends appear rather suddenly. It must be requested that the crew should be removed automatically from the plane, for instance, by catapulting the seats by means of compressed air. Descending with opened parachute without oxygen would cause severe injuries due to the lack of oxygen besides causing severe freezing; consciousness would not be regained until the ground was reached. Therefore, the following is to be requested: (1) A parachute with barometrically controlled opening. (2) A portable oxygen apparatus for the jump. For the following experiments Jewish professional criminals who had committed 'Rassenschande' (race pollution) were used; the question of the formation of embolism was investigated in ten cases. Some of the VP's died during a continued high-altitude experiment; for instance, after one-half hour at a height of 12 kilometers. * * * To find out whether the severe psychical and physical effects, as mentioned under No. 3, are due to the formation of embolism, the following was done: After relative recuperation from such a parachute descending test had taken place, however before regaining of consciousness, some VP's were kept under water until they died. * * * One VP was made to breathe pure oxygen for two and one-half hours before the experiment started. After six minutes at a height of 20 kilometers he died and at dissection also showed ample air embolism as was the case in all other experiments." (T-384-385.)

Dr. Romberg declared in an interrogation conducted on 29 October 1946, that he and other doctors had conducted experiments on themselves reaching altitudes of 17,000 meters (17 kilometers). Beyond that, he said, death was probable. This seems to contradict the report made by Rascher, above referred to, in which he speaks of the impossibility of flight at 12 kilometers (12,000 meters).

But the whole fallacy of the experiments and their sheer futility are revealed in a letter which Dr. Hippke, Chief of the Medical Section of the Luftwaffe, wrote to Himmler under date of 8 October 1942—

"It is true that no conclusions as to the practice of parachuting can be drawn for the time being, as a very important factor, viz., cold, has so far not yet been taken into consideration; it places an extraordinary excess burden on the entire body and its vital movements, so that the results in actual practice will very likely prove to be far more unfavorable than in the present experiments." (T-404.)

If it was impossible perfectly to simulate flying conditions in the low-pressure chamber—and this, if they were scientists at all

worthy of the name, they should have known and must have known—then the tests were only the wildest kind of experimenting. And if the experimenting was done with human lives, as it was, the recklessness and the wanton handling of these human lives, resulting from 60 to 70 times in death, can only be characterized by what it was,—murder.

(d) Freezing Experiments

On 20 May 1942, [Field] Marshal Milch wrote General Wolff recommending experiments “in regard to perils at high seas.” (T-393.) As German aviators from time to time were being forced to parachute into the North Seas, and consequently being subject to extreme cold for extended periods of time, the purpose of the freezing experiments was to ascertain the most effective way of rewarming such aviators and thereby saving their lives. (T-480.)

The cold-water experiments were performed between August and October 1942; the dry-cold experiments from February to April 1943. Walter Neff, already identified, described the experimental basin as being made of wood, two meters long, two meters high, and 50 centimeters above the floor. He stated that 280 to 300 prisoners were used in the tests, many of them undergoing as high as three experiments, and that out of the number indicated 80 to 90 died. The selection of the subjects was left to the political department of the camp after Rascher had made requests for a certain number. The eventual victims were made up of political prisoners, foreigners, prisoners of war, and inmates condemned to death. According to Neff, none of the subjects were volunteers. (T-423.)

The experiment was conducted in the following manner. The basin was filled with water and then ice was added until the temperature measured 3° [centigrade]. Now the subject, either naked or dressed in a flying suit, was forced into the freezing liquid. When two certain doctors, Holzloehner and Finke, were performing the experiment, the subjects had narcotics administered to them, but when Rascher took over he refused narcotics because he maintained that “you cannot find the exact condition of the blood, and that you would exclude the willpower of the subject if he was under an anaesthetic.” When the subject was experimented on in a conscious state, a much longer time elapsed before the so-called freezing narcosis set in. (T-424.)

Neff, describing the operation, declared that the “sinking down of the temperature until 32° [centigrade] was a terrible plight for the experimental subject.” At 32° the subject lost consciousness, but these persons “were frozen down to 25° body tempera-

ture." When Rascher was handling the experiments "a large number of the persons involved were kept in the water so long a time until they were dead." (T-425.)

Many others died during the reviving or during the re-warming procedure. The utterly heartless and fiendish manner in which some of the experiments were conducted can be gathered from the graphic description by Neff of the episode of the two Russians—

"It was the worst experiment which was ever carried out. From the bunker two Russian officers were carried out. We were forbidden to speak to them. They arrived in the afternoon at approximately 4 o'clock. Rascher had them undressed and they had to go into the basin in a naked state. Hour after hour passed and when usually after a short time, 60 minutes, the freezing would have set in, these two Russians were still conscious even after two hours. All of our appeals to Rascher, asking him to give them an injection was without purpose. Approximately in the third hour one Russian said to the other: 'Comrade, tell that officer that he may shoot us.' Then the other one replied, 'Don't expect any mercy from this Fascist dog.' And how can one imagine that we inmates also had to be witnesses of such a death and could do nothing against it, then you can really estimate how terrible it is to be condemned to work in such an experimental station. After these words, which were translated to the Germans by a young Pole in a somewhat different form, Rascher went back into his office. The young Pole immediately tried to give them an anaesthetic with chloroform, but Rascher returned immediately. He threatened us with a pistol, and he said, 'Don't dare interfere and approach these victims.' The experiment lasted at least five hours until death set in. Both corpses were sent to Munich for autopsy in the Schwabisches Hospital there. Q. Witness, how long did it normally take to kill a person in these freezing experiments? A. The length of the experiment varied according to the individual case. It always varied according to whether the subject was clothed or unclothed. If his physical construction was weak and if in addition to that he was naked, death often set in already after 80 minutes. But there were a number of cases where the experimental subject lived up to three hours and remained that way in the water until finally death set in." (T-426.)

On 20 September 1942, Rascher made an intermediary report on these experiments—

"The experimental subjects (VP's) were placed in the water dressed in complete flying uniform, winter or summer combina-

tion, and with an aviator's helmet. A life jacket made of rubber or kapok was to prevent submerging. The experiments were carried out at water temperatures varying from 2.5° to 12° [centigrade]. In one experimental series, the occiput, the brain stem, protruded above the water, while in another series, the brain stem and back of the head were submerged in water * * *. Fatalities occurred only when the brain stem and back of the head were also chilled. Autopsies of such fatal cases always revealed large amounts of free blood, up to one-half liter, in the cranial cavity. The heart invariably showed extreme dilation of the right chamber. As soon as the temperature in these experiments reached 28° the experimental subjects died invariably, despite all attempts at resuscitation. The above-discussed autopsy findings conclusively proved the importance of a warming protective device for the occiput when designing the planned protective clothing of foam type." (T-398-399.)

The sheer monstrousness of this type of experiment reveals itself in the last sentence of the report which states with the flourish of a great scientific discovery that if the back of the head, the occiput is to be submerged in freezing water, there should be a warm, protective device to cover the occiput. If one is to have his feet in icy water, he should wear warm, waterproof boots. If he is to dip his head in the icy water, then his head should also be protected! This, then, is the weighty conclusion of so-called scientists sacrificing human lives for an observation that is obvious to a ten-year-old child.

"During attempts to save severely chilled persons (Unterkuehlte) it was shown that rapid re-warming was in all cases preferable to slow re-warming, because after removed from the cold water, the body temperature continued to sink rapidly. I think that for this reason, we can dispense with the attempt to save intensely chilled subjects by means of animal heat. Re-warming by animal warmth, animal bodies or women's bodies, would be too slow. As auxiliary measures for the prevention of intense chilling, improvements in the clothing of aviators come alone into consideration. The foam suit with suitable neck protector which is being prepared by the German Institution for Textile Research (Deutsches Textilforschungsinstitut), Muenchen-Gladbach, deserves first priority in this connection. The experiments have shown that pharmaceutical measures are probably necessary if the flier *is still alive* at the time of rescue." (T-399-400.)

Here other amazing, fantastic discoveries were made.

1. That something should be done at once to re-warm a body that has been floating about in icy water.
2. That aviator suits be made up with suitable neck protectors.
3. And that if the flier is still alive when rescued, medicine should be prescribed for him. If dead, no pharmaceutical measures are recommended!

In the year 1942, in the name of science, in the name of progress, men trained in medicine calmly and deliberately froze the blood in the arteries and veins of human beings to the point of death to proclaim warm clothing for low temperatures and re-warming and medicine for those who have succumbed to coldness.

Dr. Becker-Freyseng, who participated in some of the experiments, declared that as a result of the freezing experiments conducted at Dachau, they gave orders to flight surgeons that the warm bath method was to be used in reviving aviators who had been chilled. And thus another milestone was reached in science; namely, that warmth revived and comforted these who had been chilled. (*T-470*.)

On 22 September 1942, Himmler acknowledged Rascher's report, but Himmler who was carrion and obscenity incarnate, ordered that further subjects be frozen, and that re-warming and revival be attempted by the use of naked women. For this purpose Rascher obtained four gypsy women, and the experiments began. The subjects were, in accordance with usual procedure, forced into water in which ice cakes floated and were retained in the freezing compound until unconscious. Then each frozen victim was put to bed with two naked women, and the three were covered with blankets. In still other experiments the unconscious subject was placed in bed with only one woman. From all this revolting and macabre performance, the scientific deduction was reached that the re-warming process was better achieved by one woman than two because with one single partner "personal inhibitions are removed and the woman nestles up to the chilled victim more intimately." This was the great scientific revelation achieved from an obscene spectacle which could have seemed more like the superstitious drum-beating rites of barbarians on some forgotten savage, jungle-infested isle, than the work of educated doctors in the year 1942. Nor was this type of experiment without its fatalities. Of one subject, the report stated, "This person died with symptoms suggesting cerebral hemorrhage as was confirmed by the subsequent autopsy." The Nazi scientists, after this experiment, did however, achieve greatness in stating that this type of re-warming was recommended only when women were available

and other types of re-warming facilities were not available, except in the "case of small children who are best re-warmed by their mothers with the aid of hot-water bottles." (!)

In a final report to Himmler on the super-cooling experiments at Dachau, the ghastly experimenters, after having killed scores of subjects, came to the conclusion that they did not know whether rescued persons should be re-warmed quickly or slowly—

"It was not clear, for example, whether those who had been rescued should be warmed quickly or slowly. According to the current instructions for treating frozen people, a slow warming-up seemed to be indicated. Certain theoretical considerations could be adduced for a slow warming. Well-founded suggestions were missing for a promising medicinal therapy."

The uncertainty is blamed on the "absence of well-founded suggestions concerning the cause of death by cold in human beings." (T-433.)

And now, in order to clarify this question, they decided to go back to animal experiments which would suggest that after all their experimenting and killing of human beings, they are no closer to any scientific discovery than when they started. (T-433.)

However, they still continued the experiments with human beings in another manner. This was the dry-cold process, an operation carried out during the period January-March 1943. The *modus operandi* of this experiment was to place the subject outdoors at night in a nude state, cover him with a linen sheet, and then pour cold water over him hourly. After several operations of this character, Rascher complained that it was a mistake to cover the subjects even with a linen sheet. He must be utterly naked, otherwise "the air cannot get at the person." And from then on the subjects suffered their torture without covering of any kind. Even if it could be assumed that the test could have the slightest modicum of value, it is not understood why the subject had to be utterly naked. As the purpose of the experiment, it is presumed, was to ascertain the reaction of a soldier's body to a frozen state, there is no reason why the subject could not wear some clothes, if only the merest undergarment, because it is scarcely conceivable that a soldier or aviator would be without some clothing on his back. On this subject, Neff testified—

"The next experiment was a mass experiment when the prisoners were also put outside naked at night. The temperature of one of them was measured with a galvanometer, the others with a thermometer. Rascher was present during approximately eighteen to twenty experiments of that type, but I can not remember exactly how many deaths occurred and if deaths oc-

curred in connection with these experiments. I would like to say with certain reservations that approximately three deaths occurred during that period." (T-429.)

On the character of the subjects Neff stated—

"Of the experimental subjects subjected to air-cooling experiments, none were people who were sentenced to death. They were prisoners of various nationalities. There were also German political prisoners and 'green' prisoners.

"Q. And these prisoners had not volunteered, had they?

"A. No." (T-429.)

V. DISCUSSION AND CONCLUSIONS

(a) Responsibility of Milch as to Count One of Indictment

Article II of Control Council Law No. 10, promulgated by the Allied Control Council, representing the nations of the United States, Great Britain, France, and Russia, proclaims the ill-treatment or deportation to slave labor of civilian populations of occupied territories, or the ill-treatment of prisoners of war, to be war crimes, punishable by death, imprisonment, or other penalties.

It is sufficient for this Tribunal to cite Control Council Law No. 10 as authority for its action in this case. Since, however, the Control Council came into being after the ending of the war, and since the laws which it published necessarily also followed the termination of hostilities, it has been argued by defense counsel that it does not comport with justice and reason that a defendant should be condemned for an act which, prior to its commission, was not accepted in international law as a crime. From the day of surrender Germany has been without a government of its own, and as the Allied powers are exercising quasi-sovereign jurisdiction in practically all phases of German relations, both internal and external, the very circumstances of Germany's present political situation not only justifies but demands that the Control Council establish government in its three fundamental phases; namely, the judiciary, the executive, and the legislative. Otherwise chaos would fling Germany into even a more precipitous abyss than the one into which she has fallen, and the supreme and perhaps irreparable disaster, arrested by Allied intervention, would be upon her.

Yet it can be argued and it has been argued that despite the imperative need of an occupational force with its almost unlimited jurisdiction, such an occupying force simply represents the

authority of victor over vanquished. In the discharge of its duties under the law which created it, this Tribunal is not called upon to answer the arguments just indicated, but a respect for the opinion of mankind invites a listing of the reasons which establish the justice of the procedure here invoked and the reasons which must invest its judgment with the solemnity and solidity of accepted international law.

In the first place, it is not Control Council Law No. 10 which makes abuse of civilian populations an international crime, nor even the decision of the International Military Tribunal, which in turn derived its power from the London Charter which had as its antecedent the Moscow Declaration of 1943. International law is not a body of codes and statutes, but the gradual expression, case by case, of the moral judgments of the civilized world, and no international law textbook of the last century ever sanctioned the deportation of a civilian population for labor. Although under Article 52 of the Hague Regulations, the inhabitants of occupied countries may be used for the needs of the occupying army, such civilians may be utilized only in proportion to the resources of the country, and they may not under any circumstances be required to take part in military operations against their own country. L. Oppenheim's *Treatise on International Law* (Vol. II, Sixth Edition, page 345) states flatly that there is no right to deport inhabitants to the country of the occupant for the purpose of compelling them to work there.

It is submitted, however, that though this is the law and so recognized, total warfare, as it raged in World War II, suspended, if it did not outrightly abrogate, all these rules heretofore respected and esteemed as binding on civilized nations. In this respect defense counsel argues that "modern warfare, having as its aim total annihilation of the armed production of the enemy, brought with it to a great extent warfare against the civilian population," and he cites total blockade as an illustration of his thesis. It is true that total blockade affects the entire blockaded population, as indeed air raids strike at the most helpless and harmless of the enemy's civilians. The writer of this opinion was witness many times to the death and mutilation of inhabitants, including women, children, and old men, in Luftwaffe air raids aimed at legitimate war targets. German civilians also paid with their lives for living in their own country. And thus, it would seem in principle, that if civilians may legitimately be killed through military action, though noncombatant, they may certainly be made to work. But it does not follow that because military necessity unintentionally victimizes a civilian population, political domination may strip them of their civil rights and sub-

ject them to intentional torture and possible death. With all its horror modern war still "is not a condition of anarchy and lawlessness between the belligerents, but a contention in many respects regulated, restricted, and modified by law." (Oppenheim, *ibid.*, 421.)

Though the adversaries descend into the pit of bloody combat, there is always open to them the means of re-ascending to the level of nonhostile negotiations. The matter of temporary truces for recovering the dead and succoring the wounded, the making of arrangements through international relief organizations for the treatment of prisoners, the granting of safe passage through the lines of persons mutually agreed upon by the parties, all are instances which refute the logical development of defense counsel's argument that total warfare justifies the abandonment of every restriction and authorizes the combatants to use all manners and means to win the conflict.

And no one was in a better position to understand this than the defendant. He had participated as a soldier in the First World War; he had, following the war, entered distinguished private enterprise; he had travelled extensively and was induced by none other than Hitler himself to enter the Air Ministry long before the outbreak of World War II because of his talents and abilities. It is idle for defense counsel to say that Milch "was never a good National Socialist." If joining a political party, accepting its benefits and preferments, rising to supreme heights in grade and distinction, offering never-flagging loyalty to the Fuehrer, even in the face of a declared acknowledgment that the Fuehrer was leading Germany to disaster, if this does not make one a full-fledged National Socialist, then nothing does.

Milch did not simply passively ignore international law, he actively expressed a knowledgeable contempt for it. We have seen how he declared at one of the Central Planning Board meetings that "International law cannot be observed here."

Defense counsel made much of the point that the German people did not want war, and the defendant himself described how when the first tanks moved through the streets of Berlin, the inhabitants of that city were silent and worried. But it is not clear how this observation advances the innocence of the defendant. If anything it adds to his moral guilt because the evidence reveals only too well that to the fullest extent of his energies he prosecuted a war which he states was against the will and interests of his people. The indictment has not charged him with waging aggressive war, but in view of his participation in the 23 May 1939 conference when Hitler outlined quite clearly his aggressive intentions, and in view of his (Milch's) never tiring

efforts in the war's various phases—at the front, in the air, in production, in inspection—it cannot be said that to his trained mind the war had the aspects of a defensive and not an aggressive conflict. Although Milch has here repudiated belief in the master race theory, yet we know that he went through a formal procedure to establish the absence of Jewish blood in his veins. This procedure even took the embarrassing turn of statements concerning his parentage. In doing this, Milch could not help but know that the Jews were being persecuted by the political party to which he voluntarily belonged. Nor will the Tribunal believe his declaration that he knew of only two concentration camps in all of occupied Europe. For the Tribunal to acknowledge this statement would be to declare Milch weak-minded if not *non compos mentis*. Milch was constantly threatening workers with the concentration camp. These threats he attributes to excessive anger as he does all his outbursts, to which we have already called attention.

Milch would have the Tribunal believe that his violent language was never intended to produce results. He explained that his declaration that Italian prisoners of war attempting to escape should be shot does not constitute cruelty because, in the words of his counsel, "all countries have prisoners shot who attempt to escape." This contradicts another statement made in court wherein he lauded prisoners who sought to regain their freedom. When confronted with inconsistencies of this character, the defendant invariably sought refuge in the statement that he was never taken seriously in his threats to shoot, hang, or whip. He informs us that he never used a whip, that everybody knew he exaggerated, that nobody took him seriously, and that he did not have full control of himself. But Erhard Milch was not the village idiot. He carried a field marshal's baton, and the lifting of that baton compelled obedience no matter how idiotic might be the demand. Further, Milch's imprecations were not simple interjections; they frequently carried the appearance of orders already given or about to be issued. He may never have actually penned a death warrant or called out the SD with its murder squads, but is it so certain that underlings beyond his cognizance did not carry into effect his sometimes very clear directions on punishments to be inflicted?

Violent language is not as innocuous as Milch would have the present world believe. Even if it should be true that his immediate circle laughed at his fulminations, as was testified, there is no assurance that others laughed. A field marshal's fraternizations are necessarily limited. There were not many who had the privilege to stand beside him, as did General Vorwald, and philo-

sophically muse; "Now his neck is getting red again." There were necessarily hundreds in the course of six years of war who, attending his various meetings, were not informed that his fire and brimstone were froth. Vorwald can laugh at a field marshal and a field marshal can laugh at a Hitler, but the comedy ceases there. Milch has ridiculed Hitler's speeches and pointed out that certain portions of the Fuehrer's orations were known as the "Adam and Eve" section. He indicated further that many of Hitler's thunderings were mere bluff, but who can say today that he was bluffing?

Hitler's most potent force for evil was language. With all that he has to answer for at the bar of history, it can be doubted that there exists proof that he with his own hands killed any man or even the proverbial fly. Hitler's armory was language. It was Hitler's language which mesmerized the German nation. Every one has said so. He had no other abilities. He was no soldier. All the generals were agreed on that. He could not ride a horse, he could not drive a car, he could not build a fence. He could hang paper and he could talk, and the German people regarded that talk as substance. And on the phosphorescent sea of his wildly undulating phrases they launched the ship of their well-being with the tragic result that fragments and splinters of that ship now piteously stare at one from every nook and corner of this once prosperous and happy land.

The greatest individual force of destruction in Germany for nearly 20 years was *Mein Kampf*. And yet *Mein Kampf* was simply language. To the knowledge of the writer of this opinion, *Mein Kampf* was never used as a missile or fired as a projectile, but is there a German sincerely interested in the welfare of his country today who doubts that its words were bullets, its phrases bombs, and its pages poison which, falling into the wells of the nation, corroded the thinking of the innocent and goaded into action the ambitions of the wicked?

As the record shows, Milch incessantly threatened the wildest excesses, he orally directed them, and he reported to his chief on one occasion that he had put certain ones into effect. In spite of his present disavowal, there is nothing in the transcript to indicate that he repudiated his threats at the time of utterance. The defense has repeatedly attacked the accuracy of the minutes of the Central Planning Board, the GL, and the Jaegerstab. All these documents were taken from the official files of the Reich Air Ministry. Furthermore, the defendant's constant efforts on the stand to modify the far-reaching implications of his speeches concede the general correctness of the remarks attributed to him. Thus, making due allowance for stenographic errors, the de-

fendant stands out through the pages of these reports as a resolute, persevering, determined worker, unyielding and loyal to his cause, which was the cause of the Fuehrer.

It can be believed that Erhard Milch was not seeking personal enrichment and a luxurious living, which was so obviously the nefarious and principal goal of his chief, the super-pilferer Hermann Goering. Milch was seeking victory for Germany, for which he held an understandable affection, but his intelligence, training, and experience in the affairs of the world told him inescapably that Germany was waging an aggressive and culpable war. Milch gave of his talents and energies to the winning of a war criminally begun and lawlessly prosecuted, which, had it ended in victory for the aggressors would have resulted in the heartless subjugation of countless millions of innocent and helpless people. The defendant has recounted his worries and anguish and has explained that this mental torment provoked many of his unbridled utterances, but what was the cause of this bitterness and mortification? Not that Europe had become a slaughterhouse, not that blood ran like water, not that the four Horsemen of the Apocalypse were galloping over the continent hurling famine, pestilence, and death into every city, village, and hamlet. Milch's torment and soul-sickness were not that the human race and human dignity were being debased and degraded as they had never been before since man knew shame. It was not for all this that Milch's heart was breaking. His consternation, his panic was that Germany was losing the war!

He said, "I had to walk into defeat with open eyes." (*T-1948.*) Also, "I could see what was coming and I could not help my people." And in his bitterness he increased the fury of his verbal lashes over the backs of the foreign workers, he redoubled his efforts for more importations and screamed for more production. He knew, as far back as November 1941, that the war was lost; this knowledge was confirmed after Stalingrad, and every vestige of doubt as to the eventual result was shattered by the clouds of bombers over Germany every day. He knew that Hitler was leading Germany over the brink to ruin, and yet he called for more and more production to make the disaster all the more noteworthy. He was having difficulties with Goering, Hitler did not want him any more, and yet he stoked the fires of his wrath to an even higher degree of vengeance against the workers because they would not turn out more production for the war, every continuing day of which brought only greater misery to his people. The argument does not ring true. Milch may have believed Germany might lose the war but he certainly made every effort to have it end victoriously. This in itself is honorable for a

soldier, but he allowed himself to use means and methods which the code of a soldier does not authorize or countenance, and therein he fell.

He has related several accidents which may have affected his health. He cracked-up two or three times with his plane and he suffered an automobile mishap as well. It is suggested, although not vigorously pressed, that all this may explain his towering wraths and lightning fury. But the plea in this case is not "Not Guilty because of Insanity." Nowhere is it advanced that the defendant is not now, nor that at any time throughout the war was not, in the fullest possession of his mental faculties. If a temporary aberration is being suggested, it is remarkable that these deviations from the norm occurred only when he was urging the maximum and severest employment of forced labor and menacing with the direst punishment those who did not fulfill to the extreme the commitments of this illegal enterprise. If Milch was at any time deprived of his reasoning faculties, his temporary unbalance had method in it.

The Tribunal finds Erhard Milch guilty on count one of the indictment.

(b) Count Two

In considering Milch's responsibility under count two, we will need to enumerate and weigh each reference to him in the testimony in this connection. The high-altitude experiments began in March and lasted until June 1942. Cold-water experiments were conducted during the period from the middle of August until October 1942. The dry-cold experiments lasted from February through April 1943. During this time Milch was Inspector General of the Air Forces, State Secretary in the Air Ministry, and Generalluftzeugmeister. As Inspector General he was in charge of the office which authorized research and medical experiments conducted in behalf of the Air Forces. General Hippke, physician in charge of the Luftwaffe Medical Department, was directly subordinate to the defendant. As Generalluftzeugmeister, Milch was head of air ordnance. Milch had charge of the development of technical experiments for the Luftwaffe.

All medical institutes and Luftwaffe medical men were subordinate to the Medical Inspectorate Chief, Dr. Hippke. The DVL* was subordinate to Hippke's office in technical matters. Dr. Rascher conducted his experiments at Dachau. He was temporarily assigned to the SS, but retained his status as a Luftwaffe physician, rising from a second lieutenant to a captain in the Luftwaffe.

* Deutsche Versuchsanstalt fuer Luftfahrt (German Institute for Aviation Research). In this case, the reference is to the Medical Section of the Institute.

During the period of the experimentations, Rascher was under the command of the Luftwaffe.

On 20 May 1942, Milch wrote a letter to General Wolff, stating that his medical inspector had reported to him that the high-altitude experiments conducted by the SS and the Luftwaffe had been finished, and he did not recommend that they should be continued. He did, however, authorize experiments "of some other kind in regard to perils at high seas." On 4 June 1942, Milch authorized Hippke the continued use of the low-pressure chamber. On 20 July 1942, Rascher sent Brandt a report on the high-altitude experiments and the accompanying letter stated that it is Himmler's desire that the report should be sent to Milch. On 25 August 1942, Himmler sent Milch a copy of the report and asked that he receive Dr. Rascher and Dr. Romberg for a lecture and a showing of the film made of the experiment.

On 31 August 1942, Milch wrote Himmler acknowledging the report and promising to receive the two gentlemen for the lecture and showing of the film. On 23 August 1942, Sievers wrote Brandt discussing a revival of the high-altitude experiments and stating that a report was to have been made to Milch, but that the report was not made. On 3 October 1942, Rascher wrote Brandt that the report to Milch, planned for September, could not be made because Milch was not present. On 27 November 1942, Wolff wrote Milch a long letter pointing out the need and the great value of the experiments with human beings, stating that Himmler "has accepted the responsibility for supplying death-deserving, asocial persons, and criminals from the concentration camps for these experiments." He asks Milch to assign Rascher to the SS so that he can continue with the experiments directly under Himmler's orders. "In any case, these experiments must not be stopped. We owe that to our men."

Dr. Romberg stated in an affidavit that Milch "was familiar with these experiments." Neff testified that "Milch's name was mentioned in connection with the high-altitude experiments." Sievers, Director of the Research and Teaching Association, stated that "Milch must have known about the experiments of Dr. Rascher." Dr. Ruff stated that to his knowledge Milch was informed of these tests either by Hippke or by the SS. Dr. Becker-Freyseng said that Dr. Kalk told him he had seen Rascher in Milch's office.

When the film was shown in Milch's office on 11 September 1942, Milch was not present. Wolfgang Lutz testified that Milch had negotiated directly with Himmler regarding the execution of such experiments without consulting the Medical Inspectorate. Rudolf Brandt stated that Milch was fully informed about the

low-pressure experiments. As late as January 1943, Milch had not replied to the letter sent him by Wolff, asking for the assignment of Rascher to the SS.

This, in brief, constitutes the case against Erhard Milch in connection with the medical experiments. In order to find Milch guilty on this count of the indictment, it must be established that—

1. Milch had knowledge of the experiments.
2. That, having knowledge, he knew they were criminal in scope and execution.
3. That he had this knowledge in time to act to prevent the experiments.
4. That he had the power to prevent them.

In pressing this count against the defendant, the prosecution has the burden, as it has the burden in every count, to prove the guilt of the defendant beyond a reasonable doubt. We begin our deliberations with the cardinal rule that the defendant is presumed to be innocent. Glancing at the evidence as a whole, it is a facile matter to say that the defendant must have known of the experiments; that, with so much smoke, there must be fire. But in addition to smoke, there must be light.

The proof against Milch on this count is entirely circumstantial, and before we can find him guilty we must conclude that every hypothesis resulting from the circumstances is consistent with guilt and inconsistent with innocence. One can easily reach the hypothesis of guilt from the documents and testimony but that hypothesis in many of its phases is also consistent with innocence. Thus, applying the rule of evidence just cited, the test of guilt fails.

So far as chronology is concerned, Milch does not come into the picture of the experiments until 20 May 1942 with a letter in which he states that his medical inspector informed him that the high-altitude experiments had been completed. Obviously if they were completed there was nothing he could do to prevent them. Nor did the medical inspector or anyone else testify that Milch was informed of the precise nature of the experiments. Further, there is no evidence that Milch ever received any reports at all on the freezing experiments.

No one ever suggested that Milch attended the operations at Dachau or that he ever gave an order that human beings were to be used to the point of death.

If we can imagine the pieces of evidence on this count as irregularly shaped blocks of wood floating on water, we find these blocks occasionally coming together and dovetailing into a

pattern of guilt, but then we find them separating and just as often forming the pattern of innocence. No man should be convicted on evidence that does not remain fixed and immovable in granitic solidity. Guilt cannot be founded on a set of facts from which arguments are equally convincing as to guilt and as to innocence. Remarks such as "the defendant must have known," or "to the best of my knowledge he knew," and other similar inconclusive conjectures frequently used in this part of the case are not the kind of links which are imperatively needed to make up a chain strong enough to sustain the weight of a conviction.

The defendant is found not guilty on the second count of the indictment.

Though Milch is acquitted of complicity and participation in the medical experiments, we have nonetheless commented on those experiments at length. We have done this because otherwise the reference to Milch's acquittal standing alone might convey impression that the experiments themselves were not criminal. The Tribunal holds that the *corpus delicti* was established and a crime was committed, even though Milch is not guilty of it.

(c) Count Three

The third count of the indictment charges the defendant with crimes against humanity (slave labor and fatal medical experiments) committed on German nationals and nationals of other countries. As we have found him not guilty on count two, we necessarily also find him not guilty of the crime of fatal medical experiments in count three. We have, however, adjudicated him guilty on count one, and since the evidence establishes that nationals of other countries were also victims of slave labor under his control, we thus find Erhard Milch guilty on that part of the third count which covers the nationals of other countries. Sufficient proof was not submitted as to slave labor offenses against German nationals to justify an adjudication of guilt on that ground.

Thus, in recapitulation, we find the defendant guilty on count one, not guilty on count two, not guilty on count three insofar as it appertains to German nationals and guilty wherein it refers to "nationals of other countries." In reaching these conclusions, we inescapably ascertain that Erhard Milch was a full-fledged member of the National Socialist Party of Germany. Further, that he adhered to the doctrines of this Party which, with the almost cataclysmic force of planetary violence, achieved more destruction than has been known since man stood upright on the shores of history. The conclusion is also unavoidable that it was individuals like Milch that made the Hitler plan of war

and subjugation possible. Hitler was but one man and it was only because he had brilliant and able coadjutors that he could develop a war machine which achieved the incredible and fantastic record of smashing Poland in 18 days, striking France to her knees in 2 months, driving England from the continent in 6 weeks, overrunning Holland and Belgium in a few days, vanquishing Norway in several weeks, and Denmark overnight.

In those days of spectacular triumph, Milch had no complaint against Hitler. But it was precisely then that Hitler was working his greatest harm to Germany because it was inevitable that the people he had temporarily crushed would rise again and not rest until the evil power responsible for their suffering was destroyed. If Milch had entertained the loyalty to his people which he now professes, then was the time to withdraw from a program which was wreaking a devastation so universal that no country, including Germany, could escape.

The defendant stated from the witness stand he could not withdraw because he owed fealty to Hitler and to the German people. His loyalty to Hitler was loyalty to a man who he now states had marked him for liquidation, and so far as allegiance to the German people is concerned, they can feel no gratitude for an allegiance which increased their ruin, magnified their misery, and pushed them only deeper into the pit of despair. The Germans could do without a devotion of that kind.

The defendant apparently gained the impression in our questioning of him that some heroic sacrifice was expected on his part. We never intended, nor was it suggested, that he should take any action which could result in the forfeiture of his life. But he did himself volunteer from the witness stand that on two occasions he was ready to tell Hitler the truth even if it should mean his execution. If he was prepared to sacrifice his life on so futile a gesture, he could have taken some action which involved less hazard. He could thus, at least to that extent, have contributed to honesty and justice by refraining from threatening with death and whipping those who did not give of their last ounce of energy in the production of ordnance whose muzzles would eventually be turned on Germany itself.

In his last statement in court Milch declared that he was indifferent to his fate but he was interested in seeing Germany relieved of her suffering and re-admitted to the community of nations as an equal partner. We do not believe that any intelligent person can be indifferent to his fate, although one can summon sufficient spiritual fortitude to rise above an immediate regret. With regard to Milch's wish for the German people, he has definitely performed one service in pulling aside the curtain

to disclose to them the stupidities, the vanities, and the arrogances of their leaders which brought about their present state. The record of this case will particularly, of course, expose Milch's own errors and his transgressions against international law, the laws and customs of war, the moral code of humanity and even commandments 4 and 7 of the 10 commandments of the German soldier.

The purpose of these postwar trials obviously is not vengeance. The object aimed at (as in the criminal jurisprudence of all civilized nations) is the ascertainment of truth. When guilt is established, the penalty imposed is to serve as a deterrent to all others who might be similarly minded. Albert Speer, convicted in the first trial, stated here in this courtroom that had trials such as these followed the First World War, the Second World War might have been averted. Erhard Milch may obtain some comfort from the realization that by the publication of the evidence of this trial he is definitely contributing to the education and well-being of Germany's future, as indeed a precise contribution is being made to the cause of world justice itself.

Over 155,000 Americans made the supreme sacrifice in Germany in this war. These lads gave their lives for this ideal of world justice and world peace. America sought no territorial aggrandizement or material advantage. The American flag in this courtroom ensured to the defendant all the guarantees of the United States Constitution as to a fair trial. No person within the continental limits of the United States itself could have wished for a fuller opportunity to demonstrate his innocence of the charges brought against him.

America and her Allies bestowed upon Germany what no desire can achieve and what no money can buy. The Allied nations gave the blood of their youth to water the roots of the tree of liberty and tolerance which had withered in the twelve-year drought of National Socialism. It is to reveal who were responsible and what was responsible for the desiccation of that tree and to proclaim to the world the inevitable consequences to others who degrade the soil with the pollution and prussic acid of oppression that these trials have been established. The present trial is one chapter in the book which will forever condemn *Mein Kampf* and offer to the new German nation a volume of proved fact, whose every page will tell of the sorrow awaiting any people which permit any man or men to hoist deceit above truth, power above justice, oppression above tolerance, war above peace and man above God.

[Signed] MICHAEL A. MUSMANNO
JUDGE MILITARY TRIBUNAL II

C. Concurring Opinion by Judge Fitzroy D. Phillips

This Tribunal has been duly organized and is now existing under the authority of Ordnance No. 7 pursuant to the powers of the Military Governor of the United States Zone of Occupation within Germany expressly conferred therein and further pursuant to the powers conferred upon the zone commander by Control Council Law No. 10 and Articles 10 and 11 of the Charter of the International Military Tribunal annexed to the London agreement of 8 August 1945, and by authority of Executive Order No. 9819 signed and issued by Harry S. Truman, President of the United States of America, the pertinent parts of said order as follows:

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

"1. I hereby designate Fitzroy Donald Phillips, Judge of a Superior Court in the State of North Carolina; Robert Morrell Toms, Judge of the Third Judicial Circuit Court, Detroit, Michigan; and Captain Michael A. Musmanno (S), USNR, 086622, as the members, and John Joshua Speight as the alternate member of one of the several military tribunals established by the Military Governor for the United States Zone of Occupation within Germany pursuant to the quadripartite agreement of the Control Council for Germany, enacted December 20, 1945, as Control Council Law No. 10, and pursuant to Articles 10 and 11 of the Charter of the International Military Tribunal, which Tribunal was established by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the Union of Soviet Socialist Republics, for the trial and punishment of major war criminals of the European Axis. Such members and alternate member may, at the direction of the Military Governor of the United States Zone of Occupation, serve on any of the several military tribunals above mentioned."

and as such Tribunal, has jurisdiction to try and determine this case.

Subsequent to the organization of said Tribunal, Telford Taylor, Brigadier General, United States Army, Chief of Counsel for War Crimes, prepared and caused to be prepared a bill of indictment charging the defendant, Erhard Milch, with certain war crimes and crimes against humanity as will appear more specifically hereinafter in this judgment and on 14 November 1946

caused said bill of indictment to be duly served upon the defendant, Erhard Milch, by the Marshal for the United States Military Tribunals according to the provisions of law.

Thereafter said bill of indictment was made returnable and said cause set for trial before United States Military Tribunal No. II. Whereupon, Dr. I. Friedrich Bergold of the Nuernberg, Germany, bar was duly appointed as counsel for the defendant and accepted such appointment.

On 20 December 1946, at 9:30 a.m. in the Palace of Justice, Nuernberg, Germany, the defendant, Erhard Milch, being present in court and represented by his counsel, Dr. I. Friedrich Bergold, and the United States of America being represented by Telford Taylor, Brigadier General, United States Army, Chief of Counsel for War Crimes, and Honorable Clark Denney of counsel, the Tribunal duly arraigned the defendant upon the charges contained in the bill of indictment against him, and the defendant when called upon to plead to the bill of indictment entered a plea of Not Guilty. Whereupon the Tribunal set the date of 2 January 1947, for the trial of said case and adjourned until said time.

On 2 January 1947, United States Military Tribunal No. II met in the Palace of Justice, Nuernberg, Germany, and commenced the trial of this case.

The bill of indictment charging the defendant, Erhard Milch, with certain and specific war crimes and crimes against humanity is summarized as follows:

Count One: War crimes involving murder, slave labor, deportation of civilian populations for slave labor, cruel and inhuman treatment of foreign laborers, and the use of prisoners of war in war operations by force and compulsion.

Count Two: War crimes involving murder, subjecting involuntary victims to low-pressure and freezing experiments, resulting in torture and death.

Count Three: Crimes against humanity, involving murder and the same unlawful acts specified in counts one and two against German nationals and nationals of other countries.

The trial was conducted in two languages in the main, English and German, and in English, German, and French when French witnesses were testifying.

The hearing of evidence and the arguments of counsel concluded on 25 March 1947.

The prosecution offered three witnesses who gave evidence orally and 161 written exhibits, several exhibits containing many documents. The defense offered 27 witnesses who gave evidence orally and the defendant also testified in his own behalf, and in

addition to oral evidence the defendant offered 51 written exhibits. The exhibits as offered by both the prosecution and defense contained documents, photographs, affidavits, interrogatories, letters, maps, charts, and other written evidence.

A complete stenographic record of everything said and done in court has been made as well as an electrical recording of all the proceedings.

Copies of all the documents and written evidence offered by the prosecution have been supplied to the defense in the German language. The applications made by the defendant for the production of witnesses and documents were passed upon by the Tribunal and orders made in pursuance thereof. The Tribunal, after examination, granted all of the defense applications which in their opinion were relevant to the defense of the defendant and denied a few that the Tribunal found not to be relevant. Facilities were provided for obtaining those witnesses and documents granted through the Office of the Secretary General of the Tribunal.

Much of the evidence presented to the Tribunal on behalf of the prosecution was documentary evidence captured by the Allied armies in German army headquarters, government buildings, and elsewhere, and some of said documents were captured in the private files of the defendant himself. The case therefore against the defendant rests in a large measure on the documents thus obtained. The documents offered against the defendant on the part of the prosecution were in a large measure of his own making or those that were made in the organizations of which he was a member and largely under his control, and the authenticity of which has not been challenged except in a few cases and in those he challenged them mainly on the correctness of the transcript and not upon the subject matter as a whole. The evidence, oral and written, together with exhibits and documents contain approximately 3,000 pages which constitutes the record in this case.

The trial was conducted generally along the lines as are usually followed in trial courts of the United States except as to the rules of evidence, and as to those the Tribunal was not bound by technical rules of evidence and admitted any and all evidence which it deemed to have probative value and in strict compliance with the provisions of Article VII of Ordinance No. 7.

The Tribunal has kept in mind throughout the entire trial that this was a Tribunal established for the purpose of trying major war criminals and in this particular case a fallen military field marshal of a conquered nation, and that he was entitled to the Anglo-Saxon and English common law presumption that he was innocent until his guilt was established beyond a reasonable doubt.

Article II of Control Council No. 10 is as follows:

“ARTICLE II

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

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

“(b) *War Crimes*. Atrocities or offenses 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 labor or for any other purpose, of civilian population from occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

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

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

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

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

“(a) Death.

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

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

“(d) Forfeiture of property.

“(e) Restitution of property wrongfully acquired.

“(f) Deprivation of some or all civil rights.

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

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

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

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

The defendant stands indicted for the violation particularly of the provisions of section *b*, which defines war crimes, and for the violation of the provisions of section *c*, which defines crimes against humanity, and for the violations of certain provisions of international conventions, particularly of Articles 4, 5, 6, 7, 46, and 52 of the Hague Regulations, 1907, and of Articles 2, 3, 4, 6, and 31 of the Prisoner-of-War Convention, Geneva, 1929, the laws and customs of war, the general provisions 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 further as particularly defined in Article II of the Control Council Law No. 10.

The first count in the bill of indictment has been designated by the prosecution as “Slave Labor,” the second count as “Medical Experiments” and the third count as “Slave Labor and Medical Experiments upon German Nationals.” The pertinent rules of law that are applicable in this case will now be considered, and we shall consider briefly some salient precepts and prohibitions of international law up to and including the provisions of Control Council Law No. 10.

The prosecution has offered evidence which tended to show that

much of the labor which supplied Germany with the tools of absolute and total war was extracted from people who had been uprooted from their homes in occupied territories and imported to Germany against their will and often under the most trying and difficult circumstances. Displacement of groups of persons from one country to another is the proper concern of international law in as far as it affects the community of nations. International law has enunciated certain conditions under which the fact of deportation of civilians from one nation to another during times of war becomes a crime. If the transfer is carried out without a legal title, as in the case where people are deported from a country occupied by an invader while the occupied enemy still has an army in the field and is still resisting, the deportation is contrary to international law. The rationale of this rule lies in the supposition that the occupying power has temporarily prevented the rightful sovereign from exercising its power over its citizens. Articles 43, 46, 49, 52, 55, and 56, Hague Regulations, which limit the rights of the belligerent occupant, do not expressly specify as crime the deportation of civilians from an occupied territory. Article 52 states the following provisions and conditions under which services may be demanded from the inhabitants of occupied countries:

1. They must be for the needs of the army of occupation.
2. They must be in proportion to the resources of the country.
3. They must be of such a nature as not to involve the inhabitants in the obligation to take part in military operations against their own country.

Insofar as this section limits the conscription of labor to that required for the needs of the army of occupation, it is manifestly clear that the use of labor from occupied territories outside of the area of occupation is forbidden by the Hague Regulations.

The second condition under which deportation becomes a crime occurs when the purpose of the displacement is illegal, such as deportation for the purpose of compelling the deportees to manufacture weapons for use against their homeland or to be assimilated in the working economy of the occupying country. The defense as contained in this case is that persons were deported from France into Germany legally and for a lawful purpose by contending that such deportations were authorized by agreements and contracts between Nazi and Vichy French authorities. The Tribunal holds that this defense is both technically and substantially deficient. The Tribunal takes judicial notice of the fact that after the capitulation of France and the subsequent occupation of French territory by the German army, a puppet government was

established in France and located at Vichy. This government was established at the instance of the German Army and was controlled by its officials according to the dictates and demands of the occupying army and a contract made by the German Reich with such a government as was established in France amounted to in truth and in fact a contract that on its face was null and void. The Vichy Government, until the Allies regained control of the French Republic, amounted to no more than a tool of the German Reich. It will be borne in mind that at no time during the Vichy regime a peace treaty had been signed between the French Republic and the German Reich but merely a cessation of hostilities and an armistice prevailed, and that French resistance had at no time ceased and that France at all times still had an army in the field resisting the German Reich.

The third and final condition, under which deportation becomes illegal, occurs whenever generally recognized standards of decency and humanity are disregarded. This flows from the established principle of law that an otherwise permissible act becomes a crime when carried out in a criminal manner. A close study of the pertinent parts of Control Council Law No. 10 strengthens the conclusions of the foregoing statements that deportation of the population is criminal whenever there is no title in the deporting authority or whenever the purpose of the displacement is illegal or whenever the deportation is characterized by inhumane or illegal methods.

Article II (1) (c) of Control Council Law No. 10 specifies certain crimes against humanity. Among those is listed the deportation of any civilian population. The general language of this subsection as applied to deportation indicates that Control Council Law No. 10 has unconditionally contended as a crime against humanity every instance of the deportation of civilians. Article II (1) (b) names deportation to slave labor as a war crime. Article II (1) (c) states that the enslavement of any civilian population is a crime against humanity. Thus Law No. 10 treats as separate crimes and different types of crime "deportation to slave labor" and "enslavement." The Tribunal holds that the deportation, the transportation, the retention, the unlawful use, and the inhumane treatment of civilian populations by an occupying power are crimes against humanity.

The Hague and Geneva Conventions codify the precepts of the law and usages of all civilized nations. Article 31 of the Geneva Convention provides that labor furnished by prisoners of war shall have no direct relation to war operations. Thus the convention forbids (1) the use of prisoners of war in manufacture or transportation of arms or ammunitions of any kind; and (2) the

use for transporting of matériel intended for combat units. The Hague Regulations contain comparable provisions. The essence of the crime is the misuse of prisoners of war derived from the kind of work to which they are assigned, in other words, to work directly connected with the war effort. The Tribunal holds as a matter of law that it is illegal to use prisoners of war in armament factories and factories engaged in the manufacture of airplanes for use in the war effort.

Now, considering the basic charges and the law governing the charge against the defendant in which it alleges his responsibility for and participation in the medical experiment program, the fundamental crime with which the defendant is charged in this connection is murder. Also involved are various atrocities, tortures, offenses against the person, and other inhumane acts. The provisions of Control Council Law No. 10, which are applicable to this charge, to wit, Article II, are "b. War crimes" and "c. Crimes against humanity." The bill of indictment charges:

"A. War crimes, namely violations of the laws and customs of war as to medical experiments performed involuntarily upon persons, some of whom were prisoners of war and citizens of countries who were at war with the German Reich, and other deported citizens from other countries who were at war with the German Reich involving the commission of murders, tortures, and other inhumane acts.

"B. Crimes against humanity, namely medical experiments performed upon involuntary German nationals and nationals of other countries in the course of which brutalities, murders, and other inhumane acts were committed."

The prosecution contends that the defendant Milch did not personally participate in or personally direct, counsel, or initiate such medical experiments but that the same was done by members of his command and that he was personally responsible for their conduct by virtue of the authority that he held over his subordinates.

In this connection in the recent case before the United States Supreme Court in re Yamashita, the opinion of which was handed down by the Supreme Court of the United States at the October term, 1945, of said Court, some of the pertinent holdings in this case are as follows:

"It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders or efforts of their commander would almost certainly result in violations which it is the purpose of the law of war to prevent. Its purpose to protect civilian populations and prisoners of war from bru-

tality would largely be defeated if the commander of an invading army could with impunity neglect to take reasonable measures for their protection. Hence the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates.

"This is recognized by the annex to Fourth Hague Convention of 1907, respecting the laws and customs of war on land. Article I lays down the condition which an armed force must fulfill in order to be accorded the rights of lawful belligerents, that it must be commanded by a person responsible for his subordinates.

"These provisions plainly imposed on petitioner, who at the time specified, was Military Governor of the Philippines, as well as commander of the Japanese forces, an affirmative duty to take such measures as were within his power and appropriate in the circumstances to protect prisoners of war and the civilian population. This duty of a commanding officer has heretofore been recognized, and its breach is penalized by our own military tribunals.

"* * * It is plain that the charge on which petitioner was tried charged him with a breach of his duty to control the operations of the members of his command, by permitting them to commit the specified atrocities. This was enough to require the commission to hear evidence tending to establish the culpable failure of the petitioner to perform the duty imposed on him by the law of war and to pass upon its sufficiency to establish guilt."

I am of the opinion and find as a fact from the evidence in this case that the defendant Milch between the years 1939 and 1945 was State Secretary in the Air Ministry, Inspector General of the Air Force, Deputy to the Commander in Chief of the Air Force, a member of the Nazi Party. The defendant Milch was also Field Marshal in the Luftwaffe, 1940 to 1945; Air Quartermaster General, 1941 to 1944; member of the Central Planning Board, 1942 to 1945; and Chief of the Jaegerstab, 1944 to 1945.

After hearing the evidence of both the prosecution and defense, and after having heard the arguments of counsel, and after having fully considered all of the evidence, the following facts are concluded:

COUNT NO. 1

SLAVE LABOR

That the defendant, Erhard Milch, was born in Germany on 30 March 1892, that he was a member of the Air Force of the

German Army in World War I and was a contemporary in said air force with Goering, Udet, and others; that after the termination of World War I he returned to Germany, had a business and later was connected with the manufacture of civilian airplanes.

Prior to the outbreak of World War II he became a member of the Nazi Party and materially aided in the rebuilding of the air force of the German Reich. Shortly prior to the outbreak of World War II he visited various countries as a personal emissary of the Fuehrer, Hitler; to France, England, Holland, Italy and other countries in an effort to establish so-called permanent peace between the German Reich and these nations. That on 23 May 1939, the defendant attended a conference for the purpose of planning World War II with the following present: Hitler, Goering, Col. Gen. von Brauchitsch, Col. Gen. Keitel, Gen. Halder, Gen. Bodenschatz, Rear Admiral Schniewind, Col. (GSC.) Jeschonnek, Col. Warlimont, Lieut. Col. Schmudt, Captain Engel, Lieut. Commander Albrecht, and Captain v. Below. At the time of this meeting the defendant held a high position in the German Army, to wit, the rank of colonel general. *

At this meeting the Fuehrer, Hitler, gave his plan of aggressive war, and in this plan was included the attack of Poland at the first suitable opportunity; what the struggle would be like; the question of a short or long war; England's weakness; the consequences of such a war; the unrestricted use of all resources available; the plan of attack; and the working principles of an entire and complete program. Aggressive war was planned and initiated at this meeting, and the defendant was one of the high-ranking officers who counseled and approved of the plan.

After the outbreak of the war and the subsequent attack on Poland, the defendant actively participated in the prosecution of aggressive war until after the capitulation and fall of France. From that time on he did not participate as a combat officer but was used in the general economy for the prosecution of war in Germany, and particularly as to the building and maintenance of the Luftwaffe. Later he was elevated to the rank of field marshal in the Luftwaffe and was second in command only to Goering.

The defendant was a member of the Central Planning Board which was established and organized in April 1942, and said organization served as a means of consolidating in a single agency all controls over German war production. The Central Planning Board held regular meetings, and the defendant presided over and was present at a majority of such meetings. The Central Planning Board at each meeting kept full minutes, and a great number of

* See Table of Comparative Ranks, p. 331.

said minutes have been submitted to the Tribunal and reflect the fact that the defendant had a dominant role in the meetings of said board. The scope and authority of the Central Planning Board is contained in the minutes of a meeting held on 27 April 1942, and the duties and responsibilities of the board, according to said minutes, were announced as follows:

“The Central Planning in the Four Year Plan (Decree of the Reich Marshal of Greater Germany of 22 April 1942) is a task for leaders. It encompasses only principles and executive matters. It makes unequivocal decisions and supervises the execution of its directives. The Central Planning does not rely on anonymous institutions difficult to control but always on individuals and fully responsible persons who are free in the selection of their work methods and their collaboration as far as there are no directives issued by the Central Planning.”

On 20 October 1942, the statutes of the Central Planning Board were published and distributed, a portion of which are as follows:

“The Central Planning Board, created by the Fuehrer and the Reich Marshal in order to unify armament and war economy, deals only with the decision of basic questions. Professional questions remain the task of the competent departments, which in their field remain responsible within the framework of the decisions made by the Central Planning Board.”

The Central Planning Board was superior to “the highest Reich authority, the Reich protector, the Governor General, and the executive authorities in the occupied countries.”

The International Military Tribunal found that the Central Planning Board “had supreme authority for the scheduling of German production and the allocation and development of raw materials.” The International Tribunal found further in its opinion, in the case of *United States vs. Goering and others*, “that the Central Planning Board requisitioned labor from Sauckel with full knowledge that the demands could be supplied only by foreign forced labor and that the board determined the basic allocation of this labor within the German war economy.” The International Military Tribunal found further in its opinion the following:

“In the fall of 1943 Funk (who was then indicted before said Tribunal in regard to deportation and the use of foreign forced labor in the German Reich) was a member of the Central Planning Board which determined the total number of laborers needed for German industry, and required Sauckel to produce them, usually by deportation from occupied territories * * * but Funk was aware that the board of which he was a member was

demanding the importation of slave laborers, and allocating them to the various industries under his control.”

The prosecution offered evidence which tended to show that Albert Speer was the Plenipotentiary for Armament and was the nominal head of the Central Planning Board and that the defendant was a member of said board and was, by the order of Hitler, assigned to assist Speer as the head of said board. During much of the time of the existence of said board Speer was ill and unable to attend the meetings and look after the duties of the board and during this time the defendant was the acting head of said board and presided over its meetings as chairman.

Fritz Sauckel was Plenipotentiary for Labor and was directly responsible for the procurement and allocation of labor to the various war industries. However, the Tribunal finds as a fact that although Sauckel had the primary duty of procuring and allocating labor, the Central Planning Board on many occasions, as the minutes of the meetings of said board show, called Milch into conference with the members of the Central Planning Board and in such conferences labor was assigned and allocated by the Central Planning Board and Sauckel. The minutes of the Central Planning Board, as introduced by the prosecution, show that the members of the Central Planning Board knew and discussed the fact that labor was being deported from occupied countries against their will and were being used in various factories manufacturing armaments, airplanes, and other articles essential and necessary to the war effort, that such foreign workers were being forcibly taken from their homes without knowledge of their destination, and by force and against their will, crowded into box cars without food or water or toilet facilities, transported great distances, and forced to work in factories manufacturing war materials and other necessary items for the prosecution of the war as slave laborers.

I find as a fact that the defendant Milch had knowledge of the way and manner in which such labor was procured and the work that they were forced to do, and that he aided, abetted, counseled, advised, and assisted in the deportation, allocation, and work of said slave laborers.

The documents and reports of the meetings as offered by the prosecution are too voluminous to incorporate herein, but said records clearly show that the defendant was one of the authorized agents who dealt with the procurement, deportation, and work of thousands and thousands of slave laborers from occupied countries.

JAEGERSTAB

I find as a fact that it was the defendant who conceived and instigated the formation of the Jaegerstab, and that the defendant

directed its activities and acted as its chairman. The Jaegerstab assumed control over fighter production and exploited foreign forced labor in the armament industry and directed the use of the same. The Jaegerstab was assigned top priority for their projects, for the recruitment and commitment of manpower in the air armament industry. From the meetings of said board as offered in evidence by the prosecution, the question of manpower was time and time again referred to by the defendant. When other methods of obtaining its labor was not forthcoming, the Jaegerstab recruited its own labor either directly or by engineering snatching expeditions for the seizure of manpower arriving on transports from the East.

At one of the meetings of the Jaegerstab, Prosecution Exhibit 54, page 28, the defendant made this statement to his subordinates, that "international law cannot be observed here." When the question of Italian civilian labor was being discussed at a meeting of the Jaegerstab, the defendant made the statement and advocated the shooting of those who attempted to escape in transit.

I find as a fact that the Jaegerstab was not a mere discussion group but was an agency with absolute authority over fighter production and acted by orders and directives, fixed hours of labor and conditions of work, and on one occasion fixed the established hours of work per week in the aircraft industry at seventy-two hours.

Much of the labor employed by the Jaegerstab in aircraft production and in the air armament industry was from concentration camp inmates and foreign forced labor. The defendant was well acquainted with the procurement and allocation of this labor.

I find as a fact, from the evidence offered in the case, that after the arrival of forced slave labor from occupied countries they were poorly fed, poorly clothed, were forced to work an excessive amount of hours each week, and that their general condition and treatment as a result of such forced labor resulted in the death of a great many and the permanent disability of others, both in body and in mind.

GENERALLUFTZEUGMEISTER

I find as a fact from the evidence offered in the case, that the defendant, as Generalluftzeugmeister, had complete control of aircraft production and that he requisitioned labor for the aircraft industry with knowledge of the brutal and inhuman techniques in recruiting these laborers; and that he gave directives for the criminal treatment of the same in the centers of production. Fritz Sauckel, Plenipotentiary for Labor, stated that it was "Milch who produced manpower figures for aviation." Albert Speer testified

as follows: "The requests of the air armament industry for laborers were presented by Milch, and he did not permit anyone to take this right away from him until March 1944."

I find as a fact from the evidence offered on the part of the prosecution, that prisoners of war were included in the manpower that the defendant was requisitioning and distributing to the aircraft industry with full knowledge that they were prisoners of war. As chief of aircraft production, the defendant regulated the treatment of foreign forced labor in the German aircraft industry, fixed hours of labor and conditions of work, and by directives to his subordinates formulated the basic policy for the handling of such labor within the industry.

The evidence presented by the prosecution tended to show that the defendant advocated the most extreme measures in dealing with foreign forced labor, inhuman measures which violated every recognized principle of decency. When foreign forced laborers refused to work, the defendant ordered that they be shot. When they attempted to revolt the defendant directed that some of their numbers be killed, regardless of their personal guilt or innocence. In the case of prisoners of war who attempted to escape, the defendant ordered that these prisoners be shot and later hanged in the factory for all to see. On one occasion the defendant made the following statement, Prosecution Exhibit 145:

"The other day I talked to Himmler about it, and I told him that his main task should be to see to the production of German industry in case of internal uprisings of the foreign workers. I said that consequently a well established method should exist, and I have already given orders to the Chief A. W. * and to the training stations to get military training in this field. If, for instance, in the Locality X an uprising is started, then a sergeant with a few men, or else a lieutenant with thirty men has to turn up in the plant, and first of all shoot into the crowd with a machine gun. What he should do after is to shoot down as many people as possible in case of revolt. I have given orders to that effect, and even if our own foreign workers are involved—and then every tenth man is to be singled out and shot while the others are lined up and see him."

On another occasion, Prosecution Exhibit 148, when the defendant was speaking of the treatment of foreign workers, he made the following statement.

"In all these matters energetic interference must be made. I am of the opinion that there should be only two types of punish-

* Chef Ausbildungswesen (Chief of Training).

ment in such cases; firstly, a concentration camp for foreigners, and secondly, capital punishment."

The prosecution offered a great number of documents containing statements made by the defendant in regard to orders and threats of violence, for mistreatment and punishment, tortures, killings, and hangings of foreign workers. Space is too short to quote in this judgment all of such pertinent documents.

Although the defendant denied making a number of these statements appearing in the documents, he admitted the authenticity and utterances of many, with the excuse that he was a man of very violent temper, who, when worried from overwork, was not wholly responsible for many utterances made by him. He protested further that he did not actually mean nor intend for orders given in such fits of temper to be carried out, but they were simply the result of uncontrolled anger, and understood by his associates and subordinates to have been uttered in such vein. In further extenuation he declared that head injuries resulting from two serious accidents were largely responsible for such uncontrollable temper.

I have given due consideration to the explanation given by the defendant and am compelled to reject it. If but only a few of such remarks could be attributed to the defendant, his protestations might be given some credence; but when statements such as appear in the documents have been persistently made over long periods of time, at many places and under such varying conditions, the only logical conclusion that can be reached is that they reflect the true and considered attitude of the defendant toward the Nazi foreign labor policy and its victims and are not mere aberrations brought on by fits of uncontrollable anger. I find as a fact, therefore, that the true attitude of the defendant toward foreign laborers and prisoners of war is that reflected in the documents of the prosecution and was not the result of uncontrollable fits of temper. I find, further, that the defendant ordered, advised, counselled, and procured inhumane and illegal treatment of foreign workers resulting in permanent injury and death to many.

COUNT NO. 2

MEDICAL EXPERIMENTS

The prosecution contends that in violation of the laws of war and of crimes against humanity, high-altitude and freezing experiments were carried out by the Luftwaffe physicians at Dachau, and that said physicians who conducted such experiments were under the command of and subordinate to the defendant Milch.

I am of the opinion from the evidence offered on the part of

the prosecution that illegal and inhuman medical experiments were conducted at Dachau by Luftwaffe physicians who were under the command and subordinate to the defendant Milch and from which a great number of deaths ensued to concentration camp inmates and that great pain and suffering and permanent disability resulted to many others. I find as a fact from the evidence offered on the part of the prosecution that Dr. Erich Hippke was the Medical Inspector of the Luftwaffe and was the direct subordinate of the defendant Milch; that Hippke gave authority and ordered Dr. Rascher, a Luftwaffe physician, in the early spring of 1941 to use concentration camp inmates and prisoners of war as high-altitude experimental subjects for the benefit of the Luftwaffe. I further find, as a fact, that the witness Hippke at no time communicated this information to the defendant Milch, nor has the prosecution offered any direct evidence to the effect that the defendant Milch knew that such experiments had been conducted until after their completion. All of the testimony and the evidence, both for the prosecution and the defense, is to the effect that the defendant Milch did not have such knowledge of the high-altitude or low-pressure experiments which were carried out and completed by Luftwaffe physicians at Dachau until after the completion of such experiments. The evidence offered as to the knowledge or responsibility of the defendant Milch was not of such a nature as to show guilty knowledge on his part of said experiments.

As to the cooling or freezing experiments performed at concentration camp, Dachau, for which the defendant is charged with responsibility, I find as a fact that the defendant ordered experiments to be conducted at the camp for the benefit of the Luftwaffe. In a letter from Milch to Obergruppenfuehrer Wolff of the SS, dated 20 May 1942, the following is stated:

“In reference to your telegram of 12 May our medical inspector reports to me that the altitude experiments carried out by the SS and Luftwaffe at Dachau have been finished. Any continuation of these experiments seems essentially unreasonable. However, the carrying out of experiments of some other kind in regard to perils at high sea would be important. These have been prepared in immediate agreement with the proper offices. Oberstabsarzt Wertz will be charged with the execution and Stabsarzt Rascher will be made available until further order in addition to his duties with the medical corps of the Luftwaffe. A change of these measures does not appear necessary and an enlargement of the task is not considered pressing at this time.”

Further evidence makes it manifestly plain that subsequent to the receipt of the letter of Wolff, officers of the Luftwaffe, under the command and subordinate to the defendant, conducted medical experiments on concentration camp inmates at Dachau, against their will, by placing such experimental subjects in tanks of water of freezing temperatures, and requiring them to remain there for long periods of time while certain medical data concerning such subjects was gathered; and that as a result of such experiments, many of the human subjects died or were gravely injured.

The defendant admits giving orders for the conduct of experiments within the scope of the authority conferred by the letter, but contends that he did not know of, or contemplate, that the experiments would be conducted in an illegal manner or would result in the injury or death of any person. The defendant further asserts that he did not know or have any reason to believe that the experiments were conducted in such manner until after they had been completed. He therefore insists that he was and is not responsible for the unlawful manner in which the experiments were actually conducted by the Luftwaffe officers, and that he is not guilty of any crime as a result thereof.

The Tribunal, in its majority opinion, has fully considered the decision of the United States Supreme Court in the judgment in re Yamashita, and has found that said decision is not controlling in the case at bar. In weighing the evidence, the Tribunal was mindful of the fact that the defendant gave the order and directed his subordinates to carry on such experiments, and that thereafter he failed and neglected to take such measures as were reasonably within his power to protect such subjects from inhumane treatment and deaths as a result of such experiments. Notwithstanding these facts, the Tribunal is of the opinion that the evidence fails to disclose beyond a reasonable doubt that the defendant had any knowledge that the experiments would be conducted in an unlawful manner and that permanent injury, inhumane treatment or deaths would result therefrom.

Therefore, the Tribunal found that the defendant did not have such knowledge as would amount to participation or responsibility on his part and therefore found the defendant not guilty on charges contained in count 2.

CONCLUSIONS

(1) I concur in the opinion of the Tribunal that war crimes and crimes against humanity were committed by the defendant, including deportation, enslavement, and mistreatment of millions of persons; and that as a result thereof and in furtherance of such treatment, murders, brutalities, cruelties, tortures, atrocities,

and other inhumane acts were committed in a large scale measure upon citizens of occupied countries, prisoners of war, Jews, and other nationals. I agree further that the defendant was a principal in, accessory to, ordered, abetted, and took a consenting part therein. I also agree that for such acts and conduct on the part of the defendant, he is guilty of charges contained in count number one of the indictment.

The evidence produced during the trial upon the charges contained in this count showed conclusively that countless millions of persons were unlawfully deported, enslaved, and murdered. Especially were the Jews mistreated, tortured and murdered merely because they were Jews and their extermination desired. History discloses the fact that as early as the year 1349 in the city of Nuernberg, and within sight of where this opinion is being written, the citizens of Nuernberg drove the Jews from their city, confiscated their property, and erected a market place on the site of the Ghetto and the Liebfrauenkirche in place of the Synagogue. The hatred of the Aryan German for the Jew seems to have been constant during the many intervening years. History will record such conduct as a blot upon the name of the present German generation for many years to come.

(2) The Tribunal found the defendant not guilty of the charges contained in count number two, and I concur in such finding.

Under the American concept of liberty, as brought to us by our Anglo-Saxon heritage and the English Common Law, every person accused of crime is presumed to be innocent until proof of his guilt is established by the evidence and beyond a reasonable doubt. This presumption follows him throughout the trial and until he is found guilty beyond a reasonable doubt. In applying this God-given principle of liberty, one eminent American jurist uttered the following words:

“After considering and weighing all of the evidence you then find that your minds are disturbed, your convictions tempest-tossed, and your judgment, like the dove of the deluge, finds no place to rest; the law says you must acquit.”

The defendant was given the full benefit of these great and lasting rules of law and has received at the hands of the Tribunal a fair and impartial trial in full accord with the American concepts of justice under the law.

(3) Count three of the indictment charges the defendant with crimes against “German nationals and nationals of other countries.” I am of the opinion that sufficient evidence was not produced by the prosecution to justify an adjudication by the Tribunal of guilt as to German nationals alone. However, as to such crimes

against nationals of other countries, the Tribunal has heretofore considered such charges and has made an adjudication concerning the same in count number one of the indictment. The conclusion of the Tribunal is that the same unlawful acts of violence which constituted war crimes under count one of the indictment also constitute crimes against humanity as alleged in count three of the indictment. Therefore, the Tribunal found the defendant guilty of crimes against humanity under count three, with which finding I concur.

In weighing the evidence, the Tribunal simulated the ancient customs of using the seed of the oriental carob tree to balance the scales of justice. The defendant should not now complain.

Therefore, for the reasons stated, I am in full agreement with the judgment of the Tribunal and concur therein.

Respectfully submitted this the 15th day of April, 1947

[Signed] FITZROY D. PHILLIPS
Fitzroy D. Phillips
Judge, Military Tribunal No. II

VIII. PETITIONS

A. Extract from Petition for Clemency to Military Governor of United States Zone of Occupation

Nuernberg, 2 May 1947

To the Military Governor

PETITION

of

Attorney-at-law Dr. Friedrich Bergold,
Nuernberg, Prinzregenten-Ufer 7/III,
Defense Counsel, Military Court II

Nuernberg

in Case II against the defendant
Erhard Milch, General Field Marshal,
at present in the Court Prison, Nuernberg,
to modify the sentence of the Military Court II

Nuernberg

on 16/17 April 1947.

* * * * *

A

The sentence passed on counts I and III contains actual inaccuracies, which are inconsistent with the recorded evidence. Obviously, these errors have had an influence on the sentence as far as the award of punishment is concerned. A correction of these errors would necessarily lead to a less severe sentence.

1. The statements on page 3 of the judgment that Milch since 19 November 1941 was the second highest commander of the Luftwaffe is not in agreement with the evidence. The witnesses have testified that from 1938-1941 Milch held only one of the four highest commanding posts under Goering, and since 1941 two of the four highest Luftwaffe commanding posts. Only in regard to seniority he was the oldest officer of these four highest commands. This is important because evidence has been given for the fact that the general staff of the Luftwaffe had the responsibility for the armament program of the Luftwaffe.

2. It is not consistent with recorded evidence that the Central Planning Board had been created by a decree of the Fuehrer of 29 October 1943. It has been proved by the statement of Speer that the decree of 29 October 1943 was a decree issued by Speer a long

time after the creation of the Central Planning Board and without authorization of the defendant Milch. Since this decree was issued by Speer for his sphere of administration only, no conclusion can be drawn therefrom against the defendant.

3. It is not consistent with recorded evidence that the Court finds that the Central Planning Board handled the labor problem as such. Exhibit 151 of the prosecution proved the opposite. The witnesses who have been heard have confirmed that the Central Planning Board handled the labor problem only for information purposes for the distribution and production of raw materials and in order to clarify the untrue statements of Sauckel. This Exhibit 151 constitutes essential new evidence which is of greatest importance in regard to the verdict of the International Military Tribunal.

4. It is not consistent with recorded evidence that the defendant had admitted having seen Russian prisoners of war at service at 8.8 and 10.5 cm. antiaircraft guns in aircraft factories in Luftgau 7. The witness Vorwald made this statement on the basis of his own observation.

It has been proved that Milch had nothing to do with the allocation of Russians to the antiaircraft artillery (flak), and that he declared himself against it.

5. It is not consistent with recorded evidence that Milch said that Russian prisoners of war had volunteered for work in war plants. What he did state—and this was in agreement with the witnesses Vorwald and Foerster—was that Russian prisoners of war had volunteered for service at the antiaircraft artillery (flak), with the reservation that they would not be used for combatting Russian airplanes. This condition was fulfilled. Thus, there is no question of an inadmissible use of prisoners of war for war service.

6. It is not consistent with recorded evidence that Sauckel, the Plenipotentiary for the Allocation of Labor, participated in at least 15 sessions of the Central Planning Board. Only 15 minutes concerning the sessions [minutes of 15 sessions] of the Central Planning Board have been submitted. These minutes prove that Sauckel was not present at most of these sessions.

7. It is not consistent with recorded evidence that the defendant was informed about the methods employed and the cruelties on the occasion of the recruiting and utilization of foreign workers. All witnesses who have been heard have stated the opposite. It is therefore not permissible to assume without the basis of exact proof that Milch was informed about these matters. The Court concludes from the fact that foreign workers and prisoners of war had been used that Milch must necessarily have recognized that the methods must have been cruel. Speer has stated explicitly

that the cruel methods were not necessary and that, therefore, they were an error. But if they were not necessary then the conclusion drawn from them without any explicit proof was not permissible.

8. It is not consistent with recorded evidence that 100,000 Polish prisoners of war were deported to concentration camps. The opposite has been proved, viz., that Polish prisoners of war, in accordance with the agreement between Russia and Germany were released from captivity and employed as civilians.

9. It is not consistent with recorded evidence that Romanian nationals were subjected to deportation. Not one single piece of evidence for that has been submitted. Romania was mentioned by the defense only in connection with the armistice agreement between Russia and Romania.

10. It is not consistent with recorded evidence that Milch used Hungarian Jews. It is proved by the evidence that this did not happen before the summer of 1944 when Milch had resigned from his positions.

11. It is not consistent with recorded evidence that the Schmundt minutes must be correct, for the reason that if any allusion to a war had been omitted, Hitler would not have spoken at all. It has been proven that Hitler spoke merely theoretically about the world situation in case there should be a war at some time. He did not mention that he wanted to foment aggressive wars.

B

The judgment states that the defendant recommended more drastic and more cruel measures in regard to the recruiting and utilization of workers. (Page 18 of the judgment.)

This is in discrepancy with the recorded evidence.

Here the defense does not argue about the separate reasons given by Judge Michael A. Musmanno, since these reasons do not constitute the official judgment. These reasons also contain factual errors and even use material which has not been discussed during the trial.

These separate reasons, however, make it possible to draw a conclusion in regard to the sentence of the judgment which states that the defendant recommended more drastic and more cruel measures.

It has been proved through the evidence that utterances to that effect were made by the defendant only in smaller circles and while he was in a state of excitement. It has been proved that no action was ever taken in conformity with these utterances. It has been proved that the defendant never asked for action pursuant to such utterances. It has been proved that he did not have any

executive power in regard to any measures whatsoever. It has finally been proved that the record concerning such utterances must in part be incorrect.

Therefore, it has not been proved that the defendant approved such cruelties or demanded them in earnest.

C

The objection must be raised that the Military Tribunal did not clarify at all the legal questions which were raised by the defense in connection with the fact that the Russian Government has explicitly renounced the Hague Convention concerning Land Warfare and the previous Geneva Conventions. Since the Decree Number 7 of the Military Government for Germany provides, in Article XV, that reasons have to be given for the sentence, the Tribunal would have had to state its position in regard to these questions. This also constitutes a defectiveness of the verdict and this defect may possibly have had an influence on the award of the punishment.

D

The Military Tribunal has extensively referred on page 14 and 15 to the verdict of the International Military Tribunal against Speer. The Tribunal has therefore made the reasons of the International Military Tribunal its own to a large extent.

But consequently the Military Tribunal would have had to examine the problem of extenuating circumstances. The defense has already pointed out that the fact that he organized protected factories constituted for Speer an extenuating circumstance. During the trial it has been clearly proved that Milch was the first who already in 1941 organized protected factories, and that he was, therefore, the inventor of this kind of employment.

The problem of extenuating circumstances involves further the examination of the question, whether Milch had more to do with the utilization of foreign workers and prisoners of war than Speer. This examination was omitted. Exhibit Milch 55 and also all the evidence proved that Speer's participation in the utilization of foreign workers and prisoners of war was considerably more extensive.

If the Tribunal had examined the extenuating circumstances, then the result would undoubtedly have been that the defendant would have been allowed extenuating circumstances on a large scale. Due to the fact that the responsibility of Speer was greater than that of Milch, Milch should not have received a more severe sentence than Speer.

Consideration should also have been given to the fact that it was proved that Milch continually advocated restrictions in the employment of foreign workers and of prisoners of war, and that he did indeed succeed in achieving such restrictions.

Finally, consideration should also have been given to the fact that Milch withdrew from his positions as early as spring and summer 1944, and that he had nothing to do with the extraordinary aggravation of all conditions which took place toward the end of the war.

This weighs more than what Speer did—the nonexecution of some insane orders which Hitler issued at the end of the war in 1945.

This consideration too should have led the Tribunal to a much less severe sentence. The fact that this was not taken into consideration is therefore made a part of this petition.

(Signed) DR. BERGOLD

B. Petition to the Supreme Court of the United States for Writ of Habeas Corpus

Erhard Milch,

Petitioner vs. United States of America

Nuernberg, 2 May 1947

IN THE SUPREME COURT OF THE UNITED STATES

Application for Leave to File Petition for Writ of Habeas Corpus

Petition for Writ of Habeas Corpus

I, the undersigned Erhard Milch, have been charged in Case No. II before the Military Court No. II Nuernberg of illegally, deliberately, and intentionally having committed war crimes and crimes against humanity, as defined in Control Council Law No. 10 Article II, viz. the following:

Count One of the Indictment. War crimes, including murder, slave labor, deportation of the civilian population for slave labor, cruel and inhuman treatment of foreign workers, and the employment of prisoners of war by force and duress in actions connected with warfare.

Count Two of the Indictment. War crimes, including murder, whereby involuntary victims were exposed to sub-pressure and cold, experiments resulting in torture and death.

Count Three of the Indictment. Crimes against humanity, including murder and the unlawful acts listed in counts one and two of the indictment, committed against Germans and foreigners. (page 2 of original)

I have been acquitted on count II of the indictment and found

guilty by the sentence passed by the Military Court II on 16/17 April 1947 in respect of counts I and III of the indictment, and am condemned therefore to lifelong imprisonment.

I hereby make application for the sentence of the Military Court II passed on 16/17 April 1947 to be completely quashed, as being inadmissible according to Articles 63 and 64 of the Geneva Convention of 1929.

Substantiation

Decree No. 7 of the Military Government of Germany concerning the constitution and competency of certain military courts, constitutes a violation of Article 63 of the Geneva Convention of 1929, insofar as Decree No. 7 is applied to prisoners of war as well, and in its Article II appoints special courts for passing sentences on prisoners of war. Article 63 of the Geneva Convention of 1929 lays down, "Sentence against a prisoner of war may only be passed by the same courts and according to the same procedure as a sentence against persons belonging to the fighting forces of the country where he is a prisoner". A field marshal is equal to a five-star general of the United States of America. The present Court consisted of three judges, of which not one has the military rank which I have. It therefore does not correspond to the court which, according to the laws of the United States of America, could pass sentence on a five-star general. The authority of the present Court is, however, expressly recognized by me.

Furthermore, Decree No. 7 of the Military Government of Germany constitutes a violation in Article XV of Article 64 of the Geneva Convention of 1929, because Article XV declares the sentence of the court in finding the defendant guilty, to be final and incontestable. Article 64 of the Geneva Convention of 1929 stipulates that prisoners of war must be allowed to employ the same legal means against a verdict as are granted to members of the fighting forces

(page 3 of original)

of the country where they are detained.

The rules laid down by the Geneva Convention of 1929 represent compulsory international law of a universal character and cannot be altered either by a signatory power alone or by an agreement between several signatory powers, but only by the consent of all signatory powers. In no case may they be altered by a decree of Military Government, not even by a decree of the Control Council. The rights of a prisoner of war, which are based upon the regulations of the Geneva Convention of 1929, can neither be waived nor cancelled.

The violation of the regulations of the Geneva Convention has now come about with the passing of sentence and the now existing restrictions placed in the way of contesting the verdict, not already by the trial as such.

I am still a prisoner of war. I have not been released from captivity. I am therefore still under the protection of the Geneva Convention, the same as before.

The violation of the Geneva Convention is all the more serious, in that I am still a prisoner of war of the British. True, the defense counsel was told at the beginning of the trial in reply to an express question, that my transfer to the jurisdiction of the United States of America was already effected, but it was not proved until the conclusion of the passing of sentence. That should have been absolutely necessary.

After the serving of the indictment and the beginning of the actual trial, an attempt was made on 4 January 1947 to gain my veiled consent to my release without saying anything, whereby I was asked to accept release money. On the receipt, however, I expressly noted, "Without recognizing my release". I declared that release by American officers was not

(page 4 of original)

permissible at that moment and moreover a German field marshal could not be released in any case under existing German law.

After this explanation on my part, the American major conducting the proceedings revealed to me that another separate release proceeding would have to be carried out against me then.

Thereby it is clear that I am still a prisoner of war today. At any rate, I was when the trial begun and therefore in accordance with Article 60 of the Geneva Convention the protecting power for German prisoners of war, viz., Switzerland, should have been informed of the proceedings. This too constitutes a violation of the Geneva Convention of 1929. If the public prosecution authorities, however, were to refer to the fact that I was released after the trial had begun, then they should be confronted with the assertion that such a release is invalid. It would represent nothing but an evasion of the regulations of the Geneva Convention of 1929. I was not set at large for a single day. But that is demanded by a release from captivity as a prisoner of war. A release from captivity as a prisoner of war while maintaining captivity would be a release in fraudem legis.

Therefore the sentence constitutes a violation of international law. At the same time this violation is also a violation of the Habeas Corpus Act. None, under whatever pretext, may be deprived of the rights of legal proceedings and of a legal judge.

I therefore request the Supreme Court in Washington to examine whether the Decree No. 7 of the Military Government of Germany may be applied in my case, and whether, with due regard to the regulations of Article 60-65 of the Geneva Convention, the present Military Court II

(page 5 of original)

Nuernberg was in a position to pass sentence on me.

Furthermore I enclose a copy of my petition to the Governor-General [Military Governor of U. S. Zone of Occupation].

[Signed] ERHARD MILCH

[Note: Another petition with the same text was submitted to the United States Supreme Court by Dr. Bergold, Defense Counsel.]

IX. AFFIRMATION OF SENTENCE BY THE
MILITARY GOVERNOR OF THE UNITED
STATES ZONE OF OCCUPATION

Military Tribunal II, Case No. 2

In the Case of

The United States of America

vs.

Erhard Milch, Defendant

Order with Respect to Sentence

In the case of the United States of America against Erhard Milch, tried by United States Military Tribunal II, Case 2, Nuernberg, Germany, the defendant on 17 April 1947 was sentenced by the Tribunal to be transported to the Rebdorf Prison and there confined for the remainder of his natural life. A petition to modify the sentence, filed on behalf of the defendant by Dr. Friedrich Bergold, his defense counsel, has been referred to me pursuant to delegation by the Military Governor under the provisions of Article XXIII of Military Government Ordinance No. 7 and paragraph 6b of Regulation No. 1 under said Ordinance. I have duly considered the petition and the record of the trial, and in accordance with Article XVII of said Ordinance and paragraph 6b of said Regulation it is hereby ordered that—

The sentence imposed by Military Tribunal II, upon Erhard Milch be, and hereby is, in all respects affirmed.

[Signed] FRANK A. KEATING
FRANK A. KEATING
Major General USA
Deputy Military Governor

17 June 1947

X. ORDER OF THE UNITED STATES SUPREME
COURT, 20 OCTOBER 1947, DENYING
WRIT OF HABEAS CORPUS

Present: Mr. Chief Justice Vinson, Mr. Justice Black, Mr. Justice Reed, Mr. Justice Frankfurter, Mr. Justice Douglas, Mr. Justice Murphy, Mr. Justice Jackson, Mr. Justice Rutledge, and Mr. Justice Burton.

No. 50, Misc. Erhard Milch, petitioner, *vs.* The United States of America. The motion for leave to file petition for writ of habeas corpus is denied. Mr. Justice Black, Mr. Justice Douglas, Mr. Justice Murphy, and Mr. Justice Rutledge are of the opinion that the petition should be set for hearing on the question of the jurisdiction of this Court. Mr. Justice Jackson took no part in the consideration or decision of this application.

APPENDIX

List of Witnesses in Case 2

[NOTE.—With the exception of Constantin von Neurath, Erich Raeder, and Albert Speer, all witnesses in this case appeared before the Tribunal. Prosecution witnesses are designated by the letter “P,” defense witnesses by the letter “D,” Tribunal witness by the letter “T”. The name not preceded by any designation represents the defendant testifying in his own behalf. Extracts from testimony in this case are listed in the index of documents and testimonies.]

Name	Date of Testimony	Pages (mimeographed transcript)
D ALEXANDER, Dr. Leo.....	.14 Feb 47.....	..1074-1092
D BECKER-FREYSENG, Hermann..	.14 Feb 47.....	..1061-1066
D BRANDT, Rudolf .....	.24 Feb 47.....	..1330-1354
D BRAUCHITSCH, Berndt von....	.20 Feb 47.....	..1271-1289
D DORSCH, Xaver .....	.24 Feb 47.....	..1361-1379
D ENGEL, Gerhard .....	.24 Feb 47.....	..1355-1361
D ESCHENAUER, Artur .....	.13 Feb 47.....	..980-996
D FELMY, Helmut .....	.20 Feb 47.....	..1290-1296
P FERRIER, Roland .....	.5, 6 Mar 47....	..1481-1548
D FOERSTER, Helmut .....	.12 Feb 47.....	..915-938
D HERTEL, Walter .....	.12 Feb 47.....	..944-979
D HIPPKKE, Erich .....	.7, 11 Feb 47...	..759-870
D KOENIG, Max .....	.17 Feb 47.....	..1189-1204
D KOERNER, Paul .....	.5 Feb 47.....	..652-710
P KRYSIAK, Joseph .....	.21 Mar 47....	..2362-2376
P LE FRIEC, Paul .....	.6 Mar 47.....	..1550-1584
T LICHTENSTEIN, Walter .....	.3 Mar 47.....	..1428-1432
MILCH, Erhard .....	.11, 12, 13, 14, 17, 18, 19, 20 Mar 47...	..1696-2276
D NEFF, Walter .....	.12 Feb 47.....	..939-943
D NEURATH, Constantin von....	.19 Feb 47.....	..1440-1443

List of Witnesses Cont'd

Name	Date of Testimony	Pages (mimeographed transcript)
D PENDELE, Max .....	..18 Feb 47.....	..1205-1227
D RAEDER, Erich .....	..4 Mar 47.....	..1434-1439
D REINECKE, Hermann .....	..20 Mar 47....	..2277-2287
D RICHTER, Karl Eitel.....	..11 Feb 47.....	..871-900
D ROEDER, Manfred .....	..3 Mar 47.....	..1381-1403
D ROMBERG, Hans Wolfgang....	..14 Feb 47.....	..1021A-1050
D RUFF, Siegfried .....	..14, 17 Feb 47..	..1092-1122
D SCHMELTER, Fritz .....	..6, 7 Feb 47....	..717-759
D SCHNIEWIND, Otto .....	..24 Feb 47.....	..1307-1329
D SCHROEDER, Oskar .....	.....	.. (withdrawn)
D SIEVERS, Wolfram .....	..14 Feb 47.....	..1050-1057
D SPEER, Albert .....	..17, 19 Feb 47..	..1136-1186; 1445-1457
D VORWALD, Wolfgang .....	..10, 11, 20, 21 Mar 47.....	..1586-1696; 2287-2340
D WARLIMONT, Walter .....	..20 Feb 47.....	..1296-1299
D WELTZ, Georg August.....	..14 Feb 47.....	..1066-1072
D WOLFF, Karl .....	..18 Feb 47.....	..1228-1268

INDEX OF DOCUMENTS AND TESTIMONY

Document No.	Exhibit No.	Description	Page
EC-68	Pros. Ex. 6	Letter from the Ministry of Finance and Economics of Baden, 6 March 1941, containing directives regarding the treatment of Polish farm workers.	389
EC-194	Pros. Ex. 8	Memorandum of Keitel, 31 October 1941, concerning the use of PW's in the armament industry.	393
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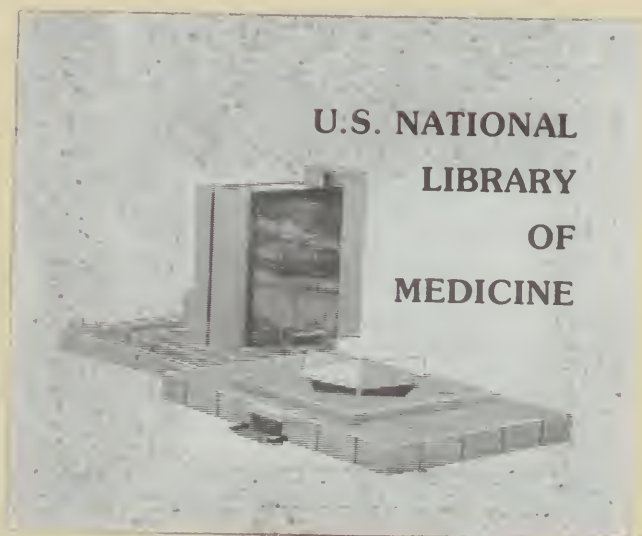
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