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[Begin block quote]

Official Transcript of the American Military Tribunal in the matter of the United States of America, against Otto Ohlendorf, et al, defendants, sitting at Nuernberg, Germany, on 8 April 1948, 0930-1630, Justice Musmanno presiding.

[end block quote]

THE MARSHAL: The Honorables, the Judges of Military Tribunal II.

Military Tribunal is now in session. God save the United States of America and this Honorable Tribunal.

There will be order in the court.

THE PRESIDENT: The Tribunal hands to the Secretary General the Opinion and Judgment in Case No. 9. This document shall be the official opinion and judgment in the case. Any questions regarding translation and transcripts shall be resolved by consultation with this document.

In the reading of the judgment any omissions for time-saving [sic] or for any other reason will not affect the authenticity and authority of the official copy of the opinion and judgment filed with the Secretary General.

Mr. Secretary General.

(The President handed to the Secretary General the Official Opinion and Judgment.)

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[begin block quote]  
THE UNITED STATES OF AMERICA

- VS -

OTTO OHLENDORF, HEINZ JOST, ERICH NAUMAN [sic],:  
OTTO RASCH, cancelled, ERWIN SCHULZ, FRANZ SIX, PAUL:  
BLOBEL, WALTER BLUME, MARTIN SANDBERG [sic],: OPINION AND JUDGMENT  
WILLY SEIBERT, EUGEN STEIMLE, ERNST BIBER-:  
STEIN, WERNER BRAUNE, WALTER HAENSCH, :  
GUSTAV NOSSKE, ADOLF OTT, EDUARD STRAUCH :  
WOLDEMAR KLINGELHOEFER, LOTHAR FENDLER : Case No. 9  
WALDEMAR VON RADETSKY, FELIZ RUEHL, HEINZ :  
SCHUBERT, and MATHIAS GRAF, Defendants :  
[end block quote]

The indictment filed in this case on July 25, 1947, charged the twenty-four defendants enumerated therein with crimes against humanity, war crimes and membership in criminal organizations. The twenty-four defendants were made up of six SS-Generals, five SS-Colonels, six SS-Lieutenant Colonels, four SS-Majors and three SS-junior officers. Since the filing of the indictment the number of defendants has been reduced to twenty-two. Defendant SS-Major Emil Haussman committed suicide on July 31, 1947, and defendant SS-Brigadier General Otto Rasch was severed from the case on February 5, 1948 because of his inability to testify. Although it is assumed that Rasch's disease (paralysis agitans or Parkinsonism will become progressively worse, his severance from these proceedings is not to be regarded as any adjudication on the question of guilt or innocence.

The acts charged in Counts I and II of the Indictment are identical in character, but the indictment draws the distinction between acts constituting offenses against civilian populations including the German nationals and nationals of other countries, and the same acts committed as violations of the laws and customs of war involving murder and ill-treatment of prisoners of war and civilian populations of countries under the occupation of Germany. Count III charges the defendants with membership in the SS, SD and Gestapo, organizations

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declared criminal by the International Military Tribunal and Paragraph I(d) of Article II of Control Council Law No. 10.

Although the indictment accuses the defendants of the commission of atrocities, persecutions, exterminations, imprisonment and other inhumane acts, the principal charge in this case is murder. However, as unequivocal as this charge is, questions have arisen which must be definitely resolved so that this decision may add its voice in the present solemn re-affirmation and sound development of international precepts binding upon nations and individuals alike, to the end that never again will humanity witness the sad and miserable spectacle it has beheld and suffered during these last years.

At the outset it must be acknowledged that the facts with which the Tribunal must deal in this Opinion are so beyond the experience of normal man and the range of man-made phenomena that only the most complete judicial inquiry, and the most exhaustive trial, could verify and confirm them. Although the principle accusation is murder and, unhappily, man has been killing man ever since the days of Cain, the charge of purposeful homicide in this case reaches such fantastic proportions and surpasses such credible limits that believability must be bolstered with assurance a hundred times repeated.

The books have shown through the ages why man has slaughtered his brother. He has always had an excuse, criminal and ungodly though it may have been. He has killed to take his brothers property, his wife, his throne, his position; he has slain out of jealousy, revenge, passion, lust, cannibalism. He has murdered as a monarch, a slaveowner, a madman, a robber. But it was left to the twentieth century,

to proclaim and to produce so extraordinary a killing that even a new word had to be created to define it.

One of counsel has characterized this trial as the biggest murder trial in history. Certainly never before have twenty-three men been brought into court to answer to the charge of destroying over one million of their fellow-human beings. There have been other trials imputing to administrators and officials responsibility for mass murder, but in this case the defendants are not simply accused of planning or directing wholesale [sic] killing through channels. They are not charged with sitting in an office hundreds and thousands of miles away from the slaughter. It is asserted with particularity that these men were in the field actively superintending, controlling, directing, and taking an active part in the bloody harvest.

If what the Prosecution maintains is true, we have here participation in a crime of such unprecedented brutality and of such inconceivable savagery that the mind rebels against its own thought image and the imagination staggers in the contemplation of a human degradation beyond the power of language to adequately portray. The crime did not exclude the immolation of women and children, heretofore [sic] regarded the special object of solicitude even on the part of an implacable and primitive foe.

The International Military Tribunal in its decision of October 1, 1946 declared that the Einsatzgruppen and the Security Police, to which the defendants belonged, were responsible for the murder of two million defenseless human beings, and the evidence presented in this case has in no way shaken this finding. No human mind can grasp the enormity of two million deaths because life, the supreme essence of

consciousness and being, does not lend itself to material or even spiritual appraisal. It is so beyond finite comprehension that only its destruction offers an infinitesimal suggestion of its worth. The loss of any one person can only begin to be measured in the realization of his survivors that he is gone forever. The extermination, therefore, of two million human beings cannot be felt. Two million is but a figure. The number of deaths resulting from the activities with which these defendants have been connected and which the Prosecution has set at one million, is but an abstract number. One cannot grasp the full cumulative terror of murder one million times repeated.

It is only when this grotesque total is broken down into units capable of mental assimilation that one can understand the monstrousness of the things we are in this trial contemplating. One must visualize not one million people but only ten persons -- men, women, and children, perhaps all of one family -- falling before the executioner's guns. If one million is divided by ten, this scene must happen one hundred thousand times, and as one visualizes the repetitious horror, one begins to understand the meaning of the Prosecution's words "It is with sorrow and with hope that we here disclose the deliberate slaughter of more than a million innocent and defenseless men, women and children."

All mankind can share that sorrow in the painful realization that such things could happen in an age supposedly civilized and mankind may also well cherish the hope that civilization will actually redeem itself, so that, by reflection, cleansing and a real sanctification of the holiness of life, that nothing even faintly resembling such

a think may happen again.

Judicial opinions are often primarily prepared for the information and guidance of the legal profession but the Nuremberg judgments are of interest to a much larger segment of the earth's population. It would not be too much to say that the entire world itself is concerned with the adjudications being handed down in Nuremberg. Thus it is not enough in these pronouncement to cite specific laws, sections and paragraphs. The decisions must be understood in the light of the circumstances which brought them about. What is the exact nature of the facts on which the judgments are based? A tribunal may not avert its head from the ghastly deeds whose legal import it is called upon to adjudicate. What type of reasoning or lack of reasoning was it that brought about the events which are to be here related? What type of morality or lack of it was it that for years bathed the world in blood and tears? Why is it that Germany, whose rulers thought to make it the wealthiest and the most powerful nation of all time, an empire which would overshadow the Rome of Caesar -- why is it that this Germany is now a shattered shell? Why is it that Europe, the cradle of modern civilization, is devastated and the whole world is out of joint?

These Nuremberg trials answer the question, and the Einsatzgruppen trial in particular makes no little contribution to that enlightenment.

When the German Armies, without any declaration of war, crossed the Polish frontier and smashed into Russia, there moved with and behind them a unique organization known as the Einsatzgruppen. As an instrument of terror in the museum of horror, it would be difficult to find an entry to surpass the Einsatzgruppen in its blood-freezing potentialities. No

writer of murder fiction, no dramatist steeped in macabre lore, can ever expect to conjure up from his imagination a plot which will shock sensibilities as much as will the stark drama of these sinister bands.

They came into being through an agreement between the RSHA (Reich Security Main Office), the OKW (Armed Forces High Command), and the OKH (Army High Command). The agreement specified that a representative of the Chief of the Security Police and Security Service would be assigned to the respective army groups or armies, and that this official would have at his disposal mobile units in the form of an Einsatzgruppe, sub-divided into Einsatzkommandos and Sonder-kommandos [sic]. The Kommandos in turn were divided into smaller groups known als [sic] Teilkommandos. Only for the purpose of comparison as to size and organization, an Einsatzgruppe could roughly be compared to an Infantry Battalion, and Einsatz- or Sonderkommando to an Infantry Company and a Teilkommando to a Platoon.

These Einsatzgruppen, of which there were four, (lettered A to D) were formed, equipped and fully ready to march before the attack on Russia began. Einsatzgruppe A was led by Stahlecker and later the defendant Jost, operated from central Latvia, Luthuania [sic] and Esthonia towards the East. Einsatzgruppe B, whose chief was Nebe, succeeded by the defendant Naumann, operated in the direction of Moskow in the area adjoining Einsatzgruppe A to the South. Einsatzgruppe C, led by Rasch and later Thomas, operated in the Ukraine, except for the part occupied by Einsatzgruppe D, which last organization, first under the defendant Ohlendorf and then Bierkamp [sic], controlled the Ukraine south of a certain line, which area also included the Crimean peninsula. Later,

Einsatzgruppe D took over the Caucasus area.

These Einsatzgruppen, each comprising roughly from 800 to 1,200 men, were formed under the leadership of Reinhardt Heydrich, Chief of the Security Police and SD. The officers were generally drawn from the Gestapo, SD, SS, and the Criminal Police. The men were recruited from the Waffen-SS, the Gestapo, the Order Police and locally recruited police. In the field, the Einsatzgruppen were authorized to ask for personnel assistance from the Wehrmacht which, upon request, invariably supplied the needed men.

At top-secret meetings held in Pretzsch and Dueben, Saxony, in May 1941, the Einsatzgruppen and Einsatzkommando leaders were instructed by Heydrich, Chief of Security Police and SD, and Streckenbach, Chief of Personnel of RSHA, as to their mission, and they were introduced to the notorious Fuehrer-Order around which this extraordinary case has risen. Under the guise of insuring the political security of the conquered territories, both in the occupational and rear areas of the Wehrmacht, the Einsatzgruppen were to liquidate ruthlessly all opposition to National Socialism -- not only the opposition of the present, but that of the past and future as well. Whole categories of people were to be killed without truce, without investigation, without pity, tears or remorse. Women were to be slain with the men, and the children also were to be executed because, otherwise, they would grow up to oppose National Socialism and might even nurture a desire to avenge themselves on the slayers of their parents. Later, in Berlin, Heydrich re-emphasized this point to some of the Einsatz leaders.

One of the principal categories was "Jews". No precise definition was furnished the Einsatz leaders as to those who

fell within this fatal designation. Thus, when one of the Einsatzgruppen reached the Crimea, its leaders did not know what standards to apply in determining whether the Krimtschaks [sic] they found there should be killed or not. Very little was known of these people, except that they had [sic] migrated into the Crimea from a southern Mediterranean country, and it was noted they spoke the Turkish language. It was rumored, however that somewhere along the arterial line which ran back into the dim past some Jewish blood had entered the strain of these strange Krimtschaks [sic]. If this were so, should they be regarded as Jews and should they be shot? An inquiry went off to Berlin. In due time the reply came back that the Krimtschaks [sic] were Jews and should be shot. They were shot.

The Einsatzgruppen were, in addition, instructed to shoot Gypsies. No explanation was offered as to why these unoffending people who through the centuries have contributed their share of music and song, were to be hunted down like wild game. Colorful in garb and habit, they have amused, diverted and baffled society with their wanderings, and occasionally annoyed with their indolence, but no one has condemned them as a mortal menace to organized society. That is, no one but National Socialism which, through Hitler, Himmler, and Heydrich ordered their liquidation. Accordingly, these simple, innocuous people were taken in trucks, perhaps in their own wagons, to the anti-tank ditches and there slaughtered with the Jews and Krimtschaks [sic]. The insane also were to be killed. Not because they were a threat to the Reich, nor because someone may have believed they were formidable rivals of the Nazi chieftains. No more excuse was offered for sentencing the insane than was advanced for condemning the Gypsies and the Krimtschaks [sic].

However, there was an historical basis for the decrees against the insane. That is, a history going back two years. On September 1, 1939, Hitler had issued his Euthanasia decree which ordered the killing of all insane and incurably ill people. It was demonstrated in other trials that this decree was made a convenient excuse for killing off those who were racially undesirable to the Nazis, and who were unable to work. These victims were grouped together under the title of "useless eaters". Since all invaded territories were expected to become Reich territory, the same policies which controlled in Germany itself were apparently introduced and put into effect in the occupied lands. But a very extensive interpretation was given to even this heartless decree. Insane asylums were often emptied and the inmates liquidated because the invaders desired to use the asylum buildings.

"Asiatic inferiors" was another category destined for liquidation. This kind of designation allowed a wide discretion in homicide. Einsatzgruppen and Einsatzkommando leaders were authorized to take executive measures on their own responsibility. There was no one to dispute with them as to the people they branded "Asiatic inferiors". And even less was there a curb on homicidal operations when they were authorized to shoot "Asocial people, politically tainted persons, and racially and mentally inferior elements."

And then, all Communist functionaries were to be shot. Again it was never made quite clear how broad was this classification. Thus, in recapitulation, the Fuehrer-Order, and throughout this Opinion it will be so referred to, called for the summary killing of Jews, Gypsies, insane people, Asiatic inferiors, Communist functionaries, and asocials.

Authenticity of Reports

The story of the Einsatzgruppen and the Einsatzkommandos is not something pieced together years after their crimson deeds were accomplished. The story was written as the events it narrates occurred, and it was authored by the doers of the deeds. It was written in the terse, exact language which military discipline requires, and which precision of reporting dictates.

The maintenance of an army in invaded territory and the planning of future operations demands cold factuality in reports, which requirement was rudimentary knowledge to all members of the German Armed Forces. Thus, every subkommando leader was instructed to inform his kommando leader of developments and activities in his field of operations, every kommando leader in turn accounted to the Einsatzgruppe leader, and the Einsatzgruppe leader by wireless and by mail reported to the RSHA in Berlin. These accounts were veiled in secrecy but they were not so covert that they did not come to the attention of the top ranking military and political officials of the regime. In fact, at the capital, they were compiled, classified, mimeographed and distributed to a selected list. These are the reports which have been submitted in evidence.

The case of the Prosecution is founded entirely on these official accounts prepared by the Einsatzgruppen and Einsatzkommando leaders. The Tribunal will quote rather copiously from these reports because only by the very language of the actual performers can a shocked world believe that these things could come to pass in the twentieth century. A few brief excerpts at the outset will reveal graphically the business of the Einsatzgruppen. A report on Einsatzgruppe B,

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dated December 19, 1941, speaks of an action in Mogilew and points out:

[Begin block quote]

"During the controls of the roads radiating from Mogilew, carried out with the aid of the constabulary, 135 persons, mostly Jews, were apprehended..... 127 persons were shot."

[end block quote]

The report also declares:

[Begin block quote]

"In agreement with the commander, the transient camp in Mogilew was searched for Jews and officials. 126 persons were found and shot."

[end block quote]

The same report advises that in Paritschi near Bobruisk,

[Begin block quote]

"A special action was executed, during which 1,013 Jews and Jewesses were shot."

[end block quote]

In Rudnja:

"835 Jews of both sexes were shot."

Sonderkommando 4a, operating in the town of Tschernigow, reported that on October 23, 1941, 116 Jews were shot; on the following day 144 were shot.

A teilkommando of Sonderkommando 4a, operating in Poltawa, reported as of 23 November 1941:

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"Altogether 1,538 Jews were shot." (NO-3405)

Einsatzgruppe D operating near Simferopol communicated:

[Begin block quote]

"During the period covered by the re-port [sic] 2,010 people were shot. (NO-3235)  
[end block quote]

An Einsatz unit, operating in the Ukraine, communicated that in Rakow:

"1,500 Jews were shot." (3876-PS)

A report on activities in Minsk in March 1942 reads:

[Begin block quote]

"In the course of the greater action against Jews, 3,412 Jews were shot." (NO-2662)  
[end block quote]

Einsatzkommando 6, operating in Dnjepropetrowsk, reported that on October 13, 1941:

[Begin block quote]

"Of the remaining 30,000 approximately 10,000 were shot. (NO-2832)  
[end block quote]

A report dated 16 January 1942, accounting for the activities of Einsatzkommando 2, stated that in Riga on 30 November 1941:

"10,[6]00 Jews were shot." (NO-3405)

In time the authors of the reports apparently tired of the word shot so, within the narrow compass of expression allowed in a military report, some variety was added. A report originating in Latvia read:

[Begin block quote]

"The Higher SS and Police leader in Riga, SS-Obergruppenfuehrer Jeckeln, has meanwhile embarked on a shooting action (Erschiessungsaktion) and on Sunday, the 30 November 1941, about 4,000 Jews from the Riga Ghetto and an evacuation transport from the Reich were disposed of." (NO-3257)  
[end block quote]

And so that no one could be in doubt as to what was meant by "Disposed of", the word "killed" was added in parentheses.

A report originating from the Crimea stated laconically:

[Begin block quote]

"In the Crimea 1,000 Jews and Gypsies were executed." (NO-2662)  
[end block quote]

A report of Einsatzgruppe B, in July 1941, relates that the Jews in Lithuania were placed in concentration camps for special treatment, and then the report explains:

[Begin block quote]

"This work was now begun and thus about 500 Jews, saboteurs amongst them, are liquidated daily." (NO-2937)

[end block quote]

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A kommando, operating in Lachoisk, reported:

[Begin block quote]

"A large-scale anti-Jewish action was carried out in the village of Lachoisk. In the course of this action 920 Jews were executed with the support of a kommando of the SS Division 'Reich'. The village may now be described as 'free of Jews'. (NO-3143)

[end block quote]

Einsatzgruppe B, operating out of headquarters Smolensk, reported on one of its operations in October:

[Begin block quote]

"In Mogilew the Jews tried also to sabotage their removal into the Ghetto by migrating in masses. The Einsatzkommando No. 8, with the help of the Ordinary Police, blocked the roads leading out of the town and liquidated 113 Jews. (NO-3160)

[end block quote]

This same organization also reported:

[Begin block quote]

"Two large-scale actions were carried out by the platoon in Krupka and Sholopanitsche, 912 Jews being liquidated in the former and 822 in the latter place." (NO-3160)

[end block quote]

The advance kommando of Sonderkommando 4a, chronicling its activities of October 4, 1941, reported:

[Begin block quote]

"Altogether, 537 Jews (men, women, and adolescents) were apprehended and liquidated. (NO-3404)

[end block quote]

Eventually even the expressions liquidate and execute became monotonous, so the report-writers broke another bond of literary restraint and began describing the murder of Jews with varying verbiage. One particularly favored phrase announced that so many Jews were "rendered harmless". Still another declared that so many Jews had been "got rid of." One more pronounced that a given number of Jews had been "done away with". However, it really mattered little what phraseology was employed. Once the word "Jew" appeared in a report, it was known that this invariably meant that he had been killed. Thus, when one particularly original report-writer wrote, "At present, the Jewish problem is being solved at Nikolajew and Cherson. About 5,000 Jews were processed at either place," it required no lucubration on the part of the RSHA officials in Berlin to comprehend that 5,000 Jews had been killed at Nikolajew and 5,000 had been killed at Cherson. (NO-3148)

THE PRESIDENT: Judge Speight will continue with the reading of the Judgment.

JUDGE SPEIGHT: Death was simple routine with these earthy organizations. In the Reich Security Main Office, Einsatzgruppen could well be synonymous with homicide. One report, after stating that certain towns were freed of Jews, ends up with the abundantly clear remark that "the remaining officials were appropriately treated." (NO-3137)

Kommando leaders also frequently informed headquarters that certain groups had been "taken care of". (NO-3151) When an Einsatzkommando "took care" of anybody only one person could be of service to the person taken care of, and that was the grave digger. "Special treatment" was still one more contemptuous characterization of the solemn act of death when, of course, it applied to others.

Then some report-writers airily recorded that certain areas "had been purged of Jews."

Finally, there was one term which was gentle and polite, discreet and definitive. It in no way called up the grim things connected with shooting defenseless human beings in the back of the neck, and then burying them, sometimes partially alive, into shallow graves. This piece of rhetoric proclaimed that in certain areas "the Jewish problem was solved." And when that wording was used one knew finally and completely that the Jews in that particular territory had been removed from the land of the living.

Einsatzgruppe C, reporting on more than 51,000 executions, declared"

[Begin block quote]

"These were the motives for the executions carried out by the kommandos: Political officials, looters and saboteurs, active Communists and political repre-sentatives [sic], Jews who gained their release from prison camps by false statements, agents and informers of the NKWD, persons who, by false depositions and influencing witnesses, were instrumental in the de-portionation [sic] of ethnic Germans, Jewish sadism and revengefulness, undesirable elements, partisans, politricks [sic], dangers of plague and epidemics, members of Russian bands, armed insurgents - provisioning of Russian bands, rebels and agitators, drifting juveniles, -"

[end block quote]

and then came the all-inclusive phrase:

"Jews in general."

(NO-3144)

The summary cutting down of such groups as "drifting juveniles" and such vague generalizations as "undesirable elements" shows that there was no limit whatsoever to the sweep of the executioner's scythe. And the reference to individual categories of Jews is only macabre window dressing because under the phrase "Jews in general, all Jews were killed regardless of antecedents.

There were some kommando leaders, however, who were a little more conscientious than the others. They refused to kill a Jew simply because he was a Jew. They demanded a reason before ordering out the firing squad. Thus, in White Ruthenia, a kommando leader reported: "There has been frequent evidence of Jewish women displaying a particularly disobedient attitude." The kommando leader's conscience now having been satisfied, he went on in his report:

[Begin block quote]

"For this reason, 28 Jewesses had to be shot at Krugloje and 337 in Mogilew." (NO-2656)

[end block quote]

At Tatarsk the Jews left the Ghetto in which they had been collected and returned to their homes. The scrupulous kommando leader here reported the serious offense committed by the Jews in taking up living in their own domiciles. He accordingly executed all the male Jews in the town as well as three Jewesses. (NO-2656)

Further:

[Begin block quote]

"At Mogilew, too, the Jews tried to pre-vent [sic] their removal to a ghetto, 113 Jews were liquidated." (NO-2656)

[end block quote]

Operation Report No. 88, dated September 19, 1941, states that, on September 1 and 2, leaflets and pamphlets were distributed by Jews, but that "the perpetrators could not be found." With this declaration that the guilty ones could not be located, the leader of the execution unit involved tranquilized his moral scruples and, accordingly, as his report factually [sic] declares, he executed 1,303 Jews, among them 875 Jewesses over 12 years of age.

Always very sensitive, the occupation forces found that the Jews in Monastyschtschina and Choslawitschi displayed an "impudent and provacat-ive [sic] attitude". The kommando accordingly shot the existing Jewish Council

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and 20 other Jews. (NO-3143)

In the vicinity of Ostrowo, the resident Jews, according to Report No. 124, dated October 25, 1941, had repeatedly shown hostile conduct and disobedience to "the German authorities". Thus, the current kommando went into Ostrowo and shot 169 Jews. (NO.3160)

In Marina-Gorka, the labor assigned to Jews was done, according to Report No. 124, dated October 25, 1941, "very reluctantly". Thus, 996 Jews and Jewesses were given "special treatment." (NO-3160)

Report No. 108, dated October 9, 1941, advises that for the death of 21 German soldiers near Topola, 2,100 Jews and Gypsies were to be executed, thus a ratio of 100 to one. There is no pretense in the report that any of the 2,100 slain were in the slightest way connected with the shooting of Germans. (NO-3156)

An item in Operation Report No. 108, October 9, 1941, points out that "19 Jews who were under suspicion of having either been communists or of having committed arson" were executed. (NO-3156)

In Mogilew, the Jewish women were "extremely resistive" and not wearing the prescribed badge, so 28 of them were liquidated. (NO-3156)

Report No. 73, dated September 4, 1941, acquaints the world with the fact that 733 civilians were exterminated in Minsk, the reason being that they "were absolutely inferior elements with a predominant mixture of Asiatic blood." The method of determining the inferiority of character and the predominance of Asiatic blood is not indicated. (NO-2844)

The executioners were, however, not always without thought for the Jews. Sometimes apparently the liquidation took place for the benefit of the Jews themselves. Thus, Einsatzgruppe B reported in December 1941:

[Begin block quote]

"In Gorodok, the Ghetto had to be evacu-ated [sic] because of the danger of an epidemic. 394 Jews were shot." (NO-2833)

[end block quote]

Einsatzgruppe C, reporting on conditions in Radomyschl, declared:

[Begin block quote]

"A supply of food for the Jews as well as for the children was impracticable.

In consequence, there was an ever in-creasing [sic] danger of epidemics" (NO-3149)  
[end block quote]

The situation was met bravely and chivalrously:

[Begin block quote]

"To put an end to these conditions 1,107 Jewish adults were shot by the kommando and 561 Juveniles by the Ukrainian militia. Thereby, the Sonderkommando [sic] has taken care of a total of 11,328 Jews till 6 September 1941." (NO-3149)

[end block quote]

Operational Report No. 92, dated September 23, 1941, related how scabies had broken out in the ghetto of Newel. "In order to prevent further contagion, 640 Jews were liquidated and the houses burnt down." This treatment undoubtedly overcame the scabies. (NO-3143)

The same report proclaims further that, in the town of Janowitschi, a contagious disease, accompanied by fever, broke out. It was feared that the disease might spread to the city and the rural population. To prevent this from happening, 1,025 Jews were shot. The report closes proudly with the statement: "This operation was carried out solely by a commander and 12 men." (NO-3143)

As the kommandos became more and more familiar with the therapeutic capabilities of their rifles, they turned to the field of preventative medicine. In October of 1941, the kommando leader in Witebsk came to the conclusion that there was an "imminent danger of epidemics" in the town, and to forestall that this should come to pass, he shot 3,000 Jews. (NO-3160)

Mention had been made of the execution of the insane. The reports are dotted with references to the liquidation of inmates of mental institutions. It seems that the kommandos, in addition to the executions carried out under their own orders, were ready to perform other killings on request. Einsatzgruppe C reports

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that a teilkommando of Sonderkommando, 4a, passing through Tschernigow, was asked by the director of the mental asylum to liquidate 270 incurable. The teilkommando obliged. (NO-2832)

In Poltawa, Sonderkommando 4b found that the insane asylum located there maintained a farm for the inmates. Since there was not enough full cream milk in the town to supply the three large German military hospitals there, the milk shortage was met by executing a part of the insane. The report on the subject explains:

[Begin block quote]

"A way out of this difficulty was found by deciding that the execution of 565 incurables should be carried out in the course of the next few days under the pretext that these patients were being removed to a better asylum in Charkow." (NO-2832)

[end block quote]

It also stated:

[Begin block quote]

The underwear, clothing and other wearing apparel collected on this occasion [sic] have also been handed over mainly to the hospitals." (NO-2827)

[end block quote]

The grim casualness with which these executions [sic] were conducted comes to light in an item taken from a report made by the Russian Government [sic] (USSR-41) which reads:

[Begin block quote]

"On 22 August 1941, mental patients from the Psychiatric Hospital in Daunapilsk -- approximately 700 adults and 60 children -- were shot in the small town of Aglon. Among them were 20 healthy children who had been temporarily [sic] transferred to the building of the hospital from a Children's home." (USSR-41)

[end block quote]

Report No. 47, dated August 9, 1941, after generally discussing conditions in the Ukraine, stated of the operations of Einsatzgruppe C: "Last but not least, systematic reprisals against marauders and Jews were carried out." Under their meticulous taskmasters, the Jews were bound to be wrong no matter what they did. If they wore their badges they could expect maltreatment, since they were recognized as Jews; if they left them off, they were punished for not wearing them. If they remained in the wretched and overcrowded ghettos they suffered from hunger, if they left in order to obtain food they were "marauding".

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Operation Report No. 132, describing the activities of Einsatzkommando 5, declared that, between October 13 and October 19, 1941, it had among others executed 21 people guilty of sabotage and looting, and 1,847 Jews. It also reported the shooting of 300 insane Jews, which achievement, according to the report, "represented a particularly [sic] heavy burden for the members of Einsatzkommando 5 who were in charge of this operation". (NO-2830)

Operation Report No. 194, detailing the activities of Einsatz-kommando [sic] 8, states that, from March 6 to March 30, 1942, this kommando executed:

[Begin block quote]

"20 Russians for subversive Communist activities, sabotage and membership of the NKWD,  
5 Russians because of theft, burglary and embezzlements,  
33 Gypsies,  
1,551 Jews."

[end block quote]

Einsatzkommando 5, for the period between November 2 and November 8, 1941 killed, as Report No. 143 succinctly states:

[Begin block quote]

"15 political officials,  
21 saboteurs and looters,  
414 hostages,  
10,650 Jews."

[end block quote]

Report No. 150, dated January 2, 1942, speaking of actions in the Western Crimea, stated:

[Begin block quote]

"From 16 November thru [sic] 15 December 1941, 17,645 Jews, 2,504 Krimtschaks [sic], 824 Gypsies and 212 Communists and partisans have been shot."

[end block quote]

The report also states, as if talking of cleaning out swamps:

[Begin block quote]

"Simferopol, Jewpatoria, Alushta, Kar-asubasar [sic], Kertsch and Feodosia and other districts of the Western Crimea have been cleaned of Jews.

[end block quote]

One report complains that the Wehrmacht had failed to plan the executions and, consequently, many Jews escaped. This irritated the report-writer considerably. He stated:

[Begin block quote]

"Naturally, the systematic action of Einsatzkommando 5 suffered extremely by these planless excesses against the Jews in Uman. In particular, a large number of the Jews were now forewarned and escaped from the city. Besides the numerous Jews, many of the Ukrain-ian [sic] officials and activists still liv-ing [sic] in Uman, were warned by the excesses, and only two co-workers of the NKWD were found and liquidated The re-sults [sic] of these excesses were cleaned up immediately by Einsatzkommando 5, after its arrival." (No-3404)

[end block quote]

It will be noted that the word #excesses" [sic] is here used in its opposite sense, that is deficiency. Not as many persons were killed as should have been.

It also objected that people talked about these executions:

[Begin block quote]

"Rumors about executions in other areas rendered action at Simferopol very dif-ficult [sic]. Reports about actions against Jews gradually filter through from fleeing Jews, Russians, and also from unguarded talks of German soldiers." (NO-2834)

[end block quote]

In spite of these difficulties the operations were not entirely unsuccessful because this particular report sums up with:

"Altogether, 75, 881 persons have been executed."

A report from the northern Crimea reads:

[Begin block quote]

"Between i [sic] and 15 February, 1,451 persons were executed, of which 920 were Jews, 468 Communists, 45 partisans and 12 looters, saboteurs, associ-als [sic]. Total up to now is 86,632. (NO-3339)

[end block quote]

Einsatzgruppe D, giving an account of its activities from October 1 to October 15, 1941, stated in Report No. 117:

[Begin block quote]

"The districts occupied by the kom-mandos [sic] were cleaned out of Jews. 4,091 Jews and 46 Communists were ex-ecuted [sic] in the time the report covers, bringing the total up to 40,699." (NO-3406)

[end block quote]

Coming back to Simferopol, in Report No. 153, dated January 9, 1942, we find:

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[Begin block quote]

"The operational areas of the teil-kommandos [sic], particularly in smaller villages, were purged of Jews. Dur-ing [sic] the period covered by the report, 3,176 Jews, 85 partisans, 12 looters, and 122 Communist officials were shot. Sum total: 79,276. In Simferopol, apart from Jews also the Krimtscjak [sic] and Gypsy question was solved." (NO-3258)

[end block quote]

An entry from Operational Situation Report No. 3, on the period August 15 to August 3 [sic], 1941, states:

[Begin block quote]

"During a scruting [sic] of the civilian prison camp in Minsk, 615 persons were liquidated. All those executed were racially inferior elements." (NO-2653)

[end block quote]

Many more examples could be given from the reports but the above will suffice to indicate their tenor and scope and the attitude of those who participated in the events described therein. How did the action groups operate? As kommando leaders entered a town they immediately assembled what they called a Jewish Council of Elders made up of from 10 to 25 Jews, according to the size of the town. These Jews, usually the more prominent ones, and always including a Rabbi, were instructed to register the Jewish population of the community for the purpose of resettlement. The registration completed, the Jews were ordered to appear at a given place, or vehicles went to their homes to collect them. Then they were transported into the woods and shot. The last step of the kommando in closing the books in the whole transac-tion [sic] was to call on the Council of Elders, express appreciation for their cooperation, invite them to mount the truck standing outside, drive them out to the same spot in the woods, and shoot them, too. On report illustrates the procedure described:

[Begin block quote]

"The Jews of the city were ordered to present themselves at a certain place and time for the purpose of numerical registration and housing in a camp. About 34,000 reported, including women and children. After they had been made to give up their clothing and valuables, all were killed; this took several days." (NOKW-2129)

[end block quote]

Another report lauded the leader of Einsatzkommando 4b for his resourcefulness and skill in rounding up the intelligentsia of Winnica:

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[Begin block quote]

"He called for the most prominent Rabbi of the town ordering him to collect within 24 hours the whole of the Jewish intelligentsia and told him they would be required for certain registration work. When this first collection waws insuffi-cient [sic] in numbers, the intellectual Jews assembled were sent away again with the order to collect themselves more of the intellectual Jews and to appear with these the following day." (NO-2947)

[end block quote]

And then the report ends triumphantly on the note:

[Begin block quote]

"This method was repeated for a third time so that in this manner nearly the entire intelligentsia was got hold of and liquidated.

[end block quote]

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In Kiev a clever stratagem was employed to ensnare the Jews. The word "clever" is taken from the report covering the action:

[Begin block quote]

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

[end block quote]

Practically every page of these reports runs with blood and is edged with a black border of misery and desolation. In every para-graph [sic] one feels the steel and flinty pen with which the report-writer cuts through the carnage described therein. Report No. 94 tells of Jews who, driven from their homes, were compelled to seek primitive existence in caves and abandoned huts. The rigors of the elements, lack of food and adequate clothing inevitably produced serious ill-nesses [sic]. The report-writer chronicles:

[Begin block quote]

"The danger of epidemics has thus increased considerably, so that, for that reason alone, a thorough clean-up of the respective places became necessary."

[end block quote]

and then, he adds:

[Begin block quote]

"The insolence of the Jews has not yet diminished even now."

[end block quote]

Thus, after evicting, starving and shooting their victims the evictors still complained: The Jews were not even courteous to their executioners!

One of the defendants denied that there were any Jews in his territory [sic]. In this connection the prosecution introduced an interesting letter from one Jacob, Master of Field Police to his Commanding General. The letter dated June 21, 1942, is very chatty and companionable, the writer sends birthday greetings to the addressee, talks about his horses, his girlfriend, and then casually about Jews:

[Begin block quote]

"I don't know if you, General, have also seen in Poland such horrible figures of Jews. I thank the

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fate I saw this mongrel race like the man in the youngest days.....  
Now, of the 24,000 Jews living here in Kamenetz Podolsk we have only a disappearing percentage left. The little Jews (Juedlein) living in the districts (Rayons) also belong to our customers. We surge ahead without pings of conscience, and then.... the waves close and the world is at peace."  
[end block quote]

But then he becomes serious and determines to be hard with himself for the sake of his country.

[Begin block quote]  
"I thank you for your reprimand. You are right. We men of the new Germany have to be hard with our-selves [sic]. Even if it means a longer separation from our family. Now is the time to clean up with the war criminals, once and forever, to create for our descendants a more beautiful and eternal Germany. We don't sleep here. Every week 3-4 actions, one time Gypsies, the other time Jews, partisans and other rabble. It is very nice that we have now a SD unit (SD Aussenkommando) with which I can work excellently."  
[end block quote]

In another letter this officer becomes very sentimental and is sorry for himself that he is far away from home and thinks of his children: "One could weep sometimes. It is not good to be such a friend of children as I was." However, this does not prevent him from taking up lodging in a former Children's Asylum.

[Begin block quote]  
"I have a cozy apartment in a former children's asylum. One bedroom and a livingroom with all the accessories."  
[end block quote]

### The Magnitude of the Enterprise

One million human corpses is a concept too bizarre and too fantastical for normal mental comprehension. As suggested before, the mention of one million deaths produces no shock at all commensurate [sic] with its enormity because to the average brain one million is more a symbol than a quantitative measure. However, if one reads through the reports of the Einsatzgruppen and observes the small numbers getting larger, climbing into ten thousand, tens of thousands, a hundred thousand and beyond, then one can at last believe that this actually happened - the cold-blooded, premeditated killing of one million human beings.

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Operation Report 88, reporting on the activities of only one kommando, states that up to September 6, 1941, this Kommando 4a "has taken care of a total of 11,328 Jews".

Einsatzgruppe A, reporting its activities up to October 15, 1941, very casually declares: "In Latvia, up to now, 30,000 Jews were executed in all".

Einsatzgruppe D, reporting on an operation near Kikerino, announces that the operational area has been "cleared of Jews. From 19 August to 25 September 1941, 8,890 Jews and Communists were executed. Total number 13,315".

This same Einsatzgruppe communicated from Nikolajew as of November 5, 1941, that total executions had reached the figure of 31,767.

Reporting on one month's activities (October 1941), Einsatzgruppe B advised that "during the period of the report, the liquidations of 37,180 people took place".

Einsatzgruppe C, reporting on its operations in Kiev as of October 12, 1941, declared that Sonderkommando 4a had now reached the total number of more than 51,000 executions.

The Commissioner General for White Ruthenia reported with self-approbation on August 10, 1942:

[Begin block quote]

"During detailed consultations with the SS-Brigadefuehrer Zenner and the extremely capable Chief of the SD, SS-Obersturmbannfuehrer Dr. jur. Strauch, we found that we had liquidated approximately 55,000 Jews in White Ruthenia during the last 10 weeks".

[end block quote]

Speaking of another place, the Commissioner General proclaimed: "In the Minsk-Land area the Jewry was completely exterminated." Then he complained that the Army had been encroaching on the Einsatz prerogatives:

[Begin block quote]

"The preparations for the liquidation of the Jews in the Glebokie area were completely disrupted by an arbitrary action by the Rear Army Area, which has already been reported to your office. In the Rear Army Area - I was not contacted, 10,000 Jews were liquidated who were scheduled for extermination by us anyway".

[end block quote]

However, the Commissioner General quickly got over his resentment

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and went on with his narrative:

[Begin block quote]

"In the city of Minsk, about 10,000 Jews were liquidated on 28 and 29 July, 6,500 of whom were Russian Jews - mainly old people, women, and children - the remainder consisted of Jews unfit for work, most of whom had been sent to Minsk from Vienna, Bruenn, Bremen and Berlin in November of the previous year, at the Fuehrer's orders. The Sluzk area was also ridded of several thousand Jews. The same applies to Nowogrodek and Wilejka".

[end block quote]

In Baranowitschi and Hanzewitschi he found that the killings had not been going as well as he desired: "Radical measures still remain to be taken.: He explained: In Baranowitschi, about 10,000 Jews are still living in the town alone." However, he would attend that situation at once. He promised that 9,000 of them would be liquidated next month."

As of October 15, 1941, Einsatzgruppe A declared that the sum total of Jews executed in Lithuania was 71,105.

As an appendix to the report, Einsatzgruppe A submitted the invent-ory [sic] of the people killed as a business house might submit a list of stock on hand:

[Begin block quote]

"Total:	Jews	Communists	Total
Lithuania	80,311	860	81,171
Latvia	30,025	1,845	31,868
Estonia	474	684	1,158
White Ruthenia	<u>7,620</u>	<u>- -</u>	<u>7,620</u>
	118,430	3,387	121,817

[end block quote]

to be added to these figures:

[Begin block quote]

In Lithuania and Latvia Jews annihilated by pogroms	5,500
Jew, Communists and partisans executed in old-Russian area	2,000
Lunatics executed	<u>748</u>
(correct total 130,036)	122,455

Communists and Jews liquidated by State Police, and Security Service Tilsit during search actions	<u>5,502</u>
	<u>135,567</u>

[end block quote]

THE PRESIDENT: Judge Dixon will continue with reading of the opinion and the judgment.

JUDGE DIXON: It would not take, and it did not take many reapings of this character to reach the figure of one million.

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Operational Report No. 190, speaking of the activities of Einsatz-gruppe [sic] D, announces quite matter-of-fact that, in the second half of March 1942, a total of 1,501 people were executed, and then adds, perhaps boredly: "Total number shot up to date, 91,678".

Descanting on the activities of Einsatzgruppe A, around Leningrad, Operation Report No. 150 declares: "There is no longer any Jewish civil population".

Activity and situation Report No. 9, covering the period of January 1942, apprised Berlin:

[Begin block quote]

"In White Ruthenia the purge of Jews is in full swing. The number of Jews in the Territory handed over to the civil authorities up to now, amounts to 139,000. 33,210 Jews were shot meanwhile by the Einsatzgruppen of the Security Police and the SD."

[end block quote]

A special report prepared by Einsatzgruppe A, committed to the Eastern Territories, left nothing to conjecture as to the purpose of their organization.

[Begin block quote]

"The systematic mopping up of the Eastern Territories embraced, in accordance with the basic order, the complete removal, if possible, of Jewry. This goal has been substantially attained - with the exception of White Russia - as a result of the execution up to the present time, of 229,052 Jews."

[end block quote]

Referring specifically to Lithuania, the report carried the observation that many of the Jews used force against the officials and Lithuanian auxiliaries who performed these excutions [sic] and that, before they were shot they even abused Germany!

Describing operations in White Ruthania [sic], Einsatzgruppe A complained that it did not take over this area until a heavy frost had set in. The report points out that this "made mass executions much more difficult". And then another difficulty, the report-writer emphasizes, is that the Jews "live widely scattered over the whole country. In view of the enormous distances, the bad condition of the roads, the shortage of vehicles and petrol, and the small forces of the Security Police and SD, it needs the utmost effort in order to be able to carry out shootings."

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The report-writer almost wistfully complains that the Jews were unreasonable in not coming themselves over these long distances to present themselves for shooting. In spite of all the difficulties, however, the report ends up with: "Nevertheless, 41,000 Jews have been shot up to now."

So inured had the executioners become to the business of death that in one report, where the question of setting up a ghetto was concerned, the report-writer communicated that in getting things started there would be "executions of a minor nature of 50 to 100 persons only".

Report No. 155, dated January 14, 1942, disclosed that in Audrini -

[Begin block quote]

"On 2 January, at the order of Einsatzgruppe A of the Security Police and the Security Service, the village was completely burnt down after removal of all foodstuffs, etc., and all the villagers shot. 301 men were publicly shot in the market square of the neighboring town, Rossitten".

[end block quote]

The report ends on the very casual note:

"All these actions were carried out without incident."

A town had been pillaged and destroyed and all its inhabitants massacred. In another village 301 people were herded into the public square and shot down mercilessly. But for the report-writer this mass violence did not even constitute an incident!

On two days alone (September 29 and September 30, 1941) Sonder-kommando [sic] 4a, with the help of the Gruppenstaff and two Police Units, slaughtered in Kiev 33,771 Jews. The money, valuables, underwear and clothing of the murdered victims were turned over to the racial Germans and to the Nazi administration of the city. The massacre ends up with the phrase:

"The transaction was carried out without friction - "

and then adds, as he was about to put away the typewriter:

"No incidents occurred."

The shooting of Jews eventually became a routine job and at times kommandos sought to avoid executions, not out of charity or sympathy, but because it meant just that much more work. The defendant Nosske

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testified to a caravan of from 6,000 to 7,000 Jews who had been driven across the Dnjester River by the Rumanians into territory occupied by the German forces, and whom he guided back across the river. When asked why these Jews had been expelled from Rumania, Nosske replied:

[Begin block quote]

"I have no idea. I assume that the Rumanians wanted to get rid of them and sent them into the German territory so that we would have to shoot them, and we would have the trouble of shooting them. We didn't want to do that. We didn't want to do the work for the Rumanians, and we never did, nor at all other places where something similar happened. We refused it and, therefore, we sent them back."

[end block quote]

One or two Defense Counsel have asserted that the number of deaths resulting from acts of the organizations to which the defendants belonged did not reach the total of one million. As a matter of fact, it went far beyond one million. As already indicated, the International [sic] Military Tribunal, after a trial lasting ten months, studying and analyzing figures and reports, declared:

[Begin block quote]

"The RSHA played a leading part in the "final solution" of the Jewish question by the extermination of the Jews. A special section, under the AMT IV of the RSHA was established to supervise this program. Under its direction [sic], approximately six million Jews were murdered of which two million were killed by Einsatzgruppen and other units of the Security Police."

[end block quote]

Ohlendorf, in testifying before the International Military Tribunal, declared that, according to the reports, his Einsatzgruppe killed 90,000 people. He also told of the methods he employed to prevent the exaggeration of figures. He did say that other Einsatzgruppen were not as careful as he was in presenting totals, but he presented no evidence to attack numbers presented by other Einsatzgruppen. Reference must also be made to the statement of the defendant Heinz Schubert who not only served as adjutant to Ohlendorf in the field from October 1941 to June 1942, but who continued in the same capacity of adjutant in the RSHA, Office Amt III B, for both Ohlendorf and Dr. Hans Emlich, until the end of 1944. If there was any question about the correctness of the figures, this is where the question would have

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been raised, but Schubert expressed no doubt nor did he say that these individuals who were momentarily informed in the statistics entertained [sic] the slightest doubt about them in any way.

Schubert showed very specifically the care which was taken to prepare the reports and to avoid errors:

[Begin block quote]

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

[end block quote]

The defendant Blume testified that he completely dismissed the thought of ever filing a false report because he regarded that as unworthy of himself.

THE PRESIDENT: The Tribunal will now be in recess fifteen minutes.

THE MARSHAL: The Tribunal will be in recess until 11:15 o'clock.

(recess)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Judge Dixon continues with the reading of the opinion and judgment.

JUDGE DIXON: Then, the actual figures mentioned in the reports, staggering though they are, do by no means tell the entire story. Since the objective of the Einsatzgruppen was to exterminate all people falling in the categories announced in the Fuehrer-Order, the completion of the job in any given geographical area was often simply announced with the phrase: "There is no longer any Jewish population." Cities, towns and villages were combed by the kommandos and when all Jews in that particular [sic] community were killed, the report-writer laconically telegraphed or wrote to Berlin that the section in question was "freed of Jews". Sometimes the extermination area covered a whole country like Esthonia or a large territory like the Crimea. In determining the numbers killed in a designation of this character one needs merely to study the atlas and the census of the period in question. Sometimes the area set aside for an execution operation was arbitrarily set according to kommandos. Thus one finds in the reports such entries as: "The fields of activity of the kommandos is freed of all Jews."

And then there were the uncounted thousands who dies [sic] a death pre-meditated [sic] by the Einsatz units without their having to do the killing. When Jews were herded into a few miserable houses which were fenced off and called a "ghetto", this was incarceration -- but incarceration with-out [sic] a prison warden to bring them food. The reports make it abundantly clear that in these ghettos death was rampant, even before the Einsatz units began the killing off of the survivors. When, in a given instance, all male Jews and Jewesses over the age of 12 were executed, there re-mained [sic], of course, all the children under 12. They were doomed to per-ish [sic] Then there were those who were worked to death. All these fatal-ities [sic] are unmistakably chronicled in the Einsatz Reports, but do now show up in their statistics.

In addition, it must be noted that there were other vast numbers of

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victims of the Einsatzgruppen who did not fall under the executing rifles. In many cities, towns and provinces hundreds and thousands of fellow-citizens of those slain fled in order to avoid a similar fate. Through malnutrition, exposure, lack of medical attention and particularly, if one thinks of the aged and the very young, of ex-haustion [sic], most if not all of those refugees perished. These figures, of course do not appear in the Einsatzgruppen Reports, but the criminal responsibility for their deaths falls upon the Fuehrer-Order program as much as the actual shooting deaths.

#### Employment as Labor Before Execution

At times, part of the Jewish population in a given community was temporarily spared, not for humanitarian reasons, but for economic purposes. Thus, a report from Esthonia specifies:

[Begin block quote]

"The arrest of all male Jews of over 16 years of age has been nearly finished. With the exception of the doctors and the Elders of the Jews who were appointed by the Special Kommandos, they were executed by the Self-Protection Units under the control of the Special [sic] Detachment 1 a. Jewesses in Pernau and Reval of the age groups from 16 to 60 who are fit for work were arrested and put to peat-cutting or other labor." (L-180)

[end block quote]

In Lithuania, however, the executions went so fast that there was a great shortage of doctors for the non-Jewish population:

[Begin block quote]

"More than 60% of the dentists were Jews; more than 50% of the other doctors as well. The disappearance of these brings about an extreme shortage of doctors which cannot be overcome even by bringing in doctors from the Reich." (L-180)

[end block quote]

A report from the Ukraine in September 1941 recommends that the Jews be killed by working and not by shooting:

[Begin block quote]

"There is only one possibility which the German ad-ministration [sic] in the Generalgouvernement has neglected [sic] for a long time: Solution of the Jewish problem [sic] by extensive labor utilization of the Jews. This will result in a gradual liquidation of the Jewry -- a development, which corresponds to the economic conditions of the country.

(NO-3151)

[end block quote]

In the cities of Latvia, German agencies used Jews as forced un-paid [sic] manpower, but there was always the danger that, despite these

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economic advantages to the Germans, the security police would shoot the working Jews.  
(NO-3146)

Einsatzgruppe C reports in September 1941:

[Begin block quote]

"Difficulties have arisen, in so far as Jews are often the only skilled workers in certain trades. Thus, the only harness-makers and the only good tailors at Nowo-Ukrainka are Jews. At other places also only Jews can be employed for carpentry and locksmith work.

"In order not to endanger reconstruction and the repair work also for the benefit of transient troop units, it has become necessary to exclude provisionally especially the older Jewish skilled workers from the executions."  
(NO-3146)

[end block quote]

In a certain part of the Ukraine, described as between Krivoi-Rog and Dnepropetrovsk, collective farms, known as Colchoses, were found to be operated by Jews. They were described in the report as being of low intelligence but since they were good workers the einsatz commander [sic] did not liquidate them. However, the report goes on to say that the einsatz commander was satisfied with merely shooting the Jewish managers. (NO-3153)

The Nazi Commissioner-General for White Ruthenia, reporting in July 1942, expressed quite frankly his desire to strike down all Jews in one murderous stroke. However, he was willing to stay his arm temporarily [sic] until the requirements of the Wehrmacht should be satisfied:

[Begin block quote]

"I myself and the SD would certainly much prefer that the Jewish population in the District General of White Ruthenia should be eliminated once and for all when the economic requirements of the Wehrmacht have fallen off. For the time being, the necessary requirements [sic] of the Wehrmacht who is the main employer [sic] of the Jewish population are still being considered."  
(3428-PS)

[end block quote]

Operation Report No. 11, dated July 3, 1941, also explains that in the Baltic region the Wehrmacht is not "for the time being" in a position to dispense with the manpower of the Jews still available and fit for work. (MP-4537)

It must not be assumed, however, that once being assigned to work the Jews were free from molestation. Einsatzgruppe B, reporting on affairs in Witebsk, declared:

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[Begin block quote]

"By appointed Jewish Council, so far about 3,000 Jews registered. Badges for Jews introduced. At present they are being employed with clearing rubble [sic]. For deterrent, 27 Jews, who had not come to work, were publicly shot in the streets. (NO-2954)

[end block quote]

One report-writer, describing conditions in Esthonia, complained that as the Germans advanced, the Esthonians arrested Jews but did not kill them. He shows the superior methods of the Einsatzgruppe:

[Begin block quote]

"Only by the Security Police and the SD were the Jews gradually executed as they became no longer required for work." (2273-PS)

[end block quote]

He then adds as an obvious deduction:

[Begin block quote]

"Today there are no longer any Jews in Esthonia."

[end block quote]

Just as a heartless tradesman may work a superannuated horse un-til [sic] he has drained from its body the last ounce of utility, so did the action unit in Minsk dispose of the Jews:

[Begin block quote]

"In Minsk itself--exclusive of Reich Germans -- there are about 1,800 Jews living, whose shooting must be post-poned [sic] in consideration of their being used as labor." (2273-PS)

[end block quote]

In White Ruthenia the kommando leaders were instructed on orders of Heydrich to suspend the killing of Jews until after they had brought in the harvest.

#### Instigation to Pogroms

Certain Einsatzkommandos committed a crime which, from a moral point of view, was perhaps even worse than their own directly committed [sic] murders, that is, their inciting of the population to abuse, mal-treat [sic] and slay their fellow citizens. To invade a foreign country, seize innocent inhabitants and shoot them is a crime, the mere state-ment [sic] of which is its own condemnation. But to stir up passion, hate, violence and destruction among the people themselves, aims at breaking the moral backbone, even of those the invader chooses to spare. It sows seeds of crime which the invader intends to bear continuous fruit,

even after he is driven out.

On the question of criminal knowledge it is significant that some of those responsible for these shameless crimes endeavored to keep them secret. SS-Brigadier General Stahlecker, head of Einsatzgruppe A, re-peating [sic] on activities of Einsatzgruppe A, stated in October 1941 that it was the duty of his Security Police to set in motion the passion of the population against the Jews. "It was not less important", The [sic] report continued,

[Begin block quote]

"In view of the future to establish the unshakable and provable fact that the liberated population themselves took the most severe measures against the Bolshe-vist [sic] and Jewry enemy quite on their own, so that the directions by German author-ities [sic] could not be found out." (L-180)

[end block quote]

In Riga this same Stahlecker reported:

[Begin block quote]

"Similarly, native anti-Semitic forces were included to start pogroms against Jews during the first hours after cap-ture, though this inducement proved to be very difficult. Following our ord-ers [sic], the Security Police was determined to solve the Jewish question with all possible means and most decisively. but it was desirable that the Security Po-lice [sic] should not put in an immediate ap-pearance [sic], at least in the beginning, since the extraordinarily harsh measures were apt to stir even German circles. It had to be shown to the world that the na-tive [sic] population itself took the first ac-tion [sic] by way of natural reaction against the suppression by Jews during several decades and against the terror exercised by the Communists during the preceding period." (L-180)

[end block quote]

Stahlecker was surprised and disappointed that in Lithuania it was not so easy to start pogroms against the Jews. However, after certain prodding and assistance, results were attained. He reports:

[Begin block quote]

"Klimatis, the leader of the partisan unit, mentioned above, who was used for this pur-pose [sic] primarily, succeeded in starting a po-grom [sic] on the basis of advice given to him by a small advanced detachment acting in Kowno, and in such a way that no German order or German instigation was noticed from the out-side [sic]. During the first pogrom in the night from 25 to 26 June the Lithuanian partisans did away with more than

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1,500 Jews, set fire to several synagogues or destroyed them by other means and burn-ed [sic] down a Jewish dwelling district con-sisting [sic] of about 60 houses. During the following nights about 2,300 Jews were made harmless in a similar way. In other parts of Lithuania similar actions fol-lowed [sic] the example of Kowno, though smaller and extending to the Communists who had been left behind." (L-180)  
[end block quote]

In working up special squads to initiate and carry through po-groms [sic] in Lithuania and Latvia, Stahlecker made it a point to select men who for personal reasons had a grudge against the Russians. Somehow these squads were then made to believe that by

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killing Jews they were avenging themselves on the Russians for their own griefs.

Activity and Situation Report No. 6, prepared in October 1941, complained that Einsatz units operating in Estonia could not provoke "spontaneous, anti-Jewish demonstration with ensuing pogroms" because "adequate enlightenment [sic] was lacking". However, as stated before, not everything was lost because under the direction of the Einsatzgruppe of the Security Police and Security Service, all male Jews over the age of 16, with the exception of doctors and Jewish Elders, were arrested and killed. The report then states: "At the conclusion of the operation there will be only 500 Jewesses and children left in the Ostland".

Hermann Friedrich Graebe, manager and engineer in charge of a German building firm in Sdolbunow, Ukraine, has described in graphic language just how a pogrom operates. When he heard that a pogrom was being incubated he called on the commanding officer of the town, SS-Sturm-bannfuehrer [sic] Putz [sic], to ascertain if the story had any basis in fact since he, Graebe, employed some Jewish workers who he wished to protect. Sturmbannfuehrer Putz [sic] denied the rumors. Later, however, Graebe learned from the Area Commissioner's deputy, Stabsleiter Beck, that a pogrom was actually in the making but he exacted from Graebe the promise not to disclose the secret. He even gave Graebe a certificate to protect his workers from the pogrom. This amazing document reads:

[Begin block quote]

"Mssrs. JUNG

R o w n o

The Jewish workers employed by your firm are not affected by the pogrom. You must transfer them to their new place of work by Wednesday, 15 July 1942, at the latest.

From the Area Commissioner Beck"

[end block quote]

That evening the pogrom broke. At ten o'clock SS-men and Ukrainian militia surged into the Ghetto, forcing doors with beams and crossbars. Let Graebe tell the story in his own words:

[Begin block quote]

"The people living there were driven on to the street just as they were, regardless of whether they were dressed or in bed. Since the Jews in most cases

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refused to leave their houses and resisted, the SS and militia applied force. They finally succeeded, with strokes of the whip, kicks and blows, with rifle butts in clearing the houses. The people were driven out of their houses in such haste that small children in bed had been left behind in several instances. In the street women cried out for their children and children for their parents. That did not prevent the SS from driving the people along the road, at running pace, and hitting them, until they reached a waiting freight train.

"Car after car was filled, and the screaming of women and children, and the cracking of whips and rifle shots resounded unceasingly. Since several families or groups had barricaded themselves in especially strong buildings, and the doors could not be forced with crowbars or beams, these houses were now blown open with handgrenades. Since the Ghetto was near the railroad tracks in Rowno, the younger people tried to get across the tracks and over a small river to get away from the Ghetto area. As this stretch of country was beyond the range of the electric lights, it was illuminated by signal rockets.

"All through the night these beaten, hounded and wounded people moved along the lighted streets. Women carried their dead children in their arms, children pulled and dragged their dead parents by the arms and legs down the road toward the train. Again and again the cries 'Open the door! Open the door!' echoed through the Ghetto."  
[end block quote]

Despite the immunity guaranteed his Jewish workers by Commissioner Beck, seven of them were seized and taken to the collecting point. Graebe's narrative continues:

[Begin block quote]

"I went to the collecting point to save these seven men. I saw dozens of corpses of all ages and both sexes in the streets I had to walk along. The doors of the houses stood open, windows were smashed. Pieces of clothing, shoes, stockings, jackets, caps, hats, coats, etc. were lying in the street. At the corner of the house lay a baby, less than a year old with his skull crushed. Blood and brains were spattered over the house wall and covered the area immediately around the child. The child was dressed only in a little skirt. The commander, SS Major Puetz, was walking up and down a row of about 80-100 male Jews who were crouching on the ground. He had a heavy dog whip in his hand. I walked up to him, showed him the written permit of Stabs-leiter [sic] Beck and demanded the seven men whom I recognized among those who were crouching on the ground. Dr. Puetz was very furious about Beck's concession and nothing could persuade him to release the seven men. He made a motion with his hand encircling the square and said that anyone who was once here would not get away. Although he was very angry with Beck, he ordered me to take the people from 5 Bahnhof-strasse [sic] out of Rowno by 8 o'clock at the latest.

"When I left Dr. Puetz, I noticed a Ukrainian farm cart, with two horses. Dead people with stiff limbs were lying on the cart, legs and arms projected over the side boards.

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The cart was making for the freight train. I took the remaining 74 Jews who had been locked in the house to Sdolbunow."  
[end block quote]

5,000 Jews were massacred in this pogrom.

Special Kommando 7 which, as heretofore indicated, had shot the 27 Jews on the streets of Witebsk, announced in its report:

[Begin block quote]  
"The Ruthenian part of the population has approved of this. Large-scale execution of Jews will follow immediately."  
[end block quote]

The active cooperation of the action units with the accomplishment of pogroms is evidenced by one report where the Sipo and SD want some of the credit for the murders committed:

[Begin block quote]  
"As a result of the pogroms carried out by the Lithuanians [sic], who were nevertheless substantially assisted by Sipo and SD, 3,800 Jews in Kauen and 1,200 in the smaller town were eliminated."  
[end block quote]

In some areas special groups were set up:

[Begin block quote]  
"In addition to this auxiliary police force, two more independent groups have been set up for the purpose of carrying out pogroms. All synagogues have been destroyed; 400 Jews have already been liquidated."  
[end block quote]

THE PRESIDENT: The presiding judge continues with the reading: Heading,

Appropriation of Personal Effects and Valuables

While no explanation was ever given as to why the Nazis condemned the Jews to extermination, the public record shows that they counted on substantial material advantage. The levying of enormous indemnities against persons considered by the Nazis as Jews or half-Jews and the expropriation of their property in Germany as well as in the countries occupied by it, brought huge returns to the coffers of the Reich. And even in the dread and grim business of mass slaughter, a definite profit was rung up on the Nazi cash register. For example, Situation Report No. 73, dated 4 September 1941 reporting [sic] on the executions carried out by a single unit, Einsatzkommando 8, makes the cold commercial announcement:

[Begin block quote]  
"On the occasion of a purge at Tscherven 125,880 rubels were found on 139 liquidated Jews and were confiscated. This brings the total of the money confiscated by Einsatz-

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kommando 8 to 1,510,399 rubels up to the present day."  
[end block quote]

Situation Report No. 133, dated 14 November 1941, shows the progress made by this unit in a little over two months:

[Begin block quote]

"During this period covered by this report, Einsatzkommando 8 confiscated a further 491,705 rubels as well as 15 gold rubels They were entered into the ledgers and passed to the Administration of Einsatzkommando 8. The total amount of rubels so far secured by Einsatzkommando 8 now amounts to 2,511,226 rubels."

[end block quote]

On October 1941, Situation Report No. 125 gave Einsatzkommando 7b credit for 46,700 rubels taken from liquidated Jews, Einsatzkommando 9 credit for 43,825 rubels and "various valuables in gold and silver", and recorded that Einsatzkommando 8 had increased the amount of its loot to the sum of 2,019,521 rubels

Operation and Situation Report No. 31, dated July 1941, rendering an account of operations in Lithuania, recorded the taking of "460,000 rubels in cash as well as a large number of valuables" from liquidated Jews. The report stated further:

[Begin block quote]

"The former Trade Union Building in Wilna was secured for the German Labor Front (DAF) at their request, likewise the money in the trade union accounts in banks, totalling 1.5 million rubels."

[end block quote]

Although engaged in an ideological enterprise, supposedly undertaken on the highest ethnic and cultural level, executants of the program were not above the most petty and loathsome thievery. In the liquidation [sic] of Jews in Zhitomir and Kiev the reporting Einsatzkommando collected 137 trucks full of clothing. The report does not say whether the clothing was torn from the victims while they were still alive or after they had been killed. This stolen raiment was turned over to the National Socialist People's Welfare Organization.

One of the defendants related how during the winter of 1941 he was ordered to obtain furcoats for his men, and that since the Jews had so much winter clothing, it would not matter much to them if they gave up a few fur coats. In describing an execution which he attended, the defendant was asked whether the victims were undressed before the execution. He replied: "No, the clothing wasn't taken - this was a

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fur coat procurement operation."

A document issuing from Einsatzgruppe D headquarters (February 1942) speaks of the confiscation of watches in the course of anti-Jewish activities. The term "confiscate" does not change the legal or moral character of the operation. It was plain banditry and highway robbery. The gold and silver watches were sent to Berlin, others were handed over to the Wehrmacht (rank and file) and to members of the Einsatz-gruppe [sic] itself "for a nominal price" or even gratuitously if the circumstances warranted that kind of liberality with the blood-stained articles. This report also states that money seized was transmitted to the Reich Bank, except for a small amount required for routine purposes (wages etc.). In other words the executioners paid themselves with money taken from their victims.

The same Einsatzgruppe, reporting on the hard conditions under which some Ethnic German families were living in Southern Russia, showed that it helped by placing Jewish homes, furniture, children's beds, and other equipment at the disposition of the Ethnic Germans. These houses and equipment were taken from liquidated Jews.

Einsatzgruppe C, proudly reporting on its accomplishments in Korowo (September 1941), stated that it organized a regular police force to clear the country of Jews as well as for other purposes. The men enlisted for this purpose, the report goes on to say, received "their pay from the municipality from funds seized from Jews".

Whole villages were condemned, the cattle and supplies seized, (that is stolen), the population shot and then the villages themselves destroyed.

Villages were razed to the ground because of the fact, or under the shallow pretense, that some of the inhabitants had been aiding or lodging partisans.

The reports abound with itemization of underwear, clothing, footwear, cooking-utensils, etc., taken from the murdered Jews.

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In Poltava, 1,538 Jews were shot and their clothing was handed over to the mayor who, according to the report covering this action, "gave special priority to the Ethnic Germans when distributing it".

Even those who were destined for death through the gas vans had to give up their money and valuables and sometimes their clothes before breathing in the carbon monoxide.

Money and valuables taken from the victims were sent to Berlin to the Reich Ministry of Finance. When a Jewish Council of Elders was appointed to register the Jews for the ostensible purpose of resettlement [sic], the Council was also requested to submit the financial situation [sic] of the Jews. This facilitated the despoilation [sic] of their possessions which went hand in hand with their execution.

### Prisoners of War

The extermination program on racial and political grounds also extended to prisoners of war. Even in the first weeks of Ger-many's [sic] war against Russia, large numbers of civilians from the invaded areas were indiscriminately thrown into prisoner of war camps, run by the P.O.W. department of the High Command of the Wehrmacht. On 17 July 1941, Heydrich issued Operational Order No. 8, which contained "directives" for the Einsatz units "detailed to permanent P.W. camps (Stalags) and Transit camps (Dulags)". These directives not only grossly violated the provisions of the Hague Regulations on prisoners of war and civilians in belligerently occupied territories and of century-old rules and customs of warfare, but outraged every principle of humanity. They provided for nothing less than the cold-blooded mass-murder of prisoners of war, and of civilians held in P.W. camps. The directives state as their "purpose":

[Begin block quote]

"The Wehrmacht must immediately free it-self [sic] of all those elements among the prisoners [sic] of war who must be regarded as Bolshevist influence. The special situa-tion [sic] of the campaign in the east, there-fore [sic], demands special measures (Italics original) which have to be carried out in a spirit free from bureaucratic and ad-ministrative [sic] influences, and with an eager-ness [sic] to assume responsibility."

[end block quote]

The directives instruct the Einsatz units as to which cate-gories [sic] of persons to seek out "above all". This list mentions in de-tail [sic] all categories and types of Russian Government officials, all influential communist party officials, "the leading personalities of the economy", "the Soviet Russian intellectuals", and as a separate category -- the category which was again to yield the largest number of victims of this "action" --

"All Jews"

It, in fact, emphasized that in --

[Begin block quote]

"taking any decisions, the racial origin has to be taken into consideration."

[end block quote]

Concerning executions, the directives specified:

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[Begin block quote]

"The executions must not be carried out in the camp itself or in its immediate neighborhood. They are not public and are to be carried out as inconspicuously as possible."

[end block quote]

Further:

[Begin block quote]

"In order to facilitate the execution of the purge, a liaison-officer is to be sent to Generalmajor von Hindenburg, Commander-in-Chief of the P.W. camps in the Army Corps Area, East Prussia, in Koenigsberg, Prussia, and to General-leutnant [sic] Herrgott, Commander-in-Chief of the P.W. camps in the General Gouvern-ment [sic] in Kieloe."

[end block quote]

Under this program doctors, if found in the POW camps, were doomed either because they were "Russian intellectuals" or because they were Jews. However, by 29 October 1941, Heydrich found it necessary to rule:

[Begin block quote]

"Because of the existing shortage of physicians and medical corps personnel in the camps, such persons, even if Jews, are to be excluded from the segregation and to be left in the P.W. camps, except in particularly well-founded cases."

[end block quote]

Another passage in this order of Heydrich vividly demon-strates [sic] to what extent the Reich went officially in flouting the most basic rules of international law and the principles of humanity:

[Begin block quote]

"The chiefs of the Einsatzgruppen decide on the suggestions for execution on their own responsibility and give the Sonder-kommandos [sic] the corresponding order."

[end block quote]

It is apparent that all those involved in this program were aware of its illegality:

[Begin block quote]

"This order must not be passed on in writing -- not even in the form of an excerpt. District commanders of Transit camps must be notified verb-ally [sic]."

[end block quote]

It is to the credit of an occasional army officer that he objected to this shameful and degrading repudiation of the rules of war. In one report we find:

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[Begin block quote]

"As a particularly clear example the conduct of a camp commander in Winniza is to be mentioned who strongly ob-jected [sic] to the transfer of 362 Jewish prisoners of war carried out by his deputy and even started court martial proceedings against the deputy and two other officers."

[end block quote]

General Fieldmarshal von Reichenau, commanding the Sixth Army, however, was no so chivalrous as the officer indicated. The report states further:

[Begin block quote]

"Generalfeldmarshal von Reichenau has, on 10 October 1941, issues an order which states clearly that the Russian soldier has to be considered on prin-ciple [sic] a representative of Bolshevism and has also to be treated accordingly by the Wehrmacht."

[end block quote]

Perhaps the nadir in heartlessness and cowardice was reached by these murder groups when one of the kommandos brutally ikilled helpless, wounded prisoners of war. Einsatzgruppe C, report-ing [sic] (November 1941) on an execution performed by Sonderkommando 4a, stated:

[Begin block quote]

.....the larger part were again Jews, and a considerable part of these were again Jewish prisoners of war who had been handed over by the Wehrmach. At Borispol, at the request of the com-mander [sic] of the Borispol POW-Camp, a platoon of Sonderkommando 4a shot 752 Jewish prisoners of war on 14 October 1941 and 357 Jewish prisoners of war on 10 October 1941, amongst then some commissioners and 78 ounded Jews, handed over by the camp physician."

[end block quote]

PRESIDENT: The next heading,

#### METHODS OF EXECUTION

How were the executions conducted? What was the modus operandi? On this subjeht history need not remain in the dark. Several of the executioners have themselves cleared away all mystery as to just how they accomplished their extraordinary deeds. Defendant Paul Blobel, who stated that his sonderkommando killed between 10,000 and 15,000 people, described in some detail one performance he per-sonally [sic] directed. Specifying that from 700 to 1,000 persons were

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involved in this execution, he related how he divided his unit into shooting squads of 30 men each. Then the mass graves were prepared --

[Begin block quote]

"Out of the total number of the persons designated for the execution, 15 men were led in each case to the brink of the mass grave where they had to kneel down, their faces turned toward the grave. At that time, clothes and valuables were not yet collected. Later on this was changed.....

"When the men were ready for the execution one of my leaders who was in charge of this execution squad gave the order to shoot. Since they were kneeling on the brink of the mass grave, the victims fell, as a rule, at once into the mass grave.

"I have always used rather large execution squads, since I declined to use men who were specialists for shots in the neck (Genickschusspezialisten). Each squad shot for about one hour and was then re-placed [sic]. The persons which still had to be shot were assembled near the place of the execution, and were guarded by members of those squads, which at that moment did not take part in the executions."

[end block quote]

In some instances, the slain persons did not fall into the graves, and the executioners were then compelled to exert themselves to complete the job of internment. A method, however, was found to avoid this additional exertion by simply having the victims enter the ditch or grave while still alive. An SS eye-witness explained this procedure:

[Begin block quote]

"The people were executed by a shot in the neck. The corpses were buried in a large tank ditch. The candidates for execution were already standing or kneeling in the ditch. One group had scarcely been shot before the next came and laid themselves on the corpses there."

[end block quote]

The defendant Biberstein also verified this with his state-ment [sic]:

[Begin block quote]

"The shootings took place in a sand pit, in which the bodies afterwards were buried."

[end block quote]

The defendant Ott, who stated his kommando conducted 80 10 100 executions, told of one winter execution where the corpses were temporarily buried in the snow.

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The business of executions was apparently a very efficient business-like procedure, illustrated by Report No. 24, dated 16 July 1941, which succinctly stated:

[Begin block quote]

"The arrested Jewish men are shot without ceremony and interred in already prepared graves, the EK 1b having shot 1,150 Jews at Duenaburg up to now."

[end block quote]

Some of the kommando leaders, however, were a little more ceremonious. These executioners called off the names of the victims before they were loaded on the truck which was to take them to their death. This was their whole judicial trial -- the indictment, the evidence, and the sentence -- a roll call of death.

There were different techniques in execution. There were Einsatz commanders who lined up their victims kneeling or standing on the edge of the grave, facing the grave, others who had the executees stand with their backs to the grave, and still others, as indicated, who had their victims stand in the grave itself. On defendant des-cribed [sic] how the victims lined up at the edge of the ditch and, as they fell, another row stepped into position so that, file after file, the bodies dropped into the pit on to the bleeding corpses beneath.

Hardly ever was a doctor present at the executions. The responsibility of the squad leader to make certain the victims were dead before burying them was simply discharged by a glance to deter-mine [sic] whether the bullet-ridden bodies moved or not. Since in most cases the huddled and contorted bodies were strewn and piled in a trench at least six feet deep, only one more horror is added in contemplating the inadequacy of an inspection made from the rim of a ditch as to whether life in the dark ground below was extinct or not.

In fact one defendant did not exclude the possibility that an executee could only seem to be dead because of shock or temporary unconsciousness. In such case it was inevitable he would be buried alive.

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The defendant Blobel testified that his firing squad always aimed at the heads of the victims. If, he explains, the victim was not hit, then one member of the firing squad approached with his rifle to a distance of three paces and shot again. The scene of the victim watching the head-hunter approaching with his rifle and shoot-ing [sic] at him at three paces represents a horror for which there is no language.

Some kommando leaders, as we have seen, bade their victims lie down on the ground, and they were shot in the back of the neck. But, whatever the method, it was always considered honorable, it was always done in a humane and military manner. Defendant after de-fendant [sic] emphasized before the Tribunal that the requirements of militariness and humaneness were meticulously met in all executions. Of course, occasionally, as one defendant described it, "the manner in which the executions were carried out caused excitement and dis-obedience [sic] among the victims, so that the kommandos were forced to restore order by means of violence:, that is to say, the victims were beaten. Undoubtedly always, of course in a humane and military manner.

Only rarely, however, did the victims react to their fate. Commenting on this phase of the executions, one defendant related how some victims, destined to be shot in the back, turned around and bravely faced their executioners but said nothing. Almost invariably they went to their end silently, and some of the defendants commended on this. The silence of the doomed was mysterious, it was frighten-ing [sic]. What did the executioners expect the victims to say? Who could find the words to speak to this unspeakable assault on humanity, this monstrous violence upon the dignity of life and being? They were silent. There was nothing to say.

It was apparently a standing order that executions should not be performed publicly, but should always take place far removed from the centers of population. A wooded area was usually selected

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for this grim business. Sometimes these rules were not observed. Document NOKW-641 relates an execution which took place near houses whose occupants became unwilling witnesses to the macabre scene. The narrative states:

[Begin block quote]

"A heavy supply traffic for the soldiers was also going on in the main street, as well as traffic of evacuated civilians. All events could be followed from the window of the battalion's office, the moaning of the people to be shot could be heard, too. The following morning, a lot of clothing was lying about the place concerned and surrounded by in-quisitive [sic] civilians and soldiers. An order to destroy the clothing was given immediately."

[end block quote]

The business man, Friedrich Graebe, already quoted before, has left a moving account of a mass execution witnessed by him in October 1942 near Dubmo, an account which because of its authoritative [sic] description deserves recording in its entirety in this Opinion:

[Begin block quote]

"Moennikes and I went direct to the pits. Nobody bothered us. Now I heard rifle shots in quick succession, from behind one of the earth mounds. The people who had got off the trucks -- men, women and children of all ages -- had to undress upon the orders of an SS-man, who carried a riding or dog whip.

"They had to put down their clothes in fixed places, sorted according to shoes, top clothing and underclothing. I saw a heap of shoes of about 800 to 1,000 pairs, great piles of underlinen and clothing. Without screaming or weeping these people undressed, stood around in family groups, kissed each other, said farewells and waited for a sign from another SS-man, who stood near the pit, also with a whip in his hand.

"During the 15 minutes that I stood near the pit I heard no complaint or plea for mercy. I watched a family of about 8 persons, a man and woman, both about 50 with their children of about 1, 8 and 10, and two grown up daughters of about 20 to 24. An old woman with snow-white hair was holding the one year old child in her arms and singing to it, and tickling it. The child was cooing with delight. The couple were looking on with tears in their eyes. The father was holding the hand of a boy about 10 years old and speaking to him softly; the boy was fighting his tears. the father pointed toward the sky, stroked his head, and seemed to explain some-thing [sic] to him. At that moment the SS-man at the pit shouted something to his comrade. The latter counted off about 20 persons and instructed them to go behind the earth mound. Among them was the family which I have mentioned.

"I well remember a girl, slim and with black hair, who as she passed close to me, pointed to herself and said, '23'. I walked around the mound and found myself con-fronted [sic] by a tremendous grave. People were closely wedged together and lying in top of each other so that only their heads were visible. Nearly all had blood running over their shoulders from their heads. Some of the people shot were still moving. Some were lifting their arms and turning their heads to show that they were still alive. The pit was already 2/3 full. I estimated that it already contained about 1,000 people. I looked for the man who did the shooting. He was an SS-man who sat at the edge of the narrow end of the pit, his feet dangling into the pit. He had a tommy gun on his knees and was amoking [sic] a cigarette. The people, completely naked, went down some steps which were cut in the clay wall of the pit and clambered over the heads of the people lying there, to the place to which the SS-men directed them. They lay down in front of the dead or injured people; some caressed those who were still alive and spoke to them in a low voice. The I heard a series of shots.

"I looked into the pit and saw that the bodies were twitching or the heads lying already motionless on top of the bodies that lay before them. Blood was running down their necks. I was surprised that I was not ordered away, but I saw that there were two or three postmen in uniform nearby. The next batch was approach-ing [sic] already. The went down into the pit, lined them-selves [sic] up against the previous victims and were shot. When I walked back, round the mound, I noticed another truckload of people which had just arrived. This time it included sick and infirm persons. An old, very thin woman with terribly thin legs was undressed by the others who were already naked, while two people held her up. The woman appeared to be paralyzed. The naked people carried the woman around the mound. I left with Moennikes and drove in my car back to Dubno.

"On the morning of the next day, when I again visited the site, I saw about 30 naked people lying near the pit - about 30 to 50 meters away from it. Some of them were still alive; they looked straight in front of them with a fixed stare and seemed to notice neither the chilliness

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of the morning nor the workers of my firm who stood around. A girl of about 20 spoke to me and asked me to give her clothes and help her escape. At that moment we heard a fast car approach, and I noticed that it was an SS detail. I moved away to my site. Ten minutes later we heard shots from the vicinity of the pit. The Jews still alive had been ordered to throw the corpses into the pit; - then they had them-selves [sic] to lie down in this to be shot in the neck."  
[end block quote]

The tragedy of this scene is lost entirely on the executioner. He does his job as a job. So many persons are to be killed, just as a carpenter contemplates the construction of a shed. He must consider the material he has on hand, the possibilities of rain, etc. Only by psychologically adjusting oneself to such a state of affairs can one avoid a shock when one comes to a statement in a report very casually written, namely: "Until now, it was very difficult to carry out executions because of weather conditions."

A report from Einsatzgruppe A, discussing events which occurred in the winter of 1941-42, remarks:

[Begin block quote]  
"The Commander in White Russia is instructed to liquida-te [sic] the Jewish question as soon as possible, despite the difficult situation. However, a period of about 2 months is still required - according to the weather."  
[end block quote]

It is all this same type of studied indifference that causes another report-writer to chronicle simply: "Hostages are taken in each new place, and they are executed on the slightest reason."

One of the Einsatzgruppen leaders complains that only 96 Jews were executed at Grodno and Lida during the first days. He manifests his displeasure and declares: "I gave orders that considerable intensification was to take place there."

Judge Speight will continue with the reading of the judgment.

JUDGE SPEIGHT: Adolf Ruebe, a former SS-Hauptscharfuhrer [sic], declared in an affidavit that now and then there were executioners who devised original methods for killing their victims:

[Begin block quote]  
"On the occasion of an exhumation in Minsk, in Novem-ber [sic] 1943, Obersturmfuehrer Heuser arrived with a kommando of Latvians. They brought eight Jews, men and women, with them. The Latvians guarded the Jews, while Harter and Heuser erected a funeral pyre with their own hands. The Jews were bound, put on the

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pile alive, drenched with gasoline and burnt."  
[end block quote]

It was stated in the early part of this Opinion that women and children were to be executed with the men so that Jews, Gypsies and so-called asocials would be exterminated for all time. In this respect, the Einsatzgruppen leaders encountered a difficulty they had not anticipated. Many of the enlisted men were husbands and fathers, and they winced as they pulled their triggers on these helpless creatures who reminded them of their own wives and offspring at home. In this emotional disturbance they often aimed badly and it was necessary for the kommando leaders to go about with a revolver or carbine, firing into the moaning and writhing forms. This was hard on the executioners, personnel experts reported to the RSHA in Berlin, and to relieve their emotional sensitivity, gas vans were sent to the rescue.

These strange vehicles carried spurious windows and curtains and otherwise externally resembled family trailers. Women and children were lured into them with the announcement that they were to be resettled and that they would meet their husbands and fathers in the new place. Once inside the truck, the doors automatically and hermetically closed, the driver stepped on the accelerator, and monoxide gas from the engine streamed in. By the time the van reached its destination, which was an anti-tank ditch outside the town, the occupants were dead. And here they joined their husbands and fathers who had been killed by rifles and carbines in the hands of the Einsatzkommandos.

As distressing as may be to the average person the mere thought image of these murder wagons, they were simply articles of equipment so far as the Einsatzgruppen were concerned. Communications went back and forth, correspondence was written about these vans with the casualness which might accompany a discussion on coal trucks. For instance, on May 16, 1942, SS-Untersturmfuehrer Dr. Becker, wrote SS-Obersturmbannfuehrer Rauff, pointing out that vans could not be

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driven in rainy weather because of the danger of skidding. He, there-fore [sic], posed the question as to whether executions could not be accomplished with the vans in a stationary position. However, this suggestion offered a problem all its own. If the van was not actually set for mobility the victims would realize what was about to happen to them, and this, Becker said, must be avoided so far as possible. He thus recommended: "There is only one way left. To load them at the collecting point and to drive them to the spot". Becker then complained that members of the kommando should not be required to unload the corpses:

[Begin block quote]

"I brought to the attention of the commanders of those S.K. concerned, the immense psychological injuries and damages to their health which that work can have for those men, even if not immediately, at least later on. The men complained to me about headaches which appeared after each unloading."

[end block quote]

Then with regard to the operation of the lethal device itself, Becker says:

[Begin block quote]

"The application of gas usually is not undertaken correct-ly [sic]. In order to come to an end as fast as possible, the driver presses the accelerator to the fullest extent. By doing that the persons to be executed suffer death from suffocation and not death by dozing off as was planned. My directions have now proved that by correct adjustment of the levers death comes faster and the prisoners fall asleep peacefully."

[end block quote]

On June 15, 1942, the commandant of the Security Police and Security Service Ostland wrote the RSHA in Berlin as follows:

[Begin block quote]

"Subject: S-Vans

A transport of Jews, which has to be treated in a special way, arrives weekly at the office of the commandant of the Security Police and the Security Service of White Ruthenia.

"The three S-vans which are there are not sufficient for that purpose. I request assignment of another S-van (5 tons). At the same time I request the shipment of 20 gas hoses for the three S-vans on hand (2 Diamond, 1 Saurer), since the ones on hand are leady already".

[end block quote]

Ever efficient in discharging their homicidal duties, it appears that the Einsatz authorities now even set up a school in this new development of the fine art of genocide. The defendant Biberstein, describing one of these ultra-modern executions, spoke of the driver

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Sackenreuter of Nuremberg "who had been most carefully instructed about the handling of the gas truck, having been through special training courses". Biberstein was satisfied that this method of killing was very efficient because the faces of the dead people were "in no way distorted"; death having come "without any outward signs of spasms." He added that no physician was present to certify that the people were dead because "this type of gas execution guaranteed certain death". Who it was that guaranteed this was not vouchsafed to history.

The murder-vans were constructed in Berlin and then, under their own power, driven to the fields of action. The reports tell of two vans which travelled from Berlin to the Crimea. It would be interesting to know the thoughts of the drivers of these murder-cars as they rolled over half of Europe, through city and country, climbing mountains and penetrating plains, travelling 2,000 kilometers with their gaseous guillotines to kill helpless women and children. One of the drivers was none other than the chauffeur of the arch-murderer Reinhardt Heydrich.

One reads and reads these accounts of which here we can give only a few excerpts and yet there remains the instinct to disbelieve, to question, to doubt. There is less of a mental barrier in accepting the weirdest stories of supernatural phenomena, as, for instance, water running up hill and trees with roots reaching toward the sky, than in taking at face value these narratives which go beyond the frontiers of human cruelty and savagery. Only the fact that the reports from which we have quoted came from the pens of men within the accused organizations can the human mind be assured that all this actually happened. The reports and the statements of the defendants themselves verify what otherwise would be dismissed as the product of a disordered imagination. The record reveals that investigators and evidence analysts have checked and rechecked. Being human they some-times [sic] doubted the correctness of the startling figures appearing in

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the reports. Thus, when one of them came across that statement of Stahlecker that Einsatzgruppe A, of which he was chief, had killed 135,000 human beings in four months, the investigator questioned Otto Ohlendorf if this were possible. Ohlendorf read the statement in question and announced:

[Begin block quote]

"I have seen the report of Stahlecker (Document L-180) concerning Einsatzgruppe A, in which Stahlecker asserts that his group killed 135,000 Jews and Communists in the first four months of the program. I know Stahl-ecker [sic] personally, and I am of the opinion that the document is authentic.

[end block quote]

How can all this be explained? Even when Germany was retreating on all fronts, many troops sorely needed on the battlefield were diverted on this insane mission of extermination. In defiance of military and economic logic incalculable manpower was killed off, property of every description was destroyed - all remained unconsidered as against the insanity to genocide.

Here and there a protest was raised. The SS-Commissioner General for White Ruthenia objected to the executions in his district - not on the grounds of humanity, but because he believed the unbridled murder program was lowering the prestige of Germany.

[Begin block quote]

"Above all, any act lowering the prestige of the German Reich and its organizations in the eyes of the White Ruthenian population should be avoided....I am submitting this report in duplicate so that one copy may be forwarded to the Reich Minister. Peace and order cannot be maintained in White Ruthenia with methods of that sort. To bury seriously wounded people alive who worked their way out of their graves again, is such a base and filthy act that this incident as such should be reported to the Fuehrer and Reich Marshal. The civil administration of White Ruthenia makes very strenuous efforts to win the population over to Germany in accordance with the instructions of the Fuehrer. These efforts cannot be brought in harmony with the methods described herein."

[end block quote]

The report referred to gave a graphic description of the extermination action. It told of the arrival of a Police Battalion with instructions to liquidate all Jews in the town of Sluzk within two days. The Commissioner for the Territory of Sluzk protested that the liquidation of all Jews, which naturally included the tradesmen, would shut down

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the economic life of that area. He asked, at least, for postponement of the executions. The lieutenant in charge of the battalion refused to wait. The report continues:

[Begin block quote]

"For the rest, as regards the executions of the action, I just point out to my deepest regret that the latter bordered already on sadism. The town itself offered a picture of horror during the action. With indescribable brutality on the part of both the German police officers and particularly the Lithuanian partisans, the Jewish people, but also among them White Ruthenians, were taken out of their dwellings and herded together. Everywhere in the town shots were heard, and in different streets the corpses of shot Jews accumulated.... In conclusion I find myself obliged to point out that the police battalion has looted in an unheard of manner during the action, and that not only in Jewish houses but just the same in those of the White Ruthenians. Anything of use such as boots, leather, cloth, gold and other valuables, has been taken away. On the basis of statements of the members of the Armed Forces, watches were torn off the arms of Jews in public, on the street, and rings were pulled off the fingers in the most brutal manner.

"A major of the Finance Department reported that a Jewish girl was asked by the police to obtain immediately 5,000 rubels to have her father released. This girl is said to have actually gone everywhere to obtain the money."

[end block quote]

For a nation at war nothing can be more important than that ammunition [sic] reach the soldiers holding the fighting frontiers. Yet, many vehicles loaded with ammunition for the armed forces were left standing [sic] in the streets of Sluzk because the Jewish drivers, already illegally forced into this service, had been liquidated by the Execution [sic] Battalion. Although the very life of the nation depended on the continued operation of every type of food-producing establishment, 15 of the 26 specialists at a cannery were shot.

The blood bath of Sluzk brought about some interesting correspondence. The Commissioner General inquired of the Reich Minister of Occupied Eastern Territories if the liquidation of Jews in the East was to take place without regard to the economic interests of the Wehrmacht and specialists in the armament industry. The Reich Minister replied:

[Begin block quote]

"Clarification of the Jewish question has most likely been achieved by now through verbal discussions. Economic considerations should fundamentally remain unconsidered in the settlement of the problem."

[end block quote]

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A German inspector of armament in the Ukraine, after a thorough investigation into the Jewish Liquidation Program, reported to General of the Infantry, Thomas, Chief of the Industrial Armament Department, that the project was a big mistake from the German point of view. In the Ukraine he found that the Jews represented almost the entire trade and even a substantial part of the manpower.

[Begin block quote]

"The elimination, therefore, necessarily had far-reaching [sic] economic consequences and even direct consequences FOR THE ARMAMENT INDUSTRY [sic] (Production for supplying [sic] the troops)."

[end block quote]

The report goes on:

[Begin block quote]

"The attitude of the Jewish population was anxious-obliging from the beginning. They tried to avoid everything that might displease the German administration [sic]. That they hated the German administration and army inwardly goes without saying and cannot be surprising. However, there is no proof that Jewry as a whole or even to a greater part was implicated in acts of sabotage. Surely, there were some terrorists or saboteurs among them just as among the Ukrainians. But it cannot be said that the Jews as such represented a danger to the German armed forces. The output produced by Jews who, of course, were prompted by nothing but the feeling of fear, was satisfactory to the troops and the German administration."

[end block quote]

What made the program of extermination particularly satanic was that the executions invariable took place not during the stress and turmoil of fighting or defense action, but after the fighting had ceased:

[Begin block quote]

"The Jewish population remained temporarily unmolested shortly after the fighting. Only weeks sometimes months later, specially detached formations of the police executed a planned shooting of Jews.... The way these actions which included men and old men, women and children of all ages were carried out was horrible. The great masses executed make this action more gigantic than any similar measure taken so far in the Soviet Union. So far about 150,000 to 200,000 Jews may have been executed in the part of the Ukraine belonging to the Reichskommissariat (RK); no consideration was given to the interests of economy."

[end block quote]

In a final appeal to reason this German inspector cries out:

[Begin block quote]

"If we shoot the Jews, let the prisoners of war perish, condemn considerable parts of the urban population to death by starvation and also lose a part of the farming population by hunger during the next year, the question remains unanswered: WHO IN ALL THE WORLD IS THEN SUPPOSED TO PRODUCE ECONOMIC VALUES HERE?"

[end block quote]

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No one answered the question of the German inspector. Nor did any one answer the question of Humanity as to why those oceans of blood and this burning of a continent. Reason, with its partner Conscience, had been lost long ago in the jungle of Nazi greed and arrogance, and so Madness ruled, Hate marched, the sky reddened with the flames of destruction and the World wept - and still weeps.

## T H E L A W

### JURISDICTION

On August 27, 1928 Germany signed and later ratified the general treaty for the Renunciation of War, more generally known as the Kellogg-Briand Pact, wherein sixty-eight nations agreed:

[Begin block quote]

"Article I. The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations to one another.

Article II. The High Contracting Parties agree that the settlement or solution of all disputes or conflicts or whatever nature or whatever origin they may be, which may arise among them, shall never be sought, except by pacific means."

[end block quote]

In spite of this unequivocal universal condemnation of war, the fifth decade of the twentieth century witnessed a conflict at arms of global proportions which wrought such devastation on land and sea and so convulsed organized society that, for many decades yet to come, men, women and children in every land will feel and suffer its consequences.

On August 8, 1945, representatives of Great Britain, France, Russia and the United States met in London and entered into an agreement for the trial of war criminals ascertained to be such. Nineteen other nations expressed their adherence to this agreement.

On September 30, 1946, the International Military Tribunal, created by the London Agreement, after a trial which lasted ten months, rendered a decision which proclaimed that Germany had precipitated World War II and, by violating international commitments and obliga- [sic]

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tions, [sic] had waged aggressive war. The International Military Tribunal, in addition to rendering judgment against specific individuals, declared certain organizations, which were outstanding instruments of Nazism, to be criminal.

On December 20, 1945, the Allied Control Council, composed of representatives of the same four above-mentioned nations and constituting the highest legislative authority for Germany, enacted Law No. 10, concerning "Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Crimes Against Humanity". This Tribunal came into being under the provisions of that Law, but while the Tribunal derives its existence from the authority indicated, its jurisdiction over the subject matter results from International Law valid long prior to World War II.

Defense Counsel have advanced various arguments on the law applicable to this case. In view of their representations and the gravity of the case itself, the various phases of the law will be discussed with more detail than perhaps ordinarily the situation might require.

Under International Law the defendants are entitled to a fair and impartial trial, which the Tribunal has endeavored throughout the long proceedings to guarantee to them in every way. The precepts that every man is presumed innocent until proved guilty has held and holds true as to each and every defendant. The other equally sanctified rule that the Prosecution has the burden of proof and must prove the guilt of the accused beyond a reasonable doubt has been, and is, assured.

This trial opened on September 15, 1947, and the taking of evidence began on September 29. The Prosecution required but two days to present its case in chief because its evidence was entirely documentary. It introduced in all 253 documents. 136 days transpired in the presentation of evidence in behalf of the defendants, and they introduced [sic], in addition to oral testimony, 731 documents. The trial itself was conducted in both English and German and was recorded steno-

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graphically and in both languages. The transcript of the oral testimony consists of more than 6,500 pages. An electric recording of all proceedings was also made. Copies of documents introduced by the Prosecution in evidence were served on the defendants in the German Language.

The Judgment in this case will treat the several defendants separately [sic] in the latter part of the Opinion, but since many items of defense, especially in argumentation, are common to more than one of the defendants they will be discussed collectively to avoid repetition [sic] during the individual treatments. It is to be emphasized that the general discussion and collective description of acts or defenses of defendants need not apply to each and every defendant in the box. Any general reference will necessarily apply to a majority of them but that majority need not always consist of the same persons. As already stated, the individual treatments will appear at the end.

THE PRESIDENT: The Tribunal will now be in recess until 1:45

(A recess was taken until 1345 hours.)

6706

AFTERNOON SESSION

(The Tribunal reconvened at 1345 hours.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Judge Dixon will continue with the reading of the Judgment.

JUDGE DIXON:

These arguments put forth by the defense may be grouped under four different headings and will be discussed in that order by the Tribunal: Jurisdiction, Self Defense and Necessity, Superior Orders and Non-Involvement [sic].

The substantive provisions of Control Council Law No. 10 which are pertinent in this case, read as follows:

[Begin block quote]

Art. II, 1. (b) War Crimes. Atrocities or offenses [sic] against persons or property constituting violations of laws or customs of war, including but not limited to, murder, ill-treatment or deportation to slave labor or for any other [sic] purpose, of civilian population from occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing [sic] 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 [sic], enslavement, deportation, imprisonment, torture, rape or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds [sic] 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 [sic] or the capacity in which he acted, is deemed to have committed a crime as defined in paragraph 1

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of this Article, if he [sic] was (a) a principle or (b) was an accessory to the commission of any such crime or ordered or abetted the same or (c) took a consenting part therein or (d) was connected with plans or enterprises involving its commission or (e) was a member of any organization or group connected with the commission of any such crime or (f) with reference to paragraph 1 (a), if he hold a high political, civil or military (in-cluding [sic] 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."  
[end block quote]

Control Council Law No. 10 was attacked by Defense Counsel at the beginning of the trial, at the end of the trial, and even after all evidence and documentation had been received and argu-ments [sic] closed. In a motion filed February 20, 1948, counsel renewed their representations that this law was inapplicable to the instant case because of the fact the Russia, on August, 23, 1939, signed a secret treaty with Germany agreeing to a division of Poland. In the argument supporting their motion, Counsel do not dwell on the fact that in signing the agreement with Russia, Germany naturally became a party to the very transaction involved. However, in spite of this very definite concurrence by Germany in Russia's acts, inso-far [sic] as they arose out of the so-called secret agreement, Defense Counsel submitted that Russia disqualified herself from membership in the Allied Control Council and that, therefore, any agreement reached with her as one of the signatory powers must necessarily be void. The argument is wholly lacking in merit.

The matter of responsibility for breach of the International Peace was fully considered and decided by the International Military Tribunal in its decision of September 30, 1946 [sic]:

[Begin block quote]

"The Tribunal is fully satisfied by the evidence that the war initiated by Ger-many [sic] against Poland on the 1st September

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1939 was most plainly an aggressive war, which was to develop in due course into a war which embraced almost the whole world, and resulted in the commission of countless crimes, both against the laws and customs of war, and against humanity."

[end block quote]

It was this monstrously selfish and evil aggression which precipitated [sic], as the International Military Tribunal pointed out, a global war whose effects are visible today throughout the world. The legal consequences drawn from the International Military Tribunal adjudication, which is now res judicata, may not be altered by the assertion that someone else may also have been at fault.

At the final arguments in the case various Defense Counsel spoke of international events which followed the ending of the war. It is intended as no offense to Defense Counsel to say that is [sic] would seem they are seeking to fish in troubled waters, or what they assume to be an agitated sea. Nonetheless, the Tribunal must refuse representations and arguments upon that subject. The defen-dants [sic] in this case stand accused of crimes which occurred [sic] during the war. History's footsteps since the termination of World War II can not obliterate the blood marks of that colossal [sic] and tragic conflict.

While the Tribunal placed no limitations on the scope of Defense Counsel's representations, as in justice it should not, it does not follow that everything was relevant to the issues in the case. It is only by hearing an argument that one can conclusively determine its materiality or lack of materiality. However, the Tribunal now decides, after hearing and analyzing all the evidence, that discussions in this case on the ante-war relationship between Germany and Russia are Im-material [sic]. It further decides that representations on the post-war relationship Russia [sic] and the rest of the world are equally irrelevant.

Although advacing [sic] the proposition that Russia signed a secret treaty with Germany prior to the Polish war, the Defense said or pre-sented [sic] nothing in the way of evidence to overcome the well considered

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conclusion of the International Military Tribunal that Germany started an aggressive war against Russia. On the basis of this finding alone, Russia's participation in the Allied Council which formulated Law No. 10 was legal and correct and in entire accordance with International Law.

Furthermore, Defense Counsel's representations in this respect have no bearing on the charges in this Indictment. They are not de-fending [sic] Germany as a nation in this trial. They are representing indi-viduals [sic] accused of specific crimes under Law No. 10, which, like the Charter of the International Military Tribunal, was not an arbitrary exercise of power of the victorious nations but the expression of Inter-nation [sic] Law existing at the time of its creation. Control Council Law No. 10 is but the codification and systemization of already existing legal principles, rules and customs. Under the title of Crimes against Humanity, these rules and customs are the common heritage of civilized peoples, and, in so far as War Crimes are concerned, they have been recog-nized [sic] in various International Conventions, to which Germany was a party, and they have been International Law for decades if not centuries. As far back as 1631, Grotius, in his De Jure Belle ac Pacis, wrote:

[Begin block quote]

"But.....far must we be from admitting the conceit of some, that the Obligation of all Right ceases in war; nor when under-taken [sic] ought it to be carried on beyond the Bounds of Justice and Fidelity."

[end block quote]

The German author Schaetzel, in his book "Bestrafungen nach Kriegsgebrauch, published in 1920, stated:

[Begin block quote]

".....The Law and Customs of Warfare are law not because they are reproduced in the Field Manual but because they are International Law. The Imperial Decree (of 1899) speaks of punishment [sic] 'in accord-ance [sic] with the laws, the customs of war and special decrees of competent military authorities' (Art. 2). this shows clearly that the customs of war are recognized as a source of law. They are binding on in-dividuals [sic] by virtue of the Imperial Decree which orders the authorities administering justice to follow these rules.

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"The customs of war are substantive penal law as good as the State's penal legislation."  
[end block quote]

Defense Counsel have particularly thrust at Control Council Law No. 10 with Latin maxim *Nullem crimen sine lege, nulla poena sine lege*. It is indeed fundamental in every system of civilized juris-prudence [sic] that no one may be punished for an act which was not prohibited at the time of its commission. But it must be understood that the "lex" referred to is not restricted to statutory law. Law does, in fact, come into being as the result of formal written enactment and thus we have codes, treaties, conventions and the like, but it may also develop ef-fectively [sic] through custom and usage and [sic] through the application of Common Law. The latter methods are no less binding than the former. The Inter-national [sic] Military Tribunal, in its decision of September 30, 1946, de-clared [sic]:

[Begin block quote]

"International Law is not the product of an international legislature.....This law is not static, but by con-tinual [sic] adaptation follows the needs of a changing world."

[end block quote]

Of course some fields of International Law have been codified to a substantial degree and one such subject is the law of Land Warfare which includes the Law of Belligerent Occupation because belligerent occupation is incidental to warfare. The Hague Regulations, for in-stance [sic], represent such a codification. Article 46 of those Regulations provides with regard to invading and occupying armies that:

[Begin block quote]

"Family honor and rights, the lives of persons and private property, as well as religious convictions, and practice must be respected."

[end block quote]

This provision imposed obligations on Germany not only because Germany signed signed [sic] the Hague Convention on Land Warfare, but because it had become International Law binding on all nations.

But the jurisdiction of this Tribunal over the subject matter before it does not depend alone on this specific pronouncement of International Law. As already indicated, all nations have held them-selves [sic] bound to the rules or laws of war which came into being through

common recognition and acknowledgement. Without exception these rules universally condemn the wanton killing of non-combatants. In the main, the defendants in this case are charged with murder. Certainly no one can claim with the slightest pretense at reasoning that there is any taint of ex post factoism in the law of murder.

Whether any individual defendant is guilty of unlawful killing is a question which will be determined later, but it cannot be said that prior to Control Council Law No. 10 there existed no law against murder. The killing of a human being has always been a potential crime which called for explanation. The person standing with drawn dagger over afresh [sic] corpse must, by the very nature of justice, exonerate himself. This he may well do, advancing self defense or legal authorization for the deed, or he may establish that the perpetrator of the homicide was one other than himself.

It is not questioned that the defendants were close enough to mass killings to be called upon for an explanation -- and to whom are they to render explanation so that their innocence or guilt may be determined? Is the matter of some one million non-military deaths to be denied judi-cial [sic] inquiry because a Tribunal was not standing by, waiting for the ap-prehension [sic] of the suspects?

The specific enactments for the trial of war criminals which have governed the Nuremberg trials, have only provided a machinery for the actual application of international law theretofore existing. In the comparatively recent Saboteurs Case (Ex parte Quirin 317 U.S., 1, 1942) the Supreme Court of the United States affirmed that individual offenders against the rules and customs of war are amenable to punishment under the common law of nations without any prior designation of tribunal or pro-cedure [sic]. In this connection reference may also be made to trials for pi-racy [sic] where, going back centuries, the offenders, regardless of nationality, were always tried in in the arresting state without any previous designation of tribunal.

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Military Tribunals for years have tried and punished violators of the rules of land warfare outlined in the Hague Convention, even though the Convention is silent on the subject of courts. The Inter-national [sic] Military Tribunal speaking to this subject said:

[Begin block quote]

"The law of war is to be found not only in treaties, but in the customs and practices of states which grad-ually [sic]obtained universal recognition, and form the general principles of justice applied by jurists and prac-ticed [sic] by military courts."

[end block quote]

All civilized nations have at times used military courts. Who questions that Prussia during the Franco-Prussian war and Germany during World War I and World War II utilized military courts to try subjects of other nations charged with violating the rules and law of war?

There is no authority which denies any belligerent nation juris-diction [sic] over individuals in its actual custody charged with violation of international law. And if a single nation may legally take juris-diction [sic] in such instances, with what more reason may a number of nations agree, in the interest of justice, to try alleged violations of the in-ternational [sic] code of war?

In spite of all that has been said in this and other cases, no one would be so bold as to suggest that what occurred between Germany and Russia from June 1941 to May 1945 was anything but war, and, being war, that Russia would not have the right to try the alleged violators of the rules of war on her territory and against her people. And if Russia may do this alone, certainly she may concur with other nations who affirm that right.

Thus, Russia's participation in the formulation of Control Council Law No. 10 is in accordance with every recognized principle of inter-national [sic] law, and any attack on that participation is without legal sup-port [sic]. The Tribunal also inds [sic] and concludes that Control Council Law No. 10 is not only in conformity with International Law but is in itself a highly significant contribution to written International Law.

International Law Applied to Individual Wrong-Doers

Defense Counsel have urged that the responsibilities resulting from International Law do not apply to individuals. It is a fallacy of no small proportion that international obligations can apply only to the abstract legal entities called States. Nations can act only through human beings, and when Germany signed, ratified and promulgated [sic] the Hague and Geneva Conventions, she bound each one of her subjects [sic] to their observance. Many German publications made frequent reference to these international pledges. The 1942 edition of the military [sic] manual edited by a military judge of the Luftwaffe, Dr. Waltzog, carried the following preface:

[Begin block quote]

"Officers and noncoms have, before taking military measures, to examine whether their project agrees with International Law. Every troop leader has been confronted [sic], at one time or another, with questions such as the following: Am I entitled to take hostages; How do I have to behave if bearing a flag of truce; What do I have to do with a spy, what with a franc-tireur; What may I do as a permitted ruse of war; What may I requisition; What is, in turn, already looting and, therefore, forbidden; What do I do with a [sic] enemy soldier who lays down his arms; How should enemy paratroopers be treated in the air and after they have landed?"

[end block quote]

An authoritative collection of German Military Law ("Das gesamte Deutsche Wehrrecht"), published since 1936 by two high government officials [sic], with an introduction by Fieldmarshal von Blomberg, then Reich War Minister and Supreme Commander of the Armed Forces, carried in a 1940 supplement this important statement:

[Begin block quote]

"The present war has shown, even more than wars of the past, the importance of disputes on International Law.....In this connection, the enemy propaganda [sic] especially publicizes questions concerning the right to make war concerning the war guilt, and thereby tries to cause confusion; this is another reason why it appears necessary fully to clarify and to make widely known the principles of International Law which are binding on the German conduct of war."

[end block quote]

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Every German soldier had his attention called to restrictions imposed by International Law in his very paybook which carried on the first page what was known as "The Ten Commandments for Warfare of the German Soldier". Article 7 of these [sic] rules provided specifically [sic]:

[Begin block quote]

"The civilian populations should not be injured.

"The soldier is not allowed to loot or to destroy."

[end block quote]

Further arguing the proposition of individual non-responsibility for their clients, several defense counsel have submitted that this trial in effect represents a trial of the victors over the vanquished. This objection dissolves so quickly under a serious glance that one wonders if it was presented reflectively. In the first place, the defendants [sic] are not being tried in any sense as "vanquished individuals" any more than it is to be assumed that a person taken into custody [sic] by police authorities is to be regarded as a "vanquished person". Wars are fought between nations as such and not between individuals as such. In war there is no legal entity such as a "defeated individual" just as there is no judicial concept of a "victorious individual". The defendants [sic] are in court not as members of a defeated nation but because they are charged with crime. They are being tried because they are accused of having offended against society itself, and society, as represented by international law, has summoned them for explanation. The doctrine that no member of a wronged community may try an accused would for all practical purposes [sic] be the end of justice in every country. It is the essence of criminal justice that the offended community inquires into the offense [sic] involved.

In the fullest appreciation of the responsibilities devolving upon the Tribunal in this particular phase of the case, as in all phases, reference [sic] is made to the speech by Mr. Justice Jackson in the International Military Tribunal in which he said:

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[Begin block quote]

"We must summon such detachment and intellectual integrity to our task that this trial will commend itself to posterity as fulfilling humanity's aspirations to do justice."

[end block quote]

What Justice Jackson said at the beginning of that trial, this Tribunal says at the termination of the current trial.

#### SELF DEFENSE AND NECESSITY

Dr. Aschenauer, speaking for the defendant Ohlendorf and such others whose cases fall within the general pattern of the Ohlendorf defense, declared that the majority of the defendants committed the acts with which they are charged --

[Begin block quote]

"(a) In presumed self defense on behalf of a third party. (Putativenoithilfe is the technical term in the German legal language).

(b) Under condtions [sic] of presumed necessity to act for the rescue of a third party from immediate, otherwise unavoidable danger, (so-called 'Putativenotstand')."

[end block quote]

In other words, it is claimed that the defendants in committing the acts charged to them, acted in self defense for the benefit of a third party, the third party being Germany. In develop-ing [sic] this theme of defense for Germany, Dr, Aschenauer insisted that this Tribunal apply his interpretation of Soviet Law. One can not avoid noting the paradox of the defendant's invoking the law of a country whose jurisprudence, ideologies, government and social system were all declared antagonistic to Germany, and which very laws, ideolo-gies [sic], government and social system the defendants, with the rest of the German armed forces, had set out to destroy. However, it is the pre-rogative [sic] of Defense Counsel to advance any argument whichhe [sic] deems ap-propriate [sic] in behalf of his client and the fact that Dr. Aschenauer con-siders [sic] Soviet Law more modern than German Law cannot fail to be interesting.

[Begin block quote]

It has thus achieved the aim which the German reform legislation has been striving at for a long time. Acts of necessity are unrestrictedly admissible if they are necessary for the protection of higher interests in so far as the danger could not be averted by any other means.

[end block quote]

Under this theory of law any belligerent who is hard-pressed would be allowed unilaterally to abrogate the laws and customs of war. And it takes no great amount of foresight to see that with such facile disregarding of restrictions, the rules of war would quickly disappear. Every belligerent could find a reason to assume that it had higher interests to protect. As untenable as is such a proposition, Dr. Aschenauer [sic] goes even further:

[Begin block quote]

"If the existence of the State or of the nation is directly threatened, then any citizen -- and not only those appointed [sic] for this purpose by the State -- may act for their protection."

[end block quote]

Under this state of law a citizen of Abyssinia could proceed to Norway and there kill a Norwegian on the basis that he, the Abyssinian, was motivated only by the desire to protect his country from an assumed [sic] aggression by the Norwegian.

And that is not all:

[Begin block quote]

"An error concerning the prerequisites of self defense or of an act for the protection of a third party is to be treated as an error about facts and constitutes, according to the reason for, the avoidability and also the degree of gravity of the individual error, a legal excuse or - at the very least -- a mitigating circumstance."

[end block quote]

Thus, if the Abyssinian mentioned above, invaded Norway out of assumed necessity to protect his nation's interest, but it developed [sic] later that he killed the wrong person, he would be absolved because he had simply made a mistake. The fact that this astounding proposition is advanced in all seriousness demonstrates how desperate is the need for a further reevaluation of the sacredness of life and for emphasizing the difference between patriotism and murder.

Dr. Aschenauer does not claim that the actual circumstances supported [sic] Staatsnothilfe (defense of endangered State), but he submits that this state of affairs does not render the deeds of the defendants [sic] any less legal provided the defendants assumed that conditions existed for the application of the above-mentioned legal concepts. In support of this argument he points out what he regards the objective conditions and the subjective conditions of the German-Russian war:

[Begin block quote]

"The east European Jewish problem as part of the problem of Bolshevism; origin and import of the defendants' obsession that a solution of the problem [sic] 'Bolshevism versus Europe' could only be brought about by a 'solution' of the Jewish problem and in their particular sphere only be [sic] unreserved execution of the Fuehrer-Order."

[end block quote]

Thus, even an obsession becomes a valid defense, according to this theory.

Dr. Aschenauer's legal position on assumed self defense has been discussed not because it corresponds with any accepted tenets of international law but only for the purpose of demonstrating that under any law the acts of his client and others falling in that category cannot by the widest stretch of the imagination be justified as an act of self defense in behalf of German [sic].

Even combatants may only be killed or otherwise harmed in accordance [sic] with well-established rules. And there is nothing in the most elementary rules of warfare to permit the killing of enemy civilians simply because they are deemed "dangerous". But in killing e.g., Jews, the defendants did not succor Germany from any real danger, or assumed danger. Although they declared that the Jews were bearers of Bolshevism, it was not explained how they carried that flag. Nor did any one attempt to show how, assuming the Jews to be disposed towards Bolshevism, this per se translated itself into an attack on Germany. The mere adherence to the political doctrine of Bolshevism did not of itself constitute an aggression or potential aggression against Germany.

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It was claimed that the killing of the Jews was predicated on the circumstances of the German-Russian War, but in point of fact Jews were oppressed in Germany and German-occupied territory long prior to that war. The treatment of Jews by Germany and those representing the Third Reich did not depend on the German-Russian [sic] at all. The circumstance [sic] that Jews were living in Russia when the German forces invaded Russia was simply a coincidence which did not call for their annihilation. If merely being

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an inhabitant of Russia made that inhabitant a threat to Germany then the Einsatzgruppen would have had to kill every Russian, regardless of race.

If however, it is argued by the Defense that the German forces considered as mortal enemies and subject to execution [sic] only those Russians who were members of the Communist Party, then even according to this theory those Jews who were not members of the communist Party should have been spared, as were those Russians who were not members of the Communist Party. The record shows, however, that when it came to a Jew, it did not matter whether he was a member of the Communist Party or not. He was killed simply because he was a Jew.

THE PRESIDENT: The presiding Judge continues with the reading of the judgment:

THE PRESIDENT: Mass Killings for Ideological Reasons

Dr. Reinhard Maurach, Professor Criminal Law and Eastern European Law, was called by the defendant Ohlendorf to expound the international law underlying the position of the various defendants maintaining Ohlendorf's view. Some sections of [sic] his treatise, submitted as Ohlendorf Document No. 38, supported the prosecution rather than the defense. On three occasions he condemned mass killings for ideological reasons:

[Begin block quote]

"This is the place to say with special emphasis [sic] that the shooting of entire groups of a population is not justified by any 'collective suspicion', or any group, no matter how great.

"It has already been emphasized that that [sic] the issuing and execution of mass liquidation orders cannot find any justification [sic] in international law, even within the scope of a total war of this kind, and in particular cannot allow of any appeal to the objective premises of self defense and emergency.

"General extermination measures cannot be justified by any war situations, no matter how exceptional."

[end block quote]

However, in the end the expert arrived at an opposite conclusion. First he stated that a state of war as such does not vindicate [sic] extraordinary

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actions, but then in a superb demonstration of legal acrobatics he declared that if the war aims of one of the opponents are total, then the opponent is vindicated in claiming self defense and state of necessity, and therefore may introduce the mass killings he had previously condemned.

For the purpose of considering this argument we will ignore the fact that Germany waged an undeclared war against Russia, that Germany was the invader and Russia the invaded, and look only to the evidence adduced to support the theme that, after being invaded, Russia's actions were such as to call for the executions of which the Prosecution complains.

In behalf of the defendants [sic] many so-called Russian exhibits were introduced. Among them were documents on the Soviet Foreign Policy, statements emanating from the Kremlin, articles from the Russian Encyclopedia, and speeches made by Stalin. All these exhibits are strictly irrelevant and might well be regarded as a red herring drawn across the trail. But the Tribunal's policy throughout the trial has been to admit everything which might conceivably elucidate the reasoning of the defense. Thus, the excerpt from Stalin's speech of July 3, 1941, quoted in Ohlendorf's document book, will be cited here:

[Begin block quote]

"In the areas occupied by the enemy, cavalry and infantry partisan detach-ments [sic] must be formed and diversion groups created for fighting the units of the enemy army, for kindling partisan warfare everywhere and every place, for blowing up bridges and highways, for destroying telephone and telegraph connections, for burning down forests, supply camps and trains. Unbearable conditions must be created for the enemy and all of his accomplices in the occupied areas, they must be pursued and destroyed at every step and all their measures must be frustrated. One cannot regard the war against fascist Germany as an ordinary war. It is not only a war between two armies. It is at the same time the great war of the entire Soviet people against the fascist German Troops."

[end block quote]

Scrutiny of this speech fails to reveal anything which orders the execution of German prisoners of war or the shooting of wounded

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persons, or the mass killings of Germans in German territory occupied by Russia, or anything which would justify the allegedly retaliatory killing of non-combatant Jews.

On [sic] of the most amazing phenomena of this case which does not lack in startling features is the manner in which the aggressive war conducted by Germany against Russia has been treated by the Defense as if it were the other way around. Thus, one of the Counsels in his summation speech said:

[Begin block quote]

"However, as was the case in the campaign against Russia, when a large number of the inhabitants of this land, whether young, old, men women or child, con-trary [sic] to all acts of humanity and against every provision of international law, cowardly carries on a war from ambush against the occupying army, then cer-tainly [sic] one cannot expect that the provisions [sic] of international law would be observed to the letter by this army."

[end block quote]

No comment is here needed on the statement which character-izes [sic] the defense of one's country as "cowardly", and the other equally astounding remark that the invader has the right to ignore international [sic] law.

#### DEATH OF NON-COMBATANTS BY BOMBING

Then it was submitted that the defendants must be exonerated from the charge of killing civilian populations since every Allied nation brought about the death of non-combatants through the instrumen-tality [sic] of bombing. Any person, who, without cause, strikes another may not later complain if the other in repelling the attack uses sufficient force to overcome the original adversary. That is fundamental law between nations as well.

It has already been adjudicated by a competent tribunal that Germany under its Nazi rulers started an aggressive war. The bombing of Berlin, Dresden, Hamburg, Cologne and other German cities followed the bombing of London, Coventry, Rotterdam, Warsaw and other Allied cities; the bombing of German cities succeeded, in point of time, the acts

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discussed here. But even if it were German cities without Germans having bombed Allied cities, there still is no parallelism between an act of legitimate warfare, namely the bombing of a city, with a concomitant loss of civilian life, and the premeditated killing of all members of certain categories of the civilian population in occupied territory.

A city is bombed for tactical purposes: communications are to be destroyed, railroads wrecked, ammunition plants demolished, factories razed, all for the purpose of impeding the military. In these operations it inevitably happens that non-military persons are killed. This is an incident, a grave incident to be sure, but an unavoidable corollary of battle action. The civilians are not individualized. The bomb falls, it is aimed at the railroad yards, houses along the tracks are hit and many of their occupants killed. But that is entirely different, both in fact and in law, from an armed force marching up to these same rail-road [sic] tracks, entering those houses abutting thereon, dragging out the men, women and children and shooting them.

It was argued in behalf of the defendants that there was no normal distinction between shooting civilians with rifles and killing them by means of atomic bombs. There is no doubt [sic] that the invention of the atomic bomb, when used, was aimed at non-combatants. Like any other aerial bomb employed during the war, it was dropped to overcome military resistance [sic].

Thus, as grave a military action as is an air bombardment, whether with the usual bombs or by atomic bomb, the one and only purpose of the bombing is to effect the surrender of the bombed nation. The people of that nation, through their representatives, may surrender and, with the surrender, the surrender [sic] the bombing ceases, this killing is ended. Furthermore, a city is assured of not being bombed by the law-abiding [sic] belligerent if it is declared an open city. With the Jews it was entirely different. Even if the nation surrendered they still were killed as individuals.

It has not been shown through [sic] this entire trial that the killing

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of the Jews as Jews in any way subdued or abated the military force of the enemy, it was not demonstrated how mass killings and indiscriminate slaughter helped or was designed to help in shortening or winning the war for Germany. The annihilation of defenseless persons considered as "inferior" in Russia would have had no effect on the military issue of the war. In fact, so mad were those who inaugurated this policy that they could not see that the massacre of the Jews in many instances actually hindered their own efforts. We have seen in the record that occasionally German officials tried to save Jews from extinction so that they could be forced to work for the German war effort. This would have been another war crime but at least it would not have been so immediately disastrous for the victims.

The Einsatzgruppen were out to kill "inferiors" and, first of all, the Jews. But in the documentation of the war crimes trials since the end of the war, no explanation appears as to why, from the viewpoint of the Nazis, the Jew had to die. In fact, most of the defendants in all these proceedings have expressed a great regard for the Jew. They assert they have admired him, befriended him and to have deplored the atrocities committed against him. It would seem they were ready to help him in every way except to save him from being killed.

The Einsatzgruppen were told at Pretzsch that "the Jews" supported Bolshevism, but there is no evidence that every Jew had espoused Bolshevism, although, even if this were true, killing him for his political belief would still be murder. As the Einsatzkommandos entered new cities and towns and villages they did not even know where to look for the Jews. They could not even be sure who were Jews. Each Einsatz-kommando [sic] was equipped with several interpreters, but it became evident throughout the trial that these invading forces did not carry sufficient linguistic talent to cope with the different languages of the States, prov-inces [sic] and localities through which they moved. There can be no doubt that because of the celerity with which the order was executed countless

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non-Jews were killed on the supposition that they were Jews. Frequently the only test applied to determine Judaism was that of physiognomy.

One either justifies the Fuehrer-Order or one does not. One supports the killing of the Jews or denounces it. If the massacres are admitted to be unsupportable and if the defendants assert that their participation was the result of physical and moral duress, the issue is clear and it becomes only a question of determining how effective and oppressive was the force exerted to compel the reluctant killer. If, how-ever [sic], the defendants claim that the killing of the Jews was justified, but this claim does not commend itself to human reason and does not meet the requirements of law, then it is inevitable that the defendants committed a crime.

It is the privilege of a defendant to put forth mutually exclusive defenses, and it is the duty of the court to consider them all. But it is evident that the insistence on the part of the defendants that the massacres were justified because the Jews constituted an immediate danger to Germany inevitably weakens the argument that they acted only under duress exerted on them personally; and in turn the "personal duress" argument enfeebles the "danger to Germany" argument. In two or three instances an attempt was made to show that the Jews in Russia held a high percentage of official positions, a percentage disproportionate to the size of the Jewish population. This was the most common theory utilized in Germany for the oppression and persecution of the Jews. By adducing the same excuse here the defendants involved acknowledged they were putting into pphysical [sic] effect in Russia an antipathy and prejudice already entertained in Germany against the Jewish race. There was no duty and certainly no right on the part of the defendants to go into Russia to equalize the official positions according to the proportion between Jews and non-Jews.

Defense Counsel Dr. Mayer admitted that the Fuehrer-Order violated the recognized laws and customs of war, but urged that Russia was not

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entitled to protection under international law. Apart from the fact that Russia was a party to the Hague Convention of Land Warfare -- in fact, the Hague conference of 1899 was initiated by Russia -- the International [sic] Military Tribunal pointed out that the rules of the Hague Regulations have become delcaratory [sic] of the Common Law of War. It further disposed of the objection by quoting approvingly from the memorandum issued by the German Admiral Canaris on September 15, 1941, in which he declared that it is contrary to military tradition, regardless of treaty or lack of treaty --

[Begin block quote]  
"To kill or injure helpless people."  
[end block quote]

Dr. Mayer also said, taking the same line as Dr. Maurach:

[Begin block quote]  
"If this war was not an unjustified war of aggression, but a justified preventive war, then on the basis of my explanations in the Trial Brief on the subject of the ideology, aims and practice of the USSR, to which I refer, the question arises, in how far the German Reich found itself, in this war against the USSR, in a genuine state of national emergency, and whether this justified the orders given by Hitler."  
[end block quote]

If Dr. Mayer means this, he collides head-on with a res judicata. The International Military Tribunal, after studying countless documents and hearing numerous direct witnesses of and participants in the event itself, declared:

[Begin block quote]  
"The plans for the economic exploita-tion [sic] of the USSR, for the removal of masses of population, for the murder of Commissars and political leaders, were all part of the carefully prepared scheme launched on the 22nd June without warning of any kind, and without the shadow of legal excuse. It was plain aggression."  
[end block quote]

The annihilation of the Jews had nothing to do with the defense of Germany, the genocide program was in no way connected with the protection of the Vaterland, is was entirely foreign to the military issue. Thus, taking into consideration all that has been said in this particular phase of the defense, the Tribunal concludes that the argument that the jews [sic] in themselves constituted an aggressive menace to Germany,

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a menace which called for their liquidation in self defense, is untenable as being opposed to all facts, all logic and all law.

THE PRESIDENT: New headings.

#### SUPERIOR ORDERS

Those of the defendants who admit participation in the mass killings which are the subject of this trial, plead that they were under military orders and, therefore, had no will of their own. As intent is a basic prerequisite to responsibility for crime, they argue that they are innocent of criminality since they performed the admitted executions [sic] under duress, that is to say, Superior Orders. The defendants formed part of a military organization and were, therefore, subject to the rules which govern soldiers. It is axiomatic that a military man's first duty is to obey. If the defendants were soldiers and as soldiers responded to the command of their superiors to kill certain people, how can they be held guilty of crime? This is the question posed by the defendants. The answer is not a difficult one.

The obedience of a soldier is not the obedience of an automaton. A soldier is a reasoning agent. He does not respond, and is not expected to respond, like a piece of machinery. It is a fallacy of wide-spread consumption that a soldier is required to do everything his superior officer orders him to do. A very simple illustration will show to what absurd extreme such a theory could be carried. If every military person were required, regardless of the nature of the command, to obey unconditionally [sic] a sergeant could order the corporal to shoot the lieutenant, the lieutenant could order the sergeant to shoot the captain, the captain [sic] could order the lieutenant to shoot the colonel, and in each instance the executioner would be absolved of blame. The mere statement of such a proposition is its own commentary. The fact that a soldier may not, without incurring unfavorable consequences, refuse to drill, salute, exercise, reconnoiter, and even go into battle, does not mean that he must fulfill every demand put to him. In the first place, an order to require obedience must relate to military duty. An officer may

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not demand of a soldier, for instance, that he steal for him. And what the superior officer may not militarily demand of his subordinate, the subordinate is not required to do. Even if the order refers to a military subject it must be one which the superior is authorized, under the circumstances, to give.

The subordinate is bound only to obey the lawful orders of his superior, and if he accepts a criminal order and executes it with a malice of his own, he may not plead Superior Orders in mitigation of his offense. If the nature of the ordered act is manifestly beyond the scope of the superior's authority, the subordinate may not plead ignorance to the criminality of the order. If one claims duress in the execution of an illegal order it must be shown that the harm caused by obeying the illegal order is not disproportionately greater than the harm which would result from not obeying the illegal order. It would not be an adequate excuse, for example, if a subordinate, under orders, killed a person known to be innocent, because by not obeying it he himself would risk a few days of confinement [sic]. Nor if one acts under duress, may he without culpability commit the illegal act once the duress ceases.

The International Military tribunal, in speaking of the principle to be applied in the interpretation of criminal Superior Orders, declared that:

[Begin block quote]

The true test, which is found in vary-ing [sic] degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible."

[end block quote]

The Prussian Military Code, as far back as 1845, recognized this principle of moral choice when it stated that a subordinate would be punished if, in the execution of an order, he went beyond its scope or if he executed an order knowing that it "related to an act which obviously aimed at a crime."

This provision was copied into the Military Penal Code of the kingdom of Saxonia in 1867, and of Baden in 1870. Continuing and even

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extending the doctrine of conditional obedience, the Bavarian Military Penal Code of 1869 went so far as to establish the responsibility of the subordinate as the rule, and his irresponsibility as the exception.

The Military Penal Code of the Austro-Hungarian Monarchy of 1855 provided:

[Begin block quote]

"Art. 158: A subordinate who does not carry out an order is not guilty of a violation of his duty of subordination [sic] if:

(a) The order is obviously contrary [sic] to loyalty due to the Prince of the Land;

(b) if the order pertains to an act or omission in which evidently a crime or an offense [sic] is to be recognized

[End block quote]

In 1972 [sic] Bismarck attempted to delimit subordinate responsibility by legislation, but the Reichstag rejected his proposal and instead adopted the following as Article 47 of the German Military Penal Code:

[Begin block quote]

Art. 47: If through the execution of an order pertaining to the service, a penal law is violated, then the superior giving the order is alone responsible. However, the obeying subordinate shall be punished as accomplice:

1) if he went beyond the order given to him, or

2) if he knew that the order of the superior concerned an act which aimed at a civil or military [sic] crime or offense."

[End block quote]

This law was never changed, except to broaden its scope by changing the word "civil" to "general", and as late as 1940 one of the leading commentators of the Nazi period, Professor Schwinge wrote:

[Begin block quote]

"Hence, in military life, just as in other fields, the principle of absolute, i.e., blind obedience, does not exist."

[End block quote]

Yet, one of the most generally quoted statements on this subject is that a German soldier must obey orders though the heavens fall. The statement has become legendary. The facts prove that it is a myth.

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When defendant Seibert was on the stand, his attorney asked him:

[Begin block quote]

"Witness, do you remember a proverb said by a German Kaiser concerning the carrying out of orders by Soldiers?"

[End block quote]

And the defendant replied:

[Begin block quote]

"I do not know whether it was William I or William II, but certainly one Kaiser-Emperor used the expression, 'If the military situation or the entire situa-tion [sic] makes it necessary a soldier has to carry out an order, even if he has to shoot his own parents'."

[End block quote]

The defendant was then asked whether , in the event he received such an order, he would execute it. To the surprise of everybody he replied that he did not know. He declined to answer until he should have time to consider the problem. The Tribunal allowed him until the next morning to deliberate, and then the following ensued:

[Begin block quote]

"Q. Now if in accordance with this declara-tion [sic] by the Chief of State of the German Empire at the time, the military situation made it necessary for you -- after receiv-ing [sic] and order, -- to shoot your own parents, would you do so?"

A. I would not do so.

Q. Then there are some orders which are issued [sic] by the Chief of State which may be disobeyed?

A. I did not regard this as an order by the Chief of State but as a symbolic example towards the whole soldiery how far obedi-ence [sic] had to go, but never actually asking a son to shoot his own parents. I imagine it only as follows, Your Honor: if I am an artillery officer in the war and I have to fire at a very important sector, which is decisive for the whole military situation and I received the order to [sic] fire at a certain village and I know that in this village my parents are living, then I would have to shoot at this village. This is the only way in which I can imagine this order, but never -- it is inhuman -- to ask a son to shoot his parents.

Q. ..So. [sic] therefore, if you received such an order coming down the line, you would disincline to obey it? You would not obey it?

A. I would not have obeyed such an order.

Q. Suppose the order came down for you to shoot the parents of someone else, let us say, a Jew and his wife. And in your

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view you saw the children of these par-ents [sic]. Now, it is established beyond any doubt that this Jewish father and Jewish mother have not committed any crimes -- absolutely guiltless, belmishless [sic] The only thing that is established is that they are Jews. And you have this order coming down the line to shoot them. The children are standing by and they implore you not to shoot their parents. would you shoot the parents?

A. I would not shoot these parents."  
[End block quote]

Then, in summing up, the witness was asked:

[Begin block quote]  
"And, therefore, as a German officer, you now tell the Tribunal that if an order were submitted to you, coming down the line militaryly [sic] to execute two innocent parents only because they were Jews, you would refuse to obey that order?"  
[End block quote]

And the answer was:

[Begin block quote]  
"I answered your example affirmatively, I said 'Yes, I could not have obeyed'. "  
[End block quote]

Although Defense Counsel's query intended to establish the utter helplessness of a German soldier in the face of a superior command, the inquiry finally resulted in the defendant's declaring that he would not only ignore the order of the supreme war lord to shoot his own parents, but also to shoot anybody else's parents. He thus demon-strated [sic] that under his own interpretation of German Military [sic] Law, he did have some choice in the matter of obeying Superior Orders. Why then did he participate in the execution of the parents of other people? Why did other defendants do the same if they had a choice, as the defendant Seibert indicated?

THE PRESIDENT: Judge Speight will continue with reading of the judgment.

JUDGE SPEIGHT: Subject:

SUPERIOR ORDERS DEFENSE MUST ESTABLISH IGNORANCE OF ILLEGALITY

To plead Superior Orders one must show an excusable igno-rance [sic] of their illegality. The sailor who voluntarily ships on a

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pirate craft may not be heard to answer that he was ignorant of the probability he would be called upon to help in the robbing and sinking of other vessels. He who willingly joins as [sic] illegal enterprise is charged with the natural development of that unlawful undertaking. What SS man could say that he was unaware of the attitude of Hitler toward Jewry?

As early as February 24, 1920 the National Socialist Party announced in its 25 point program, which was never changed, its opposition to Jews and declared that a Jew could never be an equal citizen. Mein Kampf was dedicated to what may be called the "Master Race" theory, the doctrine of Aryan superiority over all other races. When the Nazis seized power in 1933, persecution of the Jews became an official state policy. Then in September 1935 came the well-known Nuremberg Laws which among other things [sic] deprived the Jews of German citizenship.

Mein Kampf was not a private publication. Its brazen voice rang through [sic] Germany. One passage was proclaimed over and over:

[Begin block quote]

"The soil on which we now live was not a gift bestowed by Heaven on our fore-fathers [sic]. They had to conquer it by risking their lives. So also in the future, our people will not obtain territory, and therewith the means of existence, as a favor from any people, but will have to win it by the power of a triumphant sword."

[End block quote]

The Nazi party drilled into the ears of the world its odium for the Jews. "Der Stuermer" and other publications spread the verbal poison of race hatred. Nazi leaders everywhere vilified the Jews, holding them up to public ridicule and contempt. In November 1938 an SS inspired and organized hoodlumism fell upon the Jews of Germany: synagogues were destroyed, prominent Jews were arrested and imprisoned, a collective fine of one billion marks was imposed, ghettos were established, and now the Jews were compelled on orders of the Security Police to wear a yellow star on their breast and back.

Did the defendants not know of these things? Could they express surprise [sic] when, after this unbroken and mounting program of violence, plans

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were formulated for the "final solution of the Jewish problem"?

Some of the defendants may say they never knew of the Nazi Party extermination program or,if [sic] they did, they were not in accord with the sentiments therein expressed. But again, a man who sails under the flag of skull and cross-bones cannot say that he never

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expected to fire a cannon against a merchantman. When Bach Zelewski, SS General and many years a member of the Party, was asked to explain the phenomenon of the Einsatzgruppen killings, he replied:

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

The argument has, however, been advanced that the Fuehrer-Order was not criminal. Although this proposition is at first blush opposed to all common sense, contrary to natural human reactions and out of harmony with the rudimentary law of cause and effect, yet it has been presented seriously by the defendants and in fact constitutes the major item of defense. Therefore, it cannot simply be dismissed as intolerable; reasons must be advanced as to why it is intolerable.

Let us suppose that the Fuehrer-Order had proclaimed the killing of all grey-eyed people, regardless of age, sex or position. So long as the iris of the eyes responded to those light rays in the spectrum which make up grey, the possessor of such eyes was estined [sic] for evil days. Character, occupation and health could not influence nor could religion, politics and nationality alter the predetermined doom. The farmer at his plow, the teacher at her desk, the doctor at the bedside, the preacher in his pulpit, the old woman at her knitting, the children playing in the yard, the cooing infant at the mother's breast [sic] -- would all be condemned to death, if they saw the wondering world through the tell-tale grey eyes.

Let us glance at the unfoldment of such a program and look in on a family, whose members, because of that unfathomable selection of life's chemicals and inscrutable mixing in the mystic alembic of time, all have grey eyes. Suddenly comes a thunderous knocking and the door bursts open. Steel-helmeted troopers storm in and with automatic guns and drawn pistol order the dismayed occupants into the street.

We hear the screams of the children, we see the terror in the

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faces of mother and sister, the biting of lips of the helpless father and brother, the wild tramping of the invader's boots through the house, the overturning of furniture, the smashing into cupboards, attics, wardrobes seeking out the hidden, horrified Grey-Eyed. The tearful fare-well [sic] to home, the piling into the waiting truck of the pitiful family possessions, the bewildered mounting of the doomed Grey-Eyes. The truck rumbles forward, stops to pick up other Grey-Eyes and still more Grey-Eyes [sic] in the market square, at the corner store, in the parish church.

Then the wild careening ride into the woods where other villages are waiting chalk-faced, mute, staring at each other. The unloading of the truck, the guttural command to line up with the others. Then the red-mouthed machine rifles speaking their leaden sentences from left to right and from right to left. The villagers falling, some cut in two, others with blood flowing from their mouths and eyes, those gray eyes, pleading for understanding, for an explanation as to why? Why? Others only wounded but piled into a ditch already dug behind them. The shooting party rides away, piteous hands uplift from the uncovered grave, we hear a moaning which, at times, decreases to a murmur, then mounts to a wail, then ceases altogether.

Of course, it is all fantastic and incredible, but no more fantastic and incredible than what has happened innumerable times in this very case. If one substitutes the word Jew for Grey-Eyed, the analogy is unassailable.

It is to be presumed that, if the defendants had been suddenly ordered to kill the grey-eyed population, they would have balked and found no difficulty in branding such an act as a legal and moral crime. If, however, fifteen years before, the Nazi Party program had denounced all grey-eyed people and since then the defendants had listened to Hitler vituperating against the Grey-Eyes, if they had seen shops smashed and houses destroyed because Grey-Eyes had worked and lived there; if they had learned of Himmler's ordering all Grey-Eyes into concentration camps,

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and then had heard speeches in Pretzsch wherein the mighty chieftains of the SS had declared that all Grey-Eyes were a menace to Germany -- if this had happened, can we be so certain that the defendants would not have carried out a Fuehrer-Order against Grey-eyed people? And in that event, would there not have been the same defense of Superior Orders?

If now, from the vantage point of observation of a thing which did not come to pass, the defendants can denounce, as we assume they would, this hypothetical massacre, how can they less denounce a slaughter which did occur and under circumstances no less harrowing than the one pictured only for the purpose of illustration?

But throughout the trial it has been answered, in effect th at [sic] it was entirely different with the Jews. They were bearers of Bolshevism. If that was their guilt, then the fact that they were Jews was only incidental. They were being exterminated not because of Judaism but be-cause [sic] of Bolshevism. If by that argument they mean that a Jew was to be executed only because he was a Bolshevich, why was it to be assumed that a Russian Jew was any more bolshevistic than a Russian Russian? Why should Alfred Rosenberg, chief Nazi philosopher, be less inclined biologically to Communism than his obscure Jewish namesake and neighbor? What saved Benjamin Disraeli, leader of the Conservative Party and several times prime minister of Great Britain, from being a Bolshevich? And had he lived in 1941, would Hitler have declared him a carrier of Bolshevism?

According to the Nazi ideology the Jew by his very nature was simply destined to be Bolshevistic, but it is a demonstrable truism that, if the einsatzkommandos themselves had adopted Jewish babies, these babies would have grown up to be staunch SS men. In point of fact, during the war, thousands of Czech, Polish, Russian, and Yugoslav children were taken into Germany to be reared as Germans. No one knows how many Jewish offspring were included in these carloads of kidnapped children because it was seriously assumed that so long as they were blonds they could not belong to the hated race.

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During the trial there was introduced in evidence a letter written by one of the defendants in which he quoted from Heydrich:

"Many of the Jews listed in your register are already known for continually trying to deny that they belong to the Jewish race by all possible and impossible reasons. It is, on the whole, in the nature of the matter that half-breeds of the first degree in particular try at every opportunity to deny that they are Jews.

"You will agree that in the third year of the war, there are matters of more importance for the war effort, and for the Security Police and the Security Service as well, than worrying about the wailing of Jews, making tedious investigations and preventing so many of my co-workers from other and much more important tasks. If I started scrutinizing [sic] your list at all, I only did so in order to refute such attacks by documents once and for all.

"I feel sorry to have to write such a justification six-and-a-half years after the Nuremberg Laws were issued.

The defendant noted in his letter his enthusiastic accord with the sentiments expressed by Heydrich and added on his own that consideration for the Jews was "softness and Humanitarian day-dreaming". He also declared that it was unthinkable that a German should listen to Mendelssohn's music, and, to hearken to Offenbach's "Tales of Hoffman", simply revealed ignorance of National Socialistic Ideals. Yet, he saw nothing unidealistic about invading the office of his superior, the General Commissioner of White Ruthenia, trained in the same school of Nazi idealism, entered a complaint against the defendant's action, not because seventy innocent human beings had been killed but because a subordinate had dared to come into his office and shoot his Jews without telling him about it.

The defendant was also annoyed that anyone should have questioned the propriety and correctness of removing gold fillings from the teeth of the Jews designated for killing.

The Tribunal is devoting much time and space to expounding the

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obvious, but perhaps it is not so obvious. Otherwise the arguments by and on behalf of the defendants might not have been presented with such insistence. Furthermore, this is the time and place to settle definitively [sic] insofar as it is part of the issue in this trial, the business of the so-called Jewish problem.

A problem presupposes a situation with [sic] advantages and disadvantages to be considered on either side. But what in Nazi Germany was so delicately called the "Jewish problem", was a program, that is, an anti-Jewish [sic] program of oppression [sic] leading finally to extermination. The so-called Jewish problem was not a problem but a fixation based upon the doctrine that a self-styled "master-race" may exterminate a race which it considers inferior. Characterizing the same proposition as the "Jewish menace" is equally devoid of sense. In fact, if it were not so tragic, the National Socialistic attitude toward the Jews could only be considered nonsensical.

We will recall how the einsatz units treated the Krimtschaks [sic] in the Crimea. In the same area they came across a sect known as Karaimians. The Karaimians [sic] resembled the Krimtschaks [sic] in that they shared the same Jewish religion. However, the ethnic experts in Berlin after some kind of study, concluded that the Karaimians [sic] had no Jewish blood in their veins and were, therefore, exempt from the extermination order. Thus, although the Karaimians had Jewish religion in their souls, they did not have that kind of corpuscles in which the seeds of Bolshevism ride. Hence they had the right to live. If one can picture an einsatz unit rounding up the worshippers in a synagogue and distinguishing the Karaimians [sic] from the Krimtschaks [sic], releasing the former and killing the latter, one is privileged to decide whether the Nazi attitude toward Jewry was not something which could well fall into the category of nonsense, that is, tragic nonsense.

It was all a matter of blood and nothing could save the person with Hebrew arteries. Although any other person could change his religion, politics, allegiance, nationality, yet, according to the National Socialist

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ideology, there was nothing the Jew could do. It was a matter of blood, but no one has testified as to the omniscient wisdom which counted and evaluated the offending corpuscles.

PRESIDING JUDGE: We will now take a recess of 15 minutes.

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Judge Speight continues with the reading of the judgment.

JUDGE SPEIGHT: One thing that can be said about the Fuehrer Order. It was specific, it was unambiguous. All Jews were to be shot. And yet, despite the unambiguity of this order, in spite [sic] of the un-appealable [sic] and infallible pronouncement that Jews were absolutely outside of the pale, defendant after defendant related his great consideration for the Jew. Scores of affidavits were submitted, in behalf of nearly all the accused, demonstrating their generous conduct towards some individual Jews in Germany. One of the defendants related, in a pre-trial interrogation, how he had even lived with a Jewish woman. He wished to prove by this that he was entirely devoid of prejudice.

But, if it were true that the defendants regarded the Jews as equals in Germany, why did they consider them sub-human in Russia? If they did not recognize them as a potential danger in Germany, why should they regard them as a threat in the Crimea 2,000 miles away? It is not too much to say that most of the Jews did not know of Hitler and his doctrines until the Einsatzgruppen arrived to kill them.

Although forming no part of the charges in the indictment, the systematic attempts to destroy the graves of the slain as described in official German documents are interesting in that they shed some light on the mental attitude of the executioners. Did they regard the executions as culpable acts, ocular evidence of which should be destroyed? The defendant Blobel in his affidavit, signed June 18, 1947, stated that in June 1942 he was entrusted by Gruppenfuehrer Mueller with the task of removing the traces of the executions carried out by Einsatzgruppen in the East. He leaves nothing to the imagination [sic]:

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[Begin block quote]

"I myself [sic] witnessed the burning of corpses in a mass grave near Kiew, during my visit in August. This grave was about 55 m long, 3 m wide, and 2 1/2 deep. When the cover had been lifted, the bodies were covered with fuel and set on fire. It took about two days for the grave to burn down. I myself saw that the grave became red-hot right down to the ground. After the grave was filled in, and thus all traces were as good as eliminated.

"Owing to the approach of the front, it was not possible to destroy the mass graves further to the South and the East, resulting from the executions of the Einsatz-gruppen [sic]."

[end block quote]

So intent was Blobel, evidently in obedience to order, to wipe out the incriminating evidence of the killings, that he even tried to destroy the corpses by means of dynamite. Rudolf Heoss, Commandant of the Auschwitz concentration camp, who supervised these experimenta-tions [sic], stated that the dynamiting method was not successful:

[Begin block quote]

"Blobel constructed several experimental ovens and used wood and gasoline as fuel. He tried to destroy the corpses by means of dynamiting them, too; this method was rather unsuccessful."

[end block quote]

Hence other means were used:

[Begin block quote]

"The ashes, ground to dust in a bone mull, were thrown in the vast forests around. Staf. Blobel had the order to locate all mass graves in the entire Eastern Territory and to eliminate them.... The work itself was carried out by Jewish work units, which, upon finishing their partic-ular [sic] task, were shot. Concentration camp Auschwitz had to furnish continuously Jews for this kommando."

[end block quote]

#### DURESS NEEDED FOR PLEA OF SUPERIOR ORDERS

But it is stated that in military law even if the subordinate realizes that the act he is called upon to perform is a crime, he may not refuse its execution without uncurring serious consequences, and that this, therefore, constitutes duress. Let it be said at once that there is no law which requires that an innocent man must forfeit his life or suffer serious harm in order to avoid committing a crime which he condemns. The threat, however, must be imminent, real and inevitable. No court will punish a man who, with a loaded pistol at his head, is compelled to pull a lethal lever.

Nor need the peril be that imminent in order to escape punishment. But were any of the defendants coerced into killing Jews under the

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threat of being killed themselves if they failed in their homicidal mission? The test to be applied is whether the subordinate acted under coercion or whether he himself approved of the principle involved in the order. If the second proposition be true, the plea of Superior Orders fails. The doer may not plead innocence to a criminal act ordered by his superior if he is in accord with the principle and intent of the superior.

When the will of the doer merges with the will of the superior in the execution of the illegal act, the doer may not plead duress under Superior Orders.

If the mental and moral capacities of the superior and subordinate are pooled in the planning and execution of an illegal act, the subordinate may not subsequently protest that he was forced into the performance of an illegal undertaking.

Superior means superior in capacity and power to force a certain act. It does not mean superiority only in rank. It could easily happen in an illegal enterprise that the captain guides the major, in which case the captain could not be heard to plead Superior Orders in defense of his crime.

If the cognizance of the doer has been such, prior to the receipt of the illegal order, that the order is obviously but one further logical step in the development of a program which he knew to be illegal in its very inception, he may not excuse himself from responsibility for an illegal act which could have been foreseen by the application of the simple law of cause and effect. From 1920, when the Nazi Party Program with its anti-Semitic policy was published, until 1941 when the liquidation order went into effect, the ever-mounting severity of Jewish persecution was evident to all within the Party and especially to those charged with its execution. One who participated in that program which began with Jewish disenfranchisement [sic] and depatriation and lead, step by step, to deprivation of property and liberty, followed with beatings, whippings, and

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measure aimed at starvation, may not plead surprise when he learns that what has been done sporadically, namely, murder, now is official-ly [sic] declared policy. On January 30, 1939, Hitler publicly declared in a speech to the Reichstag that if war should come it would mean "the obliteration of the Jewish race in Europe".

One who embarks on a criminal enterprise of obvious magnitude is expected to anticipate what the enterprise will logically lead to.

In order successfully to plead the defense of Superior Orders the opposition of the doer must be constant. It is not enough that he mentally rebel at the time the order is received. If at any time after receiving the order he acquiesces in its illegal character, the defense of Superior Orders is closed to him.

Many of the defendants testified that they were shocked with the order when they first heard it. This assertion is, of course, contradicted by the other assertion made with equal insistence, and already disposed of, that the Fuehrer Order was legal because the ordered executions were needed for the defense of the Fatherland. But if they were shocked by the order, what did they do to oppose it? Many said categorically that there was nothing to do. It would be enough, in order to escape legal and moral stigmatization to show the order was parried every time there was a chance to do so. The evidence indicates that there was no will or desire to depreciate its fullest intent. When the defendant Braune testified that he inwardly opposed the Fuehrer Order, he was asked as to whether, only as a matter of salving his conscience in the multiplicitous executions he conducted, he ever released one victim. The interroga-tion [sic] follows:

[Begin block quote]

"Q. But you did not in compliance with that order attempt to salve your conscience by releasing one single individual human creature of the Jewish race, man, woman or child?

A. I have already said that I did not search for children. I can only say the truth. There were no exceptions, and I did not see any possibility."

[end block quote]

One may accuse the Nazi military hierarchy of cruelty, even sadism, if one will. But it may not be lightly charged with inefficiency. If any of these kommando leaders had stated that they were constitution-ally [sic] unable to perform this cold-blooded slaughter of human beings, it is not unreasonable to assume that they would have been assigned to other duties, not out of sympathy or for humanitarian reasons, but for efficiency's sake alone. In fact Ohlendorf declared on this very subject:

[Begin block quote]

"In two and a half years I had sufficient occasion to see how many of my Gruppe did not agree to this order in their inner opinion. Thus, I forbade the participation in these executions on the part of some of these men, and I sent some back to Germany."

[end block quote]

Ohlendorf himself could have got out of his execution assignment by refusing cooperation with the Army. He testified that the Chief of Staff in the Field said to him that if he, Ohlendorf, did not cooperate, he would ask for his dismissal in Berlin.

The witness Hartl testified that Thomas, Chief of Einsatzgruppe B, declared that all those who could not reconcile their conscience to the Fuehrer Order, that is, people who were too soft, as he said, would be sent back to Germany or assigned to other tasks, and that, in fact, he did send a number of people including commanders back to the Reich.

This might not have been true in all Einsatzgruppen, as the witness pointed out, but it is not enough for a defendant to say, as did Braune and Klingelhoefner, that it was pointless to ask to be released, and, therefore did not even try. Exculpation is not so easy as that. No one can shrug off so appalling a moral responsibility with the statement that there was no point in trying. The failure to attempt disengagement from so catastrophic an assignment might well spell the conclusion that the defendant involved had no deep-seated desire to be released. He may have thought that the work was unpleasant but did it nonetheless. Even a professional murderer may not relish killing his victim, but he does it with no misgivings. A defendant's willingness [sic] may have been predicated on the premise that he personally opposed Jews or that he wished to stand well in the eyes of his

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comrades, or by doing the job well he might earn rapid promotion. The motive is unimportant if he killed willingly.

The witness Hartl also related how one day as he and Blobel were driving through the country, Blobel pointed out to him a long grave and said: "Here my Jews are buried." One can only conclude that Blobel was proud of what he had done. "Here my Jews are buried". Just as one might speak of the game he had bagged in a jungle.

Despite the sustained assertion on the part of the defendants that they were straight-jacketed in their obedience to Superior Orders, the majority of them have, with testimony and affidavits, demonstrated how on numerous occasions they opposed decrees and orders handed down by their superiors. In an effort to show that they were not really Nazis at heart, defendant after defendant related his dramatic clashes with his superiors. If one concentrated only on this latter phase of the defense one would conclude that these defendants were all ardent rebels against National Socialism and valiantly fought against the inhuman proposals put to them. Thus, one affiant says of the defendant Willy Seibert that he "was strongly opposed to the measure taken by the Party and the government".

Of Steimle an affiant said: "Many a time he opposed the Party agencies and so-called superior leaders." Another affidavit not only states that Steimle opposed violence but that in his zeal for justice he shrewdly joined the SD in order to be able "to criticize the shortcomings [sic] in the Party". Again it was stated that "repeatedly his sense of justice led him to oppose excesses, corruptions and symptoms of depravity by Party-officers."

Of Braune an affiant states, "over and over again Dr. Braune criticized severely our policy in the occupied territories (especially in the East, Ukraine and Baltic States)".

During the time he served in Norway, Braune was a flaming sword of opposition to tyranny and injustice in his own camp. He bitterly opposed the Reich Kommissar Terboven, cancelled his orders, condemned

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large-scale operations, released hostages and freed the Norwegian State Minister Gerhardsen. One affidavit said that in these actions "Braune nearly always went beyond his authority". And yet in spite of this open rebellion Braune was not shot or even disciplined. Why is it that in Norway he acted so differently from the manner in which he performed in Russia? Was he more the humanitarian in Norway? The answer is not difficult to find. One of the affiants very specifically states:

[Begin block quote]

"Right from the beginning of our conferences, Braune opposed the large-scale operations which Terboven and Fehlis continually carried out. He did not expect the slightest success from such measures, and saw in them only the danger of antagonizing the Norwegian population more and more against German policy and the danger of increasing their spirits of resistance."

[end block quote]

Thus, the defendants could and did oppose orders when they did not agree with them. But when they ideologically espoused an order such as the Fuehrer Order they had no interest in opposing it.

THE PRESIDENT: Judge Dixon will continue with the reading of the Judgment.

#### GERMAN PRECEDENT ON SUPERIOR ORDER DOCTRINE

The defense of Superior Orders has already been passed upon by a German court. In 1921 two officers of the German U-boat 68 were charged with violation of the laws of war in that they fired at and killed unarmed enemy citizens seeking to escape from the sinking Hospital Ship H.M.S. Llandoverly Castle. The defendants pleaded lack of guilt in that they had merely carried into effect the order given time by their commander, First Lieutenant Patzig. The German Supreme Court did find as a fact that Patzig ordered his subordinates Diethmar and Boldt to fire at the life boats, but it adjudicated them guilty nonetheless, stating:

[Begin block quote]

"It is certainly to be ordered in favor of the military subordinates, that they are under no obligation to question the order of their superior officer, and they can count upon its legality. But, no such confidence can be held to exist, if such an order is universally known to everybody, including also the accused, to be without any doubt whatever against the law. This happens only in rare and exceptional cases. But, this case was precisely one of them. For in the present instance, it was perfectly [sic] clear to the accused that killing defenseless people in the life-boats could be nothing else but a breach of law. As naval officers by profession they were well aware, as the naval expert, Saal-wachter [sic], has strikingly [sic] stated, that one is not legally authorized to kill defense-less [sic] people. They quickly found out the facts by questioning the occupants in the boats when these were stopped [sic]. They could only have gathered, from the order given by Patzig, that he wished to make use of his subordinates to carry out a breach of law. They should, therefore, have refused to obey. As they did not so they must be punished."

[end block quote]

Despite this very telling precedent several of the attorneys for the defense asked in behalf of their clients: What could they have done? After all, the defendants were soldiers and were required to obey orders. Ordinarily, in war, the proposition of unquestioning obedience involves a set of circumstances which subject the subordinate to the possibility of death, wounding or capture. And it is traditional [sic] in such a situation that, in consonance with the honor of his calling, the soldier does not question or delay but sets out stoically to face the peril and even self-immolation. Lord Tennyson immortalized this type of glorious self-sacrifice when he commemorated the Cavalry Charge at Balaklava in the Crimea:

[Begin block quote]

"Theirs not to make reply,  
Theirs not to reason why,  
Theirs but to do and die."

[end block quote]

The members of the Einsatzgruppen, which, by a twist of ironic fate, were operating in the same Crimea and surrounding territory about one hundred years later, were not, however facing the same situation which confronted Tennyson's Light Brigade. The einsatz battalions were not being called upon to face shot and shell.

They were not ordered to charge into the mouths of cannon. They were called upon to shoot unarmed civilians standing over their graves.

No soldier would be disgraced in asking to be excused from so-one-sided a battle. No soldier could be accused of cowardice in seeking relief from a duty which was, after all, not a soldier's duty. No soldier or officer attempting escape from such a task would be pleading avoidance of a military obligation. He would simply be requesting not to be made an assassin. And if the leaders of the Einsatzgruppen had all indicated their unwillingness to play the assassin's part, this black page in German history would not have been written.

What could the defendats [sic] have done, if they could not have been relieved? They could have been less zealous in the execution of the inhuman order. Whole populations of cities, districts and wide lands were within their power. No Roman emperor had greater absolutism of decision over life and death than they possessed in their areas of operation. They were not ordered within any given town to shoot a precise number of people and a fixed number of women and children. But men like Braune could see no reason for making exceptions.

Several of the defendants stated that it would have been useless to avoid the order by subterfuge, because had they done so, their successors would accomplish the task and thus nothing would be gained anyway. The defendants are accused here for their own individual guilt. No defendants [sic] knows what his successor would have done. He could possibly have also indicated his reluctance and with a succession of refusals properly submitted, the order itself might have lost its efficacy. But in any event no execution would have taken place that day. One defendant stated that to have disobeyed orders would have meant a betrayal of his people. Does he really mean that the German people, had they known, would have approved of this mass butchery?

The masses of the home-loving German people, more content to have a little garden in which to grow a plant or two than the promise of vast lands beyond the horizon, will here learn how they were betrayed by their supposed champions.

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Here they will also learn of the inhumanity and the oppression and the shedding of innocent blood committed by the regime founded on the Fuehrer prinzip.

In his attack on Control Council [sic] Law No. 10, Dr. Mayer declared that it invalidates two fundamental principles of the legal systems of all civilized nations:

[Begin block quote]

"(1) The principle: nulla poena sine lege.

(2) Validity of the excuse of having acted under order."

[end block quote]

The Tribunal has already disposed of objection number [sic] 1. Objection [sic] number 2 is no more convincing than was objection number 1. Law No. 10 does not invalidate the excuse of Superior Orders. It states:

[Begin block quote]

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

[end block quote]

Dr. Mayer, like others, misreads this provision and substitutes for the word "crime" some other word, possibly "act". This makes the provision to read that anyone acting pursuant to the orders of his Government or superior does not free himself from responsibility for any act." But the provision specifically states "crime". Unless it is established that the deed in question is a crime then naturally there needs to be no explanation for its commission. No superior can authorize a crime. No one can legalize what is demonstrated categorically [sic] and definitely to be a crime.

The main objective of the Defense in this case has been to prove that the acts of the Einsatzgruppen were not crimes, that they were acts of self defense committed in accordance with the rules of war. If, however, it is proved that they were crimes, then, naturally, the approval of another criminal would not make the acts any the less crimes.

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Once it is juridically established that a certain act is a crime, then all those who participated in it, both superior and subordinates are accomplices.

How could the approval of Hitler possibly condone the offense, if offense it was? Hitler was not above International Law. Let us sup-pose [sic] that in 1935 Hitler ordered one of his men to go to Siam and there assassinate its King. Would it be argued that the assassin in that situation would be immune because acting under Superior Orders? Any judicial inquiry would establish that the Siam assassin had committed a crime and the fact that he had acted in pursuance to the order of his Government or a superior could not possibly free him from responsibility for the crime. This is exactly what Control Council Law No. 10 says, and this is what the law has always said, or ever since there was Inter-national [sic] Law.

As a matter of fact, Article 47 of the German Military penal Code goes much farther than Control Council Law No. 10. Under the German Code the subordinate may be convicted even if no crime was actually committed. It is sufficient if the order aims at the commission of a crime or offense. The German Code makes the obeying subordinate respon-sible [sic] even for [sic] any "civil" or "general offenses", i.e. for comparatively insignificant breaches of law which are not contemplated in the Allied law. Nor does the German Code, as contrasted to the Allied law, mention the defense of Superior Orders as a possible mitigating circumstance.

Several counsel have quoted paragraph 347 of the American Rules of Land Warfare in support of their position on Superior Orders. The section in question, after listing various offenses against the rules of warfare, declares:

[Begin block quote]

"..... Individuals of the armed forces will not be punished for these offenses in case they are committed under the order or sanction of their government or commanders.

The commanders ordering the commission of such acts or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall."

[end block quote]

What has escaped some analysts of this provision is that the word individuals is intended to apply to individuals who make up a military [sic] unit, that is, ordinarily, soldiers of lower rank. It applies naturally also to officers, but only provided they are serving under another officer of a higher rank. Unless one accepts this meaning the word "commanders" appearing in his [sic] second sentence would be entirely elusive as to its significance. But it is to be noted that in square juxtaposition to the men (and perhaps officers) who make up the military [sic] unit, the Article puts the "commanders" of such units; and by "commanders" is obviously meant the officers or acting officers, in charge of any armed unit.

As the colonel is commander of a regiment, the major of a battalion [sic], and the captain of a company, the sergeant or 2nd lieutenant may be in charge of a platoon. If the unit commander were not responsible, and the responsibility climbed upward from grade to grade, the result would be that the only one who could ever be accountable for an illegal order would be the chief executive of the nation, that is, the President [sic], King or Prime Minister, depending on the country involved. That such singular responsibility was not intended is evidenced in the use of the plural "commanders" instead of the singular "commander". Making this meaning absolutely clear, the provision specifically mentions [sic] two types of "commanders" who are to be held responsible:

[Begin block quote]

(a) commanders who order their units to commit war crimes; and

(b) commanders if the troops under their authority commit such crimes.

[end block quote]

Thus, the provision proclaims clearly that the commander is to be responsible -- whether he gives the order to commit war crimes, or whether the troops under his authority commit them at the behest of

somebody else, since he has the control over the troops and is respon-sible [sic] for their acts.

Since it has not been denied that the defendants were commanders of einsatz units, they clearly would fall within the provisions of Article 347, American Rules of Land Warfare. This Article 347 was re-pealed [sic] in 1944, but it has here been discussed at length because De-fense [sic] Counsel made much of it, and because it was still law at the time the Einsatzgruppen were operating.

In further confirmation of the interpretation above given of Article 347, reference is made to Article 64 of the American Articles of War which announces punishment for the disobedience of any lawful command of a superior officer. Obviously if the order is unlawful he may not be punished for refusing to obey it.

The subject of Superior Orders is not so confusing and complica-ted [sic] as it had been made by some legal commentators. In considering the law in this matter we must keep in mind that fundamentally there are some legal principles that stand out like oak trees. Much underbrush has grown up in the vicinity and they seem to confuse the view. But even the most casual observation will catch on the legal landscape these sturdy oaks which announce that:

[Begin block quote]

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

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

3. Deciding the question of free will, all the circum-stances [sic] of the case must be considered because it is impossible to read what is in a man's heart.

[end block quote]

Dr. Aschenauer correctly referred to one of these trees in Lord Mansfield's charge to the jury in Stratton's case (1780) Howell, State Trials, Vol. 21, p. 1062-12234:

[Begin block quote]

"A state of emergency is a reason for justification, since nobody can be guilty of a crime without having in-tended [sic] it. If there is irresistible, physical [sic] duress, then the acting person has no volition with regard to the deed."

[end block quote]

Was there irresistible, physical duress? Was there volition with regard to the deed? The answering of these two questions will serve as safe guides in applying the criteria herein announced in the discussion on the subject of Superior Orders.

#### NON-INVOLVEMENT

Several of the defendants pleaded Not Guilty on the ground that they were in no way involved in the homicidal [sic] operations of the einsatz units. These denials of participation took various forms. It was stated that the defendant, although traveling with the kommando, never learned of executions and certainly did not participate in them, it was asserted that, although the defendant participated in executions, the executees were partisans, saboteurs, looters, and the like; and it was also claimed on behalf of some of the defendants that, although they actually ordered and supervised executions, these executions always followed an investigation in the case involved. No one was shot unless he was proved guilty of a crime

How thorough were these investigations if and when they took place? An order issuing from the Fuehrer's headquarters on June 6, 1941 -- that is, 15 days before the beginning of the Russian war -- spoke of the conduct of the German forces entering Russia. One paragraph discussed the disposition of political commissars who "for the time being" were not to be executed unless they committed or were suspected of hostile acts. Then came this very significant instruction:

[Begin block quote]

"As a matter of principle in deciding the question whether guilty or not guilty, the personal impression which the commis-sar [sic] gives of his mentality and attitude will have precedence over facts which may be improvable."

[end block quote]

Thus kommando leaders were not only empowered but encouraged to execute a man more on his looks than on evidence. One of the defendants corroborated this practice. He was asked what he would do if he came upon a person speaking to four or five people in a room, advocating Com-munism [sic] but in no way opposing the Germans. The defendant replied:

[Begin block quote]

"I would have got a look at the man, and if I was under the impression that he would put his theoretical conviction into deed, in that case I would have had him shot. The actual speech or lecture could not be decided upon theoretically [sic]."

[end block quote]

He was asked further:

[Begin block quote]

"So that you would listed [sic] to the speech and then you would look at him under a microscope [sic], and after this big look, if you thought he might have done something, then you would have him shot. That is what we understand by your answer?"

[end block quote]

And the reply was a categorical "Yes".

Many of the so-called investigations, moreover, were merely inquiries [sic] for the purpose of obtaining from the victim information which would enable the executioners to locate and seize other victims. For instance [sic], the defendant Ott testified from the witness stand, as will be noted later, how arrested persons were arrested, "investigated", and shot.

Several of the Defense Counsel have argued that their clients were soldiers and that their only job was combat. But if the job with the Einsatzgruppen was strictly military, why did the High Command not send military men to do it? Why did they choose Ohlendorf who had had no military [sic] training of any kind to head a military organization? Very few of the kommando leaders had been soldiers, and the brief three or four weeks' training at Pretzsch, prior to marching into Russia, consisted only of drilling and target practice on the rifle range. It is obvious that they were being sent into Russia not as combat soldiers, but as ideological exponents. In the field they were a travelling RSHA, they were a Gestapo [sic] on wheels.

Report No. 128 describes the executions by Einsatzgruppe C of 80,000 persons and explains that 8,000 of them were "convicted of anti-German or Bolshevistic activities".

The report goes on further to say:

[Begin block quote]

"Even though approximately 75,000 Jew have been liquidated in this manner, it is already at this time evident that this cannot be a possible solution of the Jewish problem."

[end block quote]

The report-writer explains that, in small towns and villages, they had achieved a complete liquidation of the "Jewish problem, and that, in the larger cities, after executions, all Jews had disappeared". It is evident from this statement that the main objective of the kommandos was to kill Jews, not partisans.

Counsel for Sandberger, in his final argument, quoted from the United States Basic Field Manual, Rules of Land Warfare:

[Begin block quote]

"If the people of a country, or any portion thereof, already occupied by an army rise against it, they are violators of the laws of war and are not entitled to their protection."

[end block quote]

Dr. von Stein, however, failed to show that the people in the respective German-occupied areas took part in any uprising. On the contrary, it was the einsatz leaders who attempted to stir up popular tumult by instigating pogroms.

The defendant Haensch declared that, during the entire time he served in Russia, he never saw a Jew, and that he never heard of the Fuehrer-Order. Although his kommando, prior to his arrival in Russia, had admittedly slaughtered thousands of Jews, no one ever told him of this nor did he ever hear of it. This is simply incredible. And, in support of this admittedly incredulous utterances, an even more extra-ordinary [sic] assertion was made by his attorney, namely, that Heydrich was anxious for Haensch not to know about these things since they had nothing to do with his work in Berlin.

In defense of Blobel, who admitted in a pre-trial statement that his kommando had killed 10,000 to 15,000 people, his attorney declared in a final summation that Blobel's duties were purely administrative--adding, to be sure that these administrative duties were to be inter-preted [sic] in their "widest sense".

One of Blobel's administrative duties was to conduct executions. History will be his debtor for the authoritative account he rendered on mass-executions from the standpoint of the spirit and philosophy of slayer and slain. He was asked at the trial whether the doomed, as they were being led to their waiting graves, ever attempted to break away before the shots were fired. He replied that there was no resistance [sic] and this surprised him greatly. The following interrogation then occurred:

[Begin block quote]

"Q. You mean that they resigned themselves easily to what was awaiting them?

A. Yes, that was the case. That was the case with these people. Human life was not as valuable as it was with us. They did not care so much. They did not know their own human value.

Q. In other words, they went to their death quite happily?

A. I would not say that they were happy. They knew what was going to happen to them. Of course, they were told what was going to happen to them, and they were resigned to their fate, and that is the strange thing about these people in the East.

Q. And did that make the job easier for you, the fact that they did not resist?

A, In any case the guards never met any resistance [sic]. or, at least, not in Sokal. Everything went very quietly. It took time, of course, and I must say that our men who took part in these executions suffered more from nervous exhaustion than those who had to be shot.

Q. In other words, your pity was more for the men who had to shoot than for the victims?

A. Our men had to be cared for.

.....

Q. And you felt very sorry for them?

A. Yes, these people experiences [sic] a lot, psychologically."  
[end block quote]

Thus, to murder was added criminal impertinence. The victim is shown to be inhuman while the executioner is to be pitied. The condemned is put in the wrong and the slayer in the right. A person is robbed of

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his all -- his very life -- but it is the assassin who is the sufferer. To these people "human life was not as valuable as it was to us". Thus we behold the moral supremacy of the murderer over the depravity of the massacred. "Our men who took part in the executions suffered more from nervous exhaustion that [sic] those who had to be shot."

Here in cogent language is symbolized the whole story of the simple "administrative duties" of one of the leaders of the Einsatzgruppen in land not his own.

### Partisans

Many of the defendants admitting that they had conducted executions, explained that they had not killed any innocent person but had merely shot partisans, to be sure, not in combat, but puni-tively [sic]. This bald statement in itself does not suffice to exonerate one from a charge of unlawful killings. Article I of the Hague Regula-tions [sic] provides:

[Begin block quote]

"The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfill-ing [sic] the following conditions:

1. To be commanded by a person responsible for his subordinates.
2. To have a fixed distinctive emblem recognizable at a distance.
3. To carry arms openly; and
4. To conduct their operations in accordance with the laws and customs of war."

[end block quote]

It is unnecessary to point out that, under these provisions, an armed civilian found in a tree top sniping at uniformed soldiers, is not such a lawful combatant, and can be punished even with the death penalty, if he is proved guilty of the offense.

But this is far different from saying that resistance fighters in the war against an invading army, if they fully comply with the conditions just mentioned, can be put outside the law by the adversary. As the Hague Regulations state expressly, if they fulfill the four conditions, "the laws, rights and duties of war" apply to them in the same manner as they apply to regular armies.

Many of the defendants seem to assume that by merely characterizing a person a partisan he may be shot out of hand. but it is not so simple as that. If the partisans are organized and are engaged in what International Law regards as legitimate warfare for the defense of their own country, they are entitled to be protected as combatants.

The record shows that in many of the areas where the

Einsatzgruppen operated, the so-called partisans had wrested considerable [sic] territory from the German occupant, and that military combat action of some dimensions was required to re-occupy those areas. In belligerent occupation the occupying power does not hold enemy territory by virtue of any legal right. On the contrary, it merely exercises a precarious and temporary actual control. This can be seen from Article 42 of the Hague Regulations which grants certain well limited rights to a military occupant only in enemy territory which is "actually placed" under his control.

In reconquering enemy territory which the occupant has lost to the enemy, he is not carrying out a police performance but a regular act of war. The enemy combatants in this case are, of course, also carrying out a war performance. They must, on their part, obey the laws and customs of warfare, and if they do, and then are captured [sic], they are entitled to the status and rights of prisoners of war.

The language used in the official German reports, received in evidence in this case, show, however that combatants were indiscriminantly [sic] punished only for having fought against the enemy. This is contrary to the law of war.

THE PRESIDENT: The presiding judge continues with the reading.

#### Reprisals

From time to time the word "reprisals" has appeared in the Einsatzgruppen reports. Reprisals in war are the commission of acts which, although illegal in themselves, may, under the specific circumstances [sic] of the given case, become justified because the guilty adversary has himself behaved illegally, and the action is taken in the last resort, in order to prevent the adversary from behaving illegally [sic] in the future. Thus, the first prerequisite to the introduction [sic] of this most extraordinary remedy is proof that the enemy has behaved [sic] illegally. While generally the persons who became victims of

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the reprisals are admittedly innocent of the acts against which the reprisal is to retaliate, there must at least be such close connection [sic] these persons and these acts as to constitute a joint responsibility.

Article 50 of the Hague Regulations states unequivocally:

[Begin block quote]

"Not general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible."

[end block quote]

Thus when, as one report says, 859 out of 2,1000 [sic] Jews shot in alleged reprisal for the killing of 21 German soldiers near Topola, were taken from concentration camps in Yugoslavia, hundreds of miles away, it is obvious that a flagrant violation of International Law occurred and outright murder resulted. That 2,100 people were killed in retaliation for 21 deaths only further magnifies the criminality of this savage and inhuman so-called reprisal.

Hyde, International Law, Vol. III, page 35, has this to say on reprisals:

[Begin block quote]

"A belligerent which is contemptuous of conventional or customary prohibitions is not in a position to claim that its adversary when responding with like for like, lacks the requisite excuse."

[end block quote]

If it is assumed that some of the resistance units in Russia or members of the population did commit acts which were in themselves unlawful under the rules of war, it would still have to be shown that these acts were not in legitimate defense against wrongs per-petrated [sic] upon them by the invader. Under International Law, as in Domestic Law, there can be no reprisal against reprisal. The assassin who is being repulsed by his intended victim may not slay him and then, in turn, plead self-defense.

Reprisals, if allowed, may not be disproportionate to the wrong for which they are to retaliate. The British Manual of Warfare, after insisting that reprisals must be taken only in last resorts, states:

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[Begin block quote]

"459.....Acts done by way of reprisals must not, however, be excessive and must not exceed the degree of violation committed [sic] by the enemy."

[end block quote]

Similarly, Article 358 of the American Manual states:

[Begin block quote]

"(b) When and how employed:

Reprisals are never adopted merely for revenge, but only as an unavoidable [sic] last resort to induce the enemy to desist from illegitimate practices [sic] .....

(c) Form of reprisals:

The acts resorted to by way of reprisals.....should not be excessive [sic] or exceed the degree of violations committed by the enemy."

[end block quote]

Stowell, in the American Journal of International Law, quotes General Halleck on this subject:

[Begin block quote]

"Retaliation is limited in extent by the same rule which limits punishment in all civilized governments and among all Christian people -- it must never degenerate into savage or barbarous [sic] cruelty." (Stowell American Journal of International Law, Vol. 36, p. 671)

[end block quote]

The Einsatzgruppen reports have spoken for themselves as to the extent to which they respected the limitations laid down by International Law on reprisals in warfare.

#### CRIMINAL ORGANIZATIONS

Article 9 of the London Charter provided, *inter alia*, as follows:

[Begin block quote]

"At the trial of any individual member of any group or organization the Tribunal [sic] may declare (in connection with any act of which the individual may be convicted that the group or organization [sic] of which the individual was a member was a criminal organization."

[end block quote]

Article 10 provided that the criminality of such groups and organizations declared criminal by the International Military Tribunal was to be considered proved and not to be questioned in any succeeding proceedings. Control Council Law No. 10 defined membership in any

organization declared criminal by the International Military Tribunal as a crime.

The trial briefs on both sides in this case have devoted a great deal of space to the discussion of Count III in the Indictment. To the extent that the discussion has to do with the facts, it is wel-come [sic] and helpful. So far as the law on the subject is concerned, it has been stated completely and definitively by the Judgment of the International Military Tribunal and therefore needs no amplification here. The International Military Tribunal declared the SS, SD, and the Gestapo to be criminal organizations within the purview of the London Charter. The pertinent provisions of that Judgment declaring these organizations criminal and defining the categories of membership therein, follow:

(At this point the following was not read but at the direc-tion [sic] of the President is included in the transcript:)

[Begin block quote]

SS

The SS was utilized for purposes which were criminal under the Charter involving the persecution and extermination of the Jews, brutalities and killings in con-centration [sic] camps, excesses in the admin-istration [sic] of the slave labor program and the mistreatment and murder of prison-ers [sic] of war.....In dealings with the SS the Tribunal includes all persons who had been officially accepted as members of the SS including the members of the Allgemeine SS, members of the Waffen SS, members of the SS Totenkopf Verbaende, and the members of any of the different police forces who were members of the SS.

"The Tribunal declares to be criminal within the meaning of the Charter the group composed of those persons who had been officially accepted as members of the SS as enumerated in the preced-ing [sic] paragraph who became or remained members of the organization with know-ledge [sic] 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 [sic] 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 [sic], therefore, persons who had ceased to belong to the organizations enumerated [sic] in the preceding paragraph prior to 1 September 1939."

#### GESTAPO AND SD

"The Gestapo and SD were used for purposes which were criminal under the Charter involving [sic] the persecution and extermination of the Jews, brutalities, and killings in concentration camps, excesses in the administration [sic] of occupied territories, the administration of the slave labor programs, and the mistreatment and murder of prisoners [sic] of war.....In dealing with the Gestapo the Tribunal includes all executive and administrative [sic] officials of Amt IV of the RSHA or concerned with Gestapo administration [sic] in other departments of the RSHA and all local Gestapo officials serving both inside and outside of Germany, including the members of the Frontier Police, but not including the members of the Border and Customs Protection or the Secret Field Police, except such members as have been specified above.....In dealing with the SD the Tribunal includes Aemter III, VI, and VII of the RSHA and all other members of the SD, including all local representatives and agents, honorary or otherwise, whether they were technically members of the SS or not, but not including honorary informers who were not members of the SS, and members of the Abwehr who were transferred to the SD.

"The Tribunal declares to be criminal within [sic] the meaning of the Charter the Group composed of those members of the Gestapo and SD holding the positions enumerated in the preceding paragraph who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal [sic] by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes. The basis for this finding is the participation of the organization in War Crimes and Crimes against Humanity connected with the war; this group declared [sic] criminal cannot include, therefore, persons who had ceased to hold the positions [sic] enumerated in the preceding paragraph [sic] prior to 1 September 1939.

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"In dealing with the Gestapo the Tribunal includes all executive and administrative [sic] officials of Amt IV of the RSHA or concerned with Gestapo administration in other departments of the RSHA and all local Gestapo officials serving both inside and outside of Germany, including the members of the Frontier Police, but not including the members of the Border and Customs Protection or the Secret Field Police , except such members as have been specified above."  
[end block quote]

(At this point the President continues reading:)

In order to avoid unnecessary repetition in the individual judgments the Tribunal here declares that where it finds a defendant guilty under Count III it will be because it has found beyond a reasonable doubt from the entire record that he became or remained a member of the criminal organization involved subsequent to September [sic] 1, 1939 under the conditions declared criminal in the Judgment of the International Military Tribunal.

#### CRIMES AGAINST HUMANITY

These defendants are charged with war crimes and crimes against humanity. The concept of war crimes is not a new one. From time immemorial there have existed rules, laws and agreements which kept opposing forces within bounds in the matter of the conduct of warfare, the treatment of prisoners, wounded persons, civilian non-combatants, and the like. Those who violated these rules were subject [sic] to trial and prosecution by both the country whose subjects they were and by the country whose subjects they maltreated.

But an evaluation of international right and wrong, which heretofore existed only in the hearts of mankind, has now been written into the books of men as the law of Humanity. This law is not restricted [sic] to events of war. It envisages the protection of humanity at all times. The crimes against which this law is directed are not unique. They have unfortunately been occurring since the world began, but not until now were they listed as international offenses. The first count of the Indictment in this case charges the defendants with

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crimes against humanity. Not crimes against any specified country, but against humanity.

Humanity is the sovereignty which has been offended and a Tribunal is convoked to determine why. This is not a new concept in the realm of morals, but it is an innovation in the empire of the law. Thus a lamp has been lighted in the dark and tenebrous atmos-pHERE [sic] of the fields of the innocent dead.

Murder, torture, enslavement and similar crimes which here-tofore [sic] were enjoined only by the respective nations now fall within the prescription of the family of nations. Thus murder becomes no less murder because directed against a whole race instead of a single person. A Fuehrer-Order, announcing the death of classifications of human beings can have no more weight in the scales of international justice than the order of a highwayman or pirate.

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Despite the gloomy aspect of history, with its wars, massacres and barbarities, a bright light shines through it all if one recalls the efforts made in the past in behalf of distressed humanity. President Theodore Roosevelt in addressing the American Congress, said in 1903:

[Begin block quote]

"There are occasional crimes committed on so vast a scale and of such peculiar horror as to make us doubt whether it is not our mani-fest duty to endeavor at least to show our disapproval of the deed and our sympathy with those who have suffered by it."

[end block quote]

President William McKinley in April 1898, recommended to Congress that roops [sic] be sent to Cuba "in the cause of humanity--

[Begin block quote]

and to put an end to the barbarities, bloodshed, starvation, and horrible miseries now existing there, and which the parties to the conflict are either unable or unwilling to stop or mitigate."

[end block quote]

These two American presidents were but expressing the yearning of all mankind for amedium [sic] by which crimes against humanity could be stopped and the instigators punished [sic]. One recommended diplomatic pro-test [sic], the other armed intervention. Both methods have been used but they do not express the ideal. The former is often ineffectual and the latter achieves its benevolent object only at further expendi-ture [sic] of blood. No recourse was had to law because there was no jur-isprudence [sic] on the subject, nor was there any legal procedure to pun-ish [sic] the offenders. Humanity could only plead at the doors of the mighty for a crumb of sympathy and a drop of compassion.

But now it has been seen that humanity need not supplicate for a tribunal in which to proclaim its rights. Humanity need not plead for justice with sobs, tears, and piteous weeping. It has been de-monstrated [sic] here that the inalienable and fundamental rights of common man need not lack for a court to proclaim them and for a marshal to execute the court's judgments. Humanity can assert itself by law.

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It has taken on the robe of authority.

Following the London Agreement of August 8, 1945 between the four Allied powers, 19 other nations expressed their adherence to that Agreement [sic]. In giving effect to the London Agreement and the Charter pursuant [sic] thereto, as well as the Moscow Declaration of October 30, 1943, the Allied Control Council formulated its Law No. 10 which treated, among other things, of crimes against humanity. Those who are indicted under this provision, however, are not responding alone to the nations which have approved the principles expressed in the London and Moscow Agreements, they are answering to humanity itself, humanity which has no political boundaries and no geographical limitations. Humanity is man itself. Humanity is the race which will go on in spite of all the Fuehrers and dictators that little brains and smaller souls can elevate to platforms of tinsel poised on bastions of straw.

Crimes against humanity are acts committed in the course of whole-sale [sic] and systematic violation of life and liberty. It is to be observed that insofar as international jurisdiction is concerned the concept of crimes against humanity does not apply to offenses for which the criminal [sic] code of any well-ordered State makes adequate provision. They can only come within the purview of this basic code of humanity because the State involved, owing to indifference, impotency or complicity, has been unable to or has refused to halt the crimes and punish the criminals.

At the VIIIth Conference for the Unification of Penal Law held on July 11, 1947 the Counselor of the Vatican defined crimes against humanity in the following language:

[Begin block quote]

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

[end block quote]

The International Military Tribunal, operating under the London

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Charter, declared that the Charter's provisions limited the Tribunal to consider only those crimes against humanity which were committed in the execution of or in connection with crimes against peace and war crimes. The Allied Control Council, in its Law No. 10, removed this limitation so that the present Tribunal has jurisdiction to try all crimes against humanity as long known and understood under the general principles of criminal law.

As this law is not limited to offenses committed during war, it is also not restricted as to nationality of the accused or of the victim, or to the place where committed. While the overwhelming majority of those killed in the present case were Soviet citizens, some were German nationals A special report prepared by Einsatz-gruppe [sic] A, and previously quoted in another connection, declared:

[Begin block quote]

"Since December 1940 transports containing Jews had arrived at short intervals from the Reich. Of these 20,000 Jews were directed to Riga and 7,700 Jews to Minsk.....all evacuated Jews who survive the winter can be put into this camp (apart [sic] of the Riga ghetto) in the Spring. Only a small section of the Jews from the Reich is capable of working. About 70 to 80% are women and children or old people unfit for work. The deathrate is rising continually also as a result of the extraordinary hard winter."

[end block quote]

Another report, already referred to, spoke of the execution of 3,500 Jews "most of whom had been sent to Minsk from Vienna,.....Bremen and Berlin.

These two instances fall clearly within Count I of the Indict-ment [sic] which covers, inter alia, crimes against German nationals.

Although the Nuremberg trials represent the first time that international tribunals have adjudicated crimes against humanity as an international offense, this does not, as already indicated, mean that a new offense has been added to the list of transgressions of man. Nurnberg has only demonstrated how humanity can be defended in court, and it is inconceivable that with this precedent extant, the law of humanity should ever lack for a tribunal.

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Where law exists a court will rise. thus, the court of humanity, if it may be so termed, will never adjourn. The scrapping of treaties, the incitement to rebellion, the fomenting of international discord, the systematic stirring up of hatred and violence between so-called ideologies, no matter to what excesses they may lead, will never close the court doors to the demands of euity [sic] and justice. It would be an admission of incapacity, in contradiction of every self-evident reality, that mankind, with intelligence and will, should be unable to maintain a tribunal holding inviolable the Law of Humanity, and, by doing so, preserve the human race itself.

Through the centuries man has been striving for a better under-standing [sic] between himself and his neighbor. Each group of people through the ages has carried a stone for the building of a tower of justice, a tower to which the persecuted and the downtrodden of all lands, all races and all creeds may repair. In the Law of Humanity we behold the tower.

THE PRESIDENT: Judge Speight will continue.

JUDGE SPEIGHT: Subject, Simferopol.

SIMFERROPOL [sic]

Although the tone of this Opinion is of necessity severe, it is without bitterness. It can only be deplored that all this could happen. The defendants are not untutored aborigines incapable of appreciation of the finer values of life and living. Each man at the bar has had the benefit of considerable schooling. Eight are lawyers, one a university professor, another a dental physician, still another an expert on art. One, as an opera singer, gave concerts throughout Germany before he began his tour of Russia with the Einsatzkommandos. This group of educated and well-bred men does not even lack a former minister, self-unfrocked though he was. Another of the defendants, bearing a name illustrious in the world of music, testified that a

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branch of his family reached back to the creator of the "Unfinished Symphony", but one must remark with sorrow that it is a far cry from the Unfinished Symphony of Vienna to the finished Christmas massacre of Simferopol, in which the hapless defendant took an important part.

It was indeed one of the many remarkable aspects of this trial that the discussion of enormous atrocities was constantly interspersed with the academic titles of the persons mentioned as their perpetrators. If these men have failed in life, it cannot be said that it was lack of education which led them astray, that is, lack of formal education.

Most of the defendants, according to their own statements, which there is no reason to disbelieve, came of devout parents. Some have told how they were born in the country and that, close to Nature and at their mothers' knees [sic], learned the virtues of goodness, charity and mercy. It could be said that the one redeeming feature about this entire sordid affair is that those virtues are still recognized. One inexperienced in the phenomena of which the human soul is capable, reading the reports of the Einsatzgruppen, could well despair of the human race. Here are crimes that defy language in the depths and vastness of their brutality. Here pitilessness reaches its nadir and nothing in Dante's imagined Inferno can equal the horror of what we have discovered happened in 1941, 1942, and 1943 in White Ruthenia, the Ukraine, Lithuania, Esthonia, Latvia and the Crimea.

In this trial, one was constantly confronted with acts of men which defied every concept of morality and conscience. One looked in on scenes of murder on so unparalleled a scale that one recoiled from the sight as if from a blast of scalding steam.

But herein is the paradox, and with it the moral encouragement of redemption. Some of the defendants called witnesses to testify to their good deeds, and practically all of them submitted numerous affidavits extolling their virtues. The pages of these testimonials fairly glitter with such phrases as "honest and truth-loving", "straight-

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thinking and friendly manner", "industrious, assiduous and good-natured", "of a sensitive nature", "absolutely honest".

Through the acrid smoke of the executing rifles, through the fumes of the gas vans, through the unuttered last words of the one million slaughtered, the defendants have recalled the precepts gained at their mothers' knee. Though they seemed not to see the frightful contrast between their events of the day and those precepts of the past, yet they do recognize that the latter are still desirable. Thus, the virtues have not vanished. So long as they are appreciated as the better rules of life, one can be confident of the future.

Nor are the affidavits merely subjective in praise. They point out objectively what the defendants did in attacking injustice and intolerance. In various parts of Europe (always with the exception of Russia) the Tribunal is told they occasionally interceded in behalf of oppressed populations and broke lances with the local Nazi despots. The affidavits state, for example, that Ott who enforced the Fuehrer-Order from beginning to end in Russia, was all kindness and gentleness to the villagers in Gross-Bierderstroff in the Lorraine, and that Haensch, whose conduct in the East leaves much to be desired, was the epitome of charity in Denmark where the population in paeans of thanks-giving [sic] showered him with adulatory messages and boquets [sic] of flowers. During the period that Naumann was stationed in Holland, on affiant states, Naumann befriended the Jews, got them out of concentration camps and released hostages. In fact, according to one affidavit, Naumann was known as a man "with softness towards Jews."

What is the explanation for the appalling differences between the virtues which others saw in these defendants and their deeds as des-cribed [sic] by themselves? Was it the intimate companionship with evil? The poet Pope sought to describe this phenomenon in his quatrain:

[Begin block quote]

"Vice is a monster of so frightful a mien,  
As to be hated needs but to be seen;  
Yet seen too oft, familiar with her face,  
We first endure, then pity, then embrace."

[end block quote]

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One of the Defense Counsel, a highly respected member of the local bar apparently would seem, unwittingly, to have given an ex-planation [sic]. From the constant association with the case, he found himself arguing in his summation speech: "What did Schubert actually do which was criminal?" And then he outlines Schubert's actions:

[Begin block quote]

"Schubert first goes to the gypsy quarter of Simferopol and sees them being loaded aboard and shipped off. Then he drives to the place of execution, sees the rerouting of traffic, the roads blocked off, persons being unloaded, valuables handed over, and the shooting. Finally he drives back once more along the way to the gypsy quarter and there again sees them being loaded aboard and carried off, and then returns to his office. That is what he did."

[end block quote]

SS-Obersturmfuehrer Schubert oversees an execution of human beings who happen to be Gypsies, there is no assertion anywhere that these Gypsies were guilty of anything but being Gypsies. He sees that the roads are blocked off, that the victims are loaded on trucks and taken to the scene of execution, that that [sic] their valuables are taken from them and then he watches the shooting. This is what Schubert did, and the question is asked: What is wrong about

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that? There is no indication of any realization here that Schubert was taking an active part in mass murder. Counsel even goes further and says that when Schubert reported to Ohlendorf on what had happened, he stated that he saw "nothing unusual".

The reference to Counsel, when it occurs, is not intended as any criticism of professional conduct. It is the function of a lawyer to represent to the best of his ability his client's cause and it must now be apparent what difficulties confronted the attorneys in this case. Nonethe-less [sic], with industry and skill, with patience and perseverance they made their presentations so that the Tribunal was not denied any fact or argument which could be submitted in behalf of the accused. Regardless of the results of the Judgment it cannot be said that the accused did not have the utmost and fullest defense.

Many of the affidavits introduced in behalf of defendants spoke of religion. One related how Seibert often accompanied his mother to church. While he was in the Crimea, did he recall these visits to the house of God with his mother, and if he did, could he reconcile his activities there with the teachings of religion and of his mother?

This is a court of law, and the presence or absence of religion on the part of any defendant is not an issue in this trial. The fact, however, that Seibert advanced his early Christian training as an item of defense is indication that he at least recognizes there is a dissimilarity between what he learned and what he later did. This affidavit is additionally interesting because it impliedly repudiates the condemnations of religion by men like Goebbels, Rosenberg, Himmler, and above all, Hitler himself, who designated the

church as the only remaining unconquered ideological opponent of National Socialism, continually insulting it in speeches and pronunciamentos.

Bormann said:

[Begin block quote]

"National Socialist and Christian concepts are irreconcilable ..... If therefore in the future, our youths knows [sic] nothing more of this Christianity whose doctrines are far below ours, Christianity will disappear by itself..... All influences which might impair or damage the leadership of the people exercised by the Fuehrer with the aid of the NSDAP must be eliminated. More and more the people must be separated from the churches, and their organs, the pastors."

[end block quote]

With this anti-religious attitude dominating National Socialism, it is interesting to note that at least ten of the defendants, according to their own statements, formally left the church of their childhood.

And here one must tell of the Christmas of Simferopol in the year of 1941. In the early part of December the commander of the 11th Army, which was located in that area, notified the chief of Einsatzkommando 11b that the Army expected them to kill some several thousand Jews and Gypsies before Christmas.

This savage proposal, coming on the eve of one of the holiest days of the year, did not consternate the kommando leader, as one might expect. On the mystic chords of memory no echo sounded of the Christmas carols he had heard in childhood, nor did he recall the message of Peace on Earth and Good Will Toward Men. The only impediment this kommando leader saw in the execution of the order was that he lacked enough men and equipment for so accelerated an assignment, but he would do his best. He called on the Army Quartermaster and obtained sufficient personnel, trucks, guns and ammunition

to do the bloody deed, and it was done. The Jews and Gypsies -- men, women, and children -- were in their graves by Christmas.

On Christmas Day the executioners were depressed, the Tribunal was told, not because of the slaughter, but because they now feared for their own lives. Death, which had been so commonplace a day or two before, presently revealed itself as vivid and frightening: It might overtake the executioners themselves. Life became sweet and precious. the kommando leader testified that the danger existed they might fall into the hands of the Russians.

But at last they overcame their apprehensions and they found themselves in the mood to celebrate their own Christmas party. Their chief, Otto Ohlendorf, made a speech on that occasion. The defendant Braun was questioned on this speech:

[Begin block quote]

"Q. And did he talk on religious matters?

A. I cannot give any details of the words anymore. I don't know whether he mentioned Christ, but I know Herr Ohlendorf's attitude on all this.

Q. What was his attitude as he delivered it in his speech? What did he say that was of religious significance?

A. I really cannot give any details any more.

Q. Did anybody offer any prayers on Christmas Day of 1941?

A. Your Honor, I do not know.....

Q. Were any prayers offered for the thousands of Jews that you had killed .....?

A. Your Honor, I don't know whether anyone prayed for these thousands of Jews."

[end block quote]

Did this Christmas massacre serve the best interests of Germany and her people? Did it harmonize with the theory of moral revulsion to the Fuehrer-Order, as proclaimed by the defendants?

How far did the defendants get away from religion? It is to be repeated here that it is entirely irrelevant to the issue before the Tribunal as to whether the defendants are religious or not. They can be atheists of the first degree and yet be as innocent as the driven snow of any crime. Religion is mentioned because several of the defendants introduced the subject and their references to religion are pertinent in the evaluation of the credibility of certain testimony.

Ernst Biberstein, the defendant who was a minister of the Gospel, left the church in 1938. At that time he repudiated organized religion and claims to have founded a religion of his own. This religion, he stated, was based on the love of his fellow-men. Despite his definite abandonment of the church, he states he was regarded as a clergyman by his fellow-officers and emphasized this point as a reason why he could not have committed the murders with which he is charged. He did admit to attending various executions. Since, according to his testimony, he still worshipped at the invisible altar of his own religion, he was asked whether he attempted to offer comfort and solace to those who were about to die. His answer was that since the Bolshevik ideology advocated the movement of atheism, "one should not throw pearls before swine". Then came the following:

[Begin block quote]

"Q. Did you think that because they were Bol-shevists [sic] and had been fighting Germany that they did not have souls?

A. No.

Q. You did believe they had souls then, didn't you?

A. Of course.

Q [sic] But because they were of the attitude which you have expressed, you did not think it was

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worthwhile to save those souls?

A. I had to assume that these were Atheists. There are people who do not believe in God, who have turned away from God, and if I tell such a man a word of God, I run the danger that the person will become ironic.

Q. Well, suppose he did become ironic that could not be any worse than the fact that he was going to be killed rather soon. Suppose he did become ironic, how did that harm anyone?

A. These things are too sacred to me that I would risk them in such situations."  
[end block quote]

He was further asked:

[Begin block quote]  
"Do you think that you demonstrated that 'Love of fellow-men' by letting these people go to their deaths without a word of comfort along the religious lines, considering that you were a Pastor? Did you demonstrate there a 'Love of fellow-men'."  
[end block quote]

And his answer was:

[Begin block quote]  
"I didn't sin against the Commandments of Love."  
[end block quote]

Did Biberstein tell the truth when he said that the core of his religion was "Love of his fellow men" and then ordered the shooting of innocent people who he regarded as swine? Was he trustworthy when he declared that he never heard of the Fuehrer-Order until he arrived in Nuremberg? Was he credible when he announced that during all the time he was in Russia he never learned the Jews were shot because they were Jews?

Religion, which through the ages, has strengthened the weak, aided the poor and comforted the lonely and oppressed, is man's own determination, but that a minister of the Gospel, via the road of Nazism, participated in mass executions is an observation that cannot go unnoticed. When the Swastika [sic] replaced the Cross and Mein Kampf dislodged the Bible, it was inevitable that the German people were headed

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for disaster. When the Fuehrerprinzip took the place of the Golden Rule, Truth was crushed and the Lie ruled with an absolutism no monarch has ever known. Under the despotic regime of the Lie, prejudice supplanted justice, arrogance cancelled understanding, hatred superseded benevolence -- and the columns of the Einsatzgruppen marched. And in one of the front ranks strode the ex-minister Ernst Biberstein.

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THE FUEHRERPRINZIP

In every Nuremberg trial, an invisible figure appears in the defendants' dock. At each session in this Palace of Justice, he has entered the door and quietly moved to his place among the other defendants. For over two years he has been making his entrances and exists [sic]. He never takes the witness stand, he never speaks, but he dominates every piece of evidence, his shadow falls over every document.

Some of the accused are ready to charge this sinister shadow with responsibility for their every reverse and misfortune. But were he to cast off the cloak of invisibility and appear as he was, the amimadversions [sic] of the other occupants of the defendants' box might not be so audible, because he knows them well. He was no sudden interloper in Germany's destiny. He did not appear in a flash and order his present companions into action. Had it happened that way, the story of physical and moral duress they recounted from the witness stand would not be so incongruous. But, of their own free will, they threw in their lot with that of the specter's, and in their own respective functions enthusiastically [sic] carried out the shadow's orders, who was then not a shadow but a fire-breathing reality.

In explanation of their willingness to follow him in those days, they explain they had no reason to doubt him. He had been so successful. But the very successes they cheered most were usually this man's greatest crimes. Each defendant has claimed that the propaganda of the day assured them that Germany was always fighting a defensive war, but these men were not outsiders, nor were they children. They were part of the government, they belonged to the regime. It is incredible that they should believe that Germany was being attacked by Denmark, Yugoslavia, Czechoslovakia [sic], Greece, Belgium and even little Luxembourg. Indubitably they reveled in these successes. One of Defense Counsel declared that the defendants [sic] could well believe of Hitler that "here was a man whom no power could resist".

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And indeed never did a man wield so much power and never was a living man so ignominiously and stupidly obeyed by other men. Never did living beings, made in the image of man, so pusillanimously [sic] grovel at the feet of clay. But it is not true that no one could resist him. There were people who could resist him, or at least refused to be a party to his monstrous criminality. Some voluntarily left Germany rather than acknowledge him as their spiritual leader. Others opposed him and ended up in concentration camps. It is a mistake to say or assume that all the German people approved of Nazism and the crimes it fostered and committed. Had that been true, there would have been no need of Stormtroopers in the early days of the Party, and there would have been no need for concentration camps or the Gestapo, both of which institutions were inaugurated as soon as the Nazis gained control of the German state.

But against those who looked with alarm and foreboding on the violences of Nazism, there were those who could not resist the glory, pomp and circumstance of war, nor the greed of unbridled domination. They accepted Hitler with fervor and passion because they believed Hitler could lead them to a gratification of their bloated vanity and lust for power, position and luxurious living.

Nor have all forsaken their "successful" leader. Several of the defendants in this case have expressed their continuing [sic] belief in the Fuehrer. One could not bring himself to blame Hitler for any of the illegal deaths under discussion. Another regarded him as a great leader, if not a great statesman. Still another, when asked if he would have been satisfied if Hitler had succeeded in his aims, replied with a categorical affirmative. The defendant Klingelhoefler stated that he would have been happy if Hitler had won the war, even at the expense of Germany in ruins, with two million Germans killed and the entire-ty [sic] of Europe devastated. One other defendant told of his adoration for Hitler which apparently had not changed since 1945. The expression of such adoration offers convincing testimony on the mental attitude of the defendant at the

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time he received and executed the Fuehrer-Order.

That Hitler was a man of extraordinary capacities can not be doubted, but his capabilities for harm would have been nil had he not had willing, enthusiastic collaborators like the defendants who accepted his mad out-pourings and hysterical maledictions against defenseless minorities, as if his pronouncements were the apostopies of a semi-divinity.

These defendants were among those who made it possible for a megalomaniac to achieve his ambition of putting the world beneath his heel or to bring it crashing in ruins about his head. Some of these defendants, in following Hitler, may have believed that, in executing his will, they were serving their country. Their sense of justice staggering from the intoxication of command, their normal reactions drugged by the opiate of their blind fealty, their human impulses twisted by the passion of their ambitions, they made themselves believe [sic] that they were advancing the cause of Germany. But Germany could have fared better without such patriotism. When Samuel Johnson uttered his cynical line that patriotism is the last refuge of a scoundrel, he could well have had in mind a Hitlerian patriotism.

Hitler struck the match, but the fire would have died a quick death had it not been for his fellow arsonists, big and little, who continued to supply the fuel until they, themselves, were scorched by the flame they had been so enthusiastically tending. If history has taught anything it has demonstrated with devastating finality that most of the evils of the world have been due to craven subser-vience [sic] by sub-chiefs upon a man who through boundless ambition un-restrained [sic] by conscience has formulated plans which, proposed by any-one else, would be rejected as mad.

Dictatorship in government can only lead to disaster because whatever benefits derive from centralized control are lost in the in-finite [sic] damage which inevitably follows lack of responsibility. That

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unlimited authority and power are poisons which destroy judgment and reason is a demonstrable fact as conclusively established as any chemical formula tried and tested in a laboratory. The genius of true democratic government is that no one person is allowed to take the nation with its millions of people into the valley of decisive action without the advice, counsel and approval of those who are to be subjected to the hazards, hardships and potentially fatal consequences [sic] of that decision.

The defendants must have found themselves repeatedly at the cross-roads where and when there was still the opportunity to turn in the direction of the ideals which they had once known, but the wilful [sic] determination to follow the trail of blood prints of their voluntarily accepted leader could only take them to the goal they had never intended. It is possible that currently the defendants realize the mistake which h [sic] they made. Though most of them have sought to rationalize their deeds, though they attempted to explain that every executioner's rifle was aimed at a notional peril, it is possible they now grasp the disservice [sic] they have done not only to humanity but to their own fatherland. It may even be that through this trial with its sobering revelations they will have demonstrated what are the inevitable consequences of any plan which stems from hatred and intolerance; and her [sic] they may have proved what has never been disproved: There is only one Fuehrer, and that is Truth.

Alfred Rosenberg, the acknowledged master philosopher of Naziam [sic] wrote "The Myth of Blood":

[Begin block quote]

"A new faith is arising today: They [sic] myth of the blood, the faith, to defend with the blood the divine essence of man. The faith, embodied in clearest knowledge that the Nordic blood represents that mysterium which has re-placed [sic] and over come the old sacraments."

[end block quote]

What does this mean? No one has yet deciphered its cadenced incoherence, but as Rosenberg himself claimed in it conclusive proof

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of the master race, others were willing to assume in this torturing abstruseness the authority of a revealed writing. Beneath the mean-ingless [sic] phrases went the subtle theme of a race of men so different from, and superior to, other men that it required an occult language, whose alphabet was understood only by the elect, to carry the wisdom of this ineffable superiority. From it could be proved everything and nothing. From it the Nazi hierarchists drew their meretricious in-spiration [sic] which led to their licentious and profligate deeds.

There have been Alfred Rosenbergs in other eras as well, and they also have confirmed the rulers of nations, states and tribes in their superiority over other nations, states and tribes, but the results have invariably been the same. The theme of might against right has, through the centuries, led to consequences which were catastrophic to the assumed stronger. Through the pauseless sweep of the centuries, despots and tyrants have ever and again appealed to the weakness of their followers, the weakness of supposed strength, and have utilized their primitive vanity and arrogance of the little man in the accomplishment [sic] of their monumental horrors. Over and over, this monotonous and savage drama has appeared on the stage of history, but never was it played with such totality, fury and brutality as it was with the Nazis in the title role.

That so much man-made misery should have happened in the twen-tieth [sic] century, which could well have been the fruition of all the aspirations and hopes of the centuries which went before, makes the spectacle almost unsupportable in its unutterable tragedy and sadness. Amid the wreckage on the six continents, amid the shattered hearts of the world, amid the sufferings of those who have borne the cross of disillusionment and despair, mankind pleads for an understanding which will prevent anything like this happening again. That understand-ing [sic] goes back to the words spoken 1900 years ago, words which had they been honored in the observance rather than in the breach would have

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made the events narrated in this trial impossible --

[Begin block quote]

"Therefore, all things whatsoever ye would  
that men should do unto you, do ye so to them."

[end block quote]

PRESIDENT: The Tribunal will be in recess until tomorrow morning at 9:30 o'clock.

(The Tribunal adjourned until 9 April 1948, at 0930 hours.)

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