

LANDSBERG

A Documentary Report



OFFICE OF THE US HIGH COMMISSIONER FOR GERMANY
FRANKFURT, GERMANY

APO 757-A, US ARMY

OFFICE OF THE US HIGH COMMISSIONER FOR GERMANY

Public Relations Division

APO 757-A

January 31, 1951

The decisions of US High Commissioner John J. McCloy covering the sentences of war criminals convicted by the Military Tribunals at Nuremberg and now confined in Landsberg prison are announced in the attached statements.

The announcement is broken down into the following four general parts:

Series A is a statement by Mr. McCloy in which he generally discusses the basis for the clemency review; it explains the causes for the delay in the final disposition of these cases and discusses some of the arguments which have been advanced against carrying out death sentences. (page 3)

Series B contains the actual decisions on the sentences of each prisoner. This part includes a very brief resume and discussion of the cases and the action taken on the individual sentences. This action is listed in table form at the conclusion of each resume. (page 5)

Series C is the text of the introduction of the Clemency Board's report. This Board spent several months in Germany examining the clemency petitions which had been filed in behalf of the prisoners, reviewing the records and judgments in the twelve cases and interviewing each prisoner. (page 13)

Series D contains a brief description of the crimes committed by those prisoners under sentence of death whose sentences have not been commuted. (page 19)

Included are the final decisions made by General Handy in respect to the review of cases under the jurisdiction of EUCOM. (page 21)

Also included are texts of the London Agreement of Aug. 8, 1945 and Control Council Law No. 10, providing for prosecution and punishment of major war criminals, and US Military Government Ordinance No. 7 concerning the organization and powers of certain military tribunals. (page 25)

Series A

Statement of US High Commissioner

Mr. John J. McCloy, US High Commissioner for Germany, announced Jan. 31 his final decisions regarding requests for clemency for war criminals convicted at Nuremberg. In releasing these decisions which cover all the cases over which he, as US High Commissioner, has jurisdiction, Mr. McCloy made the following statement.

SINCE MY ARRIVAL in Germany I have received many letters and petitions asking clemency for war crimes prisoners convicted at Nuremberg and confined in Landsberg Prison.

It is a fundamental principle of American justice that accused persons shall be given every opportunity to maintain their innocence. If found guilty, it is recognized that they should be permitted to establish mitigating circumstances. In conformity with this latter principle I decided to appoint an impartial board to review these petitions, to examine each case and to consider whether any basis existed for clemency.

Such a board was appointed in March, 1950, and was composed of three well-qualified, distinguished and impartial Americans who had not previously been identified in any way with the Nuremberg trials. Its members were: the Hon. David W. Peck, Presiding Justice, Appellate Division, First Department, New York Supreme Court, chairman; Commissioner Frederick A. Moran, Chairman, New York Board of Parole; and Brig. General Conrad E. Snow, Assistant Legal Adviser, Department of State. The Board commenced its deliberations in Washington and, in July of 1950, established itself in Munich, Germany, where it conducted proceedings during the course of the summer.

The Board submitted its recommendations to me at the end of the summer. In a statement which is being released at this time, the Board has described the general basis on which it proceeded. After reviewing the Nazi criminal programs which were the basis of the Nuremberg trials, this considered statement disposes of certain general arguments commonly made on behalf of a number of the defendants. These arguments include the following: (1) the excuse of 'superior orders'; (2) claims that the offenders are being punished under *ex post facto* laws; (3) the allegation that the delay in carrying out the death sentences should itself be sufficient grounds for commuting them. I urge everyone to read the Board's statement. I call attention to the comments of the Board on conditions in Landsberg Prison. (see page 19)

WITH THE ASSISTANCE of the Board's recommendations, I have considered each individual request for clemency and in every case I have made the final decision.

Sentences have been reduced in a very large number of cases. They have been reduced wherever there ap-

peared a legitimate basis for clemency. Such reductions have been granted where the sentence was out of line with sentences for crimes of similar gravity in other cases; where the reduction appeared justified on the ground of the relatively subordinate authority and responsibility of the defendants; where new evidence, not available to the court, supported such clemency. Where I was convinced that a defendant on some occasion had the courage to resist criminal orders at personal risk, I took such facts into consideration. It is notable that several of the defendants did have the courage to resist or repudiate such orders without suffering any serious consequences. In certain cases my decision to grant clemency has been influenced by the acute illness of the prisoner or other special circumstances of similar nature.

Fifteen of the prisoners convicted at Nuremberg and now at Landsberg are under sentence of death. In these cases I have taken into account every factor which could justify clemency and have resolved every doubt in favor of the convicted man. Ten of the sentences will be commuted to imprisonment.

THE REMAINING FIVE sentences will be confirmed. In each of these cases the enormity of the crimes for which these men were directly responsible was such as to place clemency out of reason. Four of them were leaders of the *SS Einsatzgruppen* or extermination units which were engaged in the ruthless liquidation of all possible opponents of Nazism in the conquered territories. Their crime was the slaughter among others of Jews, gypsies, insane people and communists who fell into their hands. In all, approximately 2,000,000 helpless human beings were exterminated in the program.

The other prisoner sentenced to death at Nuremberg whose sentence is not commuted is the former leader of the organization responsible for the administration of the concentration camps (WVHA). Hundreds of thousands of people died of starvation or abuse or were murdered in these camps. In addition to many other atrocities this man personally supervised the destruction of the Warsaw ghetto in which 56,000 Jews were murdered or deported.

Objection has been voiced to the execution of these death sentences as contrary to the provision of the Basic German Law of 1949, abolishing the death penalty in Germany. This provision, however worthy of respect, does not control this situation. It can not affect my obligation to honor the judgments of courts constituted pursuant to international action before the adoption of the German Basic Law.

THE CRIMES FOR which these judgments and sentences were imposed were committed mainly outside Germany and against non-Germans. The flood of criminality en-

gendered by the Hitler regime resulted in an international demand for justice. Courts were established to try individuals accused of a program of deliberate and calculated crime, of historic proportions, perpetrated not on a national but on an international scale. The crimes for which they were found guilty have no counterpart in the ordinary criminal law and the present German law concerning capital punishment cannot be accepted as the standard of punishment.

Some have suggested that the delay since the death sentences were imposed makes it inhumane or unjust to carry them out. These views fail to take account of the facts which induced the delay and the extent of it.

Actually the time which has elapsed since the sentences were imposed has been much shorter than is generally realized and has been taken up with reviews for the benefit of the condemned men. The defendants were originally sentenced in April and August of 1948. The law under which these cases were tried required that death sentences be reviewed and confirmed by the Military Governor. After this review General Clay* confirmed all death sentences except one which was commuted to life imprisonment. This process of reviews necessarily took considerable time.

A further delay was caused by investigations of certain of the war crimes trials by committees of the Congress of the U.S. These investigations were undertaken to make sure that the trials were fair in all respects and gave the defendants an adequate opportunity to present their defenses. While the investigations were in progress, a stay of execution was issued for all capital sentences imposed by Military Tribunals or Military Commissions in Germany. It is now no longer in effect.

IN THE MEANTIME, however, all of the prisoners under death sentence had filed petitions for review of their sentences in the Courts of the United States. Appeals in certain of these cases were taken to the Supreme Court of the United States. The last of these petitions was dismissed in November 1950. I naturally would not permit any executions to take place as long as there was any possibility for legal review.

Finally, the work of the Clemency Board, followed by my own examination of petitions for clemency, has required more than eight months.

As I have said, all of these reviews — by the Military Governor, by the Committees of Congress, by the United States Courts, and by the Clemency Board — have been designed to make sure that each defendant had the full

benefit of a fair trial and of any possible legal appeals, and of any grounds for clemency which could be asserted on his behalf. The result of all these reviews has been that eleven of the original death sentences have been commuted, one by the Military Governor and ten on the basis of my own review. Had the death sentences been carried out when they were originally imposed, men whose sentences have since been commuted would have been executed.

There is one other matter in connection with the Nuremberg sentences upon which I wish to comment generally. It is the charge that sentences against certain former members of the German army malign the German military profession as a whole.

THE SENTENCES rendered at Nuremberg against members of the military profession were based on charges of excesses beyond anything which could possibly be justified on the grounds of military security. The individuals in question were convicted for directing or participating in savage measures of reprisal and oppression against civilian populations far exceeding the limits of international law or accepted military tradition. Whenever the heat of battle or true military considerations could persuasively be pleaded, a conscious effort has been made to moderate the sentences. In reaching my conclusions I have recognized, as did the courts and the Clemency Board, the bitter character of partisan warfare on certain of the fronts. But with every allowance for these considerations there still remain excesses which can not be rationalized or excused. Where sentences were imposed upon former officers, they have, of course, been based on individual responsibility and participation. These sentences reflect upon the individuals concerned, not upon the honor of the German military profession.

I am satisfied that the dispositions now finally made in the individual cases are just to the individual and society. I have attempted to apply standards of executive clemency as they are understood in a democratic society. I have made every effort to decide each individual case objectively, dispassionately and on its own merits. With the subordinate or less influential figures, I have endeavored to grant a greater measure of clemency than to those whose high positions placed on them a greater responsibility.

All of my decisions have been rooted in the firm belief in the basic principle of the rule of law which all must respect and to which all are answerable. With this principle, I have striven to temper justice with mercy.

* General Lucius D. Clay, US Military Governor in Germany, 1947-49.

Series B

Final Decisions of US High Commissioner

I AM ANNOUNCING herewith my decisions on the review which I have undertaken of the sentences rendered by the Military Tribunals established under US Military Government Ordinance No. 7 for the trial of war criminals.

In large measure my decisions are based on the report of the Advisory Board for Clemency for War Criminals which was appointed to review these cases.

In all cases where the Board has recommended commutation of a death sentence I have accepted the recommendation. A very limited number of additional death sentences have been commuted, although the Board, in its report, found no ground for clemency. As regards sentences of imprisonment, in a few instances my own examination of the circumstances of individual cases has resulted in my reaching a result slightly different from that recommended by the Board as to the precise degree of modification warranted. In general, however, my decisions follow the substance of the Board's report.

I have adopted certain general recommendations made by the Board. One of these was the increase in the amount of time credited to prisoners against their sentences for good behavior from five to ten days a month. This is the amount generally allowed in prisons in the United States. Moreover credit for good behavior is a standard and effective method of enforcing prison discipline.

ON THE RECOMMENDATION of the Board I am also granting all prisoners credit against their terms of imprisonment for all forms of pre-trial confinement imposed by Allied governmental agencies subsequent to May 8, 1945. Such a credit has heretofore been allowed in a number of cases but in some it appeared that full credit had not been given.

My conclusions as to modification of specific sentences of prisoners at Landsberg under my jurisdiction and certain general comments which I have to make concerning these cases are as follows:

* * *

Case 1 — Medical Case

Defendants were charged with performing medical experiments on concentration camp inmates, including high altitude tests, freezing, experiments with the use of typhus and malaria germs, artificially induced infections, salt water tests, etc.

The direct or indirect participation of professional practitioners in these crimes is a betrayal of the medical profession. The experiments were never the result of a free and voluntary proffer of their bodies by the un-

fortunate victims. They were imposed upon helpless human beings who had neither the opportunity nor the power to avoid the tests. Death or agony was the usual result of these experiments.

The worst offenders in this category of crimes have already been dealt with, but all of those presently imprisoned had a guilty part. Several of the men for whom clemency is asked were not only physicians, but also professional soldiers of very high rank.

If there had been any sense of obligation to either profession, they would not have played any consenting part in these outrages. Though difficult to find room for clemency, the Board has found, for reasons such as lack of primary responsibility, age and limited participation, a certain basis for the modification of sentences.

Accordingly, after reviewing these recommendations, I have arrived at the following decisions:

- | | |
|-------------------------|--------------------------------|
| Fritz Fischer | — from life to 15 years |
| Karl Genzken | — from life to 20 years |
| Siegfried Handloser | — from life to 20 years |
| Gerhard Rose | — from life to 15 years |
| Oskar Schroeder | — from life to 15 years |
| Hermann Becker-Freysing | — from 20 years to 10 years |
| Wilhelm Beigelboeck | — from 15 years to 10 years |
| Herta Oberheuser | — from 20 years to 10 years |
| Helmut Poppendick | — from 10 years to time served |

* * *

Case 2 — The Milch Case

Defendant was Erhard Milch, State Secretary in Hermann Goering's Air Ministry, who was convicted for advocating and exploiting slave labor.

The sole defendant in this case is the former Field Marshal Milch. The conduct of this former officer in the field of military affairs is not subject to question. It is his almost violent advocacy of, and pressure for, slave labor and disregard for the life and health of such labor in the airplane factories which is the gravamen of this offense.

His petition for clemency urges instability of temperament due to nervous strain, aggravated by a head injury. The board has recommended a reduction of sentence from life to fifteen years. This is a sharp reduction considering the high responsibility of this man, but I am prepared to follow it.

Case 3 — The Justice Case

Defendants were leading judges, public prosecutors and government officials who perverted law to suit the arbitrary requirements of Nazi racial ideology and presided at the "People's Courts" and "special" courts.

The defendants in this case, as in the Medical case, cast discredit on the professions of which they were members. There are offenders in every calling, but it is peculiarly disheartening to find them among those who are called upon to uphold law and impartial administration of justice. These defendants were not only prepared, but in most cases eager to disregard judicial and legal principles in order to advance the most brutal racial and political principles. I have had difficulty in finding a justification for clemency in any of these cases. As in the medical case, however, the Board for reasons such as limited responsibility has recommended certain reductions which I have followed with relatively minor modifications.

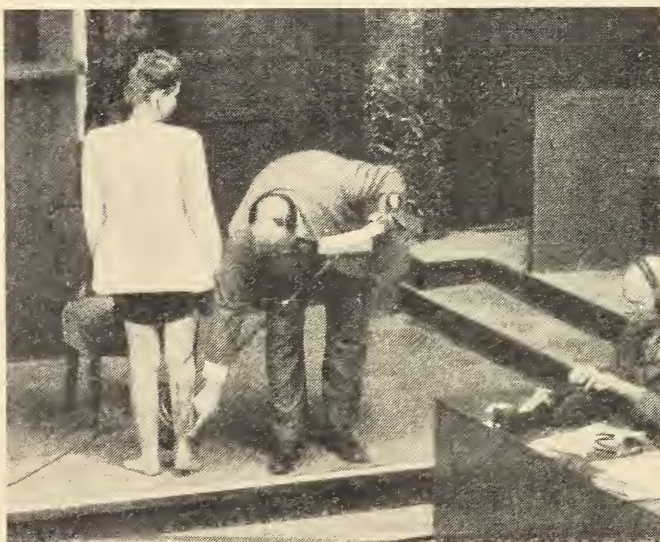
The results are as follows:

Herbert Klemm	—	from life to 20 years
Guenther Joel	—	from 10 years to time served
Rudolf Oeschey	--	from life to 20 years
Oswald Rothaug	—	from life to 20 years
Ernst Lautz	—	from 10 years to time served
Wilhelm von Ammon	—	from 10 years to time served
Franz Schlegelberger	—	from life to release on medical parole

* * *

Case 4 — The SS and Concentration Camp Case

Defendants were administrators of the concentration camps or of economic enterprises of the SS conducted with slave labor. Some of the defendants were directly



Dr. Leo Alexander, Boston psychiatrist and neurologist, gives expert testimony on the neurological and other injuries suffered by a Polish woman when she was operated and experimented upon by defendants in the Medical Case. (OCCWC photo)

identified on a large scale with the genocidal program of the Third Reich.

The case is concerned with the administration of the Concentration Camps as an adjunct of the SS. Two of the defendants were sentenced to death. One of them, Oswald Pohl, was found to have had personal responsibility for the administration of the camps. The liquidation of the Jews in the Auschwitz camp, the destruction of the Warsaw ghetto and the pillage of the Jews in the East in the action known as "Action Reinhardt" were among the crimes chargeable to this organization. Not only was Pohl, according to the judgment, the head of this administration, but he personally directed and supervised the destruction of the Warsaw ghetto, and he personally selected prisoners for medical experiments. I naturally can find no basis for clemency, and the Board recommended no modification of the sentence.

On the other hand, in the case of Eirenschmalz, the only other defendant sentenced to death in this case, I have ordered a radical commutation of his sentence. This is due to the introduction of new evidence dissociating him from the offenses on which the original death sentence was chiefly based. Though he was a part of the whole criminal organization, his individual connection with exterminations has by reason of the new evidence become remote.

Kiefer likewise benefits from the new evidence relating to Eirenschmalz. The Board has found reasons for recommending the reduction of other sentences in this case, and I have generally followed its recommendations.

My conclusions in these cases are as follows:

Oswald Pohl	—	Death. No modification.
Franz Eirenschmalz	—	from death to 9 years
Karl Sommer	—	from life to 20 years
Karl Mummmenthey	—	from life to 20 years
August Frank	—	from life to 15 years
Heinz Karl Fanslaw	—	from 20 years to 15 years
Georg Loerner	—	from life to 15 years
Hans Loerner	—	from 10 years to time served
Hans Baier	—	from 10 years to time served
Hans Bobermin	—	from 15 years to time served
Hermann Pook	—	from 10 years to time served
Leo Volk	—	from 10 years to 8 years
Erwin Tschentacher	—	from 10 years to time served
Max Kiefer	—	from 20 years to time served
Hans Hohberg	—	from 10 years to time served



Case No. 9 (Extermination Squads): left to right, front row: Otto Ohlendorf, Heinz Jost, Erich Neumann, Erwin Schulz, Frank Six, Paul Blobel, Walter Blume, Martin Sandberger, Willi Seibert, Eugen Steimle; second row: Ernst Biberstein, Werner Braume, Walter Haensch, Gustav Nosske, Adolf Ott, Waldemare Klingelhoef, Lothar Fendler, Waldemar von Radetzky, Felix Ruehl, Heinz Hermann Schubert, Mathias Graf. (US Army photo)

No mention is made of Case No. 5 (Flick) or Case No. 6 (Farben) as all of the defendants have been released or are now eligible for release.

* * *

Case 7 — The Hostages Case

Defendants were generals assigned to southeastern Europe, charged with criminal disregard of the civilized rules of warfare in respect to the treatment of hostages and civilians.

In the so-called Hostages or Southeast Generals Case the Board has recommended no alleviation of the sentences of former officers Wilhelm List and Walter Kuntze, nor can I find any extenuation for the energy, as demonstrated by their own signed orders, with which they appear to have carried out the terrorization policy of their Command.

Their high rank set a certain tone to the brutalities practiced in this area and their own orders can only be read as incitations to excess. There is, in short, more in these cases than the mere transmittal of a patently illegal order, bad as that might have been. In spite of an effort to give full weight to the harassing character of the local partisan and guerrilla warfare which these and other officers had to face in this campaign, the conclusion is inescapable that these highly responsible officers, as the Board found, passed far beyond the limits permitted by justifiable military considerations, both in their acts of omission and commission.

While the tribunal recognized that in extremity, and as a last resort, the shooting of hostages under certain restrictions was a concomitant of warfare of this type, the evidence established that many of the executions involved hundreds of gypsies and Jews and others who did not bear the slightest relation, either in location or causation, to any incidents against German troops. The taking and shooting of hostages were also in arbitrary and grossly excessive ratios to the offenses prompting the action.

The Board suggests that List and Kuntze, both elderly men, may have such physical infirmities as to raise the desirability of further medical examination to determine whether any medical parole is appropriate. In accordance

with this suggestion and in accordance with a practice which has become standard in the administration of United States prisons in Germany, I have directed that medical examinations be made of them and that a report be rendered which would provide a basis for a determination of this matter.

The sentences of other officers charged with excessive reprisals have been reduced because they had lesser responsibility or, in some cases, showed evidence of humane considerations.

The decisions are as follows:

Wilhelm List	— life. No alteration
Walter Kuntze	— life. No alteration
Lothar Rendulic	— from 20 years to 10 years
Wilhelm Speidel	— from 20 years to time served
Helmut Felmy	— from 15 years to 10 years
Ernst von Leyser	— from 10 years to time served
Hubert Lanz	— from 12 years to time served
Ernst Dehner	— from 7 years to time served

* * *

Case 8 — The Race and Settlement Case

Defendants were high officials in the Race and Settlement Office of the SS Elite Guard, RUSHA, the Repatriation office, VOMI, or the main staff office of the RKFBV. These organizations carried out systematic programs of genocide by kidnaping alien children; performing abortions on non-German workers; sterilization; forced evacuation of enemy populations and forced Germanization of enemy nationals and a number of other excesses.

The individuals were all connected with former government ministries charged with carrying out the almost unbelievably brutal racial concepts of Hitler and Himmler.

Though guilt attends all of these defendants in some measure, the Board has based its recommendations on the relatively restricted nature of the relationship of

these defendants to the crimes, their relatively subordinate rôles, and certain other extenuating circumstances. I have followed those recommendations. The decisions are as follows:

Rudolf Creutz	•-	from 15 years to 10 years
Werner Lorenz	—	from 20 years to 15 years
Heinz Brueckner	—	from 15 years to time served
Otto Hoffman	—	from 25 years to 15 years
Fritz Schwalm	—	from 10 years to time served
Herbert Huebner	—	from 10 years to time served

* * *

Case 9 — Einsatzgruppen, or Extermination Squads Case

Defendants were officers of the SS Elite Guard and in charge of the extermination squads which were responsible for the murder, as the International Tribunal found, of 2,000,000 people.

This case includes most of the death sentences which have heretofore been confirmed but which have not been executed. These men, or at least many of them, are typical of the most inhuman and degrading aspect of the whole Nazi spectacle. Their organizations were one

of the chief instruments of the extermination policy of the Nazi regime.

The political and racial character of most of their victims, which included women and children, belies any pretense that the wholesale executions were military or bore any relation to military security. The murders which certain of these organizations committed were on such a large and vicious scale that the mind has difficulty in comprehending them. Certain of the crimes are of truly historic proportions. The evidence in these cases consists mainly in undisputed reports of the organizations, the statements of the leaders themselves, some of whom are among the defendants.

Whereas a careful examination of these cases and the Board's recommendations does afford grounds for clemency in certain individual situations, no rationalization or explanation whatever can justify the existence of these organizations themselves, or the policy which motivated them. In some of these cases, no matter how one strains to find an area for the application of clemency, the responsibility of the defendants is so clear and direct and the nature of the offenses so shocking that clemency has no meaning as applied to them. In these individual cases no mitigating circumstances whatever have been found.

There are other defendants where, with difficulty, I have found a basis for commutation of the death sentence to one of confinement for the rest of their natural lives. Though deeply guilty it can be said of them that their

Case No. 4 (SS and Concentration Camps): Oswald Pohl is shown on the extreme left in the first row. Others in the photograph include: Hans Baier, Hans Bobermin, Franz Eirenschmalz, Heinz Karl Fanslaw, August Frank, Hans Hohberg, Max Kiefer, Horst Klein, Georg Loerner, Hans Loerner, Karl Mumenthey, Hermann Pook, Rudolf Scheide, Karl Sommer, Erwin Tschentacher, Joseph Vogt, Leo Volk. (OCCWC photo)



offenses as proven by the record were on a less imposing scale.

In cases of still other individuals where the sentence of death has been heretofore confirmed, I feel injustice would be done if the sentences were carried out. This is due largely to the introduction of new and persuasive evidence which has recently been made available. The Haensch and Steimle judgments are examples. Though guilt still attaches to them the directness of their connection with the crimes is substantially lessened by this evidence. Had it not been for the lapse of time since the original sentence, this evidence would not have been considered. In such cases I have not only commuted the death sentence, but have substantially reduced the time of future confinement.

In ordering the reduction of sentences I have followed very closely the recommendations of the Clemency Board, and my action is based upon the prisoner's subordinate responsibility, or the relative remoteness of his connection with the murders, and in some cases, the refusal of the prisoner himself to continue in this brutal business. In no case have I permitted the execution to take place where the Board recommended clemency. In certain cases I have commuted the death sentence, though the Board itself recommended no clemency.

In order that it may be known why no clemency was granted in certain cases, I have appended to my decision in each such case a brief statement of the crimes for which the defendants were adjudged and sentenced and for which, after extended examination and review, no extenuation could be found.

The results in these cases are as follows:

Paul Blobel	—	death. No modification
Ernst Biberstein	—	from death to life imprisonment
Walter Blume	—	from death to 25 years
Werner Braune	—	death. No modification
Walter Haensch	—	from death to 15 years
Waldemare Klingelhoef	—	from death to life imprisonment
Erich Naumann	—	death. No modification
Otto Ohlendorf	—	death. No modification
Adolf Ott	—	from death to life imprisonment
Martin Sandberger	—	from death to life imprisonment
Heinz Hermann Schubert	—	from death to 10 years
Willi Seibert	—	from death to 15 years
Eugen Steimle	—	from death to 20 years
Heinz Jost	—	from life to 10 years
Gustav Nosske	—	from life to 10 years
Waldemar von Radetzky	—	from 20 years to time served
Erwin Schulz	—	from 20 years to 15 years
Franz Six	—	from 20 years to 10 years



Case No. 2 (Milch): Erhard Milch (left) with his counsel, Dr. Friedrich Bergold, at trial. (US Army photo)

Lothar Fendler	—	from 10 years to 8 years
Felix Ruehl	—	from 10 years to time served

The case of Defendant Strauch who was extradited to Belgium where he was sentenced to death for murders committed there was not reviewed.

* * *

Case 10 — The Krupp Case

Defendants, who were among the highest executives in the Krupp industrial empire, were charged with collaboration with the Hitler Government in the use of slave labor and in spoliation for the aggrandizement of the concern.

This case involves a charge of spoliation and plunder relating to certain property in France and Holland. There is also a slave labor count involving the illegal employment of civilians, concentration camp inmates and prisoners of war in various Krupp plants.

On the first of these charges the defense is that the Krupp concern had no part in the confiscation of the property; that it was done entirely by German governmental authorities and the property was allocated to Krupp at prices set by the government and paid by Krupp.

On the second count the defense is that the slave labor was allocated by governmental authorities and the conditions under which the labor was confined and worked were directed entirely by the concentration camp commanders in the case of the civilians and by the army in the case of the war prisoners. Employment was illegal

in the case of the civilians and contrary to the Hague Convention in the case of the prisoners of war.

There is no doubt whatever that this labor was inhumanly treated, being constantly subjected to corporal punishment and other cruelties. There is likewise no doubt that the industrial concern and its management were not primarily responsible for this treatment. The judgment does indicate that several of the defendants were involved with certain of the illegalities but it is extremely difficult to allocate individual guilt among the respective defendants.

I have come to the conclusion that whatever guilt these defendants may have shared for having taken a consenting part in either offense, it was no greater in these cases than that involved in the Farben and Flick cases. I have accordingly reduced the sentences in Case Number 10 so that the terms served will conform approximately to the sentences in similar cases.

The decisions in this case are as follows:

Alfried Krupp von Bohlen und Halbach	— from 12 years and confiscation of all property to time served and no confiscation
Friedrich von Buelow	— from 12 years to time served
Erich Mueller	— from 12 years to time served

Eduard Houdremont	— from 10 years to time served
Friedrich Janßen	— from 10 years to time served
Karl Eberhardt	— from 9 years to time served
Max Ihn	— from 9 years to time served
Heinrich Korschach	— from 6 years to time served
Heinrich Lehmann	— from 6 years to time served

One feature of this case is unique, namely, the confiscation decree attached to the term sentence against Alfried Krupp. This is the sole case of confiscation decreed against any defendant by the Nuremberg courts. Even those guilty of personal participation in the most heinous crimes have not suffered confiscation of their property and I am disposed to feel that confiscation in this single case constitutes discrimination against this defendant unjustified by any considerations attaching peculiarly to him. General confiscation of property is not a usual element in our judicial system and is generally repugnant to American concepts of justice, as Mr. Justice Jackson has said in opposing such sentences in connection with the jurisdiction granted to the International Military Tribunal.



Case No. 3 (Justice), left to right, front row: Josef Altstoetter, Wilhelm von Ammon, Paul Barnickel, Hermann Cuhorst, Karl Engert, Guenther Joel, Herbert Klemm, Ernst Lautz; second row: Wolfgang Mettgenberg, Guenther Nebelung, Rudolf Oeschey, Hans Peterson, Oswald Rothaug, Curt Rotheberger, Franz Schegelberger. (US Army photo)



Case No. 10 (Krupp): left to right, last row: Alfried Krupp von Bohlen und Halbach, Eduard Houdremont, Erich Mueller, Friedrich Janssen, Karl Pfirsch, Max Ihn, Karl Eberhardt, Heinrich Korschach, Friedrich von Buelow, Heinrich Lehmann, Hans Kupke. (OCCWC)

I can find no personal guilt in defendant Krupp, based upon the charges in this case, sufficient to distinguish him above all others sentenced by the Nuremberg Courts. As one of the compelling motives of this review is to introduce a certain uniformity in the sentences I have determined to eliminate this feature from the defendant Krupp's sentence.

I would point out that by so doing I am making no judgments as to the ultimate title to the former Krupp property. The property of *Firma Fried. Krupp* will be subject to AHC Law Number 27, "Reorganization of the German Coal, Iron and Steel Industries," and is not affected by this decision.

* * *

Case 11 — Ministries Case

Defendants were high-ranking officials who played an important part in the political and diplomatic preparation for initiation of aggressive wars, violation of international treaties, economic spoliation, diplomatic implementation of the genocidal program.

I have determined to follow the recommendations of the Board in all these cases. There is one case, however, which I feel deserves special comment. This is the case of Gottlob Berger, who was originally sentenced to twenty-five years imprisonment.

Berger was a close official associate of Himmler; he was active in the *Heu-Aktion* program by which children were evacuated from the Eastern territories and sent to training camps for armament industries. He was prominent in the creation of and gave protection to the units presided over by the notorious Dirlawanger.

On the other hand, Berger appears to have been unjustly convicted of participation in the murder of the French General Mesny. At least there is substantial evidence to show that he protested the affair and did what he could to prevent it. Also, Berger, toward the end of the war, actively intervened to save the lives of Allied officers and men who under Hitler orders were held for liquidation or as hostages.

The judgment shows without contradiction that this prisoner is culpably responsible for much that was illegal and inhumane in the Nazi program and his close

association with Himmler is a serious indictment in itself. However, I feel compelled to eliminate entirely from the consideration of the weight of his sentence any participation in the Mesny murder and to give perhaps somewhat greater weight than did the Court to certain humane manifestations toward prisoners which at least in one period of his career he displayed. For these reasons I have approved the recommendation of a reduction in sentence from 25 years to 10 years which the Board has made as a very liberal act of clemency. I have already commuted the sentence of the defendant Ernst von Weizsaecker to time served.

The conclusions of this case are therefore as follows:

- | | |
|--------------------------------|--------------------------------|
| Gottlob Berger | — from 25 years to 10 years |
| Hans Heinrich Lammers | — from 20 years to 10 years |
| Edmund Vessemer | — from 20 years to 10 years |
| Hans Kehrl | — from 15 years to time served |
| Paul Koerner | — from 15 years to 10 years |
| Paul Pleiger | — from 15 years to 9 years |
| Wilhelm Keppler | — from 10 years to time served |
| Graf von Lutz Schwerin-Krosigk | — from 10 years to time served |

* * *

Case 12 — High Command Case

Defendants were charged with personal responsibility for ordering the killing and mistreatment of prisoners of war and fostering and participating in a program involving the deportation and abuse of civilians in occupied areas.

It is important to note that in these cases the defendants involved are men of very high military rank. They were tried and convicted not for excesses participated in by them or by units under their command on the battlefields and in hot blood, but for promulgating or participating



Case No. 1 (Medical): left to right, front row: Karl Brandt*, Siegfried Handloser, Paul Rostock, Oskar Schroeder, Karl Genzken, Karl Gebhardt*, Kurt Blome, Joachim Mrugowsky*, Rudolf Brandt*, Helmut Poppendick, Wilfram Sievers*; second row: Gerhard Rose, Siegfried Ruff, Victor Brack*, Hermann Becker-Freysing, Georg August Weltz, Konrad Schaefer, Waldemar Hoven*, Wilhelm Beigelboeck, Adolf Pororny, Herta Oberheuser, Fritz Fischer. *These seven were executed June 2, 1948. (OCCWC photo)

directly or indirectly in the orders leading to the executions of or killing of civilians, political undesirables, Jews, gypsies, Allied fliers, those having "anti-German attitudes" and others having in large part no connection with the conduct of military operations. The testimony in these cases is mainly based on documents, the reports of the officers themselves, and those of their command of which they had knowledge.

The offenses also embrace responsibility for or a consenting part in the deportation of civilian populations, their enslavement, and the slaughter of commandos. The association of certain of these officers of the highest rank* with the liquidations conducted by the SIPO and the SD, was closer than is generally admitted, and their personal conduct in this connection places them beyond military justification.

With every disposition to grant consideration because officers are impelled to take measures calculated to protect their country and their command, there still remains, in these cases, an area of real guilt which, whatever his nationality, a professional soldier sensitive of his responsibilities cannot countenance.

Much has been said about the honor of the German soldier and of the German officer. The suggestion has been made that condemnation of individual officers is a reflection on the German military profession as a whole. To condemn those who were not faithful to their professional obligations is not to condemn the whole pro-

* Reinecke, for example, was a lieutenant general, chief of the AWA and chief of the National Socialist Guidance Staff of OKW, and had charge of Prisoners of War Affairs.

fession any more than to condemn the doctors and lawyers who participated in the medical experiments and in the administration of the people's courts under the Nazis is to condemn the medical and legal professions as a whole.

Where sentences have been substantially reduced it has been the result of more detached responsibility and other extenuating circumstances brought out mainly since the trials. Wherever evidence appears that any of these officers did resist or attempt to moderate in part certain of the excesses, due consideration was given such action either in the original sentence or by the present action.

The decisions in this case which closely follow the recommendations of the Board are as follows:

Hermann Reinecke	— life. No modification
Walter Warlimont	— from life to 18 years
Georg von Kuechler	— from 20 years to 12 years
Hans von Salmuth	— from 20 years to 12 years
Herman Hoth	— 15 years. No modification
Hans Georg Reinhardt	— 15 years. No modification

Kuechler is 70 years of age. Since the Court sentenced this defendant to a term less than life, I have reduced the sentence so as to give, with time served and time off for good behavior, a prospect of release from prison during his lifetime.

Advisory Board on Clemency for War Criminals

August 28, 1950

To: The United States High Commissioner for Germany.

Pursuant to the directions of John J. McCloy, United States High Commissioner for Germany, the Advisory Board on Clemency for War Criminals was convened in Washington, D. C. in March, 1950 as follows: David W. Peck, Presiding Justice, Appellate Division, First Department, New York Supreme Court, Chairman; Frederick A. Moran, Chairman, New York Board of Parole; and Conrad E. Snow, Assistant Legal Adviser, Department of State.

Commissioner Moran proceeded to Germany in April, returning to the United States with the judgments and the Board then commenced its study and consideration of the cases. The Board convened at 28 Prinzregenten Strasse, Munich, on July 11, 1950, and proceeded immediately to consider the petitions for clemency filed by or on behalf of the defendants who were convicted in Cases Numbers 1 to 12, inclusive, which were tried by Military Tribunals established in accordance with U.S. Military Government Ordinance No. 7, as amended. The Board has sat in Munich for 40 days, has read the judgments (over 3,000 pages) in the cases of 104 defendants now in confinement as a result of the above mentioned trials, the appeals filed by counsel, the petitions for clemency and all supporting documents, and has heard 50 counsel representing 90 of the defendants. Commissioner Moran has personally conferred with the prisoners at Landsberg Prison. All considerations of the Board have been in accordance with the direction of the High Commission, as contained in Staff Announcement No. 117, dated July 18, 1950.

The Board submits herewith its findings and recommendations with regard to clemency, in accordance with Paragraph 3 of the above mentioned Staff Announcement.

Respectfully submitted,
David W. Peck
Frederick A. Moran
Conrad E. Snow

Series C

Introduction to Clemency Board Report

THE AVAILABILITY TO the individual defendant of an appeal to executive clemency is a salutary part of the administration of justice. It is particularly appropriate that the cases of defendants convicted of war crimes be given an executive review because no appellate court review has been provided.

There were twelve trials before six United States Military Tribunals at Nuremberg, involving over one hundred defendants, these trials being known as the American Nuremberg trials. Some of the defendants have asserted that standards of judgment varied between the several courts and that there were inequalities in sentences. There seems also to be a feeling upon the part of the defendants that the time of their trial, shortly after the war, was unfavorable and prejudicial. It is important, therefore, that all the cases be reviewed at one time by one body under conditions which guarantee objectivity.

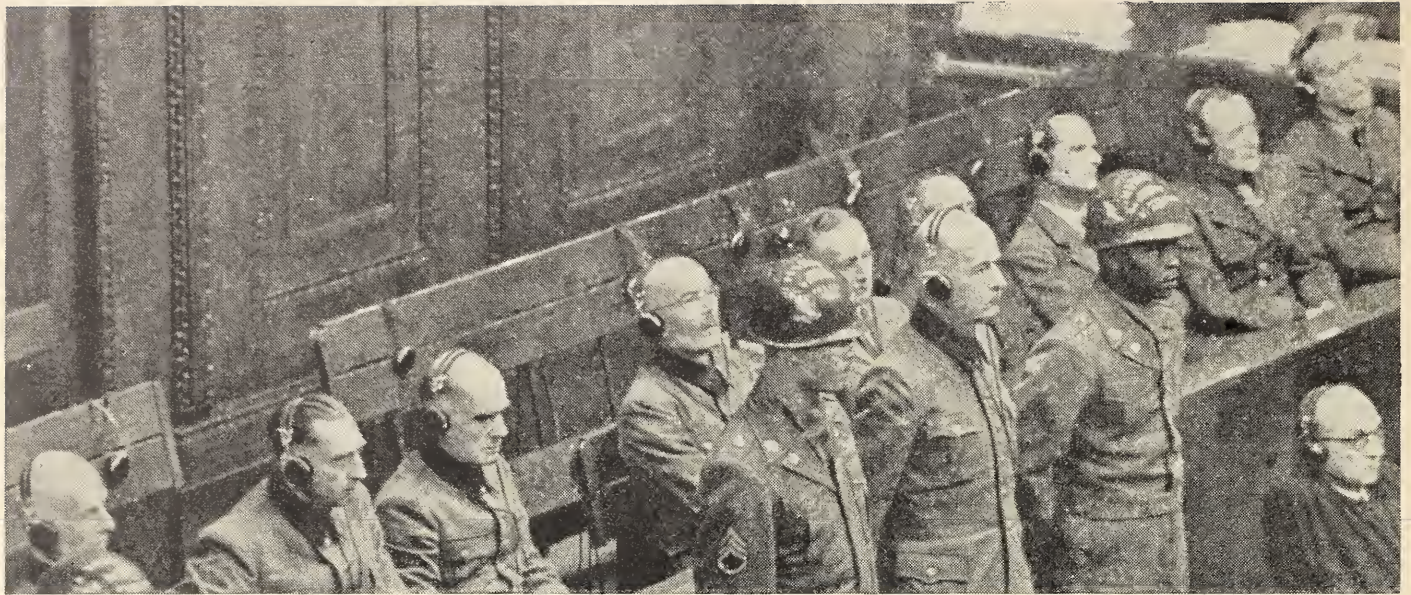
While your Advisory Board has worked under a directive that it was not to review the judgments on the law or the facts, we have felt that the authority to review sentences required a differentiation between specific facts found and established in the evidence and conclusions that may have been drawn therefrom. We have considered ourselves bound by the former but not by the latter. We

have closely examined the judgments, carefully considered the petition and supporting documents of each defendant, heard counsel in each case, and through one member of the Board interviewed each prisoner at Landsberg Prison.

THE NUREMBERG TRIALS were more than the trials of individual defendants for individual crimes. They were group trials of men who, while participating separately, were engaged in a vast criminal enterprise against international laws and humanity. We think that three

Members of the HICOG Advisory Board on Clemency are (left to right) General Snow, Justice Peck and Mr. Moran, shown while working on their reviews in Munich. (PRB OLCB photo)





Case No. 7 (Hostages): **Wilhelm List**, (standing in front at sentencing); seated left to right: **Walter Kuntze**, **Hermann Foertsch**, **Kurt von Geitner**, **Lothar Rendulic**, **Ernst Dehner**, **Ernst von Leyser**, **Hubert Lanz**, **Wilhelm Speidel**. Not shown: **Helmut Felmy**. (DPA photo)

things of equal importance should eventuate from these trials and be pointed up in this report.

(1) Recognition of laws of humanity which no people or state can flaunt and the certain knowledge that the individual engaged in their violation will be held accountable to society and punished.

(2) Education of the people of the world as to what took place under the Third Reich, that they may become ever alert to guard against the risks of repetition.

(3) Individual justice for the individual defendant. He must not be assimilated to the government, party or program. His individual action and circumstances must be scrupulously observed to the end that he be held accountable only for his own misdeeds and not have visited upon him the misdeeds of others.

We duly appreciate that our province and concern is with the individual. We believe that our report and recommendations reflect an attention to all individual considerations in accordance with the standard set. We think it necessary as well as desirable at the outset, however, to outline the scope and showing of the trials, the manifold but unified criminal activities in which these defendants participated.

THE TWELVE TRIALS were separate proceedings each concerning a segment of the Nazi program: the SS, the army, the concentration camps, the courts, the government, the industrial front. All were integrated in a massive design which despite its madness was thoroughly worked out to incorporate every endeavor. The concept which underlay the design and aggressive action was the idea that the Germans were a master race destined to conquer, subjugate and enslave the inferior races of the east, but that even the master race must be ruled by a dictator who would have complete control over their lives. It was not a new idea, this glorification of state and ordering of the lives of all individuals to serve the state, but it had never

been conceived and carried out on such a large and ruthless scale as it was by Hitler and the Nazis.

The parts of the master plan all carried out in unison were:

(1) War to conquer and bring within the Nazi domain the territories of the east.

(2) The elimination of all actual and potential opposition, by the extermination of political leaders and those who had any promise of becoming political leaders in opposition, or their collection and removal to concentration camps.

(3) The elimination of Jews, occasionally by deportation, but generally by outright slaughter. This organized business of murder was centered in SS groups which accompanied the army for the purpose of eliminating the Jews, gypsies and all those even suspected of being partisans. No less than 2,000,000 defenseless human beings were killed in this operation.

(4) The subjugation of the people of the conquered eastern territory and suppression of all resistance by calculated terrorization. This was Hitler's direction to and the deliberate policy of the High Command (OKW), carried out by many of the commanding generals in the southeast. Departing from military measures and in violation of laws of war, the southeast army engaged in the murder of political leaders captured with troops, collected the civil population, and after destroying their villages held them as hostages to be shot together with prisoners of war in arbitrary reprisal ratios as high as 100 to 1 for the death of any German soldier or for any act of sabotage. Not infrequently this army was employed in rounding up Jews and other "undesirables" and turning them over to the accompanying SS for liquidation.

(5) Pillage of property and enslavement of the population of the invaded eastern territories to feed the machine of war. Local industry was preempted to fashion German arms, or machinery and material were removed to Ger-

many for the purpose, and the local population was conscripted for local labor service or deported to Germany and placed in concentration camps near war plants, where they were set to work 12 hours a day until many thousands died from exhaustion, exposure, starvation or brutal treatment.

(6) The resettlement program which had the dual purpose of permanently ousting the non-Germans from their homes, eliminating their culture and even their existence, and settling Germans in their place. Included in this program was bringing back to the Reich from the eastern territories German nationals or ethnic Germans, regardless of whether they wished to come or not, kidnaping of non-German children with racial characteristics considered desirable and their removal to the Reich for strengthening the race, the deportation or reduction of non-Germans to a position of virtual slavery, and an elaborate program to end the propagation of the inferior races by means of sterilization, abortions and the imposition of the death penalty for forbidden sexual intercourse. All this was done on a systematic basis, of racial examinations which determined the disposition of all the people involved. This gigantic uprooting of people regardless of ties of home, family or their wishes, was carried out in a thoroughly businesslike way by agencies of the government set up for the purpose.

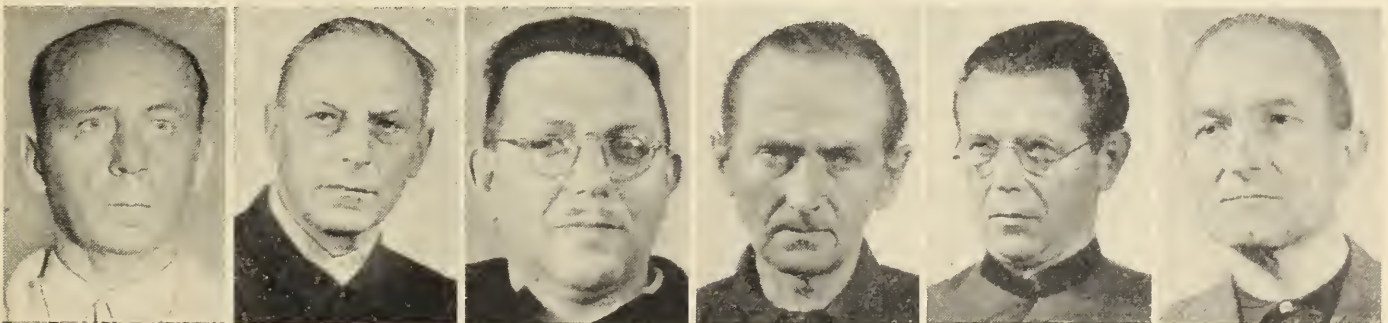
THE MEDICAL EXPERIMENTS, which constituted one entire case, will be touched on here only as an illustration of the attitude and philosophy which dominated the whole program. They included a variety of experiments with diseases, inoculations, mutilating operations and physical tests on human beings, all made on concentration-camp inmates and involving a large number of deaths. While it is contended that the experiments were useful and conducted properly, despite the many deaths resulting, the noteworthy fact is that free subjects were not persuaded to make the sacrifice for country or humanity, which is the elementary legal requirement for experiments on human beings, but the imposition was made solely upon those helpless human beings for whom the Reich had no use or respect. The number that died by medical experimentations was not comparable to those who died by other means, but hundreds of concentration-camp inmates, without their consent and in violation of every tenet of

law and professional ethics, were subjected to torture and death by experiments, including their infection with mortal disease, the breaking and transplanting of bones, exposure to freezing, high altitudes and other physical tests.

Of course, none of this could happen where law existed or was observed. Hence it was a necessary part of the program to eliminate law, and law was eliminated. There was an outright substitution of Nazi ideology for law. Judges were frankly instructed that in dealing with non-Germans they were not expected to apply or observe the statutes, but were to be guided by Nazi ideology. The judge was thus left loose and free from law to vent his will, and in a discriminatory manner based only on considerations of who the parties were, the antithesis of law, the courts reached decisions and inflicted penalties and punishment, including death for the most trifling offenses if the defendant was a Pole or Jew.

WHILE NO LAW WAS above the judges in these cases, there were ministers and party leaders above them, and decisions were closely watched even by Hitler or Himmler to make sure that the courts did their part in the Nazi program. Their interference in court proceedings, particularly with dispositions and sentences, was common. If a decision was not satisfactory to the party or government, it was recalled and a dictated disposition made. Only puppets or party stooges could serve as judges in such circumstances. The administration of justice was thus corrupted and prostituted and harnessed to the Nazi will.

What manner of men were these SS leaders, commanding generals, judges, prosecuting attorneys, industrialists and government ministers, what their psychological reactions were at the time and whether they enthusiastically or reluctantly bent themselves to their allotted tasks is not clear. While all now pretend to a distaste of their work, the hard fact remains obvious that with most of them willingness must have entered into their performance. No one man can make an entire nation goose-step to his will. Among the leaders down the line, even among the minor ones where the defendants now vie to place themselves, there had to be willing cooperation. If it had not largely existed among



Case No. 8 (Race and Settlement): left to right: Otto Hofmann, Werner Lorenz, Fritz Schwalm, Rudolf Creutz, Heinz Brueckner, Herbert Huebner. Original defendants not shown: Ulrich Greifelt, Konrad Meyer-Hetling, Otto Schwarzenberger, Richard Hildebrandt, Max Sollmann, Gregor Ebner, Guenther Tesch, Inge Viermetz. (OCCWC photo)



Case No. 12 (High Command): left to right, front row: Wilhelm von Leeb, Georg von Kuechler, Hermann Hoth, Hans Georg Reinhardt, Hans von Selmuth, Karl Hollidt, Otto Schniewind, Hugo Sperrle, Karl von Roques, Hermann Reinecke; second row: Walter Warlimont, Otto Woehler, Rudolf Lehmann. (US Army photo)

these defendants, Hitler and the small coterie at the top could never have come or remained in power.

The almost universal attitude and explanation of the defendants is that they were caught in the web, were unable to extricate themselves, and under coercion of superior orders, without any alternative but execution or suicide, were obliged to carry out their assignments. A few of the defendants had the courage and character by one means or another to remove themselves from those assignments. Nothing too serious happened to them, proving that for persons in the defendants' positions there was an escape for those who really had the character and desire to put humanity and decency above personal security at any price.

SOME OF THE defendants have made the impression upon us of genuineness in their professions. Perhaps several traveled the road one describes as the "ridge between obedience and rebellion." Yet while none attempts to justify his actions as a humane matter, the main impression given, and one that is most disappointing, is that the majority of the defendants still seem to feel that what they did was right, in that they were doing it under orders. This exaltation of orders is even more disturbing as an attitude than as a defense.

The defense is both uniform and consistent. Every defendant in this case has raised it, as every defendant in the International trials raised it. It does not matter how high or how low the defendant was. There was always some superior, eventually up to Hitler, who gave the orders, and there is reflected here a complete acceptance of what was the basic evil in the Hitler regime, a dictatorship not only in fact but in philosophy, so that

no one was expected to think or have any standards of official or personal performance except the thoughts and standards laid down by one man.

And now we have, five years after his end and the end of the war, all of these defendants chanting superior orders and contending that in the entire nation of sixty millions of people there was only one man, or a very small group of men, responsible for any and all of the things which happened, and that no one else was responsible for anything, and that so long as there was an order which trickled down from the top, everyone in the wash of it enjoyed an immunity bath. It may be as consoling a philosophy as it is a blind philosophy. But if it is to be negated and there is to be a world of law and justice, individuals in positions of some authority at least must be held answerable for their acts. However mitigating the circumstances may be, depending upon the position of a defendant and the actual coercion under which he may have acted, the defense of superior orders must be rejected as an absolution as it was rejected by the Tribunals on the trials.

ONLY BY EDUCATION of the people and the preservation of political power in them can repetition of what is shown here be avoided and the aspiration of the common man everywhere for peace and justice be realized. The other essential is the maintenance of law, and it is law which the Nuremberg trials observed and vindicated.

An elaborate legal attack was made upon the jurisdiction of the Tribunals at the trials upon the ground that the law being applied was *ex post facto* law and that the defendants had not known that they would be held ac-

countable under such law when they were acting under German law. We are not permitted to reexamine this subject, but as we have undertaken to make a few general observations on the trials, it is appropriate to say that there was nothing *ex post facto* about the law applied in these cases. Rudimentary laws of humanity, including elementary laws of war such as those relating to the treatment of prisoners, reprisals and hostages, were old and international law long before the Nazi war machine was set in motion, and were as much a part of German military and civil law as they were of international law. There was no German law that these defendants were observing at the time they were violating all tenets of international law and natural law, unless they wish to assert as law the very lawlessness of Nazi ideology, which violated and suspended German law as well as international law. This legal defense comes down to nothing more than superior orders. It is the assertion again in legal jargon that officers of the army and officers of the state were entitled to do whatever a Fuehrer decree directed, regardless of the fact that it was contrary to all legal concepts everywhere and the dictates of humanity.

WHERE THERE IS any room for question, we certainly would not hold a defendant criminally liable. But no law can be called upon to defend the murder of Jews or gypsies, the enslavement and accompanying cruel treatment of masses of people, and the wide program of racial examinations and valuations which determined who would be resettled and who would be enslaved or destroyed. Murder, pillage and enslavement are against law everywhere and have been for at least the twentieth century.

The law existing, the concomitant is that the violators be held accountable. What Nuremberg means is that the law remains at all times over all people, including the leaders of state and all who follow in their train, and that the individual will be held answerable to society.

What we have said is a necessary introduction to a consideration of the individual cases because, as we have observed, these individual defendants did not act in a vacuum or entirely on their own. It is quite as important in their behalf as it is against them to place them in the larger canvas and view them in perspective. We have said before, and we re-emphasize, that the individual is not to have visited upon him the sins of others. There is a guilt by association only to a limited degree. A man who joins and actively participates in a criminal organization, knowing that it is criminal, should be held responsible to some extent for the acts of the organization he enters and supports. A conviction of being a member of a criminal organization is not visiting upon him the crimes of that organization but is merely holding him accountable for his own association and action in entering into it and participating in it. Even in this respect and the limited punishment which we approve for it, and certainly in all other respects, each defendant is to be judged and punished solely upon the basis of his individual action.

TO THAT END it is necessary to guard against the enormity of the program in which a defendant was engaged distorting our view of his position in it. We have found that in several cases the defendants occupied such subordinate positions, with little authority, although their titles may have sounded impressive, that in reality they were little more than common members of a criminal organization. We believe that the adjustments in sentences which we have recommended are due and proper recognition of differences in authority and action among the defendants and place them in proper relation to each other and the programs in which they participated. We have not hesitated where we thought it called for, to recommend sharp reductions in sentences.

Likewise, where after all allowances were made, the stark fact remained that a defendant held a position of leadership in a project of murder, we have not been moved by the argument that by remaining long under sentence of death, the defendant has suffered so much as to be entitled to consideration on that ground. Delays in executing the death sentences have been due to the defendants' efforts to have every possible review of their cases and to the time necessarily consumed in such reviews and extending to the defendants the fullest possible consideration of their cases. It always takes time in any civilized society to exhaust the salutary processes of the law for the individual's protection. Those defendants who will be spared execution by these processes will undoubtedly think the time so spent worthwhile, as obviously it is worthwhile in every case. It must follow, however, that in the cases remaining, where no consideration of clemency could possibly justify a change in sentence, there is no basis for making a change simply because the execution has been delayed in making doubly or triply sure that the judgment should be carried out.

A WORD SHOULD be said of Landsberg prison. We have been reminded of the effect of prison confinement on a prisoner's health and morale. That factor has undoubtedly inclined us towards reducing sentences where any proper ground for reduction could be found, but it should be stated and understood that conditions at Landsberg prison are ideal prison conditions. Commissioner Moran, who has a wide familiarity with prisons and is an authority on prison administration, has inspected the prison and talked with all the prisoners. There are no complaints whatever as to prison conditions or administration. On the contrary, the prisoners recognize and we are satisfied that the care, treatment and attention given to the prisoners are all that could be asked and are in keeping with the highest standards of prison administration.

There have been urged upon us tenets of charity and generosity. Even in the case of one of the worst offenders we were asked to give an example of generosity to his family and to the people. Clemency, where any grounds can be found for exercising charitable instincts, may be an encouraging example, but a mistaken tenderness toward the perpetrators of mass murder would be a mockery. It would undo what Nuremberg has ac-



Case No. 11 (Ministers): left to right, front row: Ernst von Weizsaecker, Gustav Adolf Steengracht von Moyland, **Wilhelm Keppler**, Ernst Wilhelm Bohle, Ernst Woermann, Karl Ritter, Otto von Erdmannsdorff, **Edmund Vessemayer**, **Hans Heinrich Lammers**, Wilhelm Stuckart, Richard Walter Darre; second row: Otto Dietrich, **Gottlob Berger**, Walter Schellenberg, **Count von Lutz Schwerin-Krosigk**, Emil Puhl, Karl Rasche, **Paul Koerner**, **Paul Pleiger**, **Hans Kehrl**.
(OCCWC photo)

completed, if in the end we were guided entirely by considerations of sympathy or generosity. Executive clemency does not exist to that end.

WE HAVE TAKEN into consideration every mitigating circumstance urged upon us, including superior orders, and we have given that consideration effect in proportion to the position occupied by each defendant. In our recommendations we have made all possible allowances, and if we have erred, we have erred on the side of leniency. Justice requires the observance and enforcement of standards of law by punishment of those guilty of serious crimes in proportion to their guilt. We are not entitled to grant relief beyond that warranted by mitigating circumstances and fair consideration of individual situations. We believe that the sentences

which remain are no more than fair and just in the interest of both society and the individual.

- Case Number 9, US vs Ohlendorf, the Einsatzgruppe case
- Case Number 4, US vs Pohl, the Pohl case
- Case Number 7, US vs List, the Hostage case
- Case Number 12, US vs von Leeb, the High Command case
- Case Number 1, US vs Brandt, the Medical case
- Case Number 2, US vs Milch, the Milch case
- Case Number 3, US vs Altstoetter, the Justice case
- Case Number 8, US vs Greifelt, the RUSHA case
- Case Number 11, US vs von Weizsaecker, the Ministries case
- Case Number 10, US vs Krupp, the Krupp case
- Case Number 6, US vs Krauch, the Farben case

Series D

Biographical Background on War Criminals Condemned to Death

Paul Blobel (*Einsatzgruppen* or Extermination Squads Case)

A free-lance architect by profession, Paul Blobel joined the SA (*Sturm Abteilung*) and the SS (*Schutz Staffel*) in the early days of Nazism, and in 1933 received an order as an architect to furnish an SS office in Duesseldorf.

He joined the SD (*Sicherheits-Dienst*), rose to the position of leader of the *Abschnitt* (Section) Duesseldorf, a position which he held until June, 1941. Called to Berlin, he was placed in charge of *Sonderkommando* (Special Command) 4a with the rank of colonel in the SS and sent into Russia.

Blobel's unit was implicated in sixteen separate reports involving mass murders, many of them referring to Blobel by name. The Military Tribunal at Nuremberg found him guilty of ordering the killing of 60,000, including over 33,000 Jews who were murdered in the notorious two-day massacre at Kiev in September, 1941, and sentenced him to death. Blobel said on the witness stand that in his opinion not more than half of this number had been shot at Kiev.

In one operation Blobel's kommando killed so many people that it took 137 trucks to haul away the clothing of the victims.

In June, 1942, Blobel was entrusted with the task of removing the traces of executions carried out by the Extermination Squads (*Einsatzgruppen*). To this end, he ordered the firing of a mass grave near Kiev which burned for two days. So intent was he on wiping out the incriminating evidence of the killings that he tried to destroy the corpses by means of dynamite but was unsuccessful. The actual work of destroying these mass graves was carried out by Jewish work units, furnished by the Auschwitz concentration camps. The Jewish work units, upon finishing their particular task, were themselves shot.

* * *

Werner Braune (*Einsatzgruppen* or Extermination Squads Case)

Braune received his law degree from the University of Jena in July, 1932, and in the following year became Doctor of Juridical Science. Subsequently, he passed the necessary examinations for becoming a judge, prosecutor or attorney-at-law, and in 1939 was appointed government counsel in the Interior Department.

He joined the Nazi party in 1931 and in 1934 went to work for the Security Police (*Sicherheits-Dienst*). When the war started Braune was an assessor assigned to the Gestapo at Coblenz. In 1940, he became chief of the Gestapo in Wesermuende, and in October, 1941, he was appointed commander of *Einsatzkommando* 11b with the rank of colonel in the SS.

Probably the most spectacular achievement of this defendant was his carrying out of the "Simperoppl" massacre. In this operation thousands of Jews and gypsies were slaughtered, men, women and children, all between the beginning of December 1941 and Christmas. Braune testified of the slaughter as follows: "It took place under my responsibility. I was at the place of execution with Mr. Ohlendorf and there we convinced ourselves that the execution took place according to the directives laid down by Ohlendorf at the beginning of the assignment."

This was not the only operation of Braune. He supervised in the early part of 1942 an extensive operation in which all undesirable elements were to be gathered up — (they included Jews and Communists) and when asked what happened to the Jews he testified they were all shot "just as all Jews were shot."

* * *

Erich Naumann (*Einsatzgruppen* or Extermination Squads Case)

Naumann joined the SA in 1933 and the SD in 1935. He was sent to Russia in November, 1941, to be chief of *Einsatzgruppe* B with the rank of brigadier general in the SS. He was in command of this group until March, 1943. During this period thousands of innocent people, mainly Jews and gypsies, were executed by his unit. His unit operated on the central front in the direction of Moscow.

One of the reports introduced at the trial showed that the kommando units within Naumann's group killed 3,539 persons during the period from March 6 to March 30, 1942. Of this number 3,306 were Jews while the remainder were described as Communists, partisans, gypsies and criminals.

The tribunal which tried the *Einsatzgruppen* case found that Naumann received the "Fuehrer order" for the liquidation of Jews, gypsies and Communist functionaries from Reinhardt Heydrich, the chief of the *Einsatzgruppen*, and that he carried this order out.

Asked at the trial if he saw anything morally wrong about this order, Naumann replied,

"I considered the decree to be right because it was part of our aim of the war and, therefore, it was necessary."

In the summer of 1943, after having commanded one of the *Einsatzgruppen* in Russia for sixteen months, he was made chief of the SD and Security Police in Holland.

* * *

Otto Ohlendorf (*Einsatzgruppen* or Extermination Squads Case)

Ohlendorf studied law and political science at the Universities of Leipzig and Goettingen, and practiced in the courts of Alfeld-Leine and Hildesheim. Subsequently, he

became deputy section chief of the Institute for World Economics in Kiel, and then chief of the Institute of Applied Economic Science in Berlin. In 1936 he became economic consultant in the SD where his duties involved the establishment of an information service and the gathering of economic and cultural information.

In his defense, Ohlendorf contended that he attempted to make the SD purely a "fact-gathering organization" and during the early days he had frequent clashes over policies with Himmler, head of the SS, and Mueller, Gestapo chief. Nevertheless, Ohlendorf, with the rank of major-general in the SS, led *Einsatzgruppen* D into Russia and was in command of this group from July, 1941, to July, 1942.

During this period this unit, in an incredible campaign of wholesale slaughter and extermination, killed approximately 90,000 people. It probably would not be believed were it not recorded in his own reports or admitted.

In the beginning, these executions were carried out by firing squads. Those who were to be executed were led in groups of fifteen or twenty to the brink of a mass grave and were ordered to kneel. As the victims were shot, they fell, as a rule into the grave, and the next batch of fifteen or twenty was brought up.

Eventually, however, this wholesale slaughter created what was described as "emotional disturbances" among the members of the firing squads so that they aimed badly.

To relieve the situation, gas vans were brought into use. Women and children were lured into these vans with the announcement that they were to be resettled. Doors were sealed. When the driver stepped on the accelerator, monoxide gas from the exhaust streamed into the van and by the time it arrived at its destination the occupants were dead.

On the witness stand, Ohlendorf readily admitted receiving the "Fuehrer Order" and related how he executed the order. He never denied the facts of the killings and his only defense was that of superior orders.

Ohlendorf appeared as a witness before the International Military Tribunal in the first Nuremberg trial, involving Goering and the other top Nazis, and describing under

oath the entire *Einsatz* program of extermination. With but minor exceptions he confirmed this testimony in his own trial.

* * *

Oswald Pohl (Pohl Case)

Pohl was head of the *SS Wirtschaft und Verwaltungs Hauptamt* (Main Economic and Administrative Office of the Elite Guard). This office had charge of the administration of all concentration camps in Germany and Pohl was the principal defendant in this case, which has become known as the Pohl case.

Under the Nazis, Pohl was a man of many titles and terrible responsibilities. He had acted as chief of staff of the entire *Schutz Staffel* (SS); as adjutant-general and quartermaster-general of the SS. In January, 1942, his official title was chief of the WVHA and he held the rank of general in the SS.

His office had charge of the business in which Nazi party funds and slaves and convict labor were used to make goods in SS-owned factories. He was in charge of the administration of the concentration camps and constantly strove for longer hours, more production and stricter supervision. He was a slave driver on a scale probably never before equaled in history.

The destruction of the Warsaw ghetto, including the deportation or extermination of more than 56,000 Jews, was personally committed to him. He personally selected prisoners for medical experiments and his organization played the major role in "Action Reinhardt," the name for a plan which was carefully devised to make the Jew pay with his property, his labor, his goods and his life, for the assassination of Reinhardt Heydrich in Czechoslovakia.

All Jews were rounded up in the occupied areas and were ordered to take their belongings with them to the concentration camps. At Auschwitz or any other extermination camp to which they were taken, the Jews turned in all their belongings "for safe keeping" before entering the gas chambers. Some idea of the extent of the operation can be gleaned from the fact that these "belongings" amounted to approximately 100,000,000 Reichsmarks.

Decisions of General Thomas T. Handy

GENERAL THOMAS T. HANDY, commander-in-chief, European Command, announced Jan. 31 his final action in the cases of the thirteen war criminals under his jurisdiction who are now held in Landsberg Prison under death sentence. He is extending clemency to eleven war criminals by commuting death sentences to life imprisonment and is denying clemency to two others under like sentences.

The death sentences imposed by the trial courts in these cases were originally approved by General Lucius D. Clay in 1948. General Clay ordered further reviews of these cases on the basis of petitions which were filed on behalf of the prisoners.

A War Crimes Board of Review and the then Judge Advocate, European Command, concurred in the findings that the thirteen were justly convicted, properly sentenced, and that there were no reasons or evidence set forth in the petitions which justified modification of the death sentences imposed. General Clay reaffirmed the death sentences in early 1949.

The cases were also reviewed by the Judge Advocate General of the Army; by a committee headed by Justice Gordon B. Simpson of the Texas Supreme Court, appointed by the then Secretary of the Army Royall and by committees of the United States Congress. Nothing was found by them to disturb the finding of guilty arrived at by the courts which tried these prisoners.

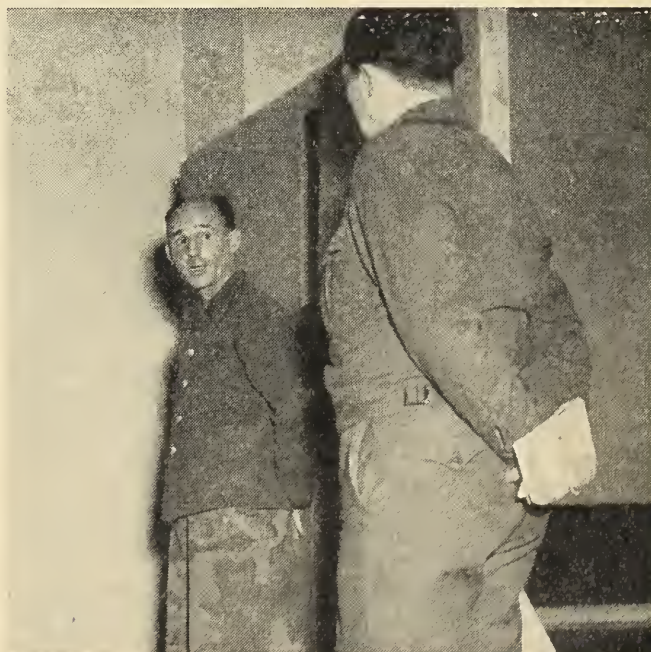
Subsequent to reaffirmation of the sentences, the condemned again addressed petitions to General Clay; additionally, to the President of the United States and other high officials of the executive department, to members of Congress, and petitions to the United States Supreme Court for writs of habeas corpus, two of which were as late as Feb. 10, 1950. All applications for writs of habeas corpus were denied by the United States Supreme Court.

"Since being in this Command," General Handy stated, "I have received numerous petitions to extend clemency to these men. All of these petitions have received thorough consideration. Each has had ample opportunity to refute the evidence against him. Additionally, out of an abundance of caution, the trial records have been reviewed many times. Even at this time, I am asked to consider more petitions for clemency. To allow them could only occasion further delay. Previously submitted petitions have contained no new evidence of material value and there is no reason to presume that, if allowed, additional ones would.

"I have studied each of these cases most carefully and particularly with a view to determining if there were any reasonable doubts in any case as to the guilt of the accused or the severity of the sentence. The sentences of eleven prisoners have been commuted to life. Their guilt as charged is unquestioned and their offenses are of such a nature that each should be required to serve a sentence covering his natural life.

"There are two prisoners to whom I cannot rightfully grant clemency. These prisoners are Schallermaier and Schmidt. They were guilty of atrocities in concentration camps. I found that they not only contributed to the infamous record of torture and killing which characterized the worst of the concentration camps but also went beyond what they were expected to do in performance of their duties at their respective camps and, on their own initiative, caused the death of many inmates.

"In the concentration camps established and operated in Germany, hundreds of thousands of victims were



Testifying for the prosecution at the "Kommando 99" trial at Dachau in December 1947, the witness stands before a model wall to illustrate how Russian prisoners of war were shot in the back of the neck by a special SS detail firing through a slot in the wall. The witness, a Polish national who was a master sergeant in the SS, was at the time under sentence of death on conviction in the Buchenwald concentration camp trial.

(US Army photo)



Defendants at the infamous Malmedy massacre trial at Dachau in July 1946 listen as Frank L. Walters (front center) of the defense counsel gives his closing arguments of the trial. (US Army photo)

beaten, tortured, starved and exterminated by various procedures. The records found at Mauthausen reflected approximately 72,000 deaths. At Buchenwald, during the latter part of the war, approximately 5,000 inmates perished monthly. It was the same in other camps, and in addition to the main camps, many of the hundreds of sub-camps carried on the same type of tortures and exterminations. The infamy of these concentration camps is well known and requires no further comment.

"Georg Schallermaier, denominated a roll-call leader, was directly in charge of prisoners at Muehldorf, a sub-camp of Dachau. Large numbers of inmates died as a result of beatings which he personally administered. Of 300 people brought to the camp in the fall of 1944, only 72 survived some four months later. He visited the morgue daily with an inmate dentist to extract the gold teeth from the dead bodies from the camp. There are no factors or arguments which can possibly justify clemency in this case.

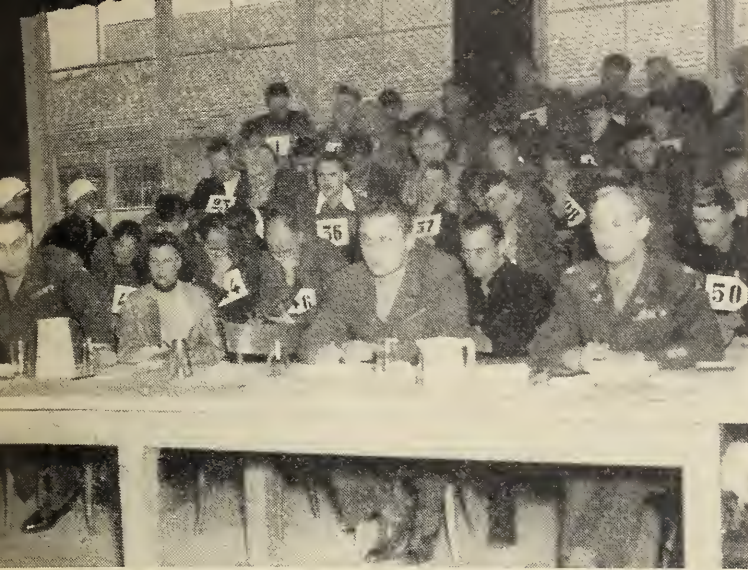
"Hans Schmidt was the acknowledged adjutant of the Buchenwald concentration camp for approximately three years. It was estimated that at one period while Schmidt was assigned to this camp, approximately 5,000 prisoners, including substantial numbers of French, Russian, Polish and Czech nationals, died each month as a result of the conditions under which they were forced to live and the cruelties inflicted upon them by the SS. As the SS adjutant, Schmidt was in a very responsible position in the administration of the camp, frequently acting as the temporary commander during the absence of Colonel

Pister, the camp commandant. According to the statement of Pister, Schmidt participated very actively in the activities of the camp, and had to be restrained because he frequently assumed greater authority than was actually delegated to him.

"He was in charge of all executions of inmates, including the execution of several hundred prisoners of war by a special unit called 'Kommando 99.' These executions were carried out in a former horse stable converted into what appeared to be a dispensary. As the unsuspecting victims were purportedly being measured for height, they were shot in the back of the head with a powerful air pistol concealed behind the wall. Sometimes as many as thirty victims were thus disposed of on a single occasion. Some of the executions supervised by Schmidt

Defendants in the Buchenwald concentration camp trial at Dachau in April 1947 listen to evidence, charging them with atrocities committed in the camp. In front are members of the defense counsel. (US Army photo)





Some of the 52 defendants on trial at Dachau in June 1946 for cruel treatment given inmates of the Flossenburg concentration camp. Seated in front are Lt. Col. Robert W. Wilson (right), chief defense counsel, and his two assistants, Russell S. McKay (left) and Albert W. Hall (center). (US Army photo)

took place in the camp crematory where the victims were hung from hooks on the wall and slowly strangled to death. I can find no basis for clemency in this case.

"I have decided to commute the death sentence imposed on six war criminals convicted in the Malmedy Case to terms of life imprisonment. The commutation of the death sentences does not mean that there is any doubt whatsoever that each was guilty of the offenses charged. The crimes for which these men were convicted occurred in the area of operations of one specific combat unit that spearheaded the Ardennes Offensive. No one who has actually read the record of the trials can question the fact that 142 unarmed American soldiers who had surrendered were grouped in a field at the Malmedy crossroads and were then machine gunned from armored vehicles which were deployed partially around the group. Many were later individually shot and killed as they lay wounded on the ground. One hundred and thirty-six frozen bodies in four close rows were found where they had fallen in ranks in the snow when the "Bulge" was reduced. All were without firearms and many had their hands above their heads as they were held prisoners. Likewise, specific killings of unarmed, surrendered prisoners of war, or civilians at other definite places, to wit: Bullingen, Cheneux, La Gleize, Stoumont, Wanne and Petit Thier, were each conclusively shown to have been committed by certain specified ones of these six prisoners.

"The leader of the combat group which perpetrated these crimes was Joachim Peiper. His protagonists represent him as a most forceful, inspiring leader who was the active moving spirit in the actions of his organization. Many petitions submitted in his behalf have been based solely on the statement that as fine an officer and soldier as he, could not have been guilty of the crimes charged. I am convinced that Peiper was a remarkable leader; that he was the moving spirit of the armored unit which spearheaded the desperate attempt of the Battle of the Bulge. General Clay said in his final

affirmation of Peiper's death sentence, 'There is no question in my mind that Peiper was in fact, the principal in the Malmedy Case.' I am likewise convinced that Peiper was the motivating spirit of the terror-spreading, killing-prisoners-of-war procedure of this spearhead. The very arguments presented in Peiper's behalf as to his ability as a leader will convince any unprejudiced observer that the killings of prisoners of war which took place in so many different localities covered by the operations of his unit could not have taken place without his knowledge and consent, and, in fact, without the force of his driving personality behind them. No fair-minded man who knows the facts would give a more severe penalty to any other participant in the Malmedy massacre than is given to Peiper.

"The record of trial is detailed and voluminous. The evidence is compelling and has convinced everyone who has read it objectively that these criminals committed the acts as found by the court which tried them. For four and a half years the execution of the sentences has been delayed by a continuous and organized flood of accusations and statements made to discredit the trial and the repeated reviews and studies requested by and on behalf of the prisoners themselves. However, the record is convincing that these men are guilty. Investigations carried on by Congressional Committees and the reviews by trained judges have failed to unearth any facts which support a reasonable doubt as to the guilt of these prisoners.

"The commutation has been based upon other facts, which are deemed to mitigate in favor of less severe punishment than death. First, the offenses are associated with a confused fluid and desperate combat action, a last attempt to turn the tide of Allied successes and to reestablish a more favorable tactical position for the German Army. The crimes are definitely distinguishable from the more deliberate killings in concentration camps. Moreover, these prisoners were of comparatively lower rank and, other than Peiper, they were neither shown to be the ones who initiated nor as far as we know advocated the idea of creating a wave of frightfulness to precede the advance which we usually refer to as the Battle of the Bulge. I cannot overlook the fact that the Army Commander, his Chief of Staff, and the Corps Commander are each serving only terms of imprisonment. Four of the six condemned in this case were sergeants, one was a major and the highest ranking, Peiper, was a lieutenant colonel.

"Lastly, the Board, headed by Judge Simpson, of the Texas Supreme Court, which reviewed this case, though not questioning the guilt of these accused, recommended that these sentences be commuted to life imprisonment. The Secretary of the Army upon the recommendation of the Judge Advocate General recommended that the sentences to death be reconsidered.

"The sentences of Gustav Heigel and Max Seidl, both SS sergeants, have been commuted to life imprisonment. Although these individuals participated actively in the

brutalities of the concentration camps to which they were assigned for duty, their positions were relatively subordinate. Though nothing can justify the brutality of their personal conduct, still the records do not show that they went out of their way to add to the brutalities. I have decided in these cases to commute each of their sentences to imprisonment for life.

"Hermann Dammann, Richard Schulze and Kurt Hans were sentenced for participating in the murder of American and Allied airmen who parachuted from disabled planes. There is no question as to their responsibility for these murders. However, certain mitigating circumstances, such as the excitement resulting from the aerial activity, the offenses being committed after heavy bombing, and the fact that their crimes did not show a pattern of their character have been advanced along with many other reasons which I deem less important.

I feel that I can commute the death sentence of each to imprisonment for life."

In addition to the review of the cases of prisoners under death sentence, the European Command War Crimes Modification Board is in the process of reviewing the cases of all war criminals confined in Landsberg Prison under the jurisdiction of the European Command. Reviews of some one hundred and twenty cases have been completed. There remain over three hundred non-capital additional cases to be reviewed. The review of this board has resulted in recommendations for substantial modification of sentences. A system of giving credit to prisoners for good conduct time in line with the best prison practices in the United States has also been instituted. This credit for good conduct time has resulted in the release of ninety-one war criminals prior to the expiration of sentences imposed by the court.

Laws Establishing War-Crimes Trials

London Agreement of Aug. 8, 1945

Agreement by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the Union of Soviet Socialist Republics for the Prosecution and Punishment of the Major War Criminals of the European Axis.

WHEREAS THE UNITED NATIONS have from time to time made declarations of their intention that war criminals shall be brought to justice;

AND WHEREAS the Moscow Declaration of Oct. 30, 1943, on German atrocities in Occupied Europe stated that those German officers and men and members of the Nazi Party who have been responsible for or have taken a consenting part in atrocities and crimes will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free Governments that will be created therein;

AND WHEREAS this Declaration was stated to be without prejudice to the case of major criminals whose offenses have no particular geographic location and who will be punished by the joint decision of the Governments of the Allies;

NOW THEREFORE the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the Union of Soviet Socialist Republics (hereinafter called "the Signatories") acting in the interests of all the United Nations and by their representatives duly authorized thereto have concluded this Agreement.

Article 1

There shall be established after consultation with the Control Council for Germany an International Military Tribunal for the trial of war criminals whose offenses have no particular geographical location whether they be accused individually or in their capacity as members of organizations or groups or in both capacities.

Article 2

The constitution, jurisdiction and functions of the International Military Tribunal shall be those set out in the Charter annexed to this Agreement, which Charter shall form an integral part of this Agreement.

Article 3

Each of the Signatories shall take the necessary steps to make available for the investigation of the charges and trial the major war criminals detained by them who are to be tried by the International Military Tribunal.

The Signatories shall also use their best endeavors to make available for investigation of the charges against and the trial before the International Military Tribunal such of the major war criminals as are not in the territories of any of the Signatories.

Article 4

Nothing in this Agreement shall prejudice the provisions established by the Moscow Declaration concerning the return of war criminals to the countries where they committed their crimes.

Article 5

Any Government of the United Nations may adhere to this Agreement by notice given through the diplomatic channel to the Government of the United Kingdom, who shall inform the other signatory and adhering Governments of each such adherence.*

Article 6

Nothing in this Agreement shall prejudice the jurisdiction or the powers of any national or occupation court established or to be established in any Allied territory or in Germany for the trial of war criminals.

Article 7

This Agreement shall come into force on the day of signature and shall remain in force for the period of one year and shall continue thereafter, subject to the right of any signatory to give, through the diplomatic channel, one month's notice of intention to terminate it. Such termination shall not prejudice any proceedings already taken or any findings already made in pursuance of this Agreement.

In witness whereof the Undersigned have signed the present Agreement.

Done in quadruplicate in London this 8th day of August, 1945, each in English, French and Russian, and each text to have equal authenticity.

For the Government of the United States of America
/s/ ROBERT H. JACKSON

For the Provisional Government of the French Republic
/s/ ROBERT FALCO

For the Government of the United Kingdom of Great Britain and Northern Ireland
/s/ JOWITT

For the Government of the Union of Soviet Socialist Republics
/s/ I. NIKITCHENKO
/s/ A. TRAININ

* In accordance with Article 5, the following Governments of the United Nations have expressed their adherence to the Agreement: Greece, Denmark, Yugoslavia, the Netherlands, Czechoslovakia, Poland, Belgium, Ethiopia, Australia, Honduras, Norway, Panama, Luxembourg, Haiti, New Zealand, India, Venezuela, Uruguay and Paraguay.

Control Council Law No. 10

Punishment of Persons Guilty of War Crimes, Crimes against Peace and against Humanity

IN ORDER TO GIVE EFFECT to the terms of the Moscow Declaration of Oct. 30, 1943, and the London Agreement of Aug. 8, 1945, and the Charter issued pursuant thereto and in order to establish a uniform legal basis in Germany for the prosecution of war criminals and other similar offenders, other than those dealt with by the International Military Tribunal, the Control Council enacts as follows:

Article I

The Moscow Declaration of Oct. 30, 1943, "Concerning Responsibility of Hitlerites for Committed Atrocities," and the London Agreement of Aug. 8, 1945, "Concerning Prosecution and Punishment of Major War Criminals of the European Axis," are made integral parts of this Law. Adherence to the provisions of the London Agreement by any of the United Nations, as provided for in Article V of that Agreement, shall not entitle such Nation to participate or interfere in the operation of this Law within the Control Council area of authority in Germany.

Article II

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

a) **Crimes against Peace.** Initiation of invasions of other countries and wars of aggression in violation of international laws and treaties, including but not limited to planning, preparation, initiation or waging a war of aggression, or a war of violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

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

c) **Crimes against Humanity.** Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.

d) Membership in categories of a criminal group or organization declared criminal by the International Military Tribunal.

2. Any person, without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in Paragraph 1 of this Article, if he

a) was a principal or

b) was an accessory to the commission of any such crime or ordered or abetted the same or

c) took a consenting part therein or

d) was connected with plans or enterprises involving its commission or

e) was a member of any organization or group connected with the commission of any such crime or

f) with reference to Paragraph 1a), if he held a high political, civil or military (including General Staff) position in Germany or in one of its Allies, cobelligerents or satellites or held high position in the financial, industrial or economic life of any such country.

3) Any person found guilty of any of the crimes above mentioned may upon conviction be punished as shall be determined by the tribunal to be just. Such punishment may consist of one or more of the following:

a) Death.

b) Imprisonment for life or a term of years, with or without hard labor.

c) Fine, and imprisonment with or without hard labor, in lieu thereof.

d) Forfeiture of property.

e) Restitution of property wrongfully acquired.

f) Deprivation of some or all civil rights.

Any property declared to be forfeited or the restitution of which is ordered by the Tribunal shall be delivered to the Control Council for Germany, which shall decide on its disposal.

4. a) The official position of any person, whether as Head of State or as a responsible official in a Government department, does not free him from responsibility for a crime or entitle him to mitigation of punishment.

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

5. In any trial or prosecution for a crime herein referred to, the accused shall not be entitled to the benefits of any statute of limitation in respect of the period from January 30, 1933, to July 1, 1945, nor shall any immunity, pardon or amnesty granted under the Nazi regime be admitted as a bar to trial or punishment.

Article III

1. Each occupying authority, within its zone of occupation,

a) shall have the right to cause persons within such zone suspected of having committed a crime, including those charged with crime by one of the United Nations, to be arrested and shall take under control the property, real and personal, owned or controlled by the said persons, pending decisions as to its eventual disposition.

b) shall report to the Legal Directorate the names of all suspected criminals, the reasons for and the places of their detention, if they are detained, and the names and location of witnesses.

c) shall take appropriate measures to see that witnesses and evidence will be available when required.

d) shall have the right to cause all persons so arrested and charged, and not delivered to another authority, as herein provided, or released, to be brought to trial before an appropriate tribunal. Such tribunal may, in the case of crimes committed by persons of German citizenship or nationality against other persons of German citizenship or nationality or stateless persons, be a German court, if authorized by the Occupying Authorities.

2. The tribunal by which persons charged with offenses hereunder shall be tried and the rules and procedure thereof shall be determined or designated by each zone commander for his respective zone. Nothing herein is intended to, or shall impair or limit the jurisdiction or power of any court or tribunal now or hereafter established in any zone by the commander thereof, or of the International Military Tribunal established by the London Agreement of Aug. 8, 1945.

3. Persons wanted for trial by an International Military Tribunal will not be tried without the consent of the Committee of Chief Prosecutors. Each zone commander will deliver such persons who are within his zone to that committee upon request and will make witnesses and evidence available to it.

4. Persons known to be wanted for trial in another zone or outside Germany will not be tried prior to decision under Article IV unless the fact of their apprehension has been reported in accordance with Section 1 b) of this Article, three months have elapsed thereafter, and no request for delivery of the type contemplated by Article IV has been received by the zone commander concerned.

5. The execution of death sentences may be deferred by a period not to exceed one month after the sentence has become final when the zone commander concerned has reason to believe that the testimony of those under sentence would be of value in the investigation and trial of crimes within or without his zone.

6. Each zone commander will cause such effect to be given to the judgments of courts of competent jurisdiction, with respect to the property taken under his control pursuant hereto, as he may deem proper in the interest of justice.

Article IV

1. When any persons in a zone in Germany is alleged to have committed a crime, as defined in Article II, in a country other than Germany or in another zone, the Government of that nation or the commander of the latter zone, as the case may be, may request the commander of the zone in which the person is located for his arrest and delivery for trial to the country or zone in which the crime was committed.

Such request for delivery shall be granted by the commander receiving it unless he believes such person is wanted for trial or as a witness by an International Military Tribunal, or in Germany, or in a nation other than the one making the request, or the commander is not satisfied that delivery should be made, in any of

which cases he shall have the right to forward the said request to the Legal Directorate of the Allied Control Authority. A similar procedure shall apply to witnesses, material exhibits and other forms of evidence.

2. The Legal Directorate shall consider all requests to it, and shall determine the same in accordance with the following principles, its determination to be communicated to the zone commander.

a) A person wanted for trial or as a witness by an International Military Tribunal shall not be delivered for trial or required to give evidence outside Germany, as the case may be, except upon approval by the Committee of Chief Prosecutors acting under the London Agreement of Aug. 8, 1945.

b) A person wanted for trial by several authorities (other than an International Military Tribunal) shall be disposed of in accordance with the following priorities:

1) If wanted for trial in the zone in which he is, he should not be delivered unless arrangements are made for his return after trial elsewhere;

2) If wanted for trial in a zone other than that in which he is, he should be delivered to that zone in preference to delivery outside Germany unless arrangements are made for his return to that zone after trial elsewhere;

3) If wanted for trial outside Germany by two or more of the United Nations, of one of which he is a citizen, that one should have priority;

4) If wanted for trial outside Germany by several countries, not all of which are United Nations, United Nations should have priority;

5) If wanted for trial outside Germany by two or more of the United Nations, then, subject to Article IV 2b) 3) above, that which has the most serious charges against him, which are moreover supported by evidence, should have priority.

Article V

The delivery, under Article IV of this Law, of persons for trial shall be made on demands of the Governments or zone commanders in such a manner that the delivery of criminals to one jurisdiction will not become the means of defeating or unnecessarily delaying the carrying out of justice in another place.

If within six months the delivered person has not been convicted by the court of the zone or country to which he has been delivered, then such person shall be returned upon demand of the commander of the zone where the person was located prior to delivery.

Done at Berlin, Dec. 20, 1945.

JOSEPH T. McNARNEY
General

B. L. MONTGOMERY
Field Marshal

L. KOELTZ
General de Corps d'Armee
for P. KOENIG

General de Corps d'Armee

G. ZHUKOV
Marshal of the Soviet Union.

US Military Government Ordinance No. 7

Organization and Powers of Certain Military Tribunals

Article I

The purpose of this Ordinance is to provide for the establishment of military tribunals which shall have power to try and punish persons charged with offenses recognized as crimes in Article II of Control Council Law No. 10, including conspiracies to commit any such crimes. Nothing herein shall prejudice the jurisdiction or the powers of other courts established or which may be established for the trial of any such offenses.

Article II

a) Pursuant to the powers of the Military Governor for the United States Zone of Occupation within Germany and further pursuant to the powers conferred upon the Zone Commander by Control Council Law No. 10 and Articles 10 and 11 of the Charter of the International Military Tribunal annexed to the London Agreement of Aug. 8, 1945, certain tribunals to be known as "Military Tribunals" shall be established hereunder.

b) Each such tribunal shall consist of three or more members to be designated by the Military Governor. One alternate member may be designated to any tribunal if deemed advisable by the Military Governor. Except as provided in Subsection (c) of this Article, all members and alternates shall be lawyers who have been admitted to practice, for at least five years, in the highest courts of one of the United States or its territories or of the District of Columbia, or who have been admitted to practice in the United States Supreme Court.

c) The Military Governor may in his discretion enter into an agreement with one or more other zone commanders of the member nations of the Allied Control Authority providing for the joint trial of any case or cases. In such cases the tribunals shall consist of three or more members as may be provided in the agreement. In such cases the tribunals may include properly qualified lawyers designated by the other member nations.

d) The Military Governor shall designate one of the members of the tribunal to serve as the presiding judge.

e) Neither the tribunals nor the members of the tribunals or the alternates may be challenged by the prosecution or by the defendants or their counsel.

f) In case of illness of any member of a tribunal or his incapacity for some other reason, the alternate, if one has been designated, shall take his place as a member in the pending trial. Members may be replaced for reasons of health or for other good reasons, except that no replacement of a member may take place, during a trial, other than by the alternate. If no alternate has been designated, the trial shall be continued to conclusion by the remaining members.

g) The presence of three members of the tribunal or of two members when authorized pursuant to Subsection (f) supra shall be necessary to constitute a quorum.

In the case of tribunals designated under (c) above the agreement shall determine the requirements for a quorum.

h) Decisions and judgments, including convictions and sentences, shall be by majority vote of the members. If the votes of the members are equally divided, the presiding member shall declare a mistrial.

Article III

a) Charges against persons to be tried in the tribunals established hereunder shall originate in the Office of the Chief of Counsel for War Crimes, appointed by the Military Governor pursuant to Paragraph 3 of Executive Order Numbered 9679 of the President of the United States dated Jan. 16, 1946. The Chief of Counsel for War Crimes shall determine the persons to be tried by the tribunals and he or his designated representative shall file the indictments with the Secretary General of the tribunals (See Article XIV, infra) and shall conduct the prosecution.

b) The Chief of Counsel for War Crimes, when in his judgment it is advisable, may invite one or more United Nations to designate representatives to participate in the prosecution of any case.

Article IV

In order to insure fair trial for the defendants, the following procedure shall be followed:

a) A defendant shall be furnished, at a reasonable time before his trial, a copy of the indictment and of all documents lodged with the indictment, translated into a language which he understands. The indictment shall state the charges plainly, concisely and with sufficient particulars to inform defendant of the offenses charged.

b) The trial shall be conducted in, or translated into, a language which the defendant understands.

c) A defendant shall have the right to be represented by counsel of his own selection, provided such counsel shall be a person qualified under existing regulations to conduct cases before the courts of defendant's country, or any other person who may be specially authorized by the tribunal. The tribunal shall appoint qualified counsel to represent a defendant who is not represented by counsel of his own selection.

d) Every defendant shall be entitled to be present at his trial except that a defendant may be proceeded against during temporary absences if in the opinion of the tribunal defendant's interests will not thereby be impaired, and except further as provided in Article VI (c). The tribunal may also proceed in the absence of any defendant who has applied for and has been granted permission to be absent.

e) A defendant shall have the right through his counsel to present evidence at the trial in support of his defense, and to cross-examine any witness called by the prosecution.

f) A defendant may apply in writing to the tribunal for the production of witnesses or of documents. The application shall state where the witness or document

is thought to be located and shall also state the facts to be proved by the witness or the document and the relevancy of such facts to the defense. If the tribunal grants the application, the defendant shall be given such aid in obtaining production of evidence as the tribunal may order.

Article V

The tribunals shall have the power

- a) to summon witnesses to the trial, to require their attendance and testimony and to put questions to them;
- b) to interrogate any defendant who takes the stand to testify in his own behalf, or who is called to testify regarding another defendant;
- c) to require the production of documents and other evidentiary material;
- d) to administer oaths;
- e) to appoint officers for the carrying out of any task designated by the tribunals including the taking of evidence on commission;
- f) to adopt rules of procedure not inconsistent with this Ordinance. Such rules shall be adopted, and from time to time as necessary, revised by the members of the tribunals or by the committee of presiding judges as provided in Article XIII.

Article VI

The tribunals shall

- a) confine the trial strictly to an expeditious hearing of the issues raised by the charges;
- b) take strict measures to prevent any action which will cause unreasonable delay, and rule out irrelevant issues and statements of any kind whatsoever;
- c) deal summarily with any contumacy, imposing appropriate punishment, including the exclusion of any defendant or his counsel from some or all further proceedings, but without prejudice to the determination of the charges.

Article VII

The tribunals shall not be bound by technical rules of evidence. They shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence which they deem to have probative value. Without limiting the foregoing general rules, the following shall be deemed admissible if they appear to the tribunal to contain information of probative value relating to the charges: affidavits, depositions, interrogations, and other statements, diaries, letters, the records, findings, statements and judgments of the military tribunals and the reviewing and confirming authorities of any of the United Nations, and copies of any document or other secondary evidence of the contents of any document, if the original is not readily available or cannot be produced without delay. The tribunal shall afford the opposing party such opportunity to question the authenticity or probative value of such evidence as in the opinion of the tribunal the ends of justice require.

Article VIII

The tribunals may require that they be informed of the nature of any evidence before it is offered so that they may rule upon the relevance thereof.

Article IX

The tribunals shall not require proof of facts of common knowledge but shall take judicial notice thereof. They shall also take judicial notice of official governmental documents and reports of any of the United Nations, including the acts and documents of the committees set up in the various Allied countries for the investigation of war crimes, and the records and findings of military or other tribunals of any of the United Nations.

Article X

The determinations of the International Military Tribunal in the judgment in Case No. 1 that invasions, aggressive acts, aggressive wars, crimes, atrocities or inhumane acts were planned or occurred, shall be binding on the tribunals established hereunder and shall not be questioned except in so far as the participation therein or knowledge thereof by any particular person may be concerned. Statements of the International Military Tribunal in the judgment in Case No. 1 constitute proof of the facts stated, in the absence of substantial new evidence to the contrary.

Article XI

The proceedings at the trial shall take the following course:

- a) The tribunal shall inquire of each defendant whether he has received and had an opportunity to read the indictment against him and whether he pleads "guilty" or "not guilty."
- b) The prosecution may make an opening statement.
- c) The prosecution shall produce its evidence subject to the cross-examination of its witnesses.
- d) The defense may make an opening statement.
- e) The defense shall produce its evidence subject to the cross-examination of its witnesses.
- f) Such rebutting evidence as may be held by the tribunal to be material may be produced by either the prosecution or the defense.
- g) The defense shall address the court.
- h) The prosecution shall address the court.
- i) Each defendant may make a statement to the tribunal.
- j) The tribunal shall deliver judgment and pronounce sentence.

Article XII

A Central Secretariat to assist the tribunals to be appointed hereunder shall be established as soon as practicable. The main office of the Secretariat shall be located in Nuremberg. The Secretariat shall consist of a Secretary General and such assistant secretaries, military officers, clerks, interpreters and other personnel as may be necessary.

Article XIII

The Secretary General shall be appointed by the Military Governor and shall organize and direct the work of the Secretariat. He shall be subject to the supervision of the members of the tribunals, except that when at least three tribunals shall be functioning, the presiding judges of the several tribunals may form the supervisory committee.

Article XIV

The Secretariat shall:

- a) Be responsible for the administrative and supply needs of the Secretariat and of the several tribunals.
- b) Receive all documents addressed to tribunals.
- c) Prepare and recommend uniform rules of procedure, not inconsistent with the provisions of this Ordinance.
- d) Secure such information for the tribunals as may be needed for the approval or appointment of defense counsel.
- e) Serve as liaison between the prosecution and defense counsel.
- f) Arrange for aid to be given defendants and the prosecution in obtaining production of witnesses or evidence as authorized by the tribunals.
- g) Be responsible for the preparation of the records of the proceedings before the tribunals.
- h) Provide the necessary clerical, reporting and interpretative services to the tribunals and its members, and perform such other duties as may be required for the efficient conduct of the proceedings before the tribunals, or as may be requested by any of the tribunals.

Article XV

The judgments of the tribunals as to the guilt or the innocence of any defendant shall give the reasons on which they are based and shall be final and not subject to review. The sentences imposed may be subject to review as provided in Article XVII, infra.

Article XVI

The tribunal shall have the right to impose upon the defendant, upon conviction, such punishment as shall be determined by the tribunal to be just, which may consist of one or more of the penalties provided in Article II, Section 3 of Control Council Law No. 10.

Article XVII

a) Except as provided in (b) infra, the record of each case shall be forwarded to the Military Governor who shall have the power to mitigate, reduce or otherwise alter the sentence imposed by the tribunal, but may not increase the severity thereof.

b) In cases tried before tribunals authorized by Article II (c) the sentence shall be reviewed jointly by

the zone commanders of the nations involved, who may mitigate, reduce or otherwise alter the sentence by majority vote, but may not increase the severity thereof. If only two nations are represented, the sentence may be altered only by the consent of both zone commanders.

Article XVIII

No sentence of death shall be carried into execution unless and until confirmed in writing by the Military Governor. In accordance with Article III, Section 5 of Law No. 10, execution of the death sentence may be deferred by not to exceed one month after such confirmation if there is reason to believe that the testimony of the convicted person may be of value in the investigation and trial of other crimes.

Article XIX

Upon the pronouncement of a death sentence by a tribunal established thereunder and pending confirmation thereof, the condemned will be remanded to the prison or place where he was confined and there be segregated from the other inmates, or be transferred to a more appropriate place of confinement.

Article XX

Upon the confirmation of a sentence of death the Military Governor will issue the necessary orders for carrying out the execution.

Article XXI

Where sentence of confinement for a term of years has been imposed the condemned shall be confined in the manner directed by the tribunal imposing sentence. The place of confinement may be changed from time to time by the Military Governor.

Article XXII

Any property declared to be forfeited or the restitution of which is ordered by a tribunal shall be delivered to the Military Governor, for disposal in accordance with Control Council Law No. 10, Article II (3).

Article XXIII

Any of the duties and functions of the Military Governor provided for herein may be delegated to the Deputy Military Governor. Any of the duties and functions of the Zone Commander provided for herein may be exercised by and in the name of the Military Governor and may be delegated to the Deputy Military Governor.

This Ordinance becomes effective Oct. 18, 1946.

BY ORDER OF MILITARY GOVERNMENT.



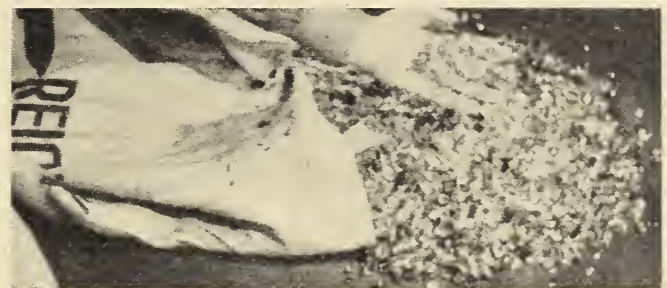
Dead being dragged to burial pits.



Clothing of victims outside gas chamber.

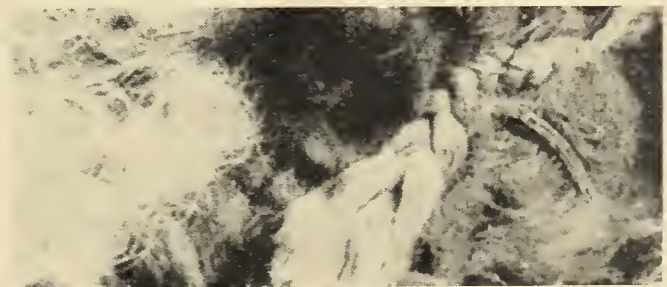
Record of the Crimes

The cruelties practiced during the Nazi regime against other peoples have been well documented on film. Some are official German motion pictures taken in concentration camps and later found among stored records. Others were made immediately after the war by Allied cameramen as they came upon the terrible scenes. All pictures on this page are from the US documentary film "Nuremberg" which was widely shown in the theaters of Germany.



Gold from victims' teeth (above),

(below) hair from victims' heads



Children in concentration camp garb.



Slave laborers who died of starvation.



USHMM LIBRARY



01 0001 0076 7218

Reprinted from the February 1951 issue
of the
“Information Bulletin.”

OFFICIAL MAGAZINE OF THE US HIGH COMMISSIONER FOR GERMANY