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M I L I T A R Y T R I B U N A L I V

CASE NO. 11

THE UNITED STATES OF AMERICA

V.

ERNST VON WEIZSAECKER, et al

FINAL BRIEF ON THE
CRIMINAL RESPONSIBILITY
OF
OTTO LEBERECHEIT MEISSNER

Nurnberg

22 October 1948

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I. THE CHARGES

It is alleged under Count I of the Indictment that the defendant Otto Leberecht MEISSNER committed Crimes against Peace in that he participated in the initiation of invasions of other countries and wars of aggression in violation of international laws and treaties, including but not limited to the planning, preparation, initiation and waging of wars of aggression, and wars in violation of international treaties, agreements and assurances. The acts recognized as Crimes against Peace are set forth in Article II of Control Council Law No. 10.

MEISSNER is charged under Count II of the Indictment with participation during a period of years preceding 8 May 1945, as a leader, organizer, instigator and accomplice in the formulation and execution of a common plan and conspiracy to commit, and which involved the commission of Crimes against Peace (including the acts constituting War Crimes and Crimes against Humanity, which were committed as an integral part of such Crimes against Peace) as defined by Control Council Law No. 10, and is individually responsible for his own acts and for all acts committed by any persons in the execution of such common plan and conspiracy. The proof adduced relative to Counts I and V forms a part of the said common plan and conspiracy, and such proof is incorporated in Count II for the substantiation of the allegations in Count II.

MEISSNER is charged under Count V of the Indictment with the commission of War Crimes and Crimes against Humanity as defined in Article II of Control Council Law No. 10 in that he participated in atrocities and offenses, including murder, extermination, enslavement, deportation, imprisonment, killing of hostages, torture, persecutions on political, racial and religious grounds and other inhumane and criminal acts against German nationals and members of the civilian populations of countries and territories under the belligerent occupation of, or otherwise controlled by Germany.

MEISSNER was originally also indicted under Count IV and Count VI, but these charges were eliminated in the course of the trial.

2. CAREER AND POSITIONS OF RESPONSIBILITY

The defendant Otto Leberecht MEISSNER was born on March 13, 1880 in Alsace-Lorraine, at that time a part of Germany. He studied law and was a member of a student fraternity. (Tr. 4463, et. seq.) In another part of this brief, it will be shown that many of his defense affiants were fellow Alsatians or members of his student fraternity.

MEISSNER joined the German diplomatic service in 1918. In 1919 he was transferred to the newly established "Office of the Reich President", at the time of the Social Democrat Friedrich Ebert. In 1920 he became Chief of the Office of the Reich President, serving from 1925 until 1934 under the Field Marshal-President Paul von Hindenburg. From 1934 until 1945 MEISSNER held the high political position of Chief of the Presidential Chancellery of Adolf Hitler. (Pros. Ex. 801, Doc. Bk. 28, p. 1)

On December 1, 1937 MEISSNER was promoted from the rank of State Secretary to the rank of State Minister under the provision "he shall be in equal rank with the Reich Ministers". (Pros. Ex. 804, Doc. Bk. 28, p. 11) MEISSNER was a member of various Nazi organizations. He was a member of the NS Civil Service Association, the NS Jurists League and the NS War Veterans League. (Pros. Ex. 801, supra) MEISSNER was awarded the golden party badge as a member of the cabinet for his "accomplishments" and "loyal collaboration". In addition, he received from Hitler, on his 65th birthday, a gift of 100,000 R.M. Goebbels on the same occasion presented him with a valuable painting. (MEISSNER cross-examination Tr. 4687, et. seq.) MEISSNER was the only State Secretary of the pre-Hitler regime who had been promoted to the rank of a cabinet member in the Third Reich and remained a Minister of Hitler until the end. (Cross-examination of MEISSNER, Tr. 4687 et. seq.) Asked during cross-examination by the Prosecution whether he carried out his duties to Hitler's satisfaction, MEISSNER answered, "I never had any differences or heard any objections, that I did not fulfill my duties". Asked in addition, whether he ever participated in any actions treasonable or disloyal to his head of state Reich Chancellor Adolf Hitler, MEISSNER answered, "No, I never participated in any such act". (Tr. 4692)

MEISSNER's entire career shows his lack of any political principle; therefore he adapted himself easily to the criminal activities of the Nazi regime which he helped to establish.

First he was a trusted State Secretary with the Social Democrat Reich President Ebert, then with the conservative Reich President Hindenburg, and later in fact rapidly promoted a State Minister to the so-called Fuehrer Adolf Hitler. The unprincipled versatility of MEISSNER in keeping highest positions of power and confidence under various regimes is characterized by Prosecution affiant Messersmith formerly American Consulate General of the United States in Berlin, now an ambassador, with the following words:

"MEISSNER was, like Lammers, a former functionary whose continuous record was that of an intriguer an opportunist. Sly, clever and in a measure intelligent, he was one of the earlier instruments used by the Nazis to carry through their aims, and he was used by them because of his close association with former President von Hindenburg and the absolute confidence which Hindenburg had in him. MEISSNER was a sinister person who is one of the ones responsible for the Nazi Party coming into power and for furthering its aims when it was in."
(Pros. Ex. 428, Doc. Bk. 29 A, p. 40)

In his capacity as Chief of the Presidential Chancellery, MEISSNER's jurisdiction embraced functions in the field of foreign relations, the character of which will be shown in the chapter on Crimes against Peace (Count I). Furthermore, his jurisdiction entailed clemency matters; his activities in this field will be shown in the chapter on War Crimes and Crimes against Humanity (Count V).

Another section of MEISSNER's jurisdiction concerned the preparation of the signature and promulgation of laws by Adolf Hitler, (Pros. Ex. 422, Doc. Bk. 29 A, p. 29). MEISSNER admitted in his direct examination (Tr. 4466, et seq.) that he held this jurisdiction.

The power which MEISSNER exercised in his capacity as State Minister with the rank of a Reich Cabinet Member is illustrated by many affidavits submitted in defense of MEISSNER. The misuse of this power for reasons of personal advantage was illustrated in the case of Weiske who through the "good services" of MEISSNER was committed to a concentration camp in order to satisfy MEISSNER's personal and financial ambitions to

own and possess one of Germany's most famous riding stables, (Tr. p. 3098 et. seq.) In addition the Weiske affair proves the complete lack of credibility of the defendant MEISSNER (Ex. 1525, Doc. Bk. 74; Ex. C-304, Doc. Bk. 74 A).

III. MEISSNER'S ROLE IN HITLER'S SEIZURE OF POWER

The defendant MEISSNER belonged to the clique of persons who engineered the seizure of power by the Nazis, thus installing a regime which from its very initial stage was engaged in the murder of millions of people through internal purges, aggressive wars and its genocidal program.

In his own affidavit, NG-1624 (Pros. Ex. 806, Doc. Bk. 28, English p. 14, dated 15 September 1945, and reaffirmed on 16 May 1947), the defendant MEISSNER admitted that at a certain stage of the negotiations concerning the formation of a cabinet under Hitler's leadership, he gave up his alleged initial reluctance to turning over the government to Hitler. Said MEISSNER: "I myself gave up my former resistance in January, 1933, expressed in correspondence with Hitler, published officially in various newspapers."

A specific background picture of MEISSNER's admitted change of mind is contained in the affidavit of Franz von Papen, NG-169 (Ex. 802, Doc. Bk. 28, English pp. 4 & 5). Said von Papen:

"In the affidavit submitted to the Prosecution by Dr. MEISSNER in matters concerning my case, some of the essential statements made by him about the political developments in January, 1933 do not correspond with facts. Dr. MEISSNER, among other things, alleged therein, that up to the last day he absolutely opposed the summoning of Hitler to the position of Reich Chancellor. In this connection, I establish the following: It is correct that Dr. MEISSNER at times exerted a strong political influence upon the Reich President - as is the case in any intimate relationship between the Under Secretary and his superior. The defendant Goering informed me in the following manner about his influence with respect to the creation of a Hitler Government: Two or three days after the first discussion in Ribbentrop's house on 22 January 1933, Dr. MEISSNER had appeared in Goering's private apartment and asked, whether the National Socialists would agree to his remaining in office and had subsequently "confessed" about a financial scandal threatening him in matters of Schenker AG. Goering had replied, that the Party was only too willing to forget about such affairs, if Dr. MEISSNER on his part would do everything in his power to promote the forming of the Hitler Government. They parted having reached an agreement on this matter."

The defense did not risk calling the affiant von Papen for cross-examination.

Highly illustrative of MEISSNER's helping Hitler to power is MEISSNER's account of his conversation on 27 January 1933 with Goering. (Tr. p. 4497) It shows that at that time when Hindenburg himself had not yet made up his mind, MEISSNER had already made up his mind in favor of a Hitler cabinet. His close cooperation with Goering is also admitted in his account of another conversation with the latter, that of 29 January 1933, where he reassured Goering that in spite of contrary rumors the formation of the cabinet under Hitler would take place within a few days. (Tr. p. 4498).

MEISSNER reiterated that von Papen was the main factor in bringing Hitler to power. But this defense does not relieve MEISSNER, who admittedly was one of the leading politicians in the whole scheme and was therefore retained in the new Hitler administration. In MEISSNER's testimony in the Justice Case, he admitted that he was the one who did arrange the first meeting between Hitler and Hindenburg on October 1, 1932. (Doc. Bk. Ex. 9 MEISSNER II, English p. 67, Quotation from Justice Case Trial Transcript page 4629 et. seq.) Moreover, he also admitted in another part of the same testimony that he had compromised with the National Socialist Party.

According to the indictment, the defendant MEISSNER not only actively participated in Hitler's seizure of power, but also belonged to that group who cloaked the initial activities of the Hitler regime in Germany with the semblance of legality by spurious procedural techniques. In connection with this charge, Prosecution put the following documents in as evidence: (Pros. Ex. 430, Doc. Bk. 29 A, English p. 47) This document shows that the defendant MEISSNER, although not as yet a Cabinet member, participated in the first Cabinet meeting of the Hitler Government on January 30, 1933. He also took part and raised his voice in the very important Cabinet session of March 7, 1933 (Pros. Ex. 803, Doc. Bk. 28). In this session the necessary steps were discussed for railroading through the Reichstag the Enabling Act which became the main basis for giving the new Nazi Government complete power. The affidavit of von Papen contains in its Paragraph 4, the following:

"The Enabling Act of March 1933 is known to have decreed, that the powers of a Reich President were not to be restricted. I, therefore, requested the Reich President to

demand that all laws which were to be passed by the Reich Government (Reichsregierung) should be endorsed with his signature. According to the protocol of a cabinet session (document presented in my trial) Dr. MEISSNER expressed the point of view that the Reich President would be burdened with too great a responsibility, if he were to sanction every law with his signature. Ostensibly he had advised the Reich President to that effect and asked to be empowered to make such a statement. Hitler undoubtedly gladly welcomed the elimination of this impediment to the unlimited power of legislation."

At the same session MEISSNER gave advice as to how the Dutch citizen van der Lubbe, falsely accused of having set the Reichstag on fire, could be sentenced to death despite certain legal obstacles. This early activity of MEISSNER in the perversion of justice foreshadows the criminal acts with which he is charged in Count V.

Having participated in installing and consolidating a regime of war and mass murder, MEISSNER proceeded through the ensuing twelve years of its power to promote and develop the program of this regime, in his capacity as State Minister.

IV CRIMES AGAINST PEACE

Under Count I of the Indictment, the defendant WEISSNER is charged with Crimes against Peace. According to Control Council Law No. 10, Article II, paragraph 2, any person is deemed to have committed a crime against peace "if he held high political, civil or military positions in Germany...".

In an earlier part of this brief proof has been adduced that WEISSNER held such a high political and civil position in the Third Reich, first as a State Secretary and then as a State Minister.

In addition, WEISSNER is charged with taking a consenting part in and being connected with crimes against peace. In the concert such policy makers as Reich Minister, State Ministers, State Secretaries, and NSDAP leaders, WEISSNER played a specific role assigned to him by the Fuehrer. This role was, as the Indictment charged, "that the defendant WEISSNER staged conferences and meetings at which the leaders of the countries to be victimized were threatened".

The variety of WEISSNER's criminal activities against peace can be seen from the following proof.

In the course of the aggression against Czechoslovakia WEISSNER attended the meeting with Slovak President Tiso during which Slovakia was separated from the Czechoslovak State in preparation for the Nazi seizure of the remaining part of Czechoslovakia. (Pros. Ex. 120, Doc. Bk. 3 B, p. 322) In the course of the same aggression WEISSNER attended the infamous Hitler conferences with Czech President Hacha during which the latter was forced to sign away the independence of Slovakia. (Pros. Ex. 122, Doc. Bk. 3 B, p. 325) The details of how WEISSNER brought his victim to the slaughter block and sounded the death knell for an independent Czechoslovakia was impressively told by Mrs. Radlova, the daughter of the late Czech President Hacha. (Tr. pp. 523-527)

In the course of the aggression against Russia, WEISSNER participated in securing allies for the aggression against Russia by promising the Rumanian Ambassador certain territories in exchange for Rumanian cooperation in the war, (Pros. Ex. 809, Doc. Bk. 28, p. 31)

WEISSNER also participated in the Nazi policy of pushing Japan

into the war against the United States and the British Empire; furthermore by urging Japan to join the war against Russia. He participated in one of the policy-making meetings between Hitler and the Japanese Foreign Minister Hirota on April 4, 1941, on which occasion Hitler urged Hirota to "strike at the right moment and take the risk upon herself of a fight against America." (Pros.Ex. 385 Doc. Bk. 9, p. 30.) It was MEISSNER who prepared the expression of appreciation for the work of the Japanese Ambassador Oshima in pressing Japan to attack the United States, awarding Oshima the order of the German Eagle in Gold right after the attack against Pearl Harbor for "his services in the bringing about of the German-Japanese cooperation which now has been crowned in a close brotherhood in arms...". (Pros.Ex. 417, Doc.Bk. 9, p. 40)

MEISSNER'S active participation in specific phases of aggression also becomes obvious through his participation in selecting personnel for satellite governments created in the course of aggressions. (Pros. Ex. 808, Doc.Bk. 28, p. 28) In addition, MEISSNER was active in securing the golden fruits of the Nazi aggression (Pros.Ex. 810, Doc. Bk. 28, p. 33) by participating in a scheme for getting possession of Belgian state treasures and gold.

These documents prove that MEISSNER participated in the aggressive acts of the Third Reich, which were declared as crimes against peace by the International Military Tribunal.

As a State Minister, MEISSNER was by the nature of his position fully aware of the aggressive course of the policy of the Third Reich. He admits that at the time he helped to bring the Hitler government into power, the danger of war was commonly known and that during the early years of the Hitler administration he was already aware of the fact that Hitler's course involved the risk of war. He stated in his own affidavit (Pros.Ex. 806, Doc. Bk. 28, p. 14):

"Hindenburg was reluctant to appoint Hitler as Kanzler, especially in 1932, because he had fear that Hitler's appointment would lead to domestic oppressions of other parties and parts of the population and to difficulties in foreign policies. I am reluctant to use the word war in this connection, but everybody knew that the problem of war was involved in his reluctance..."

"I myself realized for the first time after the so-called Rhineland Liberation in March 1936, that the danger of risk of war was approaching. I discussed it with French Ambassador Francois Poncet whom I met at a dinner on this day; he was deeply concerned about this fact. Shortly after, my son, Dr. Hans Otto Weissner, then Attache in London, told me in a confidential letter about the serious situation, and the bad impression in England of Hitler's march into the Rhineland. That was the first time that I realized that Hitler would also take the risk of the war."

* * * *

WEISSNER's defense against this charge consists of the theory that he was only a kind of social secretary of the Third Reich. However, the proof shows that he participated in the shaping of the aggressive acts right in their beginning by putting the leaders of the countries to be victimized into a position where they faced no other alternative than to yield or to die.

V. WAR CRIMES AND CRIMES AGAINST HUMANITY

The defendant MEISSNER is charged with War Crimes and Crimes against Humanity under Count V, Paragraph 38 of the Indictment. He committed these crimes after 1938, as Chief of Hitler's Presidential Chancellery, having jurisdiction in a variety of judicial matters.

A. TRANSFER OF JUDICIAL PRISONERS TO THE GESTAPO FOR ILLEGAL EXECUTION

From the beginning of the war the Defendant MEISSNER was engaged in the implementation of a program for the transferring to the Gestapo for illegal execution of those judicial prisoners whose court sentences were regarded as too mild according to the Nazi ideology.

1. THE LUFTGAS CASE

An outstanding example of these crimes against humanity is the case of the Polish Jew Markus Luftgas aka Luftglass. The former Acting Reich Minister of Justice, Franz Schlegelberger, has already been sentenced to life imprisonment for his criminal acts including this murder. In this brief the role of the defendant MEISSNER will be shown.

The documentary evidence concerning this case starts with a newspaper clipping. A Berlin newspaper, in its night issue of 20 October 1941, contained the following item:

"Jew hoarded 65,000 eggs and allowed 15,000 of them to spoil. Wired from our reporter. Breslau, October 20th. The 74-year-old Jew Markus Luftgas from Kalwarja withdrew a huge amount of eggs from the general economy and now had to account for his conduct before the Special Court of Bielnitz. The Jew had hidden 65,000 eggs in tubs and in a lime-pit, 15,000 of which had already spoiled. The defendant was sentenced to 2-1/2 years of prison as a just punishment for a crime against the war economy regulations." (Pros. Ex. 1843, NG-287, Doc. Bk. 74, English p. 39)

On the 25th of October 1941, the defendant Lamners wrote two letters, one addressed to the Acting Minister of Justice, Dr. Franz Schlegelberger, the other to Hitler's adjutant, SS Gruppenfuehrer Julius Schaub. The above-mentioned newspaper clipping was attached to the letter addressed to Schlegelberger. The letter reads:

"Dear Mr. Schlegelberger - The enclosed newspaper clipping about the conviction of the Jew Markus Luftgas to a prison sentence of 2-1/2 years by

the Special Court of Bieltitz has been submitted to the Fuehrer. The Fuehrer wishes that Luftgas be sentenced to death. May I ask you to urgently instigate the necessary and to notify me about the measures taken in order to enable me to inform the Fuehrer. Heil Hitler! yours devotedly (signature of the Reich Minister)."

The letter addressed to Schaub had this short text:

"Dear Mr. Schaub! After receiving your letter dated October 22nd 1941, I got in touch with the Reich Minister of Justice asking him to instigate the necessary. Heil Hitler! Your devoted (signature of the Reich Minister)"

There followed a letter dated 29 October 1941, from Schlegelberger to Lammers, which reads:

"Subject: Case against the Jew Luftglass (not Luftgas) Sg. 12 js. 340/41 of the Senior Public Prosecutor in Kattovice Reich Chancellory 15508 B of 25 October 1941. Dear Reich Minister Dr. Lammers: In accordance with the order of the Fuehrer and Reich Chancellor of 24 October 1941, transmitted to me by the Minister of State and Chief of the Presidential Chancellory, I have handed over to the Gestapo for the purpose of execution, the Jew Markus Luftglass who had been sentenced to 2-1/2 years' imprisonment by the Special Court in Kattovice. Heil Hitler! Very truly yours, (handwritten signature) Schlegelberger." (Underscoring supplied) (Pros. Ex. 1843, NG-287, Doc. Bk. 74, English pp. 40-42)

There were two orders of Hitler, one contained in Schaub's letter dated 22 October 1941, which expressed that Luftgas be "sentenced to death", and another one dated 24 October 1941, which expressed that Luftglass (which was the correct spelling of his name) should be "handed over to the Gestapo for the purpose of execution". The second order was, according to the clear text of Schlegelberger's letter dated 29 October 1941, transmitted to Schlegelberger "by the Minister of State and Chief of the Presidential Chancellory", which was MEISSNER.

The Judgment in the Justice Case (United States of America vs. Josef Altstoetter), contains among other findings of guilt of the then defendant Schlegelberger, the following:

"Schlegelberger divorced his inclinations from his conduct. He disapproved of the revision of sentences by the police, yet he personally ordered the murder of the Jew Luftgas on the request of Hitler....." (Justice Trial Transcript, Page 10792, quoted for judicial notice in the present case in Doc. Bk. 74, English p. 43)

MEISSNER'S DEFENSE

In his defense concerning the Luftgas Case, MEISSNER denies ever having had anything to do with this case. However, this defense claim is untenable in view of the clear contents of the Schlegelberger letter to Lammers of October 29, 1941. It is further refuted by the following evidence.

Schlegelberger, in the Justice Case, testified concerning the murder of Luftgas:

"This case, too, I mainly no longer remember even though the name recalls some certain memories. In my statements I have to refer to the documents that have been submitted, and by referring to them I would like to determine the following: The Fuehrer Order to the police was given to the Reich Ministry of Justice on the 24th of October, 1941, through the usual channels by the presidential chancellery. That nothing happened in this case is absolutely impossible. It would have been unexplainable why my letter to Lammers in which I informed him of the release was written only four days later on the 29th, for letters of that kind were as a matter of course in our office answered immediately. The fact that our letter is dated only 29th shows me rather that in the meantime unsuccessful interventions had taken place. Now I notice that in this letter to Lammers I informed him that Luftgas had been transferred to the police for the purpose of execution. That is noticeable because the information about the orders given by the police never said anything about executions but merely had transfer as the subject of the order. If in this letter to Lammers, I, therefore, informed him that Luftgas was transferred for the purpose of execution, this can only be based on the information we received from the police, and I am quite sure that I formulated the letter in that way in order to inform Lammers how the direct Fuehrer Order -- that is, the order to the police actually was worded -- and in order to point out to him what such transfer orders as we were given led to." (Justice Case Record, p. 4462, Quoted in Doc. Bk. MEISSNER III, English p. 10, Ex. 57)

Schlegelberger gave this testimony on 30 June 1947. In an affidavit dated 24 March 1948, with which he favored the defense of MEISSNER in the present case, the following appears as Paragraph 9:

"A letter of Reich Minister Dr. Lammers of 23 October 1941 and the 'transfer' order in the 'Luftgas' case obviously got crossed in the mails. I cannot exclude the possibility that the information with respect to this transfer order was not given by Dr. MEISSNER as stated in the letter of 29 October 1941 but was given by another office." (Defense Bk. MEISSNER III, English pp. 40, 41, Ex. 61)

Moreover, Schlegelberger, himself, has deprived his aforementioned affidavit of any persuasive effect by another affidavit which is Lammers Document No. 75 (Doc. Bk. Lammers V, English p. 17). He states therein:

"After further investigation I cannot entirely exclude the possibility that the order was transmitted not by Dr. Meissner, but by another office, i.e. the Office of the Fuehrer's Adjutant. On the other hand it is quite out of the question that I received that order by way of Reich Minister Dr. Lammers. Lammers had informed me in a letter dated 25 October that the Fuehrer desired 'that the death sentence be passed on Luftgas'. That information was the exact opposite of an execution order, since it demanded a new sentence, that is to say, a new judgment, which was possible by means of lodging an extraordinary protest."

This proves, at least one thing, the readiness of Schlegelberger to go to any extreme for the purpose of cooperating with any plea of any defendant in this case.

The defendant Lammers, in the pertinent part of his direct examination, (Tr. pp. 21824-21835) confirmed that the order pursuant to which Luftgas was turned over to the Gestapo for execution, was transmitted to the Ministry of Justice by MEISSNER. We quote the following passage from his testimony:

"The fact that Luftgas was actually turned over to the Gestapo for shooting and that he was actually shot, has no causal connection with my letter addressed to the Reich Minister of Justice, because it seems obvious that already before I sent out my letter, that is, before 25 October 1941, the Fuehrer had also given an order in this same matter to State Minister Dr. MEISSNER, an order of which I knew nothing, because Schlegelberger in his letter to me, dated 29 October 1941, specifically tells me that with reference to the Fuehrer Order transmitted by the State Secretary and Chief of the Reich Chancellery, dated 24 October, he had turned Luftgas over to the Secret State Police for execution. The transfer of Luftgas into police custody, therefore, did not take place on the basis of my own communication of 25 October, but, much rather, took place on the basis of MEISSNER's communication dated 24 October, quite apart from the fact that my own communication did not contain any such order, that is, the order to transfer Luftgas into the hands of the Gestapo." (Tr. p. 21827)

The statement of Lammers is consistent with Prosecution Exhibit 1843, and the Prosecution concurs with it.

An even stronger refutation of MEISSNER's plea that the Luftgas case did not pass through his hands, is contained in the following part of the testimony, on cross, of the/defense witness Hans Ficker:

"Q. On the basis of your knowledge of Professor Schlegelberger, do you consider it probable or possible that in his official letter to Dr. Lammers of 29 October 1941, in such an important matter as the Luftgas affair, he might have made such an important mistake as to mix up the Chief of the Presidential Chancellery with the Chief of the Reich Chancellery or Hitler's Adjutant?

"A. This letter, if directed according to office routine went through two or three departments and official channels and Ministerial Directors, and also probably a State Secretary drafted it and it was signed by Schlegelberger; therefore such a mistake is highly improbable although it could have happened, mathematically speaking.

Q. You think that mathematically and logically such a mistake might have occurred but psychologically it seems impossible.

A. Yes, I should say so.

Q. That letter from Schlegelberger was marked secret, if you look at the number which is indicated there.

A. The number III-G is the Department III which is the Legal Department and that was divided into subsections by letters. So III-G does not mean that it is secret. If it were secret it would have had a separate stamp." (Transcript p. 24630)

It does not seem necessary to discuss the defense affidavits of Dr. Egon Luedtke, (Defense Doc. Bk. MEISSNER III, English p. 44), or of Exhibit 77 Emil Christinneck (Defense Doc./Bk. IV, English p. 21), or the testimony of Dr. Doehle (Transcript p. 18750). These former subordinates of MEISSNER were not able to state any facts as to why MEISSNER should not have handled this case falling within the scope of his normal jurisdiction. The documentary evidence has proved beyond reasonable doubt that MEISSNER, together with the already convicted Schlegelberger and others, shares responsibility for the War Crimes murder of the Polish Jew Markus Luftgas, handed over to the Gestapo by MEISSNER and others for illegal execution as one of the many persons denied the right to life by the Nazi Government.

2. OTHER TRANSFER CASES.

The Luftgas case was an outstanding example of some thirty or more

transfer cases which form part of the War Crimes and Crimes against Humanity with which MEISSNER is charged. Ample evidence shows MEISSNER's participation in these murder cases.

In partial anticipation of the jurisdictional problem to be discussed in the following section of this brief, it is herewith submitted that the crime of transferring of judicial prisoners, sentenced to and serving terms of years, to the Gestapo for the purpose of immediate killing was, even in those cases where German nationals were involved as victims, a crime against humanity, in execution of and in connection with Hitler's crime of waging aggressive war. This appears already from Hitler's avowed motive for his transfer orders, namely, that the courts could not stand up to the special requirements of the war, and that therefore those transfers had to take place. In this connection, and also in order to give a general background picture, the following passage from the Judgment in the so-called Justice Case, appearing on Page 10691 of its Trial Transcript, and included for judicial notice by the present Tribunal is Prosecution's Document Book 74, English Page 50, will be quoted:

"Upon his (Hitler's) personal orders persons who had been sentenced to prison terms were turned over to the Gestapo for execution. We quote briefly from the testimony of Dr. Hans Gramm, who for many years was personal referent to the defendant Schlegelberger, and who testified in his behalf.

'Q: Do you know anything about transfers of condemned persons to the police, or to the Gestapo?

A. I know that it frequently occurred that Hitler gave orders to the police to call for people who had been sentenced to prison terms. To be sure, it was an order from Hitler directed to the police to the effect that the police had to take such and such a man into their custody. These orders had rather short limits. As a rule, there was only a time limit of 24 hours before execution by the police, after which the police had to report that it had been executed. These transfers, as far as I can remember, took place only during the war.' (Underscoring supplied)

This procedure was well known in the Ministry of Justice. Gramm was informed by the defendant Schlegelberger that the previous Reich Minister of Justice, Dr. Guertner, had protested to Dr.

Lammers against this procedure and had received the reply:

'That the courts could not stand up to the special requirements of the war, and that therefore these transfers would have to continue.'

The only net result of the protest was that 'from that time on in every individual case when such a transfer had been ordered, the Ministry of Justice was informed about that.'

...Lammers, former Chief of the Reich Chancellery, ...conceded that the practice was continued under Schlegelberger..." (Underscoring added)

The Tribunal in the Justice Case based that part of its foregoing findings upon Exhibit 3894, NG-190, Rebuttal Book 74 A, p. 9, namely on a file note dated 14 October 1939, signed by Guertner, the then Minister of Justice. This file note reads, in part:

"Lammers is seeing me by order of the Fuehrer: He said that he had yesterday informed the Fuehrer about the contents of my manuscript. The Fuehrer said: He had not issued general directions. He said he had ordered the three shootings. He could not give up this right, since the courts (Military and Civilian) did not prove capable to cope with the peculiar conditions of the war." (Underscoring added)

A confirmation of the contents of this document is contained in the following part of the cross-examination of the defendant Lammers:

"Q. Witness, I just wanted to ask you one question which I am particularly interested in. Where Guertner states Hitler could not give up this right since the courts did not prove capable to cope with the peculiar conditions of the war. Does that correctly reproduce what you told Guertner in that respect?

A. That is correct. I conveyed that to him as the Fuehrer's ruling." (Tr. p. 22582).

The transfer cases in which the defendant MEISSNER was criminally involved occurred subsequent to the arrangement with Guertner which required a notification of the Ministry of Justice in each individual case. The fact that MEISSNER was the one giving this communication to the Ministry of Justice has been admitted. However, in order to divest this participation of any criminal character, his defense attempts to color it in a specific way. There is no doubt that pursuant to the above-mentioned arrangement with Guertner, two channels were

used for certain notifications when Hitler had decided that a judicial prisoner sentenced to and serving a term of years should be turned over to the Gestapo for extermination. One of those channels went directly from Hitler's headquarters to the Gestapo, notifying the latter that it should take over the man from the judicial prison and liquidate him. The other channel was the corresponding notification of the Ministry of Justice, which was given by MEISSNER after Hitler's transfer order had been communicated to him. It is with regard to the purpose of the second-mentioned channel, that a fundamental issue exists between the defense of MEISSNER and the Prosecution. In substance, according to MEISSNER's defense, his notification of the Ministry of Justice was not a link in the chain of procedures constituting the carrying out of Hitler's transfer order, but served only the purpose of giving the Ministry of Justice the opportunity to take any such counter-action as they might deem necessary in the interest of justice with regard to the circumstances of the individual case. However, the notification of the Ministry of Justice, given by MEISSNER, was an essential and substantial element of the procedure necessary for the carrying out of Hitler's transfer orders, since the judicial prisons were under the jurisdiction of the Ministry of Justice and not of the Gestapo and since therefore an order of the Ministry of Justice to the judicial prison allowing extradition of the prisoners to the Gestapo was necessary in order that the Gestapo could take over the judicial prisoner. In other words, according to MEISSNER's defense plea, he was issuing an innocuous message to the Ministry of Justice; however, in fact his activities were a prerequisite for the carrying out of those atrocious murders and he was, therefore, an accomplice or accessory in the fact.

As the second line of his defense, MEISSNER claims that in none of the transfer cases passing through his hands was he at the time aware of the fact that those transfers were ordered for the purpose of killing by the Gestapo. It may be inserted that even if this were true, it would not, as a matter of law, eliminate MEISSNER's crime against humanity involved in his participation in the exposure of a judicial prisoner to the cruel fate of a man who was not to be killed but put into a

concentration camp or otherwise subjected to "treatment" by the Gestapo. However, it has been proved that as well as MEISSNER's aforementioned main plea with regard to the transfer cases, also his secondary plea, lacks any foundation in fact but is refuted by the evidence.

An object lesson of the regular routine in the transfer cases, at the same time refuting both MEISSNER's above-mentioned lines of defense, may be gained from two German court files (Case against Ludwig Eisenberger and Leonhard Klein), which were used in the Justice Case during the cross-examination of the witness Karl Schroeder former German prosecutor in Nurnberg (Justice Trial Transcript, pp. 7065-7072), and the pertinent parts of which as well as a certified transcript of the pertinent portions of Schroeder's cross-examination and redirect examination are respectively contained in Exhibits C-291, NG-5777 and C-292, NG-5768, Rebuttal Book 74 A, English pp. 22 and 34. As will be seen from the transcript of the findings (C-291, part a) Eisenberger was on 10 April 1941 under the so-called "Heimtuckegesetz" (Malicious Acts Law), sentenced to four years of penitentiary by a Special Court in Nurnberg. His crime consisted of alleged utterances which, according to the court, were apt to undermine the confidence in the political leadership of the German nation. The Malicious Acts Law of 20 December 1934, even though existing before the war, became during the war one of the judicial weapons used to suppress any kind of even intellectual opposition. Hitler apparently believed that in view of the war conditions, the sentence meted out to Eisenberger was not severe enough. He ordered his transfer to the Gestapo.

Part f of the same document (Ex. C-291, NG-5777, Doc. Ek. 74 A) is a note, dated 9 July 1941, signed by the meanwhile deceased Ministerial Director of the Ministry of Justice Dr. Crohne, addressed to the Nurnberg Chief Prosecutor confirming order, given by the Ministry of Justice over the phone, that Eisenberger should be delivered to the Gestapo upon the latter's request. That phone conversation took place on 2 July 1941, the actual delivery of Eisenberger to the Gestapo on 3 July 1941, which latter fact appears from again another part of Exhibit C-291 (Report

of Prison Warden dated 9 July 1941).

Part c of the same document (Ex. C-291, NG-5777) is a file note dated 16 July 1941, of the same Schroeder which states that according to a press release of the Reichsfuehrer-SS and Chief of the German Police, published in the Voelkischer Beobachter of the same date, Eisenberger was shot on account of resistance.

That this press release could then and there not be understood otherwise than as the report of an execution rather than unforeseen shooting of a man on account of his resistance, appears from Schroeder's report dated 23 September 1941 in the file of Ludwig Klein, Exhibit C-292, NG-5768, Doc. Bk. 74 A, English p. 34. Karl Schroeder appeared as a witness in the Justice Case and pertinent portions from his cross-examination and redirect examination are submitted as Prosecution Exhibit C-293, NG-5845, Doc. Bk. 74 A, English p. 36. Most important in it is the following part of his redirect examination. Upon the question:

"Who issued the instructions to transfer Eisenberger to the Gestapo?"

he answered:

"The Ministry of Justice."

and upon further questioning:

"In this Eisenberger case, was the rule obeyed that the proceeding depended upon instructions which the Ministry of Justice had issued to you?
....."

he answered:

"That is how I made my testimony."
(Justice Trial Tr. p. 7089)

Prosecution's Exhibit C-294, NG-5829, Doc. Bk. 74 A, English p. 42 contains extracts from another interesting German court file, namely the file of the Special Court, Munich, in the case against Franz Potleschak. This man was, on 6 October 1939, by that said court, sentenced to ten years penitentiary on the ground of the Decree of 5 September 1939 against public enemies (Ex. 1562, NG-715, Doc. Bk. 77, English p. 4), and for larceny. In concrete terms, he was charged with having committed the picking of a woman's purse in exploitation of the measures in defense of enemy air attacks, that is, of the blackout. The file contains a

clipping from the Munich Edition of the Voelkischer Beobachter of 22 October 1939. It is a press release dated 21 October 1939, the context of which reads,

"On Tuesday, October 17, one Franz Potleschack, sentenced to 10 years hard labor and 10 years deprivation of his civil rights by the Munich Special Court on October 6 of the current year, for theft of a handbag was being transferred to a penitentiary. During an ATTEMPT TO ESCAPE he was immediately SHOT. It is known that on 21 September of this year Potleschack has taken advantage of the permanent black-out to steal a handbag in Sendlinger Strasse."

MEISSNER's official participation in the transfer procedure is illustrated by Prosecution's Exhibit 1844 (NG-3278, Doc. Bk. 74, English p. 44), which is a letter of the adjutant of Hitler, Schaub, addressed "to Minister Dr. MEISSNER in the building", and reads:

"Dear Minister! The Fuehrer decreed that public enemy Gerhard Trampe, who has been sentenced to 6 years imprisonment (Press release V.B. No. 269, page 9 of Berlin edition enclosed) is to be handed over to the Gestapo immediately. With regard to this matter I have already contacted SS-Gruppenfuehrer Heydrich personally. I request that you submit the order immediately to Minister of Justice Guertner. In addition, public enemy Heins Werr who has been sentenced to 5 years imprisonment by district court I of Munich (Press release Muenchener Neueste Nachrichten No. 267 of 23 September 1940) is likewise to be handed over to the Gestapo immediately. With German greeting! Adjutant of the Fuehrer."

It is interesting to note that one of the two cases referred to in the above NG-3278, namely that of Trampe, appears also on No. 2 in part d of Exhibit 3894, NG-190, Book 74 A, English p. 9, being a list of executions based on doubtful information which was submitted to Schlegelberger by Ministerial Director Dr. Crehne. Concerning the Trampe case, it is said there:

"Trampe stole jewels and clothes from the apartment of a friend, who was the wife of a soldier, and pawned these articles for 200.--R.M. He had access to the apartment in his capacity of craftsman. Afterwards the soldier's wife and her husband agreed with Trampe on the damage. Trampe defended himself by stating that he was by want compelled to steal, that he intended to redeem the stolen objects later and that he was sure from the beginning that the couple would forgive him afterwards because of their friendship and because of his distressed condition. The court accepted his statement as true and sentenced him to six years of penitentiary. The press reported

that his defense was untruthful, and that it was not accepted as true by the court. Trampe was shot on 27 September 1940 by order of the Fuehrer. It is not known here whether the shooting took place merely on account of the incorrect reports of the press."

Part (c) of the same Exhibit 3894, NG-190, namely the letter of the Ministry of Justice to Himmler, dated 30 November 1939, is highly revealing with regard to the notorious meaning even to a man on the street, not to speak of a personality so well informed as MEISSNER, a man belonging to Hitler's retinue, of the meaning of the announcement or of similarly phrased publications that a prisoner had been shot while attempting to escape. The passage in question, which, incidentally, also refers to the above-mentioned Potleschak case, reads:

"In regard to the shootings, mentioned at the end of list II it has been published in the press that the perpetrators -- as for instance in the cases of Latacz, Jacobs, and Gluth, -- had made themselves guilty of resistance by force or, -- as for instance in the case of Potleschak --, had tried to escape. Let me point out that these verbally confirmed publications were apt to attract the attention of at least those persons who participated in the criminal proceedings. On the day before the shooting of Latacz the press had reported about the trial which took place in the hospital for prisoners on remand. Latacz who, prior to his transfer was lying in the prison hospital, had an extension bandage. Thus also the broad public was informed about his physical condition, and knew that a resistance was hardly possible in such a condition."

Highly revealing in the same direction and in part extremely touching is another^{part}/of Exhibit C-290, NG-581, Doc. Bk. 74 A, English p. 3, consisting of two reports, one apparently undated, the other dated 31 March 1942, from the Attorney General Dr. Jung of the Supreme Court of Appeal in Berlin, to Schlegelberger. In the first-mentioned report, the following passage must be singled out:

"In this connection I think I ought to point out that only recently perpetrators have repeatedly been handed out to the Secret State Police, although there was no sufficient cause therefore to be found, in my opinion, in the conduct of the Justice Authorities. I am referring to criminal procedures against Skibbe and others (2 PJs. 922.41 State Attorney Berlin) in which four defendants 26, 22, 20 and 18 years of age accused of commitment of 23, 19, 15 and 12 completed or attempted robberies committed by taking advantage of air raid protection measures, were sentenced by the Special Court of Berlin to

7, 6 and 5½ years of Penal Servitude and loss of Civic Rights for 10 years each. Although 3 of the perpetrators had not been convicted previously and the fourth one only of two comparatively minor cases, in addition to all of them being still comparatively young and, at least in my opinion, the pronounced penalties being not inadequate, the perpetrators were handed out to the Secret State Police. They were shot, as could be seen from newspaper reports, 'because they offered resistance'. May I remark that it is hardly unknown to the public any longer that the shootings 'because of resistance offered' are actually caused by other considerations." (Underscoring added)

Noteworthy is the following passage in Jung's report dated 31 March 1942:

"As far as is known here, thirteen convicts were handed out to the State Police and shot. In this connection, I think I ought to point out the penal case of Gomolinski and others about which I reported under 12 A R 1172.41 to III g 14 2905.41. The eleven convicts, all of whom had not been convicted previously and of whom seven were sentenced to penal servitude of ten years and down to one year and nine months, the remaining four however, to imprisonment of one year and nine months and one year and six months, were executed on 10 February 1942 by shooting. One of the convicts named Johannes Radloff who had to undergo one year and six months imprisonment, is a father of six children..... All in all I think I should not leave any doubt that it was particularly that case which did much damage to the confidence of the people concerned in regard to the reputation of the Judiciary."

That the activity of the Ministry of Justice in the transfer cases was not merely nominal, but a prerequisite in the carrying out of Hitler's respective policy and has therefore been found criminal by the Military Tribunal in the Justice Case, appears, from the following passage of that judgment, quoted for judicial notice Doc. Bk. 74 A, NG-5838:

"Notwithstanding the reluctance with which the officials of the Ministry of Justice acted, it appears from the foregoing that they did cooperate in the transfer of prisoners to the police."
(Justice Trial Tr. p. 10879)

This, of course, reflects on REISSNER's function whereby the prerequisite cooperation of the Ministry of Justice was secured. He thus, and on other occasions to be mentioned in later portions of this brief, consciously collaborated in a program which has been branded by the Judgment in the Justice Case.

That an order of the Ministry of Justice, directed to the judicial prison was necessary in order that the Gestapo could gain access to the judicial prisoner was admitted by Schlegelberger in his testimony as defendant in the Justice Case where he said:

"But when it could not be achieved that the order for turning over the individual to the police was rescinded, although everything had been tried, then there was no alternative than to issue a directive to the authority which was about to carry it out that they should no longer resist but turn over the man to the police." (Quotation from Justice Trial Tr. p. 4459, Doc. Bk. MEISSNER III, English p. 7)(Ex. 57)

In view of this clear testimony of Schlegelberger, on 30 June 1947, it will not be difficult for the present Tribunal to form an opinion on the credibility of Schlegelberger's affidavit of 24 March 1948 (Defense Doc. Bk. MEISSNER III, ^{Ex. 61}English p. 40), in which he offers a different version of his recollection, conspicuously in conformity with his colleague MEISSNER's aforementioned main line of defense.

A rather exhaustive report on MEISSNER's function in the transfer cases, contained in Dr. Egon Luedtke's affidavit, NG- 4744 (Pros. Doc. ^{Ex. 1845}Bk. 74, English pp. 45, 46, 47), will be literally hereinafter quoted for the convenience of the Tribunal. Says the affiant:

"During my work at the President's Chancellery, MEISSNER received Fuchrer orders to the effect that justice prisoners serving sentences be transferred to the Gestapo. MEISSNER was commissioned to transmit the orders to the Minister of Justice so that the latter should hand over the prisoners to the Gestapo. Furthermore, the Secret State Police received further orders directly. The letters to MEISSNER first came from the Fuchrer's Adjutant's Office and had been signed by Schaub. Later, these letters came from Bormann under the letter head of the 'Fuchrer's Secretary'. As far as I can remember, about thirty cases were involved. The letters had more or less the following text: 'The Fuchrer has ordered that X who on such and such a date was sentenced to so and so many years of imprisonment with hard labor (Zuchthaus) or simple imprisonment (Gefangnis) by the Special Court at X., on such and such charges, be handed over to the Gestapo. Additional orders have been given to the Gestapo directly. Please see to it that the necessary arrangements are made by the Reich Minister of Justice.' In individual cases the wording of the order was that the prisoner be handed over to the Gestapo for execution. The procedure at the

President's Chancellery after receipt of these letters was as follows: The letter received by the office chief would immediately be submitted to MEISSNER. Then I would receive the correspondence with the instruction to have a letter with a stereotype text made which had been drawn up by MEISSNER, give it to a secretary to write and, subsequently resubmit the correspondence to MEISSNER for signature. Thereupon the letter was dispatched through the office chief after signature by MEISSNER. Occasionally, MEISSNER would slightly alter the text. Likewise, MEISSNER's letters to the Minister of Justice always started in the same stereotype manner: 'The Fuehrer has ordered, etc., etc.' and adhered to the text of Hitler's orders. In the beginning, it sometimes occurred that an order by Hitler was issued as a result of press notices to which reference was made in the Fuehrer order or which at times were attached to the Fuehrer order. The transfers were all criminal cases. MEISSNER knew that the transfers were effected for the purpose of execution. Although it was not my place to make representations to MEISSNER with regard to the transfer cases, I did so and I asked him whether he could not intervene with Hitler in order to discontinue this practice or whether he could not at least keep out of the procedure. I also asked him how he could possibly take the responsibility for such things. At first, MEISSNER replied that there were many other things for which he had to assume responsibility, in other words, I was to mind my own business. Later, however, when I approached him again he gave me to understand that he disapproved of the transfers, but that he could not refuse to transmit orders and that it was impossible to dissuade Hitler from following this procedure. But, he said, the only course open to him, was to prove to Hitler on the basis of one or two particularly obvious cases, to what impossible results this procedure would lead. In the Summer of 1942, the transfers ceased because Thierack became Minister of Justice." (Underlining added)

MEISSNER knew from the wording of the orders, handled by him, as Luedtke stated above, "that the prisoner be handed over to the Gestapo for execution". In addition, MEISSNER admitted, his testimony in the Justice Case, when he claimed that only fifteen or twenty such cases passed through him:

"I read later on in the newspaper that the man who had been transferred had been shot because he attempted to flee or offered resistance." (Pros. Ex. , Justice Trial Tr. pp. 4619, 4620, quoted in Pros. Doc. Bk. 74, English p. 51)

A defense affidavit by Julius Schaub, dated 13 April 1948, which is included in Document Book MEISSNER III/(English p. 45), tries to minimize MEISSNER's activities in the turning over of justice prisoners to the Gestapo executioners. However, it appears as completely dis-

credited by Schaub's subsequent prosecution affidavit, dated 30 April 1948, (Ex. 3448, NG-5263, Doc. Bk. 74 A, English p. 1), where Schaub states:

"The relation between the former Chief of the Presidential Chancellery, Dr. Otto MEISSNER, and Adolf Hitler was a good one. MEISSNER was, in my opinion, a faithful servant of his Head of State, carrying out his duties to the Fuehrer's satisfaction....The transfer of penal prisoners to the Gestapo on the basis of a Fuehrer order took place in the following manner: The Fuehrer sometimes found in the press notices of sentences which appeared too mild to him. In such cases, he ordered me to telephone State Minister MEISSNER and request him to get into communication with the Reich Minister of Justice and ask him to have the prisoner transferred immediately to the Gestapo. I usually carried out this order at once in the presence of the Fuehrer. MEISSNER took these instructions without contradiction so that the case was finished for me. If I could not reach MEISSNER, I transmitted the Fuehrer's orders to him in writing. If, in my previous statement of 13 April 1948 which I have handed to the Defense Counsel for Dr. MEISSNER, I have expressed myself that there was never any mention of execution in the transfer orders, I would rather choose the following formulation instead of the expression 'never', in view of my general loss of memory and my present state of health: 'I do not remember that there was any mention of execution in the transfer orders.' On the whole, there were about twelve to eighteen cases which passed through my hands. Acquainted with document NG-287, I see that on 22 October 1941 I have written a letter to Dr. Lammers re: Luftgas, but I cannot remember this letter today, just as I cannot remember the whole case Luftgas any more."

From the itemized list of eighteen transfer cases forming part-(d) of Exhibit 3894, NG-190, Doc. Bk. 74 A, English p. 9, the following five should be specifically mentioned which show in the last column, headed "Method of Transmission of Orders to Us", the operation of the Ministry of Justice in the carrying out the transfer orders. These are the cases against Joachim Israel Joseph, Gustav Wolf, Fritz Bremer, Max Gross, and Viktor Meyer. The case against Joachim Israel Joseph was directed against the member of a persecuted minority, which appears already from his Nazi-imposed Jewish middle name, Israel, and is expressly stated in the entry concerning him. The entry shows also "execution" as purpose of the transfer, as shown in Exhibit 3894, under the heading "Method of Transmission of Orders to Us", concerning Joachim Israel Joseph:

"Letter from Bormann of 25 October 1939 to the Reich Ministry of Justice stating that by order of the

Fuehrer the Jew was to be handed over in order to be shot by the Secret State Police."

Reference has heretofore been made to the affidavit by Dr. Luedtke, (Pros. Ex. 1845). Dr. Luedtke gave to the Defense two affidavits of a different nature, one of which (in Doc. Bk. MEISSNER II, Ex. 22 /English p. 48) need not be covered in the present connection, whereas in the other one (contained in Doc. Bk. MEISSNER III, Ex. 60 /English p. 62), the attempt has obviously been made to blur the clear picture of the transfer cases and MEISSNER's participation therein presented by the same affiant in his first and earlier written statement on the matter. However, the truth was again reestablished by the examination of this affiant before the Commissioner (Trial Transcript. pp. 5599 et seq), especially by the answers he gave upon his examination by the prosecution, which was in the nature of a cross-examination insofar as it referred to Luedtke's defense affidavit. Although the record of this examination speaks for itself, a few quotations are submitted here for the convenience of the Tribunal:

From Transcript p. 5605:

"Q. Turning to Page 2 of the original, Dr. Luedtke, you state: 'It may have been possible for Dr. MEISSNER to have overlooked the word 'execution' or that such letters were handled during his absence by his deputy Dr. Dohle.' My question: To the best of your recollection, did Dr. Dohle handle any of these -- not whether it was possible -- do you remember whether he handled any of these?

A. No.

Q. To the best of your recollection, Dr. MEISSNER handled these, is that not correct?

A. Yes.

Q. Turning to Point 3, you stated that you did not unofficially receive any information that executions had been carried out, and in Point 4 as a conclusion for your statement that Dr. MEISSNER knew the purpose of the execution you mentioned the press notices, and secondly the sentence which contained the phrase, 'Shot while trying to escape' as well as the assumption that he had read the words in the transferred documents when the words 'for execution' were included. Therefore, to the best of your recollection the words 'for execution' were contained in some of the documents, is that not correct?

A. In the affidavit which I placed at the disposal of the Prosecution, I testified that to the best of my recollection in a few cases, or as I said, 'in isolated cases execution was mentioned'. That was the letters which came from Schaub or from Bormann."

From Transcript, pp. 5607, 5608:

"Q. You assumed Dr. MEISSNER had knowledge of the fact that these men were being transferred for purpose of execution?

A. In my affidavit I said that of course I drew the conclusion that Dr. MEISSNER read these words.

Q. Is it not true that the phrase 'while trying to escape' or 'while offering resistance to the Gestapo' was a stereotyped phrase that often appeared in public notifications?

A. Yes, that is right.

Q. And is it not further true that it was common and public knowledge that that phrase like the phrase 'special treatment' meant something quite different?

A. Common knowledge is perhaps saying too much."

From Transcript, pp. 5611, 5612:

"Q. When you received the Fuehrer Order saying transfer this man to the Gestapo, what additional information was supplied to you to show why this man condemned to a sentence of a term of years had been ordered transferred to the Gestapo?

A. In my affidavit of 4 February for the Prosecution, I gave the approximate text of the letters which were received. This text is complete.

Q. That is just what I wanted to know. Did you have any other information about this criminal except from the text of those letters?

A. No."

From Transcript, pp. 5616, 5617:

"Q. Do you consider it material and important whether a prisoner sentenced to a term of years was a habitual criminal or not a habitual criminal with regard to his transfer to the Gestapo?

A. I considered the transfer of a habitual criminal to the Gestapo a completely contemptible and reprehensible thing."

The witness Luedtke attempted to aid the defense of MEISSNER by supporting the claim that the transfer orders, as they came from Hitler to MEISSNER to be forwarded by him to the Ministry of Justice, made it

clear that the victims of those orders were habitual criminals. Even if this would be true, their transfer for execution by the Gestapo was murder. But it was not true as can be seen from the Eisenberger case, mentioned hereinabove. Moreover, it will be seen from the transcript of the cross-examination before the Commissioner of the defense affiant Christinneck on 27 August 1948 (Tr. pp. 18719, 18748, 18749), that according to Christinneck there were two types of transfer orders which came from Hitler to MEISSNER: In one type, only the ordered transfer was mentioned, but not the crime committed; in the other type, the crime committed was also indicated. Considering now the first type of case, how could MEISSNER know that the man was a habitual criminal, whose crime was not even indicated in Hitler's transfer order? It is clear that also on this point, MEISSNER's claims, which are no defense at all, break down under critical approach.

In fact MEISSNER was not able to offer any sensible defense in these transfer cases. As his own witness, he made the following statements under cross-examination:

From Transcript, pp. 4749, 4750:

"Q. Do you not know, Dr. MEISSNER, that the prison authorities subordinate to the Reich Minister of Justice had no authority to hand over a condemned prisoner, serving a term of years, to the Gestapo or to any other agency, without authorization from the Reich Minister of Justice -- yes or no?

A. Yes.

Q. And is it not true that the Reich Minister of Justice would not have handed over a prisoner to the Gestapo without specific orders from Hitler, or in the name of Hitler?

A. That's correct."

From Transcript, p. 4757:

"Q. I would like to pose a hypothetical question, Dr. MEISSNER, to you as a lawyer: If a man is tried, sentenced, and condemned to a term of years -- say fifteen years -- at hard labor, was there any legal right in the Third Reich or in the laws of other nations to transfer that man to another agency for the purpose of execution, without further reopening of proceedings?

A. No."

From Transcript, p. 4762:

"Q. In other words, Dr. MEISSNER, you did not object yourself?

A. No, I did not. I had no means to do that; it wouldn't have had any sense."

From Transcript, p. 4763:

"Q. Therefore, there was no legal way for a prisoner to be transferred to the Gestapo, was there, except through orders from Hitler to the Reich Minister of Justice? Is that correct?

A. Yes."

MEISSNER'S DEFENSE

The variety of the defense attempts of MEISSNER against the charge of murder through transfer is characteristic for their futility. Occasionally he claimed that he did not know the specific case. In other cases he tried to tell the Tribunal that his activities were not a prerequisite for the murder. Again in other cases the defendant wanted to suggest that he was not aware that the transferees would be murdered, knowing on the other hand that the transfer into the dreadful hands of the Gestapo would be anyhow a crime against humanity. And finally the defendant tried to say that the few cases he knew concerned habitual criminals, obviously suggesting here that to kill such persons without due process of law would be no murder at all.

However, under the overwhelming evidence presented in the foregoing section there can be no doubt that MEISSNER was perfectly aware of his murderous activities, no less than his subordinate Luedtke, or the German prosecutor Jung, or the convict Schlegelberger, MEISSNER's closest collaborator in these war crimes and crimes against humanity.

THE LAW

In various instances it has been shown that MEISSNER's victims were Poles and Jews. Luftgas for instance was a Polish Jew (see also cross-examination of Lammers defense witness Ficker, Tr. 24630-24632).

But even where these transfer-murders had as their victims German nationals, and not Jews or Poles, these transfers constituted a crime under Control Council Law No. 10, because they occurred during the war and were an integral part of the atrocious German war techniques. It

has been shown that the victims of the transfer-murder had transgressed such war regulations as hoarding, or theft during blackouts, as illustrated above in the Potleschak case. To wipe out petty transgressors who had received even from the German Courts only prison sentences, was part of the Nazi war terror. Therefore, these murder cases constitute war crimes and crimes against humanity under Control Council Law No. 10.

VI. MEISSNER'S PARTICIPATION IN THE SYSTEM OF SO-CALLED BLITZ EXECUTIONS

The signing of execution orders before the victims were tried and the anticipated death sentences were handed down by the courts, was a system of murder instigated and administered by the defendant MEISSNER in his capacity as Hitler's chief "clemency" advisor and administrator. This system was in use as we will show in this section, against enemy and German nationals. These persecutions for political and racial reasons were committed during war time in connection with the aggressive wars and constitute war crimes and crimes against humanity under Control Council Law 10.

In order to establish some background of this general phenomenon, with which two concrete items of Prosecution's evidence in this case will be linked, it seems helpful to quote the following passage from the direct examination of the former State Secretary in the Reich Ministry of Justice the defendant Klemm in the Justice Case:

"Q. You have now explained to the Tribunal that the decision on pardons and clemency pleas must have been a very complicated procedure. However, during the course of this trial and from documents we have seen that there were so-called lightning executions. "Blitz" executions. Will you tell the Tribunal what, during the time of your activities as Undersecretary, these "Blitz" executions meant?

A. There were circumstances which made it imperative that a death sentence to be effective as a deterrent should be executed as quickly as possible. For instance, if in a city after an air attack the looting assumed a large extent, in such cases that large and extensive machinery as I have described it now, was eliminated to the extent that these opinions, particularly on the part of the Court and the Prosecution, were rendered only orally and instead of being made in an exhaustive report and by mail, they were made by telephone from the place in question to the Ministry. And on the basis of these oral reports or telephone reports, the decision was made whether the death sentence should be commuted or executed." (Justice Trial Transcript, p. 4982, Pros. Ex. C-296, NG-5837, Doc. Bk. 74 A, English p. 63)

The most striking case of this kind, with which the defendant MEISSNER is linked, is the one in Prosecution's Exhibit 1834 (NG-2379, Doc. Bk. 74, English p. 4). On 3 May 1940, the Presidential Chancellery received a telegram dispatched on the same day from Prague by the then "Protector", von Neurath:

"To the Fuehrer - Reich Chancellery - Berlin
My Fuehrer. On 2 May 1940 about 1700 hours a
German national was killed and four soldiers of the
German Wehrmacht were shot at in Prague. On
Altstaedterring (one of Prague's main squares)
the daughter of Party-member Karl Leimer, born
19 June 1902 in Fischkorn, residing at Prague,
Zeltnergasse 1/2 drew his attention to a Czech who
was in the act of tearing down a pamphlet appealing
for the collection of scrap metal from a telephone
booth. Leimer attempted to ascertain the name of
the Czech in order to turn him over to the police.
The Czech at first offered resistance by wielding a
knife. When Leimer then attempted to turn him
over to the police the latter shot him down with a
pistol. Shortly after having been admitted to the
hospital, Leimer died. The culprit escaped. He
fired one shot at a German soldier who pursued
him. In the ensuing chase the Czech fired once
more at three other German soldiers who were
pursuing him; then the weapon jammed and he jumped
into the Moldau river. Immediately a great many
people collected who assumed a threatening attitude
towards the German soldiers. Through intervention
of an SS guard it was possible to hand over the
culprit to the German criminal police. In the brief
case of the culprit various stamps were found, among
them one designated "Maffie" (Maffia). This leads
us to assume that he was a member of this political
resistance organization. Also found in his
possession were thirteen rounds of ammunition partly
in Dum-Dum bullets. The culprit will stand trial
before a Special Court (Schnellgericht). In order
to carry out the death sentence, which is expected
to be reached as verdict, as quickly as possible,
I request now already that you inform me of your
intention to waive right of pardon. Furthermore,
making more stringent existing regulations, I shall
decree an order, in accordance with which the
illegal possession of arms shall be punishable by
death. Prague 3 May 1940 (signed) von Neurath."

On the next day, the following letter, signed by MEISSNER, went from
the Presidential Chancellery to Gruppenfuehrer Bormann in the Adjutant's
Office of the Fuehrer:

"Dear Herr Bormann! I ask you to submit the enclosed
telegram of Reich Protector von Neurath to the
Fuehrer with the request for taking official notice.
If I do not get any other instructions by tomorrow
morning with regard to the sentence underlined in
blue pencil, I shall inform Herr von Neurath that
the Fuehrer waives the right of pardon in this
respective case. Heil Hitler. Yours respectfully
(signature) MEISSNER."

This letter, which was received by Bormann on 7 May 1940,
carries his note reading: "Fuehrer agrees." Hitler's waiver, in line
with MEISSNER's recommendation, was passed on to Neurath in Prague over
the telephone (MEISSNER on cross, Tr. p. 4736.) The final result of
this ready cooperation between Neurath, MEISSNER, Bormann, and Hitler,

was reached by the blitz execution of the Czech national involved.

The following questions and answers concerning this feature of the case, appear in the cross-examination of the defendant MEISSNER:

Q. Then, with reference to Prosecution Exhibit 1834, which is page 4, Document Book 74, the case of von Neurath in advance asked that the clemency prerogative be waived. You remember that case?

A. Yes, I remember the case.

Q. Do you now admit that it was legally and morally wrong for you to have waived clemency in advance of knowing any details or without knowing any details?

A. I conceded this case in that trial as absolutely perfect. The case was so very clear that in any country wheresoever and any chief of state wheresoever would not have pronounced clemency in that case. There, to put it bluntly, these were two attempts of murder. The perpetrator was found holding ammunition and dum-dum shots and this happened at the time when there was very dangerous tension in Czechoslovakia and a time of war; Neurath was very humanitarian and of mild disposition and if he himself felt clemency as impossible in that case and he himself considered prompt execution most practical, then a most important reason must have been in existence and the trial must have been in order.

Q. Dr. Meissner, my question is not whether the man was guilty or not or whether he was a criminal or not. I would not dispute that point. The fact is that the man had not yet been brought to trial. Where did you receive your information to be able to cast judgment in this case before the trial had started?

A. In the detailed telegram of Neurath, all the facts of the case were described and it was obvious that there was no doubt that a death sentence would be passed. If the death sentence would not have been passed, then this entire action and authorization of Neurath would have become invalid. In this sentence, a decision had previously been asked for from Hitler himself.

Q. Therefore, you as a lawyer feel that on a testimony of another person, without hearing the defendant and before a trial in which the defendants had a chance to say anything, you can determine a man's guilt or innocence. Is that correct?

A. Well, the convicted man had confessed. He had been interrogated. There was no doubt that he was the perpetrator of the deed. It wasn't I that made the decision but I received Hitler's decision; and of the document itself it also says the Fuehrer agrees, "Der Fuehrer ist einverstanden."

Q. I might point out to you, Dr., that the man was not tried. He was not a convicted man. The man was to be tried." (Tr. pp. 4731, 4732)

The defendant's attempt during the cross-examination to cloud the issue cannot stand up to a close inspection. It is a criminal travesty of justice to count in advance with the certitude that a judge will be a rubber stamp to follow the dictate of convicting the accused and sentencing him to death and to forego in advance even the slightest consideration of any matters of clemency, which might, after the conviction weigh heavily enough to justify a commutation of sentence. MEISSNER's criminal attitude is in clear-cut contrast to his own and his affiant-friends' claims that he stayed in office only to prevent worse things from happening.

There cannot be any doubt that in the case of this Czech national, the obvious crime against humanity, consisting in the violation of the most elementary principles of justice, was coupled with a war crime in violation of the most elementary principles of international law concerning the treatment of civilian populations of occupied countries in matters of criminal justice.

Another case to be mentioned forthwith, covered by Exhibit 3445, NG-5296, Doc. Bk. 74 A, English p. 64, gives further proof of MEISSNER's participation in the Blitz executions, which were part of their scheme of threatening the nations to be victimized, and to annihilate the political opponents.

The facts of this case appear from the following "Express Letter", of the Presidential Chancellery, signed by MEISSNER, addressed to Hitler's personal adjutant, Obergruppenfuehrer Brueckner, dated 20 December 1948, the period after the seizure of the Sudetenland:

"Dear Mr. Brueckner! I ask you to report as soon as possible another very urgent criminal case to the Fuehrer: The second of the murderers of the SS-man Kalweit in Buchenwald has meanwhile been extradited by Czechoslovakia, where he fled after the first murderer had already been sentenced by the Special Court in May 1938 and hanged in Buchenwald. This second perpetrator, a Communist with many previous convictions, will be sentenced to death by the Special Court in Weimar tomorrow, 21 December. The two criminals, Bargartzky and Forster, as you perhaps remember, had killed the guard Kalweit with a spade in order to flee. Reichsfuehrer SS Himmler had arranged that the death sentence will be carried

out by hanging in Camp Buchenwald the very same day.
I ask you to report this to the Fuehrer and ask for
his approval. In view of the urgency of the matter,
I ask you to inform me of the Fuehrer's decision by
telephone. Heil Hitler, Your very devoted (original
signature:) MEISSNER." (Underlining added) (Re-
buttal Doc. Bk. 74 A, Exhibit 3445, NG-5296)

It is not necessary to go into the details of Meissner's attempt,
during his cross-examination (Tr. pp. 4734-4736), to whitewash his
attitude in this case. He went so far as to say:

"Even now, I can see nothing of illegal or in-
human character in connection with this case."
(Tr. p. 4736)

This, in complete disregard of the fact that, whatever the legal aspect
of that case may have been, it appears in its human aspect as the
desperate attempt of a man to escape from one of those infamous German
concentration camps (Buchenwald) which are known as organs for the mass
production of human misery. By stating this, we do not mean to imply
that his action was justified; we only want to point out that there was
no lack of mitigating circumstance in his case, as the defendant MEISSNER
in substance claims.

In part of its Judgment in the Justice Case, Military Tribunal III
pointedly stated:

"The prostitution of a judicial system for the
accomplishment of criminal ends involves an
element of evil to the state which is not found
in frank atrocities which do not sully judicial
robes." (Justice Case Trial Tr. p. 10794,
quoted for judicial notice in the present case
in Doc. Bk. 74, English p. 1)

VII. MEISSNER'S PARTICIPATION IN THE SO-
CALLED "NIGHT AND FOG" TERROR SYSTEM.

Another group of MEISSNER's war crimes and crimes against humanity consists of his participation in the "Night and Fog" terror system.

In order to establish the background for this part of the case, we quote from the Judgment of the IMT:

"The territories occupied by Germany were administered in violation of the laws of war. The evidence is quite overwhelming of a systematic rule of violence, brutality, and terror. On the 7th December 1941, Hitler issued the directive since known as the 'Nacht und Nebel' Erlass (night and fog decree), under which persons who committed offenses against the Reich or the German forces in occupied territories, except where the death sentence was certain, were to be taken secretly to Germany and handed over to the SIPO and SD for trial or punishment in Germany. This decree was signed by the defendant Keitel. After these civilians arrived in Germany, no word of them was permitted to reach the country from which they came, or their relatives; even in cases when they died awaiting trial the families were not informed. The purpose being to create anxiety in the minds of the family of the arrested person. Hitler's purpose in issuing this decree was stated by the defendant Keitel in a covering letter, dated 12 December 1941, to be as follows: 'Efficient and enduring intimidation can only be achieved either by capital punishment or by measures by which the relatives of the criminal and the population do not know the fate of the criminal. This aim is achieved when the criminal is transferred to Germany.'" (Underlinings added) (Quotation from "Trial of the Major War Criminals before the IMT", p 232, quoted for judicial notice in the present case in Doc. Bk. 74, English Page 36)

In the same connection, we wish to quote from the Judgment of Military Tribunal III in the Justice Case:

"It is clear that mental cruelty may be inflicted as well as physical cruelty. Such was the express purpose of the NN decree, and thousands of innocent persons were so penalized by its enforcement.

The foregoing documents show without dispute that the NN victim was held incommunicado and the rest of the population only knew that a relative or citizen had disappeared in the night and fog; hence, the name for the decree. If relatives or friends inquired, they were given no information. If diplomats or lawyers inquired concerning the fate of an NN prisoner, they were told that the state of the record did not admit of any further inquiry or information. The population, relative, or friends were not informed for what character of offense the victim had been arrested. Thus they had no guide or standard by which to avoid committing the same offense as the unfortunate victims had committed, which necessarily created in their minds terror

and dread that a like fate awaited them.

Throughout the whole Night and Fog program ran this element of utter secrecy. This secrecy of the proceedings was a particularly obnoxious form of terroristic measure and was without parallel in the annals of history. It could have been promulgated only by the cruel Nazi regime which sought to control and terrorize the civilian population of the countries overrun by its aggressive war. There was no proof that the deportation of the civilian population from the occupied territories was necessary to protect the security of the occupant forces. The NN plan or scheme fit perfectly into the larger plan or scheme of transportation of millions of persons from occupied territories to Germany." (Justice Case Tr. pp. 10754, 10755) (Underlining added)

It is proven by the evidence to be mentioned presently, that the defendant MEISSNER actively participated in an especially cruel feature of the altogether cruel system. The Greek mythology tells us the story of the Sword of Damocles, which was suspended over a man so close to his head that he was in permanent fear of his head being split by the sword's falling down. This, according to the old lore, was used as an instrument of torture by a cruel tyrant. Equally torturous is the method of leaving a human being, who has been sentenced to death but afterwards pardoned to life imprisonment or a term of imprisonment, in continuous uncertainty about whether or not the death sentence will be executed, thus making interminable his painful expectation of the hangman. It is to this type of cruelty that the defendant MEISSNER is linked. The evidence shows that in the case of women from the western occupied territories, whose death sentences had been commuted to life imprisonment by Hitler, he (MEISSNER) notified the then Minister of Justice, Thierack, that the condemned persons should not be informed of this commutation of their sentences.

The defense of MEISSNER, which was so successful in getting volumes of affidavits on MEISSNER's alleged mitigating influence, as Hitler's clemency advisor, was not able to submit an iota of evidence, in addition to the defendant's own testimony, incredible as that seems, that he did anything by way of a protest or at least representation against this practice before forwarding Hitler's alleged order to the Ministry of Justice. It was not on the part of the good man MEISSNER, but in the Ministry of Justice, then in charge of the bad man Thierack,

that such a protest was at least considered, if not actually made. This appears from Prosecution's Exhibit 1841 (NG-247, Doc. Bk. 74, English p. 37), which is a draft of a letter of the Ministry of Justice to Hitler's secretary, Bormann, dated 14 June 1944, but bearing von Ammon's initial, dated 10 June 1944, and apparently drafted by this official of the Ministry of Justice. The text of this draft letter reads:

"Dear Herr Reichsleiter, The Chief Reich Prosecutor at the People's Court has suggested that women from the occupied Western territories who have been sentenced to death through procedure (Fuehrer's directives for the prosecution of crimes against the Reich or the occupying forces in the occupied territories of 7 December 1941) by the general courts, where the Fuehrer has ordered a stay of execution and given orders that the condemned women are to be jailed in a penitentiary and to be treated as convicts, should be told that until further notice the death sentence will not be carried out. Up to the present, the condemned persons have not been informed of a reprieve in these cases, as the State Minister and Chief of the Presidential Chancellery, when in former cases the Fuehrer's decision was submitted, told me that the decision was not to be made public. I consider it cruel too to keep the condemned women in suspense for years as to whether the death sentence will be carried out against them soon or not. I would therefore be grateful to you if you would let me know the Fuehrer's decision as to whether there are any objections against informing the condemned persons as suggested. Heil Hitler Yours," (Underlinings added.)

That this draft never materialized into a letter really dispatched from the Ministry of Justice to Hitler's Headquarters, as appears from von Ammon's testimony in the Justice Case (Justice Case Trial Transcript, Ex. 1842 pp. 6389, 6390, quoted in the present case in Document Book 74, English p. 38), is certainly not mitigating MEISSNER's failure to take similar initiative. According to MEISSNER's testimony on direct, Hitler had "laid down that, in order not to affect the deterrent purpose of the death sentence for the general public, a formal pardon was to be made public only after the end of the war; and that the decision must not be announced until then". He adds:

"In spite of the fact that Hitler had said the decision must not be published, I did not let this stop me; insofar as applications were still available from defense counsel or others, I still wrote to them to say that the death sentence would not be executed and a formal pardon would probably be granted after the end of the war." (Trial Transcript, Page 4603)

In substance, the same line of defense was taken by MEISSNER in the course of his cross-examination (Trial Transcript, pp. 4772-4775). However, the following series of questions and answers should nevertheless be quoted for the present purpose:

Q. Was Thierack permitted to inform the women, or not?

A. Officially he was not supposed to do it, but if he had had humanitarian motives he could have found ways and means, at least, to notify the defense counsel or members of the family by personal contact, as I did. However, of course, he didn't do that.

Q. That would have been disobedience to the Fuehrer Order, would it not?

A. It was a broad interpretation of the Fuehrer Decree.

Q. Was not the essence of the order the secrecy of the proceedings?

A. Yes, certainly.

Q. You stated that you informed defense counsel and relatives when they inquired. Were they able to inform the victim?

A. Not the victims....." (Trial Tr. pp. 4774, 4775)

MEISSNER was not able to corroborate by a single affidavit or testimony, that he notified defense counsel or relatives of the affected women. Moreover, he admitted on cross-examination, that such notification of defense counsel or relatives would not have reached the affected women themselves and therefore not have relieved them of their tortured condition. However even from these two facts, the whole allegation of MEISSNER is utterly incredible. By acting as he now claims to have acted, he would openly have revolted against Hitler's express order and the very spirit of Hitler's Night and Fog policy which was to hold the victim incommunicado. This is quite inconsistent with MEISSNER's own statement about fulfillment of his duties as an obedient servant of Hitler.

In part of its decision in the Justice Case, Military Tribunal III stated:

"The record contains innumerable acts of persecution of individual Poles and Jews. To consider these cases as isolated and unrelated

instances of perversion of justice, would be to overlook the very essence of the offense charged in the indictment." (Justice Case Trial Tr., p. 10760)

Singularly, the full magnitude of MEISSNER's criminal responsibility would be overlooked if he were only made responsible for this special feature of Hitler's Night and Fog system, with which he appears specifically linked by Prosecution's Exhibit 1841. His action in forwarding Hitler's order not to notify the women in question of the granted commutation of their death sentences, but to leave them in suspense concerning their final fate until the end of the war, is symptomatic of, and therefore conclusively shows MEISSNER's participation in the execution of the whole atrocious "Night and Fog" system, inaugurated on 7 December 1941. His participation in this system constitutes war crimes and crimes against humanity.

VIII. OTHER WAR CRIMES AND CRIMES AGAINST HUMANITY

1. MEISSNER's Participation in Excluding Poles and Jews in German-occupied Polish Territories from Clemency Pleads.

By a decree dated 3 September 1939, Hitler delegated to the Ministry of Justice his prerogative to grant pardons and to dismiss petitions for pardon in cases under the jurisdiction of the ordinary courts. (Pros. Ex. 1833, Doc. Bk. 74, English F. 3) Even in a country where at that time the legal profession so cynically cooperated in the suppression of elementary human rights, an examination of clemency pleas by the Ministry of Justice was, to a certain extent, a potential safety valve against gross miscarriages of justice in judicial findings or sentences. This must be kept in mind in order to properly evaluate Prosecution's Exhibits 1578 (NG-137) and 1839 (NG-126), in Document Book 74, English pp. 27-30.

For the same purpose, attention must also be called to the decree of 4 December 1941 "Concerning the Organization of Criminal Jurisdiction against Poles and Jews in the Incorporated Eastern Territories", the substantive part of which is quoted in the decision of the Justice Case, pp. 10664, 10665, while its procedural provisions appear on pp. 10673, 10674, where the decree is rightly referred to as "The Law against Poles and Jews". That the most shocking judicial atrocities were bound to occur in application of such a law can be taken as a matter of course. Nevertheless, the defendant MEISSNER readily lent his cooperation to the cutting off of the victims of such a sham justice even from the meagre protection they might have received through the consideration of their clemency pleas by the legal counselors of the Ministry of Justice before the Thierack era.

In a letter dated 11 December 1941, addressed to Schlegelberger, then Acting Chief of the Ministry of Justice, MEISSNER wrote:

"Dear Mr. Schlegelberger! In response to your letter of the 10th of this month and with reference to our discussion of this matter, and after having read the letter of the Reichstatthalter (Reich Governor) of the Warthegau of the 13th of the last month, to Reichsminister Dr. Lammers, I herewith state that I approve of it, that henceforth submission of appeals for pardon

A. Yes, I disapproved of it.

Q. But didn't you in the same month of December, 1941, approve of the exclusion of Jews and Poles from the monthly lists of clemency recommendations and death sentences forwarded by the Reich Minister of Justice to Hitler?

A. No, I didn't approve of such a measure. The measure included the regulation that now only Germans would be listed in these monthly reports, but that regarding Poles and Jews the Governor or Gauleiter of Warthegau would be independent. This measure had the same effect as one existing in the Government General, and this measure actually didn't mean discrimination against the Poles and Jews, but it stated that in the Warthegau clemency pleas applying to Germans would continue to be subject to control of the Reich Ministry of Justice and the Fuehrer by being included in the monthly report. However, apart from that the Governor himself would have independent jurisdiction referring to the other population of the area, as to the Jews, thus, the same statute had been created and it did exist in connection with the Governor-General, and they didn't produce any deterioration or discrimination against the Poles and the Jews whatsoever. Furthermore, I want to say that I was acting pursuant to the proposal of the Reich Ministry of Justice, who issued this delegation in the form of a sub-delegation based on his own authority. Therefore, I expressed my own misgivings when I was informed that this matter was based on a direct decision which Hitler passed when Greiser intervened for that purpose.

Q. That was part and parcel of the same policy as contained in the law of December 1941, the law against the Poles and Jews, wasn't it?

A. No, not at all. It has nothing whatsoever to do with that.

Q. Then in May 1942, through the transfer of all clemency rights over Poles and Jews by the Reich Minister to the Gauleiters and Reich Governors of the annexed Polish territories?

A. No, I didn't approve of that either, this was a consequence arising from the former measure because the other Reich Governors wanted to have the same rights that Greiser enjoyed, and that either directly or by Bormann these Reich Gauleiters received the necessary authority from Hitler. My participation involved only the approving or the technical drafting, and I want to repeat, it is my conviction that there was no deterioration arising from this measure, because in the case of such measure Thierack was far more aggressive than the local Reich Governor, that was my opinion.

Q. This was done in the time of Schlegelberger and not Thierack, am I right, in May 1942?

A. That was Schlegelberger era. It was clear that Schlegelberger would not stay there long in

office. It was to be replaced by the National Socialist Ministry.

Q. Dr. MEISSNER, you stated that these laws were not discriminatory against the Poles and the Jews. Weren't these Gaue (Provinces) part of the Greater German Reich?

A. Yes.

Q. Why were these laws put into effect in these particular Gaue against the Poles and the Jews, if they were not discrimination?

A. These areas were newly incorporated areas, which in other respect were subject to other administrative laws different from those in the Reich ora.

Q. They were component parts of the Reich, yes or no?

A. Yes." (Trial Tr. pp. 4781-4783)

While the final fate of Gauleiter Greiser, the Reichsstatthalter of the Warthegau, namely that he has been sentenced to death by a War Crimes Court and executed, may be considered a matter of judicial knowledge, it is interesting to learn from the defendant MEISSNER what he knew about the man to whom he entrusted the final judicial fate of Poles and Jews who were part of the civilian population of a country occupied by Germany.

Asked: "Is it not true that Greiser, Gauleiter of the Warthegau, was a notorious and convinced National Socialist?", he gave the lame and transparent answer:

"I don't testify that he was notorious, because I don't know him myself, but it is a fact he was a convinced National Socialist." (Trial Tr., p. 4776)

It should be noted that MEISSNER, when he advised the Ministry of Justice to sub-delegate its clemency powers over Poles and Jews in the occupied Eastern provinces to the respective Reich Governors, formed this policy himself using his own judgment within the sphere of his official discretion. MEISSNER action to deprive Jews and Poles of due clemency proceedings by the proper administration of justice constitutes crimes against humanity and war crimes.

2. Anti-Jewish Activities.

Other evidence shows MEISSNER's participation in anti-Jewish activities, for instance Prosecution Exhibit 1848 (NG-1754, Doc. Bk. 74, p. 52). According to this document, MEISSNER on 4 September 1944 issued

a circular decree reading:

"To the Supreme Reich Authorities. Subject: Award of the War Service Cross, or other orders of decorations to persons of mixed Jewish blood in the first generation. By order of the Fuehrer I decree as follows: There must be no award of the War Service Cross, and other orders and decorations to persons of mixed Jewish blood in the first generation and to persons of German blood who are married to Jews or persons of mixed Jewish blood in the first generation. I ask that, in drawing up applications for awards, a careful examination should be made in this respect. To the subordinate offices. (signed) Dr. MEISSNER."

Certainly no order of the Fuehrer is alleged even by MEISSNER as having been instrumental for his, along with Goebbels' representative and publicized appearance, in September 1940, at the first performance of the Jew-baiting film "Jud Suess" (MEISSNER on cross-examination, pp. 4721, 4722 and Pros. Ex. C300, NG-5834, Doc. Bk. 74 A, English p. 97). Of course, he thereby publicly displayed his official sympathy with the Streicher-Goebbels line of abusive anti-Semitic propaganda. This fact, as well as his official participation in the discriminatory measures discussed hereinabove, must not be lost sight of in order to give the proper place, within the evaluation of MEISSNER's criminal responsibility, to his alleged assistance of Jews in a few individual cases.

3. MEISSNER and the Katzenberger Case.

In part of its decision in the Justice Case, Military Tribunal III said:

"In view of the conclusive proof of the sinister influences which were in constant interplay between Hitler, his ministers, the Ministry of Justice, the Party, the Gestapo, and the courts, we see no merit in the suggestion that Nazi judges are entitled to the benefit of the Anglo-American doctrine of judicial immunity." (Justice Case Trial Tr., p. 10703)

This observation was especially in point with regard to that part of the Tribunal's finding wherein it declared the defendant Rothaug as having committed a crime against humanity by his participation in the judgment and sentence against Katzenberger. The Katzenberger case, indeed, represents an instance of distortion of law for the malicious purpose of the extermination of a Jew by branding him as a criminal and delivering him to the hangman. This clearly appears from the discussion

of the pertinent facts in the decision of the Justice Case, pp. 10892, et seq., (Pros. Ex. C-306, NG-5852, Doc. Bk. 74 A, English p. 128).

During his cross-examination the defendant MEISSNER summarized his memory of the Katzenberger case:

"I remember that it was in 1941 or 1942 that the president of the Jewish community in Nurnberg by the name of Katzenberger, he being a gentleman 70 years of age, was sentenced for racial pollution by the Special Court in Nurnberg and sentenced to death; and Schlegelberger came to me with this case and he said that juridically speaking he considered the judgment to be wrong. The man in question had been convicted for racial pollution, for race defilement as he maintained a relationship with an Aryan girl and the only judgment that could be passed would be imprisonment in a penitentiary. However, in view of the fact that Katzenberger met this Aryan girl under the protection of blackout, this offense was classified as a blackout crime, and, in view of that, a means had been found to pronounce the death sentence. Both Schlegelberger and I considered the case to be a misjudgment juridically speaking, because the only sentence that was possible would have been penitentiary and the only means to repair the sentence to make good the damage done was via clemency which was a rather difficult course to take." (Trial Tr., pp. 4725, 4726)

In the further course of his cross-examination, the defendant MEISSNER could not explain why the possibility of a Nullity Plea was not even considered in the respective conversation between him and Schlegelberger (Trial Tr., pp. 4727-4729). He further claimed, that in this case he could not act on his own but had to bring the matter before Hitler to grant clemency, and that his efforts were in vain (Trial. Tr., pp. 4727-4731). In this connection, he states:

"I was disappointed that my endeavor had been in vain because I had had the hope that I would be successful in tendering this plea for clemency, and I accordingly notified Schlegelberger."
(Underscoring added) (Trial. Tr., p. 4728)

Neither the defendant MEISSNER himself, nor anyone on his behalf, claims that MEISSNER in any way demonstrated indignation about this shocking instance of refusal of clemency in a case where so gross injustice had been done by the Court that clemency became an elementary dictate of justice. Through his implementation of Hitler's decision, MEISSNER the chief of Hitler's clemency department, took a consenting part in this judicial murder.

The criteria of criminality set forth in paragraph 2 of Article II of Control Council Law No. 10, read:

"Any person without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in Paragraph 1 of this article, if he was (a) a principal or (b) was an accessory to the commission of any such crime or ordered or abetted the same or (c) took a consenting part therein or (e) was a member of any organization or group connected with the commission of any such crime or (f) with reference to paragraph 1 (a) if he held a high political, civil or military (including General Staff) position in Germany or in one of its Allies, co-belligerents or satellites or held high position in the financial, industrial, or economic life of any such country."
(Underlinings added)

That the defendant MEISSNER, by forwarding Hitler's decision of denial of clemency in the Katzenberger case to the Ministry of Justice, externally, and this alone counts in law, "took a consenting part therein", would seem irrefutable by any claim of "inner resistance" or unexpressed indignation which he may have had on this occasion.

MEISSNER's attitude in the Katzenberger Case refutes, ad do many other instances, the claims of MEISSNER and his defense affiants that he remained in office throughout the Hitler era only to prevent worse things happening than could have happened while he was in office.

An illustration of his attitude appears in MEISSNER's own account mentioning that when he reported the case to Hitler, he only emphasized the great age of the convicted man (Trial Tr. p. 4728). Even in the light of his own testimony he did not have the moral courage to tell Hitler that a flagrant miscarriage of justice was involved, as he and Schlegelberger were fully convinced of (Trial Tr. p. 4725). Hitler's attitude toward Jewry, which leaves no doubt how dangerous it was to take the chance of his decision in the Katzenberger case/ ^{was known to MEISSNER.} There was an easy way to avoid going to Hitler, by having Schlegelberger institute the nullity plea procedure. However, MEISSNER, a legal mind whose alleged humanitarianism is so dramatized by his defense, did not even consider such an easy way of avoiding a crime against humanity.

VI. THE DEFENSE AFFIANTS

In his defense MEISSNER has submitted a large number of defense affidavits from friends and relatives, fellow Alsatians, fraternity brothers, and former subordinates. Not one of MEISSNER's affiants makes any statement to the facts proven by the Prosecution's evidence that MEISSNER served his master Adolf Hitler with utmost loyalty in the committing of the most horrible crimes. All the affiants give testimonials which might be of interest in a disciplinary board procedure, but have no bearing on his guilt as a major war criminal.

There is no doubt that MEISSNER, in cases where his personal position was not hurt in any way, helped some of his friends or fellow Alsatians, but there is no one instance of his helping someone where he had to make the slightest sacrifice or take the slightest risk. Moreover, it becomes apparent from these affidavits that MEISSNER, a State Minister of the Third Reich, had the power to grant privileges which a person of less high standing with the Nazi regime could never have granted. The man who held the key to Hitler's clemency power and those misused his office for criminal acts against Poles, Jews and ^{those} regarded by the Nazis as undesirable Germans, had of course the power to assist some members of his own circle who had either helped him or his friends in former times or could be regarded as his own helpers in a future time.

It seems enough to give a few illustrations for the existence of a mutual affiants' company, an instrument especially well developed among the defendants and witnesses of this Case Number 11.

Characteristic for this kind of evidence is the affidavit of Dr. Karl Hopmann (Doc. Bk. MEISSNER I, English p. 34) who stated in cross-examination that he was a fellow fraternity member of MEISSNER (Transcript p. 20153.)

The cross-examination of the affiant Mrs. Edith Zinn (Doc. Bk. MEISSNER I, ^{Ex. 41} English p. 99, Trial Tr., pp. 18785 et seq.) brought out that the Zinns were relatives of MEISSNER's sister-in-law.

The affiant Werner Kiewitz is a former subordinate of MEISSNER

who, together with MEISSNER, was active in trying to get the Belgian gold for the Reich Treasury, (Pros. Ex. 810).

From the affidavit of Fritz Behrend (Doc. Bk. MEISSNER I, English p. 71) it becomes clear that MEISSNER helped Paul Brandes, who was of Jewish descent, because he wanted to do a favor to his horse-back riding teacher Esche.

From the examination of Dr. Heinrich Doehle, (Trial Tr. pp. 17847, et seq.) it became apparent that Doehle was connected with MEISSNER's own activities and was himself a high SS officer.

The affidavit of the Belgian Consul Henri Delvaux, and of his wife, Elizabeth Delvaux (Doc. Bk. MEISSNER II, English p. 28), was withdrawn by Defense Counsel and recently re-submitted as an affidavit given solely by Mrs. Delvaux, and it should be noted that only her signature has been properly certified while the affidavit is a unit welding together statements of both husband and wife. However, the lack of credibility of the defense affidavit of Mr. and Mrs. Delvaux is symptomatic of the MEISSNER affiants. Not in a single word or even by intimation did these affiants indicate the blood relationship between the families Delvaux and MEISSNER, a fact discovered by the Prosecution and then admitted by Defense Counsel in his memorandum accompanying his withdrawal of the affidavit. Nevertheless, the affiants describe the defendant MEISSNER's alleged intervention on behalf of members of the family Delvaux as if this had been a humanitarian action on behalf of complete strangers.

In summing up the defense affiants it can be stated that their eager attempts to picture MEISSNER as a social secretary in the field of foreign policy and a social welfare worker in the field of clemency and protection of minority rights, is fully refuted by the documentary evidence proving his criminal activities for more than a decade.

VII. PROPOSED FINDINGS OF FACT CONCERNING THE INDIVIDUAL RESPONSIBILITY
OF THE DEFENDANT MEISSNER

The evidence has established beyond a reasonable doubt the guilt of the defendant MEISSNER with respect to the charges of the indictment contained in Counts I, II, and V. The guilt of the defendant MEISSNER under each of these counts is predicated upon the following facts which have been established by the proof.

COUNT I

MEISSNER participated in the initiation of invasions of other countries and wars of aggression in violation of international laws and treaties, and was connected with plans and preparation for aggression in that he knowingly:

1. Occupied a responsible position in the Reich Government, and committed Crimes against Peace in that he was a principal in, accessory to, ordered, abetted, took a consenting part in, and was connected with plans and enterprises involving said crimes.
2. Participated in the planning for Hitler's seizure of power in that he
 - a) participated in conferences with Goering, von Papen, and others for the engineering of Hitler's seizure of power,
 - b) attended the cabinet meetings of January 30 and March 7, 1933, giving advice how to sidetrack the provisions of the German constitution and to circumvent legal obstacles in combatting enemies of the Hitler regime.
3. Participated in political, governmental, and diplomatic activities for the purpose of initiating invasions of other countries and wars of aggression.
4. Participated in arranging conferences and meetings at which the leaders of the countries to be victimized were threatened.
5. Participated in securing allies for aggressions.

6. Participated in securing the fruits of Nazi aggression.
7. Committed war crimes and crimes against humanity, which were an integral part of crimes against peace, in violation of international laws, treaties, agreements, and assurances and of Section II of Control Council Law 10.

COUNT II

The foregoing activities were knowingly engaged in by the defendant MEISSNER in collaboration with the defendants Lammers, Dietrich, Stuckart, von Weizsaecker, and other defendants charged in this case, and divers other persons of the SS, as a part of a common plan or conspiracy to further the Nazi policy of aggrandizement, and thereby to deprive German nationals and peoples of other countries of their personal freedom, their property, and their lives by use of force.

COUNT V

The defendant MEISSNER knowingly participated in the programs and enterprises involving the commission of mass murder and extermination of human beings in that he was a principal in, accessory to, ordered, abetted, took a consenting part in, was connected with plans and enterprises involving the persecution of enemy nationals, Jews and other persons regarded as undesirable by the Nazi State, to wit:

1. he caused the transfer of judicial prisoners to the Gestapo for execution,
2. he administered a system of blitz execution by causing the signature of execution orders before the victims were tried and the anticipated death sentences were handed down by the courts,
3. he participated in the mechanism of the so-called 'Night and Fog' terror system,
4. he participated in excluding Poles and Jews in German occupied Polish territories from clemency pleas,
5. he took a consenting part in perverting the clemency power in cases where Jews were involved.

VIII. CONCLUSION

The immensity of the guilt of the defendant MEISSNER in the committing of the above-mentioned crimes becomes apparent when we realize the following facts:

1. that MEISSNER prostituted his unique talents and reputation as top administrator and long-time civil servant to the criminal program and activities of the Nazi regime;

2. that MEISSNER was thoroughly familiar with and always up-to-date on Hitler's criminal program, being -- as Chief of the Presidential Chancellery -- a member of Hitler's official family, together with the other heads of his chancelleries, i.e., the defendant Heinrich Lammers of the Reich Chancellery, the already convicted Martin Bormann of the NSDAP Chancellery, and the missing Phillip Bouhler of the Personal Chancellery. (see also Exhibit 3906)

First MEISSNER helped to create the Hitler regime, then he loyally worked with Hitler in promoting its criminal policy with all ensuing devastation for the world including Germany.

ERRATA SHEET

CASE NO. XI - - Ministries Case

Please make the following corrections in the Prosecution brief entitled "FINAL BRIEF ON THE CRIMINAL RESPONSIBILITY OF OTTO LEBERECHE MEISSNER":

The first two paragraphs on Page 8 should be deleted and replaced with the following two paragraphs:

Under Count I of the Indictment, the defendant MEISSNER is charged with Crimes against Peace.

In an earlier part of this brief proof has been adduced that MEISSNER held such a high political and civil position in the Third Reich, first as a State Secretary and then as a State Minister, which, we submit, is an important factor to be taken into consideration in evaluating his participation and knowledge of the planning, preparation, and waging of aggressive wars.