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Publications which are counter to the general good are to be forbidden. We demand legal prosecution of artistic and literary forms which exert a destructive influence on our national life, and the closure of organizations opposing the above made demands."

In the National Socialist Year Book for 1938 the following is said with respect to DIETRICH as Reich Press Chief of the NSDAP:

"The Reich Press Chief of the NSDAP is, in addition to being the Fuehrer's personal press chief, the competent Reichsleiter for all Party agencies entrusted with political-journalistic tasks which are subordinated to him professionally and politically without prejudice to their organizational subordination. The most important of these are the Pressamtsleiter and Referents of all offices of the Reichsleitung, the editors-in-chief of the Party Press, the Gau Press Offices of the NSDAP, as well as all the rest of the press political organizations of the NSDAP.

"The mouthpiece of the Party as far as the whole of the Press is concerned is the National Socialist Party News Service, under the direction of the Chief of the Press Political Office.

". . .The entire press at home and abroad obtains all its information regarding the NSDAP from the offices of the Reich Press Chief in Berlin and in Munich."

In September 1935 DIETRICH delivered a speech at the Party rally in Nurnberg, stating, among other things:

"The liberalistic age boasted of the Press as a Seventh Power. A power, therefore, which was not of the people, but which aspired to govern them. In the National Socialistic State the press constitutes the public conscience of the nation. A power destined to serve, but not govern the people. . .

" Since the press reflects the course of events daily, even hourly, it is natural that its purification which was in the nature of an introduction to the revolution, had to manifest itself as one of its first and most decisive operations. . .

"In National Socialist Germany that

kind of press was eliminated with lightning speed by the arm of the law! A fate which it deserved a thousandfold, overtook it on the first day of the revolution.

"The same article of our Party Program further adds: 'Newspapers violating the community interests are to be prohibited'!

"And, dear Party Members, we did our full duty by our program in this respect also. In National Socialist Germany, enemies of the State and the people are not tolerated in the press; they are exterminated.

"The Program continues: 'In order to facilitate the creation of a German press, we demand that all editors and co-workers of newspapers published in German must be Volksgenossen.'

"In this respect also we can ascertain that a complete job has been done. The National Socialist Press Decree has eliminated all parasites from German journalism. Today there are no more Jews in the German press!"

The speech abounds with phrases such as the following:

"The Jewish liberal-profiteering press."

"We have eliminated the Jew from the press, and since then - dear Party members - we do indeed feel freer and better in this field."

"We have cleaned the Jews out of the German press and therefore it is more than others the target of their hatred."

On 4 October 1933 the Editorial Control Law was issued which limited editors to those who possessed German citizenship, had not lost their civic rights, and qualified for a tenure of public offices, were of Aryan descent and not married to a person of non-Aryan descent, etc.

Not only were the German newspapers under strict control, but as the program of expansion and aggression moved forward, it was made applicable to the new territories, the Saar, Austria, Sudetenland, Danzig, Occupied Eastern Territories, Poland, Netherlands and Bohemia and Moravia.

On 9 October 1934, DIETRICH officially informed the editorial staff of the National Socialist press that he made the district press leaders of the Party responsible to the Reich Press Office for all the news in the papers in the districts dealing with the Party, even if the papers were not Party papers.

On 9 March 1939, Sundermann, DIETRICH'S Chief of Staff, informed the Party Press offices and referents that daily directives would thereafter be sent to the Party press offices in order to efficiently control and guide the press in forwarding its wishes in publication questions immediately to the whole German press in the same manner as used by the press divisions of the governments.

Jewish Problem. The record is replete with Press and Periodical Directives of a general anti-Semitic nature. We relate only a few of those which were directed toward Jewish persecution and the "Final Solution."

On 15 February 1940 the Tagesparole issued the following directive:

"The foreign press declares that 1,000 German Jews have been transported to the Government General. The report is correct, but is to be treated as confidential."

On 21 August 1941, as part of the secret information in the Tagesparole, the press was informed:

"It is to our interests that all Jewish statements against Germany or the authoritarian states should be well noted. The reason for this wish is that measures of an inner-political nature may be expected."

On 26 September 1941 this information in the Tagesparole is to be found:

"With reference to the marking of Jewry, the opportunity is offered to handle this theme in the most varied ways, in order to make clear to the German people the necessity for these measures, and especially to indicate the noxiousness of the Jews. From tomorrow on the special delivery service will provide material to be used as proof of the injuries which Jewry has inflicted upon Germany, and the destiny it has envisaged for her, past and present. This material is recommended."

On 3 February 1944, the Tagesparole announced that the

"change in the diplomatic status of the Soviet Republics. . .and the applause with which it is greeted by the Jewish press throughout the world, reveals a gigantic international Jewish conspiracy,"

and that

"The German press now has the task of energetically taking up this theme of the change in the diplomatic status of the Soviet Republics, and to brand this clumsy Jewish trick with convincing words. . . It can be seen that this whole maneuver is a Jewish trick of gigantic proportions. The fact that the Jewish newspapers throughout the world welcome this development clearly indicates that this is a gigantic conspiracy of Judaism, a Jewish conspiracy of international proportions,"

and that

"In these problems also we can recognize the truth that the Jewish question is the key to the history of the world."

On 2 March 1944 it is said:

"The anti-Semitic campaign must be emphasized still more than up till now as an important propagandistic factor in the world struggle. Therefore, at all possible occasions world Judaism has to be stigmatized as the one whose cunning machinations are even opposed to the interests of its hostess nations. On top of all that these voices are to be recorded, which show clearly the real Jewish intentions of destruction and to make them the subject of convincing exposures. In this respect German journalism has to aim at keeping awake in the German people the feeling that Judaism constitutes a world danger on the one hand, and on the other, above all, to carry the discussions abroad."

On 27 April 1944, the Tagesparole stated:

"One of the fundamental topics of the German Press will remain the anti-Semitic campaign. In this respect very useful material has come to hand from Hungary. When utilizing the reports on the measures taken there against the Jews it has to be kept in mind that they will not be reproduced without extensive statements on the crimes committed by the Jews, which caused these measures. . . .

"When, in treating the first point of the Tagesparole, the newspapers will arrive at the general tendency of their commentaries -- Judaism's guilt -- then just the second point of today's Tagesparole must be the cause, taking Hungary as the pretext, to start again on a large scale the anti-Semitic campaign. This one principal topic of the German press, on account of the present reports from Hungary, must be principally reopened once more. However, not only the mere reports on the measures taken by the new Hungarian Government against the Jews must be published, moreover the present judaification of Hungary has to be shown up, which has led to such measures. . . .When this Jewish guilt has been extensively treated by the Press, then the new anti-Semitic measures of the Hungarian Government can be mentioned."

On 1 June 1944, a confidential information to the Tagesparole contained the following statement:

"The treatment by the Press of the war aims, the combat methods and the reign of terror, etc., of our enemies is incomplete and ineffective if, in every case, and in the leading articles of the newspapers, Germany's determination to oppose this Jewish chaos and to fight for German victory with bold resolution is not expressed."

We now come to the articles appearing in the periodical directives. Under the heading "If the Jew Comes into Power" it is said:

"The Zeitschriften-Dienst (Periodical Service) has already referred several times to the necessity for rousing all power to resist in the German people. The 'Deutsche Wochendienst' (German Weekly Report) shows what has happened to those nations which have become the victims of Judaism. In this connection reference can be made to Hitler's words that at the end of this war there will be only survivors and annihilated. In pointing to the firm intention of Judaism to destroy all Germans, the will for self-assertion must be strengthened."

Under the heading "Europe Protects Herself Against the Jews" it is said:

"The declaration of war by the Jews against the European nations resulted in energetic measures being taken against the Jews, not only in Germany but also in many other European states. The 'Deutsche Wochendienst' recommends the periodicals to issue comprehensive descriptions and in this connection furnishes material and suggestions for subject matter. It must be pointed out that in the articles, as a result of their racial composition, the Jews are hostile to anything constructive and any peaceful community life. For reasons of self-preservation, the nations must protect themselves against the Jewish destructive forces. . ."

* * *

"Let us avoid any criticism of the measures taken against the Jews by individual countries, and comment on their suitability and the extent to which they can be put into practical effect."

On 2 April 1943, it is said:

"Of equal value with our anti-Bolshevist propaganda is that against Jewry. It must be a matter for irrefutable certainty to every member of our people that the Jews are the inexorable enemies of our nation and are behind Bolshevism as well as behind the Plutocracies. . .The treatment of this subject belongs in the framework of the rousing of feelings of hatred recently described here as necessary. . .

". . .In the works for which the 'Deutsche Wochendienst' brings numerous suggestions and subject proposals, it must be emphasized that with Jewry it is not the same as with other peoples, that there are individual criminals, but that Jewry as a whole springs from criminal roots and is criminal by disposition. The Jews are not a nation like other nations, but bearers of a hereditary criminality. The criminal class of all lands speaks a specialized language, of which the most important elements are Hebraic. The annihilation of Jewry is no loss to humanity, but as useful to the peoples of the earth as capital punishment or security custody for criminal offenders."

On 22 April 1943 the Periodical Service stated that the Jews were responsible for the Katyn mass murder of Polish

officers, and that the Jews wanted to murder the peoples of Europe and that the Katyn incident was not alone a hateful outbreak of Jews against Poles, but rather a hateful policy of Jews against all non-Jews.

Under "Manner of Treatment" is found:

"Emphasize: Every individual Jew, wherever he may be, and whatever he may do, shares the guilt. There is no such thing as a 'decent Jew' but only a more or less cleverly designed camouflage. The Jew is a notorious criminal."

It is thus clear that a well-thought out, oft repeated, persistent campaign to arouse the hatred of the German people against Jews was fostered and directed by the press department and its press chief, DIETRICH. That part or much of this may have been inspired by Goebbels is undoubtedly true, but DIETRICH approved and authorized every release, as his own witnesses admit.

The only reason for this campaign was to blunt the sensibilities of the people regarding the campaign of persecution and murder which was being carried out.

Hitler, on 30 January 1942, in a widely published speech, said:

"On the 1st of September 1939 I already declared in the German Reichstag, -- and I am careful about rash prophecies, -- that this war will not end as the Jews imagine, namely with the destruction of the European Aryan people, but rather that the result of this war will be the destruction of Jewry. For the first time other nations will not bleed away, but rather for the first time the old Jewish law will be applied; an eye for an eye, and a tooth for a tooth.

"The longer this war will continue, the more world Jewry might just as well know this, --anti Semitism will spread. It will find encouragement in every prison camp, in every family which will come to know the real cause

for their sacrifices. And the hour will come when the most evil world enemy of all times will have, at least for a thousand years, played out his role."

These Press and Periodical Directives were not mere political polemics, they were not aimless expressions of anti-Semitism, and they were not designed only to unite the German people in the war effort.

Their clear and expressed purpose was to enrage Germans against the Jews, to justify the measures taken and to be taken against them, and to subdue any doubts which might arise as to the justice of measures of racial persecution to which Jews were to be subjected.

By them DIETRICH consciously implemented, and by furnishing the excuses and justifications, participated in, the Crimes against Humanity regarding Jews charged in Count Five.

He is and we find him GUILTY.

ERDMANNSDORFF

ERDMANNSDORFF joined the Foreign Office in 1918 and by 1928 had risen to the position of Embassy Councillor (Botschaftsrat) in China. After Hitler's rise to power in 1933 he was recalled to the Foreign Office and became Chief of the East Asia Group. In 1937 he was sent to Budapest as German Minister. He was recalled in June 1941 and became Deputy Chief (Ministerial Dirigent) of the Political Division of the Foreign Office.

Until 1943 he was subordinate to WOERMANN and thereafter to the latter's successor, Hencke.

The Facts: The defendant did not take the witness stand and offered no evidence in his behalf. It was stipulated by the prosecution and the defense, and thereon the Tribunal ruled, that only such evidence as had been admitted up to the time the defendant rested his case, i.e., July 16, 1948, should be considered against him. In its brief the prosecution has referred to documents or exhibits and oral testimony received subsequent to 16 July. In most instances this evidence was offered against other defendants and apparently the prosecution, due to a lapse of time and the size of the record of this case, overlooked its stipulation and the order the Tribunal previously adverted to. We shall not consider such exhibits or testimony.

The Political Division, except insofar as it was interfered with or by-passed by the Foreign Minister Ribbentrop (situation which quite often arose, not only with regard to

Political but other divisions of the Foreign Office), had the duty to become thoroughly informed of the political situation in foreign countries. This, of course, involved obtaining both general and confidential information which might facilitate a correct evaluation of foreign political situations.

The Political Department, or Division, had various sub-divisions, headed by a staff of referents and other employees, who specialized on a particular nation or group of nations. In theory, and quite generally in practice, instructions on political matters and policy, and the attitude to be taken by the German Diplomatic Corps abroad were given by the Political Division.

The Foreign Minister was entitled to refer to and obtain the opinion of the division on matters of foreign policy. In principle, the functions and duties of this division differed little from like departments in the Foreign Office of other states, the heads of which, of necessity, rely largely upon the advice of men who have long experience in and expert knowledge of political and other conditions in a particular country or specialized area.

Ribbentrop, however, motivated in part by a tremendous egotism and vanity, and also burdened by a subconscious realization of his inadequacies and ignorance which his vanity forced him to conceal, resented and often ignored or by-passed the experts of his political department or directed them to transmit orders to his German representatives abroad without having considered their opinions. It would have been difficult to imagine a man less fitted by native ability, experience, knowledge or temperament to guide the

foreign policy and advise the head of any major state, and it is not to be doubted that many of the fatal mistakes and crimes of the Nazi foreign policy are directly attributable to these factors, plus his pride and slavish adherence to Hitler.

That ERDMANNSDORFF had knowledge of the Crimes against Humanity committed against the Jews, and the persecution of the churches, we have no doubt. But a careful examination of the evidence reveals little or nothing more. It is far from enough to justify a conviction. The Deputy Chief of the Political Division, particularly under the Ribbentrop regime, had little or no influence. He was subordinated to the Undersecretary of State of the Foreign Office, and he was little more than a chief clerk.

We find ERDMANNSDORFF NOT GUILTY under Count Five, and the prosecution having dismissed all other charges against him, it is ordered that on the adjournment of the Tribunal he be discharged from custody.

KEPPLER

The defendant KEPPLER in 1932 became the Special Advisor for Economic Affairs in the Party. In 1933 he became a member of the Reichstag. After the rise to power he became Hitler's Plenipotentiary for Economic questions and after the death of von Hindenburg his title was changed to that of Plenipotentiary for Economic Questions to the Fuehrer and Reich Chancellor. When Goering became Plenipotentiary for the Four Year Plan, KEPPLER lost much of his power although he remained one of its directors in charge of the Office for Soil Research, Oils and Fats.

In the summer of 1937 he was directed to take part in Austrian problems and sent to Vienna to handle matters relating to the prospective Anschluss, and upon its accomplishment he, for a time, acted as Reich Deputy for Austria. In the spring of 1938 he became President of the Reich Office for Soil Research in the Ministry of Economics. When the DUT was organized, he became chairman of its Aufsichtsrat and he also served in the Aufsichtsrat of the Continental Oil Company.

Shortly after the inauguration of the Hitler regime the "Office for the Repatriation of Racial Germans" was organized, which had, among other things, the function of bringing into Germany and resettling within its borders so-called Ethnic Germans (citizens of other states), who might desire, or by persecution or by force of other treaties or other agreements with other states, were required to leave the countries of which they were nationals and enter the Reich. We do not question that these functions were quite within the bounds of International Law. There are, however, indications of certain other functions of a different character, but as to them the defendant KEPPLER is not involved and it is not necessary to discuss them.

Early in October 1939, a little more than one month after the invasion of Poland, Hitler appointed Himmler Reich Commissioner of the Office for the Strengthening of Germanism, which was directed by Hitler,

- (1) To bring back those German citizens and racial Germans abroad who were eligible for permanent return to the Reich;
- (2) To eliminate the harmful influence of such alien parts of the population as constituted a danger to the Reich and to Other German communities; and,
- (3) To create new German settlement areas, especially by resettlement of German citizens, and racial Germans coming back to the Reich.

It was intended at first to use for that purpose those portions of Poland which were attempted to be incorporated into the Reich, and which became known as the Incorporated Eastern Territories. Later Alsace and other territories which were occupied by Germany were utilized in this program.

No attention was paid to the property rights of those whose property was confiscated or who were either evacuated for labor services into the Reich or who were used as serfs in the territories where they had formerly lived and had their farms and property. In Poland not only were the lands of the Polish state confiscated, but privately owned farms, estates, or businesses as well. The property thus involved was not only the property of the Jews but that of Poles as well.

On 7 June 1940, Dr. Hugo Berger, a member of the Aufsichtsrat of the DUT (Deutsche Umsiedlungs-Treuhandgesellschaft), and who had been appointed to this post upon the recommendation of the defendant KEEDLER, published an article in the NS Landpost that nearly 5,000 large farms and hundreds

of thousands of small Polish farms had been confiscated and brought into the resettlement program; that the total area thus involved amounted to almost one-fifth of the agricultural area of the whole Reich. These confiscations, evacuations and deportations were carried out with coldly planned and calculated brutality. They were contemporaneously described by Frank, Governor of the Government General, who was tried and sentenced to death by the International Military Tribunal and thereafter executed.

In a communication addressed to Himmler in 1943 he wrote:

"If I may say so, the starting point for my opinion in this question is the consciousness that it is one of the most honorable and most urgent tasks of the German leadership to create a home in the Eastern territories, conquered by the German sword and blood, for the Ethnic Germans who had been withdrawn from the spaces, formerly under alien domination. But to me it seems necessary to weigh carefully the question whether this aim should be realized in the middle of the fight for the existence of the German people. . . or whether it would not be more expedient to postpone the execution of these measures to a date when it will be possible to carry out the necessary, basic preparations for the introduction of Ethnic German settlers without being hindered by difficulties caused by the war and without the loss of important economic contributions to be made by the territory envisaged for re-settlement, to the detriment of the German war effort.

"I refrain from discussing in detail smaller settlement and resettlement measures such as have been planned and carried out several times without sufficient contact with the offices of the general administration; I shall limit myself to describe the attempts, planned and carried out on a larger scale in the district of Zamosc since the end of last year, to settle Ethnic Germans in this territory; these measures have been carried out by the offices of the Reich Commissar for Strengthening of Germanism. . .

"According to my own conviction, the reason for the complete destruction of public order is to be found exclusively in the fact that the expelled

persons were in some cases given only 10 minutes, in no cases more than 2 hours to scrape together their most necessary belongings to take with them. Men, women, children and old people were brought into mass camps, frequently without any clothing or equipment; there they were sorted into groups of people fit for work, less fit for work and unfit for work (especially children and aged persons), without regard to possible family ties. All connections between the members of families were thus severed, so that the fate of one group remained unknown to the other. It will be understood that these measures caused an indescribable panic among the population affected by the expulsion, and led to it that approximately half of the population, earmarked for expulsion, fled. They fled in their despair from the expulsion district and have thus contributed considerably to the increase of the groups of bandits which existed for some time in the Lublin district and which act with continuously increasing audacity and force. This movement has extended, like waves in a pond, also to the inhabitants of those rural districts which were not -- in any case not yet -- intended for expulsion. In the course of these events it has even happened that the newly settled Ethnic Germans, forced by casualties inflicted on them by bandit actions, frequently banded together into armed troops and procured for themselves from the surrounding villages, with alien population, on their own initiative and by force of arms the necessary implements for their farms.

"This chaotic situation was further aggravated by retaliatory measures by the constabulary in the Lublin district to forestall additional attacks on Ethnic German villages. These retaliatory measures consisted, among others, in mass-shootings of innocent persons, especially of women and children, and also of aged persons, between the age of 2 and over 80. Experience taught that these measures have only a slight deterrent effect on these bandits who are frequently under Bolshevist leadership. But they increase the exasperation and the hatred of those innocently effected, including those parts of the population which are frightened that in future they might be affected by similar measures, and thus now, active followers for the resistance movement, led by the Polish intelligentsia, and ample propogande material for the extremely active Bolshevist agitation is played into their hands.

"The consequences of this semi-rebellious state of affairs, caused by the expulsion measures in the Lublin district, especially in the Zamosc area and vicinity, made themselves felt throughout the whole of the territory entrusted to me. I am proud of the fact that in three years of German administration of this territory under my authoritative

influence, hardly any sacrifices of German lives had to be made, in spite of the necessity to carry out numerous measures necessitated by circumstances. In the short period from the beginning of the expulsions, carried out against my will, considerable and deplorable casualties have occurred among the German people settled here, among the police and the Wehrmacht, as well as among the civil administration personnel. . .

". . . I want to stress here only the single fact that none of the foreign workers employed for Germany's final victory have reached nearly as low a nutritional level as the alien workers used here. . .

"In connection with the execution of the resettlement plan described by me, the point of view has often been maintained that all humanitarian considerations must be completely neglected. May I give the assurance that I, too, share this view utterly and completely. . ."

After the close of the Western campaign there were wholesale expulsions from Alsace and as found by the International Military Tribunal, "between July and December 1940, 105,000 Alsatians were either deported from their homes or prevented from returning to them."

The entire resettlement-repatriation program was essentially an SS enterprise. Himmler was its chief and in carrying it out the various Reich agencies were subordinated to him and he had the right to call upon them for the necessary assistance and cooperation. It involved many phases:

- (1) The confiscation and evacuation of lands so that they might be made available for resettlement;
- (2) The selection of those Ethnic Germans who were deemed fit for settlement in the East and other occupied territories (this fitness was

- determined in part by their political reliability);
- (3) The selection of those who could not be trusted in the border zones but were to be settled in the Reich where they could be re-educated in the German spirit;
 - (4) The rejection and assignment to labor or concentration camps of those politically unreliable and those who failed to show willingness to give up their citizenship and become citizens of the Reich or otherwise displayed an anti-German attitude;
 - (5) The registration and classification of the so-called Ethnic Germans into various groups;
 - (6) Their transport either into the Reich or the newly occupied territories, or to labor services or to concentration camps, according to their classification;
 - (7) The custody, control and disposition of their old homes, farms, businesses, property and funds;
 - (8) The allocation and assignment of new homes, farms, and businesses in the area in which they resettled; and,
 - (9) Financing and supporting them until such time as they became self-supporting, and making available to them the necessary furniture, equipment, machinery and the like to enable them to carry out their part of the program.

These phases of the program were divided among a number of agencies: The Main Staff Office of the Reich Commissar for the Strengthening of Germandom; The Volksdeutsche Mittelstelle (VOMI); The Main Race and Settlement Office (RuSHA); the German Racial Registration Office (DVL); and the German Settlement Trust Company (DUT).

It is of the letter that we are immediately concerned because of KEPPLER'S connection with it. It became immediately apparent to Himmler that the financial problem involved in this gigantic uprooting of peoples and shifting them from old homes to new, financing them and settling them in new homes, providing furniture, equipment, livestock, and above all, taking custody and keeping an account of the value of the old property and charging against the same the funds advanced in order to put them into new surroundings and to finance them until they were self-supporting, was of prime importance to the program and complicated in nature.

The defendant SCHWERIN VON KROSIGK, Reich Minister of Finance, had suggested to Himmler that this be done through an official office which could be set up. Himmler approached KEPPLER, who had acted as Hitler's economic advisor, and asked his advice as to the advisability of following VON KROSIGK'S proposal.

The intricate problems involved not only skill in handling but often immediate decisions. KEPPLER objected to the bureaucratic idea, feeling that it would involve too much red tape and proposed that a trust company be set up to handle these problems. At Himmler's request

he consulted SCHWERIN VON KROSIGK who recognized the merits of KEPPLER'S proposal and agreed to it. It was under these circumstances that the German Settlement Trust Company (Deutsche Umsiedlungs-Treuhandgesellschaft) was formed. KEPPLER became Chairman of its Aufsichtsrat and nominated the other members of the Board as well as the members of the Vorstand, -- these Himmler confirmed.

KEPPLER remained in that position until some time in 1943 when, because of his membership in the Reichstag, it became necessary for him to retire. While the DUT was, in form, a private, limited liability corporation, it was in fact a governmental agency. It was formed for and engaged solely in carrying out its prescribed part of the program of resettlement. The Aufsichtsrat, or supervisory board, included representatives from the Ministry of Finance, the Foreign Trade Office of the Foreign Organization of the Party, a member of Himmler's personal staff (Greifelt), the Defendant KEHRL of the Ministry of Economics, a member of the Foreign Office, a director of the Reichsbank, a director of the SS Liaison Office for Ethnic Germans, and a Vorstand member of the Official German Auditing Company, together with two Ethnic German leaders. This was done because, as KEPPLER himself says, he desired the various Reich offices affected by the problem to have representatives on the board.

The concept of forming corporations under general corporate laws and utilizing them to carry out governmental functions was not a new one; it had been used in other countries as well as in Germany. This form of organization is

adopted as a matter of convenience, as it is more elastic and therefore more efficient than formal, governmental agencies. Irrespective of form, such corporations are, in fact, arms of the government carrying out governmental functions. If these functions and the manner in which they are administered constitute a violation of international law, those responsible for and connected with it are guilty.

The defendant KEFPLER and the defendant KEHPL assert that the actual executive and administrative duties of the DUT were independently carried out by its Vorstand, and if criminal responsibility exists it is those men who are responsible and not the members of the Aufsichtsrat.

The internal organization of German corporations is somewhat different from that of incorporated companies in the United States or Great Britain. The Vorstand is composed of those who have direct charge and control of executive and administrative matters. It may be said that it is comparable with those members of the Board of Directors of an American or English company who are the executive officials of the company, while the Aufsichtsrat is composed of the Directors who hold no such position. The DUT Aufsichtsrat had a working committee composed of KEFPLER, the defendant KEHRL and Greifelt of Himmler's Main Staff Office for the Strengthening of Germandom. This working committee may be likened to the executive committee of the Board of Directors of an American corporation. That the Aufsichtsrat of the DUT was not composed of mere figure-heads without power or influence is evident from the care which was

used by KEPPLER in selecting its members and the interest he took in himself selecting its executive staff. Neither may we overlook the fact that this was, in fact, a governmental corporation charged with the performance of basic, governmental tasks. It was KEPPLER'S idea; its Aufsichtsrat and Vorstand as well as the more important members of its executive and administrative staff were chosen by him. He knew its functions and he knew what part it played in the general scheme of resettlement. If the DUT had an important part in a crime cognizable by this Tribunal, he bears a part in the criminal responsibility thereto.

The resettlement of Ethnic Germans took place at least in the following territories: In the Warthegau, a part of Poland, in Bessarabia, Bukowina, White Russia, the Dobrudje, Southern Tyrol and Alsace. By the end of 1942 it had opened offices in Danzig, Innsbruck, Kattowicz, Marburg, Posen, Strassburg, Agram, Bolzano, Bucharest, Paris, Belgrade, Bialstock, Lemberg, Lublin, Reval, Riga, Vienna, Fulnek, Kauen, Klagenfurt, Litzmannstadt, Luxembourg, Metz, Rann, Zamosc, Zichenau, Cracow and Prague. The tremendous scope of its activities is evidenced by the fact that it carried 250,000 accounts on its books dealing with individual property transactions, that is, -- those relating to the amounts realized from the property taken from Ethnic Germans who became settlers on farms and other property made available to them in the newly occupied territory; its daily mail amounted to 6,000 pieces and its employees reached 1,800 in number.

The defendant KEPPLER insists that the DUT had no functions and took no part either in confiscations and evacuations, or did it have anything to do with the selection of lands and properties in which the new settlers were to be placed. Nevertheless, we find in a report of 19 January 1944 addressed to RASCHE by the Allgemeine Waren Finanz Gesellschaft a statement that the DUT had already assigned 600 parcels of real estate to Baltics resettled in Posen.

That the DUT and its officials knew of the forced nature of these resettlements, and contemporaneously worked with it, is evident from the testimony of Ludwig Metzger, head of its legal department at Luxembourg, who was present at and had personal knowledge of the details of the forced evacuation and resettlement of the people of Alsace to which we have heretofore referred. These unfortunate people were rounded up by other agencies, who were a part of this program, and the evening before they were deported, the DUT obtained their names and interviewed them; on the next morning they saw that the property was listed and that the movable goods in their homes were registered. He states: "There is no doubt that they did not go voluntarily."

Their homes and businesses were taken over by Ethnic Germans selected from other portions of areas occupied by the German Government.

That KEPPLER himself kept in close touch and was intimately acquainted with the major steps taken by the DUT is shown by his testimony. He says:

"First of all I had to reform the firm. I had to select the Vorstand members and the Main Staff for the most important positions. Then I helped organize the firm and I was informed of all major steps, but of course I was not informed about details."

It may well be true that the DUT neither confiscated the property of the victims in order to give living room to ethnic Germans, nor took any physical part in the forced emigration of those who were selected for resettlement, but we deem this wholly immaterial. Beyond question the DUT was an essential part of the criminal scheme and without it the crime could not be carried into successful execution.

The defendant KEPPLER asserts that so far as his activities in the DUT are concerned, the Indictment is insufficient and indefinite in its charges against him, and that he offered testimony regarding the matter under the impression that the evidence offered by the prosecution under the same was addressed to Count Eight of the Indictment -- Membership in Criminal Organizations. The documents were offered and received under Count Five, and the prosecution document books plainly so state.

Certain paragraphs of this Count state in general terms the crimes with which the defendants are charged, while subsequent paragraphs deal with specific incidents involved in the general charge.

The allegations of the Indictment follow the same plan and pattern disclosed in the Indictment in the International Military Tribunal and in those of other Indictments before these Tribunals. Many of the defendants, including KEPPLER and KEHRL, shortly after arraignment, filed motions against the Indictment on the ground of insufficiency and

indefiniteness. On 5 January 1948 we overruled this motion and we refer to the memorandum filed with our order. The question of the insufficiency of Indictments of this kind was considered by Tribunal III, Case III, (The Justices Case) and a like conclusion was reached. (Pages 10648-10649.)

In accordance with our order of 5 January, we therefore received evidence of particular acts alleged to have been committed by the several defendants which came within the general allegations of the Indictment, although not among those specifically mentioned in the paragraphs which followed.

The only purpose of specific allegations is to enable the defendant to prepare his defense. Ample opportunity has been afforded to the defendants so to do. The prosecution closed its case on 27 March 1948, and at the time every defendant had been advised, not only of the specific acts upon which conviction was sought, but of the evidence offered in support thereof. The court recessed until 4 May 1948, in order to permit the defendants to prepare their defense. The defendant KEPTLER did not present his defense until 16 July 1948, and the defendant KEHRL not until 11 August. Each had more than ample time within which to prepare his case. No defendant suffered, or could have suffered, any surprise or disadvantage. There is no merit in the claims which they now urge.

There is no doubt, and we so find, that the defendant KEPTLER knew the plan, knew what it entailed, and was one

of the prime factors in its successful organization and operation.

We find him GUILTY under Count Five.

KEHRL

From 1933 to 1938 the defendant KEHRL acted as economic advisor to the Gau Brandenburg; from November 1934 to October 1936 he was a consultant for textiles and cellulose in the KEFFLER office then dealing with German raw materials; from October 1936 until January 1938 he was head of Main Office IV-2 in the Raw And Working Materials Department of the Four Year Plan; from 1 February 1938 until November 1942 he was head of the textile division of the Reich Ministry for Economics, and also acted as general referent for special tasks in that Ministry and was then promoted as the head of its Main Department II; from November 1943 to about May 1945 he was Chief of the Raw and Basic Material Office in the Reich Ministry for Armament and War Production, and was director of the Central Planning Office. He was also officer in chief of the Textile Organizations which exploited textile industries and resources in the occupied territories, as well as those in France, and became a member of the Aufsichtsrat and one of the three members of the working committee of the DUT.

It is alleged that early in 1942 KEHRL became a member of the Circle of Friends of Himmler and actively participated thereafter in the meetings of that Circle; that the activities of the SS during this period included

participation in schemes for Germanization of occupied territories according to the racial principles of the Nazi Party, the deportation of Jews and other foreign nationals, and widespread murder and ill treatment of the civilian populations of occupied territories.

It is not alleged that the Circle of Friends, as a body or organization, participated in any such crimes. KEHRL was a member of the Circle of Friends, but no evidence has been offered which tends to establish that the Circle, as such, had anything to do with any crimes charged in Count Five, and guilt cannot be predicated because of his membership in or attendance at the meetings of the Circle of Friends.

KEHRL was, however, a member of the Aufsichtsrat of the DUT, representing the Ministry of Economy and, with KEPPLER and Greifelt, was a member of the working committee of that body. It is unnecessary to here repeat what we have heretofore said regarding the DUT, its functions, and the part it played in the Germanization and Resettlement program. KEHRL admits that he knew its basic purpose, but denies that as a member of the Aufsichtsrat or working committee he was "completely informed" of the activities of the DUT; that there may have been five or six meetings of the Board which he attended and the activities were rather large, but he was by no means informed about all of them.

The defendant was both guarded and reticent in describing what he knew and what he did, which is itself of some significance. KEHRL is possessed of an active and

inquisitive mind and a very high degree of executive ability. It is apparent from his testimony regarding other matters that he has a memory of extraordinary capacity. His membership on the board was not an accident but he was chosen by KEPPLER because of his capabilities and the fact that he would there represent the Ministry of Economy, which was itself intensely interested not only in economic development of the Reich but the occupied territories as well.

We are quite convinced that he was thoroughly aware of what the DUT was expected to do, what its policies were, and what it in fact did. As one of the responsible officers of the company he was responsible for its action. It was an important component in the scheme of German resettlement and in the crimes charged in Count Five relating to it, and we have already found the defendant KEPPLER guilty under Count Five with regard to the charges above stated.

We find KEHRL GUILTY under Count Five in view of his activities in the DUT and the Resettlement Program.

On 24 January 1940, by order of Funk, Minister of Economy, a directive was issued regarding the sale of clothing to Jews, and of the issuance of clothing rations to them. This directive stated that the serious state of supply in the field of textiles and shoes -- in connection with the over-available supply in Jewish families -- made it necessary, as in the field of food, to issue the following regulations:

- (1) Jews shall not receive a clothing ration card.
- (2) Jews, on principle, shall not receive any permit for textiles, shoes, and sole material.
- (3) Jews are reduced to self help and must make application to the Reich Association of Jews in Germany for the purchase of second-hand material which was open to them without purchase permits.
- (4) The issuing agencies are authorized to give Jews purchase permits if they perform manual labor and the lack of work clothing and shoes would jeopardize their use for labor and they cannot get them any other way, and in an emergency where help from the Reich Association for Jews is not possible in time.

In defense KEHRL states that he did not sign this directive of his own initiative, but that the Minister of Propaganda, together with Hitler's Deputy, had decided, after the beginning of the war, that the Jews were not to get any clothing cards and this was passed on to the provincial economic officials, by teletype, on 24 November 1939, and that finally this directive averted hardships in that by agreement with the Reich Association of Jews some clothing could be acquired and that in certain instances ration coupons were to be issued.

While we are not satisfied that this explanation is accurate, and in fact, the regulation shows upon its face that this was not its purpose, nevertheless we do not overlook the fact that in this instance KEHRL was no more than a conduit transmitting his superior's orders and had no voice in the matter. The document shows on its face that he signed it by order of his Minister.

Here guilt is not proved beyond a reasonable doubt and KEHRL should be and is ACQUITTED in connection with this transaction.

LAMMERS

The seizure of power found the defendant LAMMERS employed as a legal expert in the Ministry of the Interior. He had joined the Nazi Party in February 1932. On 30 January 1933 Hitler appointed him Secretary of State in the Reich Chancellory and in August 1934 he was appointed its Chief. On 26 November of the same year he was made a Reich Minister without portfolio with the title, "Reich Minister and Chief of the Reich Chancellory." On 14 February 1938, he was appointed as Executive Member of the Secret Reich Cabinet Council, but this Council never functioned. On 30 November 1939, two months after the Polish invasion, the Ministerial Council for Defense of the Reich was created, with Goering as its Chairman, and LAMMERS became one of its executive members.

Among his duties was to present matters to Hitler, sometimes with and sometimes without his own recommendations; to transmit Hitler's decisions on these and other matters to the appropriate Reich Ministries and agencies; to cooperate with the members of the Reich Cabinet and other agencies of the Government and the Party; to coordinate and, if possible, reconcile the views and proposals of other Ministries with respect to legislation, and to examine, and at times to prepare laws, decrees, and regulations which were under consideration; to ascertain the views and opinions of other Ministers in such matters; and to investigate and report and recommend action regarding disputes which might arise between Ministers, agencies, and officials.

Although as Reich Minister he had no particular executive functions in the usual sense, both his responsibilities and powers were substantial. Among the reasons which impelled Hitler to raise him to cabinet rank was that he might become one of the highest Reich authorities possessing the prestige and authority incident thereto, and thereby relieve Hitler of many details and decisions. He was and continued to be one of the most important figures in the Reich Government.

On 2 May 1939 STUCKART wrote LAMMERS reporting the situation in the Protectorate and included a copy of Frank's report from which it was apparent that even more radical measures of reprisals were to be used and elections postponed due to the weakness of the racial German elements in that territory.

On 15 September 1942 the Reich Protectorate of Bohemia and Moravia reported to LAMMERS that between 1 May and 1 September, 3,188 Czechs had been arrested, 1,357 shot under court martial proceedings, and informed him of the infamous massacres at, and the razing of the villages of Lidice and Lazeky, and of the fear of the populace that they were to be decimated by police measures and the proposal that Czechs be put into the Reich Labor Service; that Czech police battalions under German command be organized, and that the personnel at the Skoda and Bruenner Munitions Works be assigned to man their aircraft defense.

LAMMERS co-signed the Decree of 1 September 1939, which established in Bohemia and Moravia an administration under a Reich Protector, and introduced the German Security Police into that territory, giving them authority to investigate and combat all action inimical or dangerous to the state and public, thus subjecting the people to the mercies of the Security Police.

The invasion of Bohemia and Moravia and their incorporation into a Protectorate, and the attempt to make them a part of the Greater German Reich were acts of aggression and were crimes against peace, and the acts of terrorism and the imposition and subjection of the inhabitants to the jurisdiction of the Security Police were wholly unlawful.

Poland. On 12 October 1939, Hitler issued a decree co-signed by LAMMERS, the defendant VON KROSIGK, and six others, declaring that that unincorporated portion of Poland occupied by German troops should be formed into the Government General, and appointing Frank as head of the Government. The decree gave the Council for Reich Defense, the Commissioner of the Four Year Plan, and the Governor General the right to legislate by decree, and gave to various supreme Reich agencies power to make arrangements necessary "for the planning of German life and the German economic sphere" in these territories, and that all administrative decrees required for implementing and supplementing the Fuehrer Decree would be issued by the Minister of the Interior.

Frank issued a number of decrees, based on the authority thus given him, which established the Secret Police in those territories, extended forced labor to Polish youth between 14 and 18 years of age, and ordered all Jews to be concentrated into forced labor troops, required Jews of both sexes to wear the yellow star of Zion on their clothing; required all Jewish businesses to be plainly marked as such, and forbade Jews to use German names, and authorized the Higher SS and Police Leaders to supervise and enforce these measures.

On 7 May 1942, LAMMERS co-signed, with Hitler, a decree giving Himmler jurisdiction in Poland, not only as

Reichsfuehrer SS but as Reich Commissioner for the Strengthening of Germandom, and providing that where a disagreement arose between the Governor General and Himmler, Hitler's decision should be obtained through LAMMERS.

In Frank's diary for 19 July 1941, he states that, during a discussion with SS Obergruppenfuehrer Krueger and others, he wired LAMMERS stating that in accordance with LAMMERS' communication of the previous day he had started preparations to take over the whole civil administration in the occupied Polish territories designated by LAMMERS and proposed to start a gigantic rehabilitation program with Polish and other labor forces at his disposal. It has been established by the evidence in this case, and by the judgment of others of these Tribunals, that the population of Poland was regarded and treated as slaves and compelled to work as and where the government of that territory determined.

During the year 1942 a bitter quarrel broke out between Frank, on the one hand, and Himmler and Higher SS and Police Leader Krueger, who had been assigned to the Government General, on the other. Each preferred charges against the other. That both the Governor General and Himmler's SS and Police Leaders had committed gross and continued outrages upon the population is beyond question, as has been adjudicated, not only by the IMT, but by various others of these Tribunals. LAMMERS was instructed to investigate and report to Hitler.

He evidently came to the conclusion that it was best to cooperate with Himmler and opposed Frank for reasons which we think had little or nothing to do with the merits of the

controversy but which may be accounted for inasmuch as at that time Himmler's star was in the ascendant and Frank's position had deteriorated. On 17 April 1943, he forwarded to Himmler a proposed mutual report to be submitted to Hitler. Based on material submitted by Krueger, LAMMERS prepared his report, and it was submitted to Krueger and his approval obtained before sending it to Himmler. In view of the defendant's protest that he was uninformed of mistreatment, brutality, slave labor and spoliation of the occupied territory, and of the mistreatment of the Jews therein, this report is illuminating. It states that the tasks of the Government General were as follows:

- "1. For the purpose of securing food for the German people, to increase agricultural production and utilize it to the greatest extent; to allot sufficient rations to the native population engaged in war work and to deliver the rest to the armed forces and the Homeland.
 - "2. To employ the manpower of the native population only for immediate war purposes and to put at the Homeland's disposal such manpower which is not needed for the last-named purpose.
 - "3. To consolidate German folkdom in the Government General and by means of resettlement to create German strongholds in the Eastern border districts by means of colonization by racial Germans transferred from other places.
- * * * * *
- "5. To obtain troops as far as possible out of the native population for the fight against Bolshevism."

The report then criticized the Frank administration for its failure to perform these tasks in that it had failed to deliver the prescribed quota of agricultural products, had failed to stop all trade enterprises not essential to the war, that although 750,000 metric tons of grain were to be delivered to the Wehrmacht, only 690,000 tons were actually delivered,

and that only 510,000 tons remained out of the harvest to feed the population of 16,000,000; that the bread ration was cut to 1050 grams per week compared to 1675 grams in the Protectorate, and 2600 grams in the annexed Eastern territories; that as a result black marketing had become prevalent and the prices had risen three to four hundred percent; that if proper coordination had been accomplished, it would have been possible to provide the population, working in the interests of Germany, with a minimum of food and other needed commodities, which would thus prevent the creation of a black market and would result in the voluntary return of reserves of manpower to employment; because of these failures the utilization of manpower met with greatest difficulties; these difficulties were increased by the elimination of Jewish manpower, but that such elimination was not the cause of the difficulties and had proper management of manpower been afforded, the elimination of Jewish manpower would not have caused difficulties worth mentioning, but as things were, manpower could only be obtained by more or less forceful methods, such as catching church and movie goers and transporting them into the Reich; that instead of being strict and severe where necessary, but otherwise acting in a big-hearted manner, granting certain liberties, the Governor General inaugurated a promotion of cultural life on the part of the Polish population which knew no bounds in itself; that under the prevailing circumstances, and particularly in view of Germany's military situation, such measures could only be explained as a weakness and thus brought results directly opposite to those sought.

From this report several things become clear. First,

that the sole interest of LAMMERS and Himmler was, first, that only those inhabitants who were working in the interest of the German war effort should receive food; second, that the Governor General had stripped Poland of its food supplies leaving a great mass of the population to starve; and, third, that LAMMERS then knew that Jews were being eliminated. His statement that this term only referred to them being eliminated from labor shipments to the Reich is not borne out by the document and, we believe, is wholly without foundation.

The report speaks for itself and contains no reference to Jews in connection with the labor which was to be sent to work in the Reich. LAMMERS asserts that he was in no position to ascertain the facts regarding the charges made by Rosenberg against Krueger and the SS, or the charges made by Himmler and the SS against Frank, although he was satisfied that serious abuses existed in Frank's administration, particularly on the part of members of his family -- the relatives whom he had appointed to office.

In view of his position and the fact that he had been directed to investigate and report to Hitler, we deem his explanation without factual merit.

Frank's diary entry of 5 August 1944 states that he sent a telegram to LAMMERS that the city of Warsaw was in flames; that the burning down of the buildings was the best means to prevent the insurgents from using them as shelters, and that after the suppression of the revolt the city would meet its deserving fate and be completely destroyed or afterwards flattened out.

In the IMT trial the defendant testified that he knew this report came to him and was immediately transmitted to Hitler and in all probability he passed it on to the Chief of the OKW as well. On further questioning he again reiterated that the report was received. In this case he flatly denies that the telegram ever reached the Reich Chancellery, and based his denial on an alleged conversation with one of Frank's subordinates and on inquiries which he had made of officials of his own Chancellery.

Frank's diary was a contemporaneous record of events and there he had no reason to make a false or erroneous statement about the telegram. Evidently it was an event which at the time he thought important, and, therefore, included it in his diary. If there had been any doubt in LAMMERS' mind, or he had any difficulty in recollecting whether he received and transmitted it, we have no doubt he would have so stated when testifying before the IMT. He not only remembered it, but also the disposition which he made of it, and when pressed for an answer as to how in fact he could say that he had no knowledge of the atrocities committed in Poland he again testified that he remembered the telegram. We do not credit his present denial that he ever saw it.

On 9 May 1944, Liebel of the Central Office Ministry for Armaments and War Production wrote LAMMERS regarding wood supplies from Norway, wherein he states:

"I regret, dear Reich Minister LAMMERS, that you, the highest authority on matters pertaining to Norway, as Reich Minister and Chief of the Reich Chancellery, had not been consulted about this matter at the very beginning."

While this statement may have been an exaggeration, it is clear that a leading responsible official in one of the most important ministries of the Reich deemed that the defendant's position was one of high importance and authority

and it is apparent from the evidence in this case that such was the fact. In the matter in question, Terboven, having asserted that he did not have the necessary manpower in Norway to procure this wood, arrangements were made through LAMMERS to ship some 15,000 Russian prisoners of war to Norway for that purpose. It is interesting to note that Stauckel, in his report on the matter, states that 4,050 Russian prisoners were already on their way, but that the additional 11,000 made available were in such a state of health that they could not be employed for another three or four weeks, and he would, therefore, advance 5,000 men from the civilian sector and was negotiating with Soeer regarding the matter.

Russia. On 16 July 1941 a conference was held at Hitler's headquarters attended by Rosenberg, Keitel, LAMMERS, Goering, and an amanuensis. Hitler said there that it was superfluous for Germany to announce its aims; that where it had the power it could do everything, and where it was lacking power, it could do nothing; that it should emphasize that it was forced to occupy, administer and seize certain areas in the interest of the inhabitants to provide order, food, transportation, etc. Thus no one would recognize that it initiates a final settlement, but that this need not prevent Germany from taking all necessary measures, - shooting, desettling, etc., - and it would take them; that Germany did not want to make any people enemies prematurely and unnecessarily, but, "We must know clearly that we shall never leave those countries." Therefore, the plan must be: (1) To do nothing which must obstruct the final settlement, but prepare for it in secret; (2) to emphasize that Germans are liberators. In particular the Crimea must be evacuated

by all foreigners and be settled by Germans only, and in the same way part of Galicia would become Reich territory; that while present relations with Rumania were good, nobody knew what they would be in the future, and that this must be considered, and German frontiers drawn accordingly; that the task was to cut the giant cake in order, first, to dominate it, second, to administer it, and third, to exploit it; that the fact that Russia had ordered partisan warfare behind the German lines had the advantage that it would enable Germany to eradicate everyone who opposed it; that there never again must be the possibility to create a military power west of the Urals; that the entire Baltic countries, as well as the Crimea, must be incorporated into Germany, with a large hinterland, together with the Volga Colony, while the Baku must become a German military colony, that the Kola Peninsula in Finland must be taken because of the large nickel mines there.

At this conference the matter of the appointment of governors for the Baltic countries was discussed, and Goering emphasized that these appointments must be based on securing food supplies, and, so far as necessary, trade and communications. Rosenberg emphasized his opinion that a different treatment of the population was desirable in every district and that in the Ukraine, Germany should start with a cultural administration, awake the historical consciences of the Ukrainians, and establish a university at Kiev, but Goering countered by stating that the first requisite was to secure the German food situation and everything else could come later.

Goering insisted that this gigantic area be pacified as quickly as possible and stated that the best solution was to shoot anybody who looked sideways, while Keitel insisted

that the inhabitants themselves ought to be made responsible because it was impossible to put a sentry at every shed and railway station, and if anyone did not perform his duties properly, he should be shot.

This conference clearly disclosed what German plans were. LAMMERS admits having been present but states that he was absent during portions of the conference preparing drafts of decrees which were to be signed, this, notwithstanding the fact that when testifying before the International Military Tribunal he stated that he assumed that he stayed there until the end. But whether he absented himself during part of the time is quite immaterial, as we are convinced that he was either there personally, or was fully informed of what took place.

LAMMERS prepared and co-signed with Keitel a Fuehrer Decree of 17 July 1941, establishing the government for the newly Occupied Eastern Territories, appointing Rosenberg as minister for this area, which included the Baltic States. He was given broad legislative powers, subject only to the competency of the Wehrmacht and the Reich authorities responsible for military operations for the functioning of railroads and the postal service. The necessary implementing ordinances were to be issued by Rosenberg in agreement with LAMMERS and the Chief of the OKW. LAMMERS testifies that these latter provisions were put in the decree so that the other ministries could participate, and that it would be possible to ask Hitler to intervene. In view of the fact, however, that Rosenberg was the only one at the conference who had evidenced the slightest degree of interest in the native population in the proposed East Ministry, and that he had further indicated that the notorious Koch was inclined to go his own way without regard to Rosenberg's orders, the explanation

given by the defendant does not ring true. As cynical and callous as Rosenberg proved himself to be, there can be no doubt that the fate of the indigenous population would have been happier under him if he had full and complete power, than it was with a division of powers between himself and other agencies.

On 17 July 1941, LAMMERS co-signed with Keitel the Hitler Decree conferring on Himmler authority to give directions concerning police security matters to the Reich Commissioners in Eastern Territories, and to assign SS police leaders to them for the purpose of guaranteeing police security.

On 20 August 1941, LAMMERS co-signed the Hitler Decree appointing Gauleiter Koch Reich Commissioner for the Ukraine. It is universally conceded by all parties to this case that his regime resulted in an unparalleled orgy of brutality, oppressions, spoliation and murder.

LAMMERS was not only informed of Koch's publicly expressed sentiment that, "Whoever believes to find gratitude with the Slavs for kind treatment has not made his political experiences in the NSDAP while in the East but in some clubs of the intelligentsia; the Slavs will always interpret kindness for weakness," but he was also informed of Koch's crimes.

LAMMERS states that he reported this to Hitler and first asserts that he supported Rosenberg against Koch, but later testifies that it was his official duty to act as an intermediary between the two officers and Hitler and gave such support to one or the other as he could, and he always attempted to remain neutral in the whole affair, and was neutral. We agree with his statement that he had no power

to dislodge either Rosenberg or Koch, and that when he reported the mutual incriminations which each made regarding the other, the matter was thereafter wholly in the hands of Hitler.

Night and Fog (Nacht und Nebel) Decree. It is alleged that LAMMERS supervised, prepared, or co-signed the notorious Nacht und Nebel Decree, but the record does not substantiate this. Without question he knew of it and of its ultimate implications, but knowledge is not enough.

Germanization. The Germanization and resettlement program, at least insofar as it involved any crimes cognizable by this Tribunal, was initiated by the Decree of 7 October 1939, which LAMMERS co-signed. He admits that it was re-drafted under his directions, making various modifications in a proposed form of decree submitted by Himmler. The defendant asserts that at the time he had no intent to authorize the commission of any crime or that he knew that any crimes were committed under it. He stated when the proposal first came up he concurred in its advisability, but suggested to Hitler that the prospect be postponed until after the war, but Hitler refused to take his advice. One of the earlier drafts contains the recital that:

"The Poland established at Versailles has ceased to exist. The opportunity, therefore, arises for the Greater German Reich to receive and settle in its area German men and women who had to live abroad up to now, and to eliminate those of foreign nationality or race."

The pertinent recital in the decree as issued states:

"The consequences which Versailles had on Europe have been removed. As a result the Greater German Reich is able to accept and settle within its space, German people, who, up to the present, had to live in foreign lands, and to arrange the settlement of national groups within its spheres of interest in such a way that better dividing lines between them are attained."

LAMMERS insisted that he was responsible for this change and we do not doubt it. It is merely using less blunt language than did the first draft. The defendant does not suggest that the program expressed in the first draft was changed or modified by the final draft, and, of course, it was not. We place no credence on his statement that he did not know that the crime of driving the Poles from their homes and confiscating their property was intended. We are convinced that he was fully advised as to the precise nature of the program and consciously and willingly participated in it.

LAMMERS received a copy of Himmler's notorious memorandum "On the Treatment of Peoples of Alien Races in the East," which was submitted to Hitler in May, 1940, wherein he proposed that no education higher than the fourth elementary school grade should be given the indigenous population. The children of valuable blood should be taken away from their parents and sent to the Reich, never to return, and that the peoples of the East should be reduced to a position of uneducated, ignorant serfs of the Germans, without culture or leadership.

In October 1943, LAMMERS distributed to the Ministry for the Eastern Territories, the OKW, the Party Chancellor, and to Himmler, the Hitler Decree of 11 October which provided that the racially valuable children born

out of wedlock in the occupied territories, whose fathers were Germans and mothers of the local population, should be taken from their mothers and put into the custody of the Reich. He directed the agencies mentioned to acknowledge the decree and take the necessary steps.

On 19 May 1943, the defendant co-signed with Keitel a Fuehrer Decree automatically conferring German citizenship on foreigners of German origin who were then members of the Wehrmacht, the Waffen-SS, the German police, or the Todt Organization, and providing that like foreigners thereafter joining any of these organizations should automatically become German citizens on the date of their admission. In view of the forced recruitment of ethnic Germans who were nationals of other countries, it is apparent that this was a part of a general plan to gain absolute control and jurisdiction of such persons. It was without legal justification or right. One who is unlawfully conscripted into the armed forces of a nation, other than his own, cannot be compelled to accept citizenship and be subjected to laws of a country other than that of his choice.

On 28 March 1940, the defendant LAMMERS wrote Himmler, transmitting a photostatic copy of an article entitled, "Deportation is being Continued - Death March from Lublin - Deaths from Freezing." This article was allegedly based on findings of the Polish-Jewish Service Committee, which was cooperating with the American Friends Organization, as well as with delegates of the Red Cross. It stated that in spite of the objections of the Government General, deportation of German Jews to Eastern Poland was being continued at the order of Himmler. It recites how the deported persons had

to abandon all their property and were not even allowed to take a suitcase and the women compelled to give up their handbags; that those who had overcoats were deprived of them; that they were not allowed to take any cash or food, beds, household articles, and all arrived at Lublin with only the clothing they wore; that men, women and children were compelled to march from Lublin to the villages where they were to be quartered, over roads deep with snow and at temperatures of -22 degrees Centigrade; that many froze to death and others, including children, were so badly frozen that it was necessary to amputate their limbs; that on arrival at their destination the survivors were lodged in stables and sheds, with no food other than black bread, and that up to 12 March, 230 Jews from Stettin had perished.

On 3 December 1940, LAMMERS wrote von Schirach, Reich Governor for Austria, that Hitler had decided, in view of von Sbirach's reports, that the 60,000 Jews residing in Vienna should be deported rapidly to the Government General because of the housing shortage in that city, and that he and LAMMERS had informed the Government General in Cracow, as well as Himmler, about this decision.

On 13 December STUCKART forwarded to LAMMERS, and to the highest Reich agencies, a memorandum regarding the 10th Ordinance implementing the Reich Citizenship Law, stating that it was drawn with the following in mind: that, in connection with the population of the incorporated Eastern Territories, it was necessary, on principle, to exclude part-Jews of alien stock, and that only the portion found capable of Germanization, after careful selection, would be permitted German citizenship; that the remainder would be placed in the position of protectees which would

be dependent upon their residence in the Reich, which would be lost when that residence was abandoned; that the protectees, under the regulations to be adopted, would receive only a minimum of rights; that the Jews would be included in this new regulation; that those Jews who were stateless would remain so, even if living in the Reich; that Reich Jews living abroad would lose citizenship and become stateless, - that the confiscation of property might restrict Jewish emigration, but after the war a solution of the Jewish problem could be found which would not depend on the voluntary action of other countries.

To this memorandum LAMMERS interposed several objections, first, that it made Jews in the Reich protectees; secondly, he inquired, in view of the fact that Jews in the near future would be deported from Germany, whether it was worth while to create a special status for them; that in any event they were not Reich citizens; that as to Jews who lost their Reich domicile by emigration or expulsion, only an amendment to the citizenship law was needed. LAMMERS discussed the matter with Hitler, who refused to permit Jews to be called "protectees."

The defendant denies any knowledge prior to 1945 of the "mass extermination" of Jews, but admits that he heard reports and received intimations, anonymous communications, regarding the same, and admits that he was aware that many Jews were being murdered. He denies that he was a violent or radical anti-Semite.

We are unable to give his statement any credence. He had intimate knowledge of and participated in drafting and co-signing many, if not most, of the anti-Jewish laws, ordinances and regulations. According to his own statement he was the official channel through which information

came to and decisions issued from Hitler, and he was the Reich Minister charged with coordinating the views of the various ministries upon this and other matters of legislation, ordinances and decrees, and consulted with them and their agencies regarding them.

His own views on the subject were expressed in an article which was published in 1944 in which he said:

"The first product of a constructive and organic structure on the European Continent had hardly begun when it already faced its most severe and most decisive test. In the life and death struggle against the plutocratic and Bolshevistic views led by world Jewry this test has lasted almost five years."

While on the stand, but before he was faced with this article, he testified:

"This question is one with which I dealt frequently in my reading at the time, but I was never able to come to any final conclusion. I had, however, realized that the Jews bore a considerable part in the guilt in all the wars of the world."

LAMMERS heard Hitler's speeches in which he spoke of the extermination and annihilation of the Jews and admits that he heard the word "extermination" which was one which Hitler often used in various speeches but said, "the question was what he meant by it." We are convinced that LAMMERS was under no illusions as to Hitler's meaning.

He was advised of the application of the German anti-Jewish laws to Luxembourg; enactments which were, without question, in violation of International Law and the Hague Convention.

On 30 January 1941, there was submitted to his Chancellery the proposal that all Jews of German citizenship, irrespective of their emigration, be declared stateless, and their property confiscated to the Reich, and he thereupon stated there could be no scruples against

the suggestion thus made by the Minister of the Interior.

Various proposals were offered which finally resulted in the Decree of 4 December 1941, which LAMMERS co-signed, whereby the Poles and Jews in the Incorporated Eastern Territory became bound to conduct themselves according to German law and the regulations introduced for them by the German authorities; to abstain from conduct liable to prejudice the German sovereignty or the prestige of the German people; made them subject to the death penalty for manifesting anti-German sentiments, or for possible conduct which lowered or prejudiced the prestige or well-being of the Reich, or the German people, which subjected them to trial by special court, by the district judge or the police courts, deprived them of any right of appeal and "the right to challenge a judge on account of partiality"; permitted arrests or detention on suspicion, and subjected them to other coercive measures, forbade them to be sworn as witnesses; deprived them of the right to act either as prosecutors or in a subsidiary capacity; subjected them to courts martial at the whim of the Ministry of the Interior, the Ministry of Justice, or the Reich Governor; conferred on courts martial the right to impose the death sentence, or to turn the victim over to the Gestapo.

This Decree was also made applicable to Poles and Jews within the Reich if, prior to 1 September 1939, they were domiciled in Poland. That there was no legal authority to subject the inhabitants of Poland, whether Poles or Polish Jews, to German law, cannot be questioned, and these measures were adopted solely to repress and persecute Poles and Polish Jews.

Final Solution. We have heretofore discussed the notorious Wannsee Conference of 20 January 1942, in which the "Final Solution" of the Jewish question was discussed in the presence of representatives of practically all of the highest Reich agencies. Kritzinger of the defendant's Reich Chancellory was present. LAMMERS insists he did not know that Kritzinger was to be there, and that he did not instruct him to be present and that Kritzinger did not there represent him. This we do not believe.

Shortly after the conference, Schlegelberger, Acting Minister of Justice, wrote to LAMMERS of certain objections, none of which, however, related to the final solution, but rather to the technical details of compulsory or simplified divorce of Germans from Jewish spouses. At the conference of 6 March, Boley, one of LAMMERS's ministerial counsellors, appeared representing the Reich Chancellory. It appears in the minutes of the meeting:

"According to information given by the representative of the Party Chancellory, one of the very highest authorities expresses the opinion, in connection with the discussion on the question of persons of mixed blood in the Wehrmacht, that it would be necessary to divide up the persons of mixed blood into Jews and Germans and that it was unwarrantable under all circumstances to have the persons of mixed blood permanently existing as a third small race. This requirement would not be met by means of sterilizing all persons of mixed blood and permitting them to remain in the Reich territory."

In July 1942, LAMMERS wrote to all the highest Reich agencies informing them of Rosenberg's appointment as commissioner to conduct the spiritual battle against Jews and Free Masons and requested these agencies to support Rosenberg in the fulfillment of his task.

The record contains a number of documentary exhibits which show that LAMMERS was familiar with and took part in discussions relating to measures against Jews. On 20 July 1942, he stated that Hitler had repeatedly expressed the opinion that applications by part-Jews for status equal to that of Germans had been treated too generously and in the future they should be allowed only if there were special reasons for exceptional treatment, that is - positive achievements. - such as work for the Party in the early days. LAMMERS requested that future actions should be based on Hitler's attitude.

Notwithstanding LAMMERS' denials, we believe and find that he was informed and knew that the extermination of the Jews was proposed and that he consciously and willingly participated in measures which were intended for and adapted to that purpose.

Judicial Persecution and Murder. The orderly process of the courts and the comparative leniency of the sentences imposed by them irked Hitler and this fact was conveyed to the Ministry of Justice. LAMMERS and Schlegelberger conferred, and on 10 March 1941, the latter wrote LAMMERS enclosing his letter to Hitler. Schlegelberger asked that it be transmitted to Hitler immediately and enclosed a draft of a proposed decree which would enable the public prosecutor to intervene in civil cases, and enable him to file application for the reopening of proceedings if he were of the opinion that new proceedings and a new judgment were necessary. in cases deemed of special importance to the national community.

The letter to Hitler is one of cringing servility, in which the writer expressed his earnest intention to install justice with all its branches more and more firmly within the National Socialist state; that there are still judgments which did not entirely comply with the necessary requirements, and in such cases he proposed to take the necessary steps. He calls attention to the fact that Hitler had created the extraordinary plea for nullification of criminal cases, and states that it is desirable to educate the judges more and more to a correct way of thinking, conscious of national destiny, and for this purpose it would be invaluable if Hitler could let Schlegelberger know if a verdict did not meet his approval, inasmuch as the judges were directly responsible to the Fuehrer and were conscious of their duties and firmly resolved to discharge them accordingly. LAMMERS was consulted by Schlegelberger regarding this decree.

On 21 March 1942, after LAMMERS had consulted with Schlegelberger and Bormann, he suggested to Hitler the issuance of a decree for the alleged simplification of the administration of the law, and with Hitler, co-signed it. Some of the changes made in the original draft which appear in the final decree were made by LAMMERS himself. Under it the Minister of Justice, in agreement with LAMMERS and the Chief of the Party Chancellery, was authorized to implement the decree to take the necessary administrative measures, and in cases of doubt, to decide matters administratively.

Schlegelberger made a suggestion for a decree

giving the Ministry of Justice confirmatory rights over every judgment passed, stating that this was a sure way to become master of the insufficient penal measures and legal judgments. LAMMERS and Bormann consulted and, feeling that Schlegelberger's proposal was insufficient, they determined to hold the matter over until a new Minister of Justice was appointed.

It is perfectly clear that both Bormann and LAMMERS favored the destruction of the independence of courts, particularly in criminal cases, and that the sentences to be imposed should rest on the uncritical and arbitrary whim of Hitler. The sorry history of this corruption of the judicial process has been set forth in detail in the opinion in the Justice Case, and it is unnecessary to repeat it here. It is sufficient to say that, after examination of the documents and the testimony offered before this Tribunal, we find that those conclusions are fully substantiated, and we agree with the findings therein made.

On 20 August 1942 the defendant co-signed with Hitler a decree reading as follows:

"A strong administration of justice is necessary for the fulfillment of tasks of the great German Reich. Therefore, I commission and empower the Reich Minister of Justice to establish a National Socialist administration of justice and to take all necessary measures in accordance with my directives and instructions made in agreement with the Reich Minister and Chief of the Reich Chancellery, and the Leader of the Party Chancellery. He can hereby deviate from any existing law."

Thierack became the new Minister of Justice and, on 27 August 1942, Bormann issued a circular announcing

Thierack's appointment, and also that the latter had been appointed Chief of the National Socialist Jurisprudence League and President of the Academy for German Law; and that, by these appointments, Hitler had united the highest offices in the field of judicial administration of Party and State, in the hands of Thierack, and by special decree had empowered the new Minister, in agreement with LAMMERS and himself, to build up a new Socialist administration of justice in accordance with the guiding rules and directions of the Fuehrer; that the task assigned to Party Member Dr. Thierack was, first of all, a political one, and consisted in bringing justice and the judiciary to the National Socialist idea, which could only be attained by closest cooperation with the Party; that should there be complaints by the Party members as to the way justice was administered, they should be presented to Bormann so that he could clear up the situation by confidential negotiations with the Ministry of Justice, and if, on discussion, it would seem absolutely necessary that the problem be brought to the Fuehrer, this would be done by LAMMERS and himself.

Late in 1942 Thierack was given power to remove recalcitrant judges, and this received LAMMERS' approval, although it appears that he did so with some misgivings and attempted to impose certain limitations on Thierack's authority.

It was by means of this corruption of the courts of justice that Jews and other enemies and opponents of National Socialism were deprived of the ordinary and commonly recognized rights to fair trial and received sentences, including that of death, shockingly disproportionate

to the offenses committed.

LAMMERS was a responsible Reich Minister. He was neither a glorified messenger boy nor a Notary Public certifying the acts of others. We believe Hitler's reason in raising the head of the Reich Chancellory from the position of State Secretary to that of Reich Minister was to relieve himself of much detail work and many decisions, and to place these functions in the hands of the defendant, who, as Reich Minister and Chief of the Reich Chancellory, possessed sufficient rank to interpose and exercise judgment and power.

We are not unmindful of the fact, which we have discussed before, that there was a constant, bitter, and persistent contest between the various chiefs of the Nazi regime to maintain what power they had, and to increase it as far as they could, and it is likewise clear that at times the star of one man would rise and that of another would sink, perhaps only to rise again. Dictators have few friends and are notoriously fickle in their ways, but LAMMERS climbed to power, sought power, and maintained power as long as he could, and he exercised that power to implement Hitler's designs and to maintain himself in Hitler's good graces.

Defendant is, and we find him GUILTY under Count Five of the Indictment.

MEISSNER

From 1925 on the defendant MEISSNER was Under-secretary of State and Chief of the Office of the Reich President. In 1935 a change in name occurred and he was thereafter known as Chief of the Presidential Chancellory. In 1937 he received the title of State Minister with the rank of a Reich Minister. He was never a member of the Party. One of his functions was to deal with petitions and pleas for clemency and present them to Hitler.

Paragraph 41 of the Indictment contains allegations of a specific nature against MEISSNER, namely, his handling of pleas of clemency to be submitted to Hitler. The evidence deals with this subject and also the transfer of persons convicted in the German criminal courts and under sentence, or whose cases were pending trial, to the Gestapo, where they were murdered.

The documents offered against him are to be largely found in Books 74 and 74-A of the prosecution, the latter being a rebuttal book.

On 3 May 1940 von Neurath reported that a Czech national, presumably a member of the resistance movement, in attempting to avoid arrest while engaged in putting up posters, shot and killed a German and fired at three German soldiers who pursued him; that he had been tried before a Special Court, that a death sentence was expected, and requested that Hitler waive the right of pardon.

MEISSNER transmitted the letter to Hitler, through Bormann, with the statement that if he did not receive any other instructions by 8 May 1940 he would inform

von Neurath that the right of pardon had been waived. Bormann returned von Neurath's telegram with the notation that "the Fuehrer agrees."

The prosecution does not suggest that the statements made in von Neurath's telegram are not true. If so, the acts, under any system of law, would be punishable, and it cannot be said that a death penalty would be unjustified.

While it is unusual for an executive to refuse to receive and consider pleas for pardon and clemency, he is not legally bound to so do. In the absence, thereof, of other evidence that the man was not guilty of an offense punishable by death, it cannot be said that MEISSNER'S failure to recommend to Hitler that von Neurath's request be denied constitutes a crime against humanity within the meaning of Control Council Law No. 10.

Weiske Affair (The Tiergarten Tattersall Hippodrome). The prosecution offered evidence that MEISSNER, for the purpose of obtaining Weiske's interest in the Berlin Hippodrome and its facilities, and to turn it over to one Esche or a corporation in which both MEISSNER and Esche became interested, caused Weiske to be arrested by the Gestapo and threatened with imprisonment in a concentration camp unless he should consent to the transaction and that, by reason of this arrest and these threats, Weiske, under duress, disposed of his property at a price far below its actual value.

There is no evidence, however, that the alleged conduct was in furtherance of or in connection with crimes

against peace or war crimes. The transaction, whatever it may have been, was purely personal, between MEISSNER and Esche on the one hand, and Weiske on the other. It is therefore not a crime cognizable by this Tribunal. If MEISSNER was wrong, or if MEISSNER committed any crime in the matter, the case is one for the German courts. We make no finding, and express no opinion, as to the merits of the charge, as to do so might possibly prejudice a proper determination by the court having proper jurisdiction.

Luftglas (sometimes referred to as Luftgas). On 20 October 1941, a Berlin newspaper contained an item that a Polish Jew, Luftgas, had been sentenced to two and one-half years in prison for having hoarded 65,000 eggs.

On 25 October LAMMERS wrote to Schlegelberger, acting as Minister of Justice, that Hitler wished the defendant Luftgas sentenced to death, requesting him to see to it and to notify LAMMERS when this had been done so that he might inform Hitler. He also wrote Schwab, Hitler's Adjutant, informing him of the communication to Schlegelberger. On 29 October Schlegelberger replied that in accordance with the Fuehrer Order of 24 October, transmitted to him by the State Minister and Chief of the Presidential Chancellory (MEISSNER), he had handed Luftgas over to the Gestapo for the purpose of execution.

Schlegelberger testified in the Justices' Case that the Fuehrer Order was given to him on 24 October through the usual channels of the Presidential Chancellory.

On 24 March 1948 he gave an affidavit on behalf of MEISSNER that he could not "exclude the possibility that

the information with respect to this transfer was not given by DR. MEISSNER as stated in the letter of 29 October 1941, but was given by another office."

On 28 April 1948 he gave an affidavit on behalf of LAMMERS and said:

"After further investigation, I cannot entirely exclude the possibility that the order was not delivered by DR. MEISSNER, but by another office, i.e., the Office of the Fuehrer's Adjutant."

The witness Ficker, called on behalf of LAMMERS, testified that inasmuch as Schlegelberger's letter, in the usual office routine, went through several departments, including the legal department and that of the State Secretary, it was highly improbable that the mistake would be made of confusing the Presidential Chancellory with the Reich Chancellory or with Hitler's Adjutant.

MEISSNER denies having had any knowledge or taking any part in this affair. The extremely guarded statements of Schlegelberger do not actually contradict his letter or his testimony which he gave in the Justice Case, and we deem it more likely that as stated in his letter to LAMMERS and his testimony, he received the Fuehrer Order from MEISSNER rather than from the Fuehrer's Adjutant. The Fuehrer Order was based on a newspaper article and without the slightest investigation by either Hitler or MEISSNER, and in the face of a substantial sentence given by a court which had tried the case and presumably had knowledge of the facts, handing the victims over to the Gestapo to be murdered was in clear violation of all law.

Other Transfers to the Gestapo. The record is clear, moreover, that in a large number of other cases certain persons who had been imprisoned for offenses or whose cases were pending trial before the courts, were transferred by the Ministry of Justice to the Gestapo. These cases occurred when Hitler, quite evidently without any investigation of the facts and based almost entirely upon what he read in the newspapers, concluded that a sentence was too light or that a trial before the courts would be too slow. In some cases the order included, and in others omitted, the words "to be shot" or "for execution."

That MEISSNER knew that these transfers meant the death of these persons concerned we have no doubt. It is clear that he did not protest such orders or object to transmitting them. His excuse was that it would have done no good.

Some of the victims were Poles or Jews, and others were German nationals. All these cases arose during the war and some involved merely critical remarks of Hitler and his Nazi regime, or offenses said to be aggravated because of war conditions.

MEISSNER knew that the Ministry of Justice had control of the custody of these persons and only it had authority to transfer them to any other agency. That he also knew that these transfers meant death we have no doubt whatsoever. He took a consenting, even though a minor, part in these crimes.

Blitz Executions. MEISSNER'S part in the so-called Blitz Executions consists of the following: The only instance as to which there is any evidence occurred in December 1938

and involved a man who, while an inmate of the Buchenwald Concentration Camp, had killed an SS man. There is no evidence to indicate that this case had anything to do with the preparation, planning, or initiating of aggressive war. This Tribunal therefore has no jurisdiction over any crime arising from this incident.

Nacht und Nebel (Night and Fog) Terror System. MEISSNER'S only participation in this matter is a draft of a letter dated 14 June 1944 which Thierack proposed to send to Bormann but which was never transmitted. Therein he stated that MEISSNER, in submitting Hitler's order granting reprieve to certain women prisoners from occupied countries sentenced under Nacht und Nebel decrees, had instructed Thierack, who was then Minister of Justice, that Hitler's decision was not to be made public, thus leaving the condemned persons in suspense for an indefinite period as to whether or not the death sentence would be carried out. MEISSNER does not deny that he gave Thierack Hitler's instruction as above set forth. To permit one sentenced to death to remain, for months or even years, without knowledge of his reprieve and under the intolerable anxiety and mental stress of not knowing whether the next day would be his last day on earth, is a trait typical of the sadism of the Nazi regime, and if anything could be considered a crime against humanity, such a practice is.

MEISSNER'S Defense and Facts in Mitigation. MEISSNER was never a member of the Party and up to the last moment he

opposed Hitler's being made Chancellor. The von Papen affidavit that MEISSNER made his peace with Hitler, via Goering, because of financial scandals in which he was involved, is based on hearsay and without proof. His main functions as Chief of the Presidential Chancellory were those of protocol, taking care of honorary awards, making arrangements for and acting as escort for visiting foreign dignitaries, and matters relating to executive clemency. He was not a policy-maker and had little or no executive power. He never enjoyed the favor of the Party and was looked upon with grave suspicion and dislike by its heads. He was kept in office by Hitler because of his ready knowledge of protocol and ceremony, of which the latter was wholly ignorant, and his long acquaintance with leading domestic and foreign personalities.

It is clearly established that insofar and as often as he could he used his position to prevent or to soften the harsh measures of the man he served, sometimes at considerable risk to himself. He may have remained in office under Hitler because of vanity, weakness, and for financial security. There is no evidence that he originated or implemented any crimes against humanity, beyond what has been heretofore termed as such, and even there his part was hardly more than that of a messenger. While in so doing he played an unenviable role and one which a stronger character more alive to higher values would have rejected, it is doubtful that it constitutes criminality.

We find the defendant MEISSNER NOT GUILTY.

PUHL

The defendant PUHL, as the leading executive official of the Reichsbank, is charged with having directed and supervised the execution of an agreement between Funk and Himmler for the receipt, classification, deposit, conversion and disposal of properties taken by the SS from victims exterminated in concentration camps. These properties totaling millions of Reichsmarks in value, included, among other things, gold teeth and fillings, spectacle frames, rings, jewelry and watches. To insure secrecy, the deliveries from the SS were credited to a fictitious account and the transaction was given a code name. The proceeds were credited to the account of the Reich Treasury under the defendant SCHWERIN VON KROSIGK.

PUHL'S entire career has been that of a banker. He was first employed in the Reichsbank in 1913, and except for his service in the Army during the First World War, he remained in that organization. He became a director in 1929 and was a senior director in 1932; he was appointed as Vice-President on 8 August 1940 and remained so until the German surrender in 1945. From 1935 to 1945 he was a member of the Aufsichtsrat (which is, roughly, the supervising board as distinguished from the executive board) of the German Gold Discount Bank. He joined the Nazi Party as early as 1938 although his membership record gives the year as 1937. The defendant asserts that his membership record was antedated.

He served under Schacht, who was acquitted, as well as Funk, who was convicted by the first International Military Tribunal, during their respective periods as President of the Bank.

The primary function of the Reichsbank was that of issuing notes; it also had the power to regulate the movement of currency and money transactions, internally as well as abroad, and to insure that the available funds of the German Economic System were utilized for the common good and in the interest of national economy; it was under the direct authority of the Fuehrer; it was a public corporate body under corporate law which had a capital of 150,000,000 Reichsmarks and its presidents and directors were under the supervision and control of Hitler, who appointed and could, at will, discharge them. Such was the legal position of the bank under the Reichsbank Law of 1939, which covers the period with which we are here concerned.

On 11 February 1939 PUHL was appointed Funk's Deputy for all business in the latter's absence, with the same power to make decisions which Funk possessed under the Reichsbank Law, a position which was superior to that of any other official of the bank. He was the managing Vice-President, while Lange, the other Vice-President, was in charge of personnel matters and of safeguarding National Socialist principles in the Bank.

PUHL had the comparative rank of a State Secretary. In addition to being a member of the Aufsichtsrat of the Gold Discount Bank, in 1944 he became Deputy President.

This bank was owned and wholly controlled by the Reichsbank.

Aktion Reinhardt. No chapter in the law and record of crimes committed during the history of the Nazi regime is so revolting and horrible as the coldly calculated extermination of Jews. Not content with depriving them of the opportunity inherent in all human beings to study, to practice professions, to engage in business in accordance with the individual's nature and talents, they were deprived of their rights of citizenship, subject to senseless degradations, humiliations and insults, their property in many instances destroyed by Party organized mobs, and finally stolen from them under the euphonious term of "confiscations"; they were deported to the Gaus in the East and finally to extermination camps where they were slaughtered by the million through starvation, shooting, and finally by mass extermination in the gas chambers of Auschwitz and Maidenek, where men and women, girls and youths, the tottering grandfather and the babe in arms met the same fate. But the Nazi Government was not content with this. There were large financial gains to be derived from wholesale murder which could be and were used to wage Germany's wars of aggression. Currency, coins, securities, jewelry, gold watches, gold spectacles, clothing from their bodies, were carefully and systematically collected; the hair was shorn from the heads of the women and finally the gold from the teeth of the corpses was meticulously removed. The best of the clothing was used to cover the bodies of the members of the master race, - the hair for

mattresses on which to lay their heads, and the coins, bank notes, jewelry and gold stored in vaults of the Reichsbank, sold through Berlin pawn shops by the Reichsbank, or sent by the Reichsbank to be melted into bullion.

The defendant contends that stealing the personal property of Jews and other concentration camp inmates is not a crime against humanity. But under the circumstances which we have here related, this plea must be and is rejected. What was done was done pursuant to a governmental policy, and the thefts were part of a program of extermination and were one of its objectives. It would be a strange doctrine indeed, if, where part of the plan and one of the objectives of murder was to obtain the property of the victim, even to the extent of using the hair from his head and the gold of his mouth, he who knowingly took part in disposing of the loot must be exonerated and held not guilty as a participant in the murder plan. Without doubt all such acts are crimes against humanity and he who participates or plays a consenting part therein is guilty of a crime against humanity. The only question we have to decide is whether the defendant PUHL was such a consenting participant as to render him liable to conviction and punishment.

As early as 26 September 1942 Frank, SS Brigadefuehrer and Brigadier General in the Waffen SS, by order of Himmler (SS-WVHA), issued instructions to the Chief of the SS Garrison Administration at Lublin and the Chief of the Administration at the Auschwitz concentration camp prescribing procedure for the disposition of property of

executed Jews.

- (a) German Reichsbank notes were to be deposited with the Reichsbank to the credit of the SS Economic and Administrative Main Office.
- (b) Foreign Exchange, coined and uncoined, rare metals, jewelries, precious and semi-precious stones, pearls, gold from the teeth and scrap gold to be delivered to the Main Office and by it immediately to the Reichsbank.

* * *

- (h) Gold frames of spectacles to be handed in with the rare metals.

Albert Thoms, an employee of the Reichsbank, deposed and later testified that, by a decree of 21 February 1939, all Jews were required to deliver personal property to the governmental authorities, and coins and gold bars resulting therefrom were to be delivered to the Reichsbank; that in the summer of 1942 he was called into the department of Director Frommknecht and informed that the Bank was going to handle a special transaction of which the latter knew little but that all the details of which were familiar to PUHL, who wanted to see the witness; that he went to PUHL'S office who explained that the Bank was going to act as custodian of the SS for the reception and disposition of deposits which would include not only gold, silver and foreign currency with which the Bank usually dealt, but other kinds of property such as jewelry, and that a way must be found to dispose of them; that he suggested to

PUHL that the latter items be transmitted to the Reich Haupt Kasse (Pawn Shop) or that they be given by Himmler directly to the pawn shop in order that the Bank would have nothing to do with the matter; that PUHL said this was out of the question and that the Bank must arrange for a procedure in order to keep the whole thing secret. This conversation was within two weeks of the first delivery which was made in August 1942.

Thoms was further instructed by PUHL not to discuss the matter with anybody, that it was highly secret and it was forbidden to speak about it. He was further instructed to get in touch with Brigadefuehrer Frank and Obergruppenfuehrer Wolff (the same Wolff who appears in this case so often as an affiant in behalf of the defense), for information; that he telephoned Frank and was told that the deliveries were to be made by truck and that they would be in charge of an SS man, Melmer; that, after discussions, it was agreed that Melmer should not appear in SS uniform, but in civilian clothes and that he was to receive a conditional receipt for the property; that Thoms would be later informed of the account to which the proceeds of the items were to be accredited; that although Melmer appeared in civilian clothes, there were two SS men on guard and most of the people in the pawn shops and in Thom's office and in the Bank knew about the SS deliveries. He says that the goods were sorted, handled and disposed of in the appropriate departments of the Bank -- stocks, securities and bonds to one department, and coins, gold and jewelry to the precious metal department. On delivery a short statement of the goods was made and signed by the Bank.

Later the contents were itemized in detail and a final receipt given in detail; that on the occasion of the first delivery Melmer told him to credit the proceeds of the account to Max Heiliger; that he confirmed this with an official of the Ministry of Finance; that a few months later PUHL inquired how the Melmer deliveries were coming along and suggested that they might soon be over, but that he informed PUHL that it seemed as though they were growing larger.

The source of these items was known from the fact that the register stamp "Lublin" appeared on packages of some of the bills and some items carried the stamp of Auschwitz, both sites of concentration camps. This was early in 1943.

In November 1942, being the tenth delivery made, dental gold appeared and eventually this item became unusually great. The Berlin pawn shop disposed of the jewelry for the Bank, and the proceeds were credited to "Max Heiliger." The witness did not know how the savings books were cashed in, the first of which was delivered on 24 April 1943.

Thoms was called as a witness in the International Military Tribunal, confirmed his affidavit, and further testified that he kept PUHL advised of these transactions and of the kinds of items, including dental gold and wedding rings that the Bank was receiving; that four or five people were employed at the Bank to sort and classify the material, which action was carried on in the corridor of

the vaults and much of the material lay quite openly on the table; that all persons involved were under strict instructions that this secret matter must not be talked about even with one's own colleagues and that this secrecy was not ordinary secrecy that attended bank transactions; that he had seen the material shown in evidence and it was typical of the Melmer deliveries. The witness further testified that there were more than seventy deliveries made by the SS to the bank.

On cross-examination he testified that the name Melmer was given for this deposit, because of the specific direction from PUHL that the matter was a particularly secret affair; that the gold teeth were sent to the Prussian State Mint where they were melted down into gold and the bullion delivered to the Reichsbank. He further testified that when the articles were sorted and classified at the bank they were put in bags with the word "Reichsbank" printed on same.

On 3 May 1946 the defendant himself was interrogated and made an affidavit that in the summer of 1942 Funk had a conversation with him and Friedrich Wilhelm, another member of the Board of Directors, and said that he had made an arrangement with Himmler to have the bank receive on safe deposit gold and jewels for the SS, and that Funk directed him to work out the arrangements with Pohl, head of the Economic Section of the SS in charge of the economic aspects of the concentration camp program; that he inquired of Funk the source of the gold jewelry and

bank notes that were to be turned over and Funk replied that it was confiscated property from the Eastern Occupied Territory and told him to ask no further questions; that he protested against the Reichsbank handling the material but was told to go ahead and to keep the matter absolutely secret.

He thereupon made arrangements with one of the officials in the cash and vault department to receive the material and himself reported the matter to the Board of Directors of the Bank at its next meeting; that Pohl, on the day of the defendant's conversation with Funk, telephoned him and asked if he had been informed of the transaction, but PUHL refused to discuss the matter over the telephone whereupon Pohl came to see him and said that the SS had some jewelry to deliver to the Bank for safe-keeping and arrangements had been made for delivery starting sometime in August 1942, and continuing over the following years; that the material deposited by the SS included jewelry, watches, eyeglass frames, dental gold and other gold items in great abundance from Jews, concentration camp victims, and other persons; that this was brought to his knowledge by SS personnel who attempted to convert this material into cash and who obtained, in this connection, the assistance of the Bank personnel with Funk's approval and knowledge; that he had been informed by Funk that Himmler and SCHWERIN-KROSIGK, the Minister of Finance, had reached an agreement that the gold and similar material was to be deposited for the account of the Reich and that the proceeds resulting from their sale should be credited to the Reich Treasury; that from time to time he visited the vaults in the Bank and observed what was in storage.

PUHL explains this affidavit on the ground that he was ill at the time and confused, and offered as corroboration the testimony of Binswanger, who was then one of the internment camp physicians. The latter's testimony should be received with great caution as it is clear that he did not tell the truth with respect to his rank in connection with the SS. Moreover, his statements as to the physical findings from his examination of PUHL do not reveal any facts which would affect either PUHL'S mind or memory. The defendant is a man of vast business experience, wide culture and high intelligence. There is no evidence that he was under duress, other than the fact that he was then confined in an internment camp. It is not claimed that he was threatened by the interrogators, and the evidence clearly shows that he was not. The affidavit is replete with details which only he could have known and which could not have been supplied by anyone else. We believe that the affidavit relates the facts.

In the Bank's files is a memorandum dated 31 March 1944 which recites that, in accordance with an oral, confidential agreement between PUHL and the Chief of one of Berlin's public offices, the Reichsbank took over the selling of local and foreign currencies, gold and silver coins, precious metals, securities, jewels, watches, diamonds and other objects which were to be processed under the code name Melmer; that a large number had been turned over to the Municipal Pawn Shop for utilization; that on 29 March 1944 the pawn shop refused further acceptance

and declined to process items already in their possession; that the question of uniform utilization was important, not only because the bank should be given the opportunity to sell unprocessed jewels, etc., from the Melmer deliveries as it had been before, but also because its equivalent belonged to the Reich and if the pawn shop sold the articles above the world-wide gross price the surplus went to the benefit of the Reich; that through sales to foreign countries a considerable amount of foreign currency must be acquired and that among the goods still in the possession of the pawn shop were diamonds to the amount of 35,000 carats, and small rose diamonds of very high value.

There is another communication in this document of 14 September 1943 from the Berlin Municipal Pawn Shop to the Reichsbank likewise dealing with the utilization of this property.

Karl Wilhelm, a former director of the Bank, gave an affidavit that in 1942 PUHL told him that SS Obergruppenfuehrer Pohl had visited him and stated that he desired that the gold and jewelry deposits then in the cellar of an SS barracks should be put under the care of the Reichsbank; that Wilhelm told PUHL that those things didn't concern him and warned PUHL against taking such deposits with the words, "They will kick back against the Reichsbank some day," whereupon PUHL replied, "You are right, it is none of your business. I just wanted to inform you of these deposits. I will deal with this matter alone." PUHL showed no reluctance but approved the project.

PUHL denies the matters deposed by Wilhelm, but on the second day of November 1946 he gave a statement that

he considered Wilhelm to be thoroughly reliable and that complete faith could be put into the statements he made and that he never considered Wilhelm was sympathetic to the Nazi program.

Walter Bayrhoffer gave an affidavit in which he stated that he was a director of the Reichsbank and a member of the Aufsichtsrat of the Gold Discount Bank; that at the end of 1942 Frommknecht told him that, without his knowledge or that of the affiant, jewels and valuables of the SS had been deposited with the Bank; that Frommknecht was somewhat annoyed that these deposits had been handled by PUHL, since cash transactions were actually the responsibility of Bayrhoffer's department; that Frommknecht informed him that the matter was classified as secret and top secret, and that he himself had misgivings about the transaction because it seemed to be outside the competency of the Bank.

On 15 July 1946 Oswald Pohl, Chief of the Economic and Administration Main Office of the SS (WVHA), gave an affidavit deposing, among other things, that in the year 1941 or 1942, after larger quantities of articles of value, such as jewelry, gold rings, gold fillings, spectacles, etc., had been collected in the extermination camps, Himmler ordered him to deliver these things to the Reichsbank, explaining that he had already entered into the negotiations concerning the matter with the Bank and Funk; that as a result of this agreement he discussed the manner of delivery with the defendant PUHL and in this conversation no doubt remained that the objects to be delivered were the jewelry and valuables of concentration camp

inmates, especially Jews who had been killed in extermination camps. There was a gigantic quantity of valuables thereafter delivered which continued for months and years. He further stated that he saw a part of these valuables when Funk and PUHL invited him to inspect the vaults and thereafter to dinner. (this took place in 1941 or 1942), and then that PUHL took them to the vaults of the Reichsbank, showed them gold bars and also various trunks of objects taken from concentration camps were opened.

Pohl gave a subsequent affidavit on 2 April 1947 which substantiates many of the details heretofore mentioned.

Pohl was called as a witness in this case for cross-examination, and in a measure attempted to repudiate the affidavits which he had given, an analysis of which will be hereafter made. Likewise both Wilhelm and Thoms were called for cross-examination and their testimony will be similarly treated.

When PUHL testified before the International Military Tribunal, he confirmed the statements of his affidavit of 3 May 1946, stating specifically that the statements in the affidavit were correct. Thereafter he recanted, stating that he did not know that there was dental gold or gold spectacle frames in the loot. August Frank of the SS heretofore mentioned testified in the Pohl Case that the conferences between Pohl and the defendant PUHL took place in July 1942, having been preceded by a conference between Himmler and Funk and between Himmler and the defendant SCHWERIN-KROSIGK; that these deposits were not deposits

of the SS and for its benefit, but were for the benefit of the Reich; that the foreign exchange was immediately utilized by the Reichsbank and its counter-value credited by the bank to a special account with the Reich Minister of Finance. This account was called the Max Heiliger account.

On 26 May 1948 Albert Thoms gave an affidavit in which he testified that there were seventy-six separate deliveries by the SS to the Reichsbank which were listed under the name "Melmer"; that of these a part was not utilized but evacuated to the salt mines in Merkers because of war conditions. He identified the receipt book of the Metal Purchasing Office of the Reichsbank, which is the record of the smelting of the gold. The remaining Melmer deliveries in 207 containers in which were stored gold, foreign exchange, jewelry and precious stones, pearls, and dental gold were likewise sent to Merkers. Attached to his affidavit are photostats of pages 14 and 15 of the Reichsbank Receipt Book and they relate to 21 deliveries which commenced with the 40th and ended with the 76th.

Page 15 relates to eleven deliveries of which the 26th was the first and the 72nd the last. Also, as a part of this exhibit is a memorandum of 24 November 1944 from the Reichsbank to the mint, directing it to melt down something over 100,000 kilograms of silver and gold (a kilogram is the approximate equivalent of two pounds), a substantial portion of which was dental gold.

While we have little doubt that the articles shown in the film were delivered by the Army to the Reichsbank

Branch in Frankfurt and were part of the loot which the Reichsbank had stored in the salt mines at Merkers, the chain of proof is not entirely complete. We shall therefore disregard the film but the facts are proved independently by the evidence which we have heretofore outlined.

The defendant PUHL asserts that the Reichsbank was by law compelled to accept this loot, particularly with respect to the gold, silver, and currency, and quotes Article 15 of the Reichsbank Law of 15 June 1939.

There is nothing in this section which can be construed to require the Bank so to do. Article 15 merely provides that the Bank must effect all banking operations for the government "insofar as they are within its competence in accordance with the provisions of the present law"; it is also required to act as intermediary for all payments by the financial establishments of the Reich, the Gaus, the provinces and the communes, and the association of communes. The receipt, realization and disposition of stolen goods can hardly constitute a banking operation, nor is it to be presumed that when the law was drafted it had reference to any transaction such as we are here discussing.

Article 14 of the same law contains the clause that the Bank is required to purchase bar gold at its Berlin headquarters at a fixed rate. This, however, only means that if and when the Bank purchases gold it must do so at the specified rate.

The legal opinion of Hans-Joachim Caesar, a jurist for the Reichsbank, cites both articles and the "pertinent

provisions of the foreign currency laws," and "according to these provisions all the gold and foreign currency had to be turned over to the Reichsbank," and as a result the Reichsbank could not reject gold and foreign currency confiscated by order of the Reich.

We reject this contention. If it had been the purpose of the law to include therein property stolen from the inhabitants of occupied territories or from those of German nationals, pursuant to an execution of aggressive war, it was void as a breach of International Law and affords no defense. We do not assume and we do not believe that any such purpose existed at the time the Reichsbank Law or the Foreign Currency Regulations were promulgated. That this was not looked upon as an ordinary transaction within the scope of its corporate purposes or official functions by the Reichsbank officials, including PUHL, is evidenced by the extreme secrecy with which the transaction was handled, the fact that the account was credited in the first instance to a fictitious name, Max Heiliger, and the contemporaneous misgivings expressed by officials and employees of the Bank at the time.

Our views are confirmed by the testimony of Karl Friedrich Wilhelm, namely, that the Bank was under no obligation to accept gold or foreign currency but it was the duty of holders to offer it. Nor was it bound to accept and dispose of jewels or unrefined gold or act in the capacity of a second-hand or antique dealer.

PUHL testifies that he first learned of the transactions in question from Funk, in accordance with an

agreement made between Himmler and Funk. This was in the summer of 1942. He further testifies that Funk told him that Himmler intended to deliver incoming gold and foreign currency into the Bank because of the legal provisions requiring such delivery, and asked him to inform the competent departments to be helpful in fulfilling the formalities concerning the delivery of the stuff. Funk mentioned not only foreign currency and gold, but also some articles of jewelry, but said nothing of gold teeth, gold teeth fillings, spectacle frames, etc.; that Funk stated that these things had been seized or given up in the East and he, PUHL, did not assume that the seizure was in violation of International Law; that there was no mention of concentration camps or Jews. Funk told him not to ask any more questions; that his protests about the Reichsbank taking over the property were not because he thought they were illegally acquired objects, but because he did not desire to have any dealings with the SS. He remembers the call which Pohl made and states that it was very short and that all Pohl told him was that he was the delivering agency for gold and silver currency collected within the framework of the SS scheme and emphasized that this was property belonging to the Reich.

Pohl did, however, mention that there might be some jewelry and asked the Reichsbank to pass it on to the competent pawn broker's agency; that as a result of his conversation with Pohl, he informed Frommknecht. He denies that he gave Thoms the instructions or heard the conversation mentioned in the latter's affidavit, but

merely said so far as property other than gold and other foreign currency was concerned, it should be passed on to the competent pawn broker's house. He admitted that he may have said that the matter should be treated in a confidential way, but that applied to all banking transactions, and that Pohl had talked of secrecy and made a lot of fuss about everything and he may have told Thoms something to that extent..

He denies, however, that the matter was to be treated as a top secret matter. He denies Wilhelm's affidavit and testimony that he had informed the latter that he (PUHL), would handle the matter himself. He claims that these matters were never discussed in the meetings of the directors and that he never received a report from the subordinates in connection with these deposits; that he had never made any inquiry of Thoms as to the status or progress of the Melmer deliveries and that he was never notified that gold teeth were supposed to have shown up in connection with the deposits, or savings bank books or twelve kilograms of pearls; that if Thoms had ever mentioned these matters he certainly would have done something against it; that he never saw, in the Reichsbank vaults, items such as were shown in the film and that he never knew that that class of items were ever turned in by the SS, and does not believe it possible that they could have been turned in to the Reichsbank.

However, the testimony of Thoms and the records of the Bank to which he heretofore referred show that the defendant is entirely mistaken with respect to this last

statement. He remembers only one visit of Pohl to the Bank vaults, namely, on 27 May 1941, before these deposits were being made, and remembers one luncheon with Pohl immediately after he visited the vaults.

He claims that at the time his affidavit was taken, he was and had been ill; that he was, at that time, still bedridden and unable to grasp the sense of the individual statements.

The witness Oswald Pohl was administration chief of the SS from 1934 to 1945. He was tried and condemned to death. He was called for cross-examination with respect to Exhibits 3477, 2826, 2862, 2827, 2865. He says that while a prisoner of the British he was badly mistreated, although he makes no claim that he was mistreated while in Nurnberg, either before, during, or after his interrogations here. He attempted to state that he did not know that the material came from concentration camps, or from extermination camps and dead Jews, or that it contained such items as gold rings, gold fillings, glasses and gold watches.

August Frank testified, in the Oswald Pohl Case, that as early as 8 October 1942 he had informed Himmler about this dental gold and suggested that further collections be sent to the Reichsbank and further that he knew that much of it came from concentration camps. We deem it highly unlikely that Pohl would not have at least as much definite information as his deputy, Frank.

We have carefully reviewed Pohl's testimony before a Commission of this Tribunal. It is our opinion that

he gave false oral testimony in an attempt to exonerate himself as well as defendant PUHL. Certainly Pohl's cross-examination shows that he would go to any lengths wholly without regard to the facts in order to avoid the effect of the affidavits which he had given.

From the records we draw and make the following findings of fact:

That PUHL was the managing director and Vice-President of the Bank, and that in Funk's absence he exercised all the powers of Funk;

That Funk was seldom in the Bank and comparatively seldom exercised his powers as President;

That PUHL, at the time he received the direction from Funk and after he talked to Pohl, knew that what was to be received and disposed of was stolen property and loot taken from the inmates of concentration camps.

We do not believe that at that time he was informed that the grisly dental gold and wedding rings were part of it. However, we think it is fairly established by the record that long before the deliveries were completed he was informed of this. His part in this transaction was not that of a mere messenger or businessman. He went beyond the ordinary range of his duties to give directions that the matter be handled secretly by the appropriate departments of the Bank. It is to be said in his favor that he neither originated the matter and that it was probably repugnant to him. He had no part in the actual extermination of Jews and other concentration camp inmates,

and we have no doubt that he would not, even under orders, have participated in that part of the program.

But without doubt he was a consenting participant in part of the execution of the entire plan, although his participation was not a major one.

We find him GUILTY under Count Five.

RASCHE

The defendant RASCHE is a banker by profession and after many years of banking experience in the Rhineland he joined the Dresdner Bank, became a member and finally the spokesman for its Vorstand. He was one of the most able and active executive officers of the Bank.

The evidence clearly establishes that the Dresdner Bank loaned very large sums of money to various SS enterprises which employed large numbers of inmates of concentration camps, and also to Reich enterprises and agencies engaged in the so-called resettlement programs.

It is unnecessary to recapitulate the evidence in this case or the findings of others of these Tribunals to the unlawful nature of these enterprises.

Exhibit 2825 is a draft of a letter of recommendation which RASCHE prepared or caused to be prepared for the signature of SS Gruppenfuehrer Pohl, which contains the statement:

"DR. RASCHE is an old fighter for the Baltikum, and as a member of the Delegation of the Reichsfuehrer SS (Himmler) he also participated in the decisive measures concerning resettlement."

The defense that Pohl did not sign this letter and that it was never used is of no materiality, as they are RASCHE'S own words praising himself and not those of Pohl.

The record, however, does not disclose that RASCHE was ever a member of any delegation of the Reichsfuehrer SS, nor what the delegation did, if it ever existed, or what the decisive measures consisted of; nor are we able, from other evidence, to determine any relationship with Himmler or the SS from which any conclusive inference can be drawn.

RASCHE was a member of Himmler's Circle of Friends and the Bank, with his knowledge, acquiescence and approval, even in part at his insistence, made large annual contributions to a fund placed at Himmler's personal disposal. There is no evidence, however, that matters relating to the resettlement program were ever discussed or acted upon in the meetings of this Circle, or that it was in any way a policy-making body. Nor is there any evidence that RASCHE knew that any part of the fund to which the Bank made contributions was intended to be or was ever used by Himmler for any unlawful purposes.

His participation in the loans made by the Dresdner Bank to various SS enterprises which employed slave labor, and to those engaged in the resettlement program, presents a more difficult problem.

The defendant is a banker and businessman of long experience and is possessed of a keen and active mind. Bankers do not approve or make loans in the number and amount made by the Dresdner Bank without ascertaining, having, or obtaining information or knowledge as to the purpose for which the loan is sought, and how it is to be used. It is inconceivable to us that the defendant did not possess that knowledge, and we find that he did.

The real question is, is it a crime to make a loan, knowing or having good reason to believe that the borrower will use the funds in financing enterprises which are employed in using labor in violation of either national or international law? Does he stand in any different position than one who sells supplies or raw materials to a builder building a house

knowing that the structure will be used for an unlawful purpose? A bank sells money or credit in the same manner as the merchandiser of any other commodity. It does not become a partner in enterprise, and the interest charged is merely the gross profit which the bank realizes from the transaction, out of which it must deduct its business costs, and from which it hopes to realize a net profit. Loans or sale of commodities to be used in an unlawful enterprise may well be condemned from a moral standpoint and reflect no credit on the part of the lender or seller in either case, but the transaction can hardly be said to be a crime. Our duty is to try and punish those guilty of violating international law, and we are not prepared to state that such loans constitute a violation of that law, nor has our attention been drawn to any ruling to the contrary.

The defendant RASCHE should be and is found NOT GUILTY under Count Five.

RITTER

The defendant RITTER, now in his sixty-sixth year, entered the Foreign Office in 1922 after a career as a civil servant in various other governmental agencies which commenced in 1909. He was a recognized expert in matters of commerce and economics, and represented the Weimar Republic in negotiating and drafting many commercial agreements, and in questions of reparations and economic matters arising within the League of Nations. In these capacities he exerted a significant political influence. He became Chief of the Commercial Policy Division of the Foreign Office and remained there until 1937 when he was appointed Ambassador to Brazil.

As Ambassador he received a greatly increased compensation and thereby became entitled to the rank of State Secretary. Prior to his appointment he claims that he was less and less consulted by von Neurath, then head of the Foreign Office, and that his appointment to Brazil was not a promotion but rather a means of "putting him on the shelf."

In 1938 while Ambassador to Brazil he received an unsolicited invitation to join the Party and testifies that he was faced with the dilemma of so doing or falling into complete disfavor which might result in his inability to return to Germany and in any event would have injured his career. He thereupon joined the Party.

RITTER was recalled in 1938, and on his return attempted to retire, but was put off by Ribbentrop until the outbreak of the war, notwithstanding the fact that von Neurath had promised him that he might do so. He received only occasional assignments in the Foreign Office upon his return from Brazil, among which were the negotiations leading up to the commercial agreement with Russia after the conclusion, in August 1939, of the non-aggression pact between Germany and that country.

In October 1940 he was appointed by Ribbentrop as liaison officer between the former and the OKW (which corresponds to the General Staff of the German Armed Forces), a position which he retained until the end of January 1945, when he became ill.

While an attempt has been made to minimize the importance of his functions and the influence which he could exert, we cannot accept this in toto. The functions of a liaison official or agent between two such important departments of a government as the Foreign Office and the General Staff are too well known and recognized, and among them is the duty to inform himself of

the purposes, plans and activities of the department to which he is assigned, report them to his superior, give advice with respect thereto, negotiate, on the latter's behalf, with the agencies to which he is assigned, adjust differences which may arise, and generally implement policies determined by his chief. These are not the duties of an errand boy or a messenger. They require a high degree of perspicacity, industry, intelligence, tact and adroitness, and the evidence, including that of the defendant himself, indicates that he possessed and utilized these qualities and performed these functions, hampered, it may be, by the almost psychopathic peculiarities of his chief, Ribbentrop.

With regard to the fate of the Jews who were deported to the East, and with respect to the policy of the Nazi Government toward them, he was under no illusions, although it was quite likely that he had no direct knowledge of the extent, technique, or manner in which the Jewish exterminations were carried out. We shall consider the documents and the testimony which the prosecution contends proves his guilt.

On 24 September 1942 RITTER wrote and signed a memo to be used by Hitler in dealing with Mussolini on varied questions, including that of the Croatian Jews, but here he was only transmitting Ribbentrop's ideas and did not purport to express his own. Our attention has not been called to any instance where he had any responsibility or took any action respecting this matter.

Danish Jews. The prosecution contends that RITTER coordinated military and civilian measures for the persecution of Danish Jews, when the civilian forces complained that they could not

carry out the deportation without military help. We have examined the exhibits cited in the brief but while RITTER received information that such measures were under consideration and that the military commander in Denmark objected thereto, and while he was on the distribution list of certain of the documents, the only evidence which the prosecution has presented to show that he took any action with respect to the same is a quotation from his cross-examination, wherein he had denied that he had anything to do with the Jews being taken from Denmark. He was asked the following question:

"Q. Do you remember that you had to mediate between the military agencies who did not want to participate in this particular instance in the West?

"A. I do not remember such a general activity of mediation, but I remember one particular case....

"Q. That is quite sufficient."

For some reason the prosecution did not see fit, and in fact stopped the defendant from testifying as to what activity was involved in the particular case which he remembered, and the matter was not again discussed. The Tribunal is not informed as to what he did, and the term "mediation" is entirely too indefinite and subject to too many shades of meaning to be used as evidence of guilt. It might include an attempt to ameliorate rather than to implement the action.

With respect to Denmark the prosecution has failed to prove its case.

Jews in France. The record discloses that RITTER was informed of the actions against Jews in France and Rumania, but there is no evidence that he participated in them. Knowledge that a crime has been or is about to be committed is not sufficient to warrant a conviction except in those instances where an affirmative duty exists to prevent or object to a course of

action. In this instance he had no such duty and he is therefore ACQUITTED with respect to them.

Hungary. During the course of Germany's persecution of the Jews, several hundred thousand emigrated to Hungary where, although subject to certain restrictive laws, they found, what was to them, a haven of refuge.

While there was a vigorous anti-Semitic movement in Hungary, neither the Regent, Admiral Horthy, nor the Cabinet then in power, showed any desire to follow the pattern laid down by the Nazi Government.

To the Third Reich it was, of course, unbearable that Jews in any country, within reach of its power or influence, should live the life of free men. Constant effort and pressure were put forth to destroy all opportunity for even a meager existence outside of concentration and slave labor camps. And this is what they finally brought about in Hungary.

As early as 1943 Hitler had become dissatisfied, not only with the military efforts of the Hungarians and with their lack of vigor in enacting and enforcing anti-Semitic legislation, but became suspicious that Hungary was war-weary and desired to make peace. It was determined to obtain the control of the Hungarian Government. Thereupon the German envoy, von Jagow, was replaced and VEESENMAYER, who had no previous diplomatic experience, was put in his place.

Ribbentrop detailed RITTER to take charge of Hungarian affairs, and included VEESENMAYER'S activities at Budapest.

VEESENMAYER became Minister and Reich Plenipotentiary to Hungary on or about 19 March 1944. On that day RITTER telephoned him giving the following instructions, viz: that on the same day

von Jagow should inform Horthy, the Hungarian Regent, that he had been recalled, and would take leave the same morning, then introduce VEESENMAYER as the new Minister and Reich Plenipotentiary; that VEESENMAYER was to introduce himself and inform Horthy of the new Hitler order concerning Imredy and others, whom VEESENMAYER would name, and whom thereafter he should immediately contact; that none of the Hungarians who were in Klessheim (where conferences between Horthy and Hitler had taken place) were to be arrested, not even Kallay; that in accordance with Ribbentrop's order, VEESENMAYER, until further notice, was to direct all information for Ribbentrop to RITTER.

On 4 March 1944 RITTER instructed Legation Councillor Vogel to rush-wire all top agencies concerned that Hitler's written authority to VEESENMAYER provided "civilian German agencies of any kind which should be activated in Hungary are only to be established with the consent of the Reich Plenipotentiary, that they were subordinate to him and would operate under his directions"; that the establishment of German civilian agencies in Hungary was not intended and that all proposals pertaining to trips of officials of top Reich agencies with a view of attending to current war efforts in Hungary must be addressed to the Foreign Office, attention Legation Councillor Krieger.

On 19 March 1944 Grote made a memorandum with regard to Operation Margarethe (the seizure of Hungary by German troops), which contains the following language:

"After consultation with Ambassador RITTER, it is superfluous to inform the Rumanian, Croatian, and Slovakian Governments regarding diplomats or submit a request to them."

On 20 March RITTER, by teletype to the Embassy at Budapest, stated that Ribbentrop requested VEESENMAYER to discuss the Kallay affair with Kaltenbrunner, and to arrange to have all exits to the castle watched by the German Security Police with instructions to arrest Kallay if he attempted to leave the castle.

On 23 March 1944 VEESENMAYER reported to Ribbentrop, via RITTER, regarding his instructions to the Security Police to take the necessary steps to arrest Kallay when he left the sanctuary of the Turkish Ministry.

On 25 March 1944 VEESENMAYER reported to Ribbentrop, through RITTER, of a conference with Sztojay and members of the Hungarian Cabinet, stating that, among other things, the Jewish question was being tackled energetically and that he had left them in no doubt that the Reich Government was at present still skeptical and could only be convinced by practical deeds, and the more quickly and energetically and thoroughly reforms were carried out the better was VEESENMAYER'S chance to convince the Reich that the new government was beginning to get ready for an alliance.

VEESENMAYER, on 2 April 1944, reported to Ribbentrop, through RITTER, that Winkelmann's subordination (to VEESENMAYER) had been carried out in every respect thus far and the cooperation was functioning smoothly in a comrade-like manner.

On 3 April 1944 VEESENMAYER reported to Ribbentrop, through RITTER, that after the next air attack on Budapest he would have no scruples against having ten suitable Jews shot for every Hungarian killed, and inquired, in view of Ribbentrop's suggestion to Hitler to offer all Jews as a present to Roosevelt and Churchill, whether this idea was being followed up or

whether he might, after the next attack, start with the retaliatory measures described. This was distributed to STEENGRACHT.

On 5 April 1944 VEESENMAYER reported to Ribbentrop, through RITTER, respecting his conference with Szalasi, head of the Arrow Cross Movement, and a subsequent one with Sztojaj, the puppet head of the Hungarian Cabinet. He said of Szalasi:

"On the whole I was disappointed in Szalasi. I consider him insincere, a clever technician, and not particularly intelligent. How far I can use him for my political purposes depends on further developments."

VEESENMAYER, on 14 April 1944, reported to Ribbentrop, through RITTER, that Sztojaj had given a binding promise that, by the end of April, 40,000 Jews fit to work would be placed at the disposal of the Reich, that a drive had been started by the SD and Hungarian Police, and all Jews between the ages of 38 and 45 hitherto not liable to the labor service would be registered and drafted, thus providing another 50,000 during the month of May, and had promised to increase the number of Jews organized in labor battalions in Hungary to 100,000 or 150,000 at the same time.

On 14 April 1944 VEESENMAYER reported to Ribbentrop, via RITTER, that he had urged Sztojaj to see to it that the Hungarian press and radio offer much stronger opposition to Kollay and his Party.

On 15 April 1944 VEESENMAYER reported that, upon his demand, the Minister President, Sztojaj, had agreed to place at Germany's disposal 50,000 Jews by the end of the month, that he would receive 5,000 forthwith and thereafter 5,000 every three or four days until the number of 50,000 was reached.

On 23 April 1944 VEESENMAYER reported to the Foreign office, and also to RITTER, that 150,000 Jews had already been put

into ghettos and that when the action was completed the number would approximate 300,000; that an additional 250,000 to 300,000 were yet to be dealt with; that negotiations for transportation had been started and that the shipment of 3,000 a day would begin on May 15, and that Auschwitz had been designated as the receiving station.

On 27 April 1944 RITTER, from Salzburg, wired the German Legation in Budapest that the Chief of the Security Police and Security Service stated that the deportation of 50,000 Hungarian Jews, on an open labor assignment to plants in Germany, was out of the question because it would make "illusory" the complete evacuation of Jews from Reich territory and the effected exclusion of Jews from the plants in the Reich, but that there was no objection to bringing Hungarian Jews in to Reich labor camps under the complete control of Himmler; that the SD would issue a separate directive concerning their transportation. RITTER further suggested that in case of further delay in transportation the Embassy at Budapest, in its telegraphic reports, make clear that the German Embassy had done everything possible and necessary to carry out the operations as quickly as possible, and that the delay in deportation was due to the fact that the authorities in charge of deportation and placement of Jews did not make the necessary arrangements.

The term "labor camp under the control of the Reichsfuehrer SS" was a euphemism for the extermination camp.

On 28 April 1944 VEESENMAYER, as per RITTER'S earlier instructions, reported to Ribbentrop through RITTER concerning the successful efforts to remove nineteen of the Hungarian district presidents, stating that he would shortly demand the withdrawal of more; that the successors to those already removed

represented a substantially better category and that increased opposition from Horthy was to be expected.

VEESENMAYER on 30 April reported to RITTER relative to the arrest of Jews and the proposed persecutions of Catholic priests for making anti-German remarks.

On 2 May 1944 VEESENMAYER reported to Ribbentrop, through RITTER, that in accordance with Horthy's wishes SS Obergruppenfuehrer Winkelmann and Gruppenfuehrer Keppler (not the defendant KEPPLER) were presented; that Horthy insisted on the integrity of Kallay and the other ministers and that Hitler's reproaches in 1943 were unjust, but that VEESENMAYER left not a single point unanswered, as the result of which Horthy said it would be better to talk about the weather.

On 5 May 1944 VEESENMAYER reported to the Foreign Office and also to RITTER that in Zone I, in the Carpathian territory, approximately 200,000 Jews had been placed in ten camps and ghettos, and, in Zone II, the work of placing an additional 110,000 Jews in concentration camps and camps had begun and that their evacuation to Germany was to start on 15 May at the rate of 3,000 per day.

On 8 May 1944 VEESENMAYER wired RITTER that Count Bethlen and Dr. Janos-Schilling disapproved of the action against the Jews which was under way in a certain district, and that they had both gone on sick leave and that Bethlen had declared that he would not and did not want to become a mass murderer and would rather resign. VEESENMAYER stated: "I shall demand that Count Bethlen and Dr. Schilling be called back." Subsequently both Count Bethlen and Schilling were removed from office.

On 10 May 1944 VEESENMAYER relayed reports to Ribbentrop, through RITTER, that the purge of Hungarian provincial administration was proceeding satisfactorily, and that 41 of the 62 governors had been dismissed and that 38 new ones had been appointed.

On 26 May 1944 von Thadden of the Foreign Office submitted a report, a copy of which went to RITTER, regarding the situation of the Jews in Hungary. He stated that the estimated number of Jews in Hungary was 900,000 to 1,000,000, 350,000 of whom lived in Budapest, and that, except for those who were concentrated in ghettos, an action was planned to start in Budapest between the middle and end of July to be a "tremendous one-day action"; that according to present information, about one-third of the Jews so far deported were able to work and on arrival in concentration camps would be distributed to the agencies of Sauckel, Organization Todt, etc.

VEESENMAYER made periodic reports of the number of Jews who had been deported to the Reich or to the East, most of which went to RITTER or to Ribbentrop via RITTER.

On 3 July 1944 Ribbentrop instructed VEESENMAYER to tell the Hungarian Government that it was not opportune to take up the various offers from abroad on behalf of the Hungarian Jews. VEESENMAYER on 6 July 1944 reported to Ribbentrop, through RITTER, on the Jewish question in Hungary and the appeals made by the King of Sweden and the Pope on behalf of the Jews; that the Hungarian counter-intelligence had deciphered code messages from the American and British Governments to their ministers at Berne which contained detailed descriptions of what had been happening to Jews from Hungary; that 1,000,000 had already been exterminated and that a majority of the deported Jews were suffering the same fate.

On 6 July 1944 VEESENMAYER reported to Ribbentrop, through RITTER, regarding the conference with the Hungarian Regent, Horthy, in which the latter urgently requested that Hitler speedily close down the Gestapo, in order to restore Hungarian sovereignty, and spoke of the protests he was daily receiving from the Vatican and the King of Sweden, also from Switzerland and the Red Cross and others, concerning the Jewish question, together with the determination to intercede in favor of the Christian Jews; he stated he told the Regent that, as long as Hungary did not totally disassociate herself from the treacherous policies of Kallay, the SS and SD agencies could not be discontinued; that the solution of the Jewish problem could not have been completed without Germany's support; that the Hungarian people increasingly recognized the burdens which the Jews made for Hungary. VEESENMAYER also demanded the removal of the Hungarian Minister Gsatay and his deputy Ruszkicay-Ruediger.

On 20 July 1944 Ribbentrop's office wired VEESENMAYER asking for a report on the British radio charge that "Germany wants to transact business with Jewish blood" and that two Hungarian delegates had appeared in Turkey to submit an offer from the Gestapo and the Hungarian Government that all Hungarian Jews in Hungary would receive exit permits on the condition that British and Americans supply Hungary with a certain amount of medicaments and transportation.

On 22 July VEESENMAYER reported to Ribbentrop, through RITTER, that from some confidential information given him the British report was correct, and was the result of a secret order of Himmler.

On 24 October 1944 VEESENMAYER reported to Ribbentrop, a copy of which was distributed to RITTER, that he had handed a note to the Hungarian Foreign Minister regarding the Jewish situation and the Regent's decision not to permit any Hungarian Jews to be deported to the Reich, and that it was only after 16 October, under the advisory cooperation of German agencies, that new negotiations were started with the aim to find a final solution for the Jewish question in Hungary.

An examination of the alleged incriminating documents with respect to Hungarian Jewish affairs under Count FIVE presents a somewhat puzzling picture. Except in the very early days of VEESENMAYER'S incumbency as Minister and Plenipotentiary, there is nothing to indicate that RITTER took any action, gave any advice or any directives. It appears that, for a number of months, VEESENMAYER almost invariably sent his reports to Ribbentrop through RITTER, or made reports bearing the marginal note, "Also for Herr RITTER." But that is as far as the record goes.

No witness has testified that RITTER took any action whatsoever with respect to these reports. A plausible, and, we are inclined to believe, the truthful explanation of the situation, is given by the defendant. At the time VEESENMAYER was sent to Budapest, there was in contemplation, and thereafter put into execution, a plan for the German armed forces to invade Hungary, intern its armed forces, and secure the country against any attempt on the part of its Regent or Government to conclude an armistice or peace. Insofar as Hungary became an operational area, VEESENMAYER, as Reich Plenipotentiary, had no jurisdiction, under the Fuehrer Decree, to interfere with or

direct military operations. During that stage of proceedings, however, involving as it did the invasion of the lands of an ally, the Foreign Office was deeply interested inasmuch as it intended to use this invasion to force the Horthy Government to appoint a pro-German cabinet. Therefore, the need of close liaison between the German Minister in Budapest, the Foreign Minister, and the Chief of the Wehrmacht, was imperative

RITTER was the liaison officer, and, under the circumstances, it was entirely natural that Ribbentrop should have instructed him to give attention to Hungarian affairs so that the work of the Wehrmacht and the policy of the Foreign Office might be coordinated and work toward the objectives in view. This would account for Ribbentrop's instructions to RITTER, and it also accounts for the fact that, apparently, RITTER ceased to interest himself in the situation after the Wehrmacht withdrew in April 1944. A realization on the part of Ribbentrop that cooperation, thus compelled, was not likely to be wholly satisfactory, and that the Hungarians might attempt to regain sovereign power and pursue their own foreign policy and thus the use of the Wehrmacht might again become necessary, readily explains why the instructions given to VEESENMAYER to report to the Foreign Minister through or via RITTER were not rescinded.

RITTER'S knowledge of the situation, from the receipt of VEESENMAYER'S reports, may be reasonably inferred, but RITTER is not to be convicted because of what he knew. He can only be found guilty for what he did.

The evidence is not sufficient to warrant his conviction under Count Five so far as Hungary is concerned, and he must be and is exonerated and found NOT GUILTY with respect thereto.

STUCKART

STUCKART was born in 1902. He studied at the Universities of Munich and Frankfurt and passed his state law examination in 1930. He joined the Party in 1922 and remained a member until it was dissolved by decree during the life of the Weimar Republic. When arrested by the French in 1923 or 1924, his membership was taken from him. Nevertheless, from 1926 to 1931 he acted as legal officer to the Party organization in Wiesbaden and formally re-entered the Party in August 1930. He occupied a judicial position and from March 1931 until February 1932 was a trial judge in the local and district court at Wiesbaden. Because of continued official difficulties resulting from his work for the Party he resigned and entered the practice of law at Stettin. He took over the Gau law office in Pomerania and was Gau Fuehrer of the NSRB.

In April 1933, shortly after the seizure of power, he was appointed the provisional mayor and state commissioner of Stettin and was elected to the Pomeranian Provincial Assembly on 17 July 1934. Hindenburg appointed him Under-secretary of the Reich Ministry for Science and Education. In 1935 he was appointed by Hitler to the Ministry of the Interior and placed in charge of Division I. At that time, although holding the nominal rank of State Secretary, which he carried over from his appointment in the Ministry of Science and Education, he did not hold the position of State Secretary in the Ministry of the Interior until Himmler succeeded Frick. He was officially appointed State Secretary

in 1943, when Frick left the Ministry and Pfundner, who had been the sole State Secretary, resigned.

Division I was divided into appropriate sections and had jurisdiction over constitutional and organizational law, legislation and administrative law, citizenship and race, new organization in the southeast, the Protectorate of Bohemia and Moravia, new organization in the east, new organization in the west, Reich defense, military defense statute and defense law, and war damage.

Frick appointed him staff leader for the Plenipotentiary of Reich Administration. As Hitler's aggressive campaigns proceeded, the defendant STUCKART became head of the central office for the following countries: Austria, the Sudetenland, Bohemia and Moravia, Alsace-Lorraine, Norway, the Southeastern territories, - Yugoslavia and Greece, and Bialystok. The function of these central offices was to coordinate and implement all measures deemed necessary to complete the details of their incorporation into the Reich, or to the needs and aims of Germany therein.

On 7 December 1939, Goering appointed STUCKART, the defendant KOERNER, and various other state secretaries as members of the General Council for the Four Year Plan.

As its name implies, the Ministry of the Interior had jurisdiction over practically all matters relating to public order and security of the Reich and in all areas which were attempted to be incorporated therein, and in the Occupied Territories, as well as practically all other legislation (except in very limited fields) which affected the daily life of the people.

In theory, at least, all police affairs were a part of and subordinate to the Ministry. Until he himself became Minister of the Interior, Himmler, as Chief of Police, Ordinary, Secret and Special, was the Minister's subordinate, but in practice he became almost completely independent. When Frick, in 1943, left the Ministry, Himmler succeeded him and thus made himself supreme in all matters for which the Ministry was competent. Throughout the Nazi regime, few of the measures, administrative or executive, and almost none of the laws or regulations, which formed the foundations of Nazi persecution, were undertaken without the consent, advice, and affirmative action of this Ministry. The so-called Germanization program was one in which the Ministry of Interior was deeply involved. We shall not repeat what has already been said regarding it. That this scheme of mass deportation, evacuation and forced settlement was a flagrant breach of international law and a crime against humanity has been established beyond question of doubt. Our only task is to determine what part, if any, STUCKART played therein, and the degree of criminal responsibility attaching to him.

On 8 December 1939, the Ministry of Interior issued a decree addressed to the Reich Governors of Danzig, Posen, Koenigsberg, and Breslau, giving detailed instructions concerning the authority of Himmler as Commissioner for the Strengthening of Germanhood, stating that his appointment made no changes in the competency of the intermediate and lower authorities, except that they were to fulfill Himmler's directives. This decree merely implemented and clarified the Fuehrer Decree creating the Office for Germanization,

in order that the governors and other lower echelons might clearly understand their duties and responsibilities. It was prepared in STUCKART'S Department I East.

On 12 November 1942, Himmler issued a general order designating the Zamosc area in occupied Poland as a settlement area. A copy of this was sent to STUCKART'S subordinate, Ministerialrat Duckart.

Exhibits 1329 to 1333 consist of correspondence in the spring of 1944 concerning the return of Germans who had been settled in the Government General to the Reich. The prosecution contends that this was a part of the Germanization and resettlement program, but we do not so view it. By that time the rapid advance of the Russian armies necessitated abandoning that area, and we think that STUCKART'S recommendations and suggestions as to the place where the refugees could be accommodated, namely, East and West Prussia, were brought about because of the necessity of providing some place for these people to live either permanently or until such time as they could return to their domicile in the Government General. That the majority of the people so concerned had been resettled in the Government General contrary to international law and that the circumstances of their settlement and evacuation of Polish nationals was a crime against humanity we have no doubt, but the instances in question do not constitute a part of the crime.

On 17 August 1942, STUCKART attended a conference at the Fuehrer headquarters at which the defendant BERGER, Lorenz, Preutzmann and Greifelt of the SS were present. The mistreatment of 45,000 ethnic Germans, who had been

settled in the Ukraine, and the suitability of the Latvians and Lithuanians, was also discussed. It was then determined that the Lettgalls must be evacuated from Latvia, that the Lithuanians could not be considered for Germanization because of alleged mental slowness and their strain of Slavic blood. It was said that no difficulty should be encountered in White Ruthenia, as the population there was not intellectual and had no political ambitions; that the Crimea should be resettled at strong points so that towns of 15,000 to 20,000 inhabitants would grow up there and around them a completely German agricultural population resettled. It was also suggested that it must be kept in mind that that part of a nation which was valuable from a racial viewpoint could not be won over if they have been previously systematically robbed, as had occurred in Estonia, where the so-called German business managers were receiving 1500 marks or more a month, while the previous Estonian owners, who looked after the business, received a salary of 300 marks, and that it was disastrous if slogans like the following should be coined:

"Stealing is called mania with the little people, kleptomania with the distinguished people, and Germania with the Germans."

It is evident that those present at that meeting were adequately informed of the nature of the Germanization and resettlement program, if they were not theretofore intimately acquainted with it, but it is also clear that one of the purposes of the meeting was to cure abuses suffered by German resettlers, such as had occurred in the Ukraine. Not only were strong criticisms expressed but plans were

made to correct conditions. The conference discloses indignation concerning the strong criticism of the administration in the Ukraine, so far as the resettlements were concerned, but did not concern itself with respect to the wrongs and persecutions which had been imposed on the native population.

On 26 November 1942, portions of Serbia were selected for resettlement, and on 8 December 1942, measures for the resettlement of Bosnian ethnic Germans were determined upon. Copies of these communications were sent to STUCKART'S subordinate, Duckart.

On 29 March 1939, STUCKART'S Division I prepared, and Pfundner, State Secretary, signed, a directive to the Regional Governors and Reich Commissioners for the Saar, Sudetenland and Austria, and to the Chief of the Civil Administration in the Protectorate, giving definitions of the terms, "members of the German people," and "ethnic Germans," and how and in what manner members of these groups became eligible for Reich citizenship and which were to be excluded from such classification.

On 30 May 1942, STUCKART, deputizing for Frick, with Bormann of the Party Chancellory, and Himmler, signed a second decree on the German people's lists and German citizenship in the Incorporated Eastern Territories. Among other things, it excluded Jews and gypsies from the status of "protectees."

In this connection STUCKART insists that his original draft provided that Jews should have the status of protectees, and there is evidence substantiating this statement. We have, however, carefully examined the documents, and we

do not believe that their rights or status as protectees were intended to be greater than if not given that appellation.

On 30 May 1942, STUCKART also signed, as a deputy, a decree prepared at Himmler's request, establishing a supreme court for ethnic classifications in the Eastern Territories.

STUCKART was informed in February 1942 of directions regarding the classification and subsequent treatment of certain classes of people included in the ethnic German list or register. They ordered that those who might be placed in Class IV should be deported into the Reich and resettled there, or, if they were asocial, of inferior heredity or of bad political record, they were turned over to the police to be imprisoned in concentration camps; that where a wife also had a bad political record she was to receive the same treatment, and the children, in that event, taken from her and resettled in the Reich; that persons who had previously practiced professions involving leadership were to be "re-educated" for other professions, not involving leadership; that the children were to be compelled to join the Hitler Youth, but not allowed to attend local secondary schools or universities unless they had been attending a German boarding school for at least three years, and had been designated by that school for university attendance; that the property of those who were not sent to the concentration camps was to remain in custody of the SS organization, and they were to be permitted to receive such installments of their own property as the SS determined in order that they might support themselves and pay necessary expenses; that those who were to

be resettled in the Reich were obliged to immediately join an organization associated with the Party, and the children to join the Hitler Youth movement; they were forbidden to change their domicile during the first five years, to marry, or to start university studies without police consent. The Higher SS and Police Leaders were enjoined to take particular care that the re-Germanization of the children was not adversely influenced by their parents, and, if necessary, to separate them from their people and place them with families of proved political and ideological opinion.

In July 1943, Ehrensberger of STUCKART'S division issued orders, addressed to the Reich Governors in the East and the heads of the Central Offices for German Registration in East Prussia and Upper Silesia and to many regional offices, with copies to the various supreme Reich authorities, regarding the classification of step, foster, and illegitimate children in the Eastern Territories. Among other things it described many circumstances under which children were to be taken away from their parents and sent away to the Reich or put in German families or treated as Polish orphans.

On 22 May 1944, STUCKART'S division prepared a decree addressed to the citizenship authorities in the Reich territory, directing that care be taken that ethnic Germans and Germanized persons did not avoid registration and recognition of their German citizenship in order to avoid military service; that should ethnic Germans and foreign nationals, regarded as completely Germanized, refuse to submit an application for recognition of this German citizenship after having been instructed so to do, they should be

reported to the SD, which would then take action. Under the Himmler Decree of 16 February 1942, it stated that the RSHA would apply this decree to ethnic Germans residing outside the Incorporated Eastern Territories who refused to make this application. This simply meant that such persons would be subjected to police measures, including the concentration camp.

It is to be remembered that this applied not only to ethnic Germans and Germanized foreigners who came voluntarily into the Reich, but included those who had been brought there involuntarily and upon whom German citizenship had been conferred without their willingness or consent. While conscription laws may be applied to all those who voluntarily take up their domicile in a country, it can hardly be said that the citizens of other nations who have, against their will and without expressing any desire to move, been deported, can then be made subject either to involuntary citizenship or to conscription laws.

A decree prepared by Section I of STUCKART'S division on 13 March 1941 became the basis of various Himmler orders and directives relating to the Germanization lists and arbitrarily conferred citizenship on inhabitants of various occupied territories.

On 4 May 1942 STUCKART signed two orders, with copies to the highest Reich authorities, the Party Chancellory, etc., giving directions to the various naturalization agencies as to the means, methods, and procedure to be followed and extending the measures to former Polish or Danzig citizens.

On 15 January 1945 STUCKART wrote the OKW forwarding

certain changes in definitions of those who were subject to Germanization, distinguishing between "members of the German people," "German nationals," "German nationals whose nationality may be rejected," "Germans abroad," "ethnic Germans," etc.

As early as 11 February 1942 STUCKART informed the defendant WEIZSAECKER about the recruiting of male Alsations for service in the army brought about by the application of German law. WEIZSAECKER in reply told STUCKART that although in principle he could not relinquish his point of view, he was prepared to waive his protest as "our actions in Alsace-Lorraine had far surpassed and overshadowed the incident referred to here."

On 5 August 1942 STUCKART wrote Himmler enclosing a draft of a decree conferring citizenship in Alsace-Lorraine and a draft of the implementing regulations. He plainly states that Hitler, a short time before, had given orders for the introduction of compulsory military service there. STUCKART not only made no objection but gave reasons for the approval of these measures. There is no question whatsoever that a large number of these conscriptees not only had no desire to serve in the German army, but were particularly averse to the compulsory change in their nationality.

On 15 April 1944 Himmler issued a directive, prepared by STUCKART'S Section I, regarding the treatment of mixed marriages between Poles and Germans, which provided, among other things, that if, upon examination, it was found that both spouses were unsuitable from a political, biological,

ideological or social point of view, they should be placed in Classes III and IV, and if the German partner was already in that class, his name would be stricken from the register and, if necessary, his citizenship revoked and the family broken up.

On 5 August 1944 the RSHA issued a directive stating that under the decree of 5 April 1943, which was prepared by STUCKART'S Section I, a male Pole could not marry before reaching the age of 28 years or a female before 25 years. The purpose of this regulation was to reduce the birth rate among the Poles.

STUCKART'S Anti-Semitism. The evidence clearly establishes that STUCKART held strong anti-Semitic views, and that while in office, both before and during the war, he used his official position to carry them out.

STUCKART asserts that his position in the Ministry of Interior was minor during Frick's tenure and he was but a glorified clerk under Himmler. We do not believe this to be the fact. He was too often chosen by Frick to act in capacities requiring both knowledge, ability, experience and strength of character. From the record itself and from the defendant's own demeanor on the stand it is quite apparent that he possessed these qualifications. His advice was asked and given. Many of the original decrees and most of the implementing decrees relating to anti-Jewish measures were drafted by him, or in his department under his supervision. When Hitler decided to enact the Nurnberg Laws, which was the

first step in the long continued campaign of persecution of Jews, STUCKART was called to aid in drafting them and did so.

The following laws and decrees were prepared by him or by his department under his direction, and some were even signed or initialed by him:

The Reich Citizenship Law of 15 September 1935;

The First Decree supplementary thereto on 14 November 1935;

The Ninth Supplementary Decree of 5 May 1939;

The Tenth Supplementary Decree of 4 July 1939;

The Eleventh Supplementary Decree of 25 November 1941;

The Law for the Protection of German Blood and German Honor on 15 September 1935;

The First Decree supplementing that law on 14 November 1935;

The Second Supplementary Decree of 31 May 1941;

The Third Supplementary Decree of 5 July 1941;

The law of 5 January 1938, concerning family and Christian names;

The Memorandum of 18 August 1938 requiring Jews to use a Jewish first name;

The Second Decree of 17 August 1938, regarding change in name or Christian names;

The Decree of 20 July 1941, denying war damage to Jews; and

The Second Decree supplementing the memorandum concerning the revocation of nationality and deprivation of German nationality.

In addition, the Minister of the Interior signed or co-signed the following decrees:

The Third, Fifth, and Sixth Supplementary Decrees to the Reich Citizenship Law, dated 14 June 1938, 27 September 1938, and 31 October 1938, respectively

The Law of 28 March 1938, and

The First and Second Supplementary Decrees concerning

- the status of Jewish religious congregations;
- The Decree and Order of 12 November 1938, eliminating Jews from German economic life;
- The Decree of 14 November 1940, relating to the examination and checking of businesses from which Jews had been purged;
- The Fourth Decree of 27 December 1940, concerning the utilization of Jewish property;
- The Decree of 26 April 1938, concerning the registration of Jewish property;
- The Decree of 14 December 1938, for the elimination of Jews from German commercial life;
- The Second Decree of 18 January 1940, concerning the use of Jewish property;
- The Fifth Decree of 25 April 1941, relating to the same subject;
- The police regulations of 1 September 1941, concerning the marking of Jews;
- The Sixth Decree of 22 August 1942, concerning the utilization of Jewish property; and
- The Decrees of 3 December 1938, 16 June 1939, and 5 December 1939, concerning this same matter.

With respect to the decrees last named, it should be said that most of them were prepared by another Ministry, because the subject matter was primarily within the jurisdiction of that Ministry, and submitted to the Minister of the Interior for examination, and, if approved, for co-signature. These drafts went to STUCKART'S division for examination and report to the Minister.

The following decrees were prepared by the Ministry of the Interior but not in STUCKART'S department, but he became one of the joint co-signers as chief of the "participating department": the Second Supplement to the Reich Citizenship Law of 2 December 1935; the Fourth Supplement of 25 July 1938; the Seventh Supplement of

5 December 1938, and the Eighth, of January 1939.

All the decrees in these three classes were identified by the witness Bernhard Loesner, who was one of STUCKART'S referents, and in charge of the section regarding racial and Jewish matters.

He states that, on STUCKART'S appointment as Chief of Division I, a change took place in the ministry; that STUCKART was active, able and ambitious, and seized hold of the reins and to an increasing extent became the real Minister of the Interior, due to Frick's weakness and lack of interest in his work, and the fact that Pfundner, who was not a convinced National Socialist, had no Party backing and was not particularly fitted for the position.

Pfundner vanished when Frick resigned and Himmler became Minister of the Interior. Loesner states that at least up to the time when STUCKART joined the SS, which was on 13 September 1936, he fought a valiant fight on behalf of the Jewish Mischlings, but thereafter it became more difficult for the witness to approach him on this subject, and that in the year 1941 the final solution aimed at Jewish annihilation was effected by the Party and that by the end of 1941 no doubt could exist on the part of anyone who had to deal with these problems, that on 21 December 1941 he demanded and obtained an appointment with STUCKART, and reported to him the description given to him by Dr. Feldscher, of the fate of the German Jews who had been deported to Riga; how they had been compelled to dig mass graves, to

strip themselves of their clothes, lie down naked in the grave where they were shot by SS men, and then the next group was compelled to disrobe, descend, and lie down on the bodies of those first murdered to meet the same fate; that he told STUCKART he could no longer act as referent on Jewish matters, and asked to be released; that the defendant told him, "Herr Loesner, do you not know that all this takes place by the highest order?" to which Loesner replied, "I have a judge within myself who tells me what to do," whereupon STUCKART said that if Loesner could no longer be reconciled to his own conscience he would consider how he was to be further employed, and the witness thereupon requested to be transferred from the Ministry to the Reich Administrative Court; that his request was not complied with for many months and the relations between himself and STUCKART became more or less strained, although he had the impression that up to the time he left the Ministry in 1943 STUCKART did not reject Loesner's views about half-Jews and mixed marriages.

With regard to Germanization, the witness reports a conversation with STUCKART in 1938 regarding the German naturalization of Transylvanian physicians; that he expressed misgivings about this program, but STUCKART replied brusquely, "It doesn't matter. In the event of war we cannot have enough physicians and technicians." Loesner gave this affidavit on the 24th of February, 1948. He himself became a victim of Nazi persecution and was finally confined in a concentration camp and not released until after the collapse. He was

called to the stand and testified he had re-examined his affidavit and with the exception of one or two minor corrections, which related only to the laws and decrees mentioned in the appendices to Exhibit 2500, confirmed it and its contents.

On cross-examination, without repudiating any part of the affidavit he had just confirmed, he was quite prolific in his efforts, both on behalf of STUCKART and LAMMERS, and testified in a manner inconsistent with the conversations mentioned in his affidavit relating to the treatment of Jews.

It is quite apparent, as has happened on a number of other occasions in this case, that between the time the affidavit had been made and the witness testified, he had been subjected to influence.

This Tribunal is not unaware of the fact that there has grown up in Germany a campaign of propaganda to discourage and dissuade Germans from appearing to testify against fellow Germans who have been charged with crimes against international law. That this campaign has been successful is equally clear and it has made more difficult the task of ascertaining the facts. We do not suggest, however, that in this instance either counsel or defendant were other than beneficiaries of this campaign. Nevertheless, the statements contained in Loesner's affidavit are obviously spontaneous and relate to matters which could not have been suggested to him by the interrogator. We are here not to blindly accept testimony but to weigh it. We believe, and so hold, that the statements made by the affiant Loesner in his affidavit, and confirmed by him under oath before this Tribunal, are substantially true.

In justice to the defendant it should be said that we are convinced that for a long time he courageously fought

the measures against the Mischlings and attempted to intervene in favor of mixed marriages.

The draft of the letter to Himmler prepared in September 1942 evidences his inner convictions even though it is not entirely clear that it was in fact sent. It is true that this letter again reiterates the suggestion made by STUCKART in the Wannsee Conference for sterilization of Mischlings, but there the story is not clear whether it was seriously meant or whether it was thrown out as a solution when STUCKART knew that it was a program which could not be carried out because of a shortage of surgeons and beds for the thousands who would be subjected to it, and that STUCKART felt that by making this suggestion he would delay and avoid more stringent measures and the plan would finally be dropped. Not being satisfied as to the fact, we must and do give STUCKART the benefit of the doubt. However, one thing is clear, that no one would suggest sterilization as a procedure of amelioration unless he was wholly convinced that deportation meant a worse fate, namely, death.

The extermination of the Jews was no secret in the Ministry of the Interior. The witness Globke, one of STUCKART'S Ministerial Counsellors, whom he called as a witness, testified:

"A I knew that the Jews were being killed in large numbers, and I was always of the opinion that there were Jews who were still living in Germany or in Theresienstadt or elsewhere in a sort of Ghetto.

(By Defense Counsel)

"Q You thought that there were executions but no systematic extermination?

"A No, I did not want to say that. I am of the opinion, and I knew that at the time, that the extermination of the Jews was carried on systematically, but I did not know that it was supposed to apply to all Jews."

STUCKART left the SA to become a member of the SS because he thought it more advantageous to belong to the SS. His last rank in that organization was Obergruppenfuehrer and the witness Globke had the impression that STUCKART liked to show himself in public in his SS uniform. He also testified that before Himmler became Minister of the Interior he repeatedly approached STUCKART in order to get his suggestions adopted by that Ministry, but that after Himmler became Minister, his relationship with STUCKART was not so close.

We do not doubt that this is true. The fact remains, however, that upon Himmler's appointment as Minister, he immediately promoted STUCKART to the position of State Secretary, and except as to divisions dealing with public health and probably those dealing with sports, STUCKART was the competent state secretary in charge of the operations of the Ministry. Knowing what we do about Himmler and his character, it is quite unlikely that he would have retained STUCKART unless he felt that the latter would do his bidding and carry out his policy. This we think STUCKART did and strangled his own conscience.

On 20 April 1940, STUCKART wrote to the Ministerial Council for Reich Defense, for the attention of the defendant LAMMERS, concerning a decree for the treatment of Jews under German labor laws, stating that he felt that it was not permissible to pay Jews for working hours lost on New Year's Day, Easter Sunday, Whit Monday, or Christmas Day, notwithstanding the fact that German labor was so entitled under the law, and recommended that they be excluded from these privileges.

On 6 September 1939 STUCKART transmitted to the Ministerial Council for Reich Defense a proposed decree which made sabotage of the German war effort applicable to the inhabitants of Bohemia and Moravia irrespective of their nationality.

On 15 July 1942 STUCKART, with Schlegelberger and Feitel, signed an order subjecting non-Germans charged with having attacked a member of the SS or German police to the jurisdiction of combined SS and Police Courts.

This was for the purpose of depriving the accused of trial by the ordinary courts of the state where the crime was committed. Inasmuch as the members of these organizations were present in Bohemia and Moravia, in obvious violation of international law, and as a part of the aggression against Czechoslovakia, there was no legal basis for such legislation, and the scant shrift which SS and Police Courts gave to any non-German before them needs no elaboration.

In April, 1944, STUCKART'S Department I wrote LAMMERS regarding the then proposed Eleventh Ordinance Supplementing the Reich Citizenship Law, regarding the sterilization of Jews. It not only shows an adherence to the measures but argues the propriety and wisdom thereof, and it speaks with approval of provisions by which Jews could be declared stateless, even though guilty of no offense.

On 7 July 1941, STUCKART'S Division I East prepared a communication to the defendant LAMMERS as Chief of the Reich
/Chancellery, as well as to the highest Reich agencies

concerning the draft of the Eleventh Ordinance Supplementing the Reich Citizenship Law which contains the following illuminating language:

"The legal effects of the draft are tied to the permanent residence of the Jew This means that for the establishment of the permanent residence only objective points of view are of importance; the free will of the person concerned is immaterial in this connection. Therefore, all the Jews evacuated into the Government General come under this regulation."
(Emphasis furnished)

Thus not only Jews who lived abroad or should thereafter emigrate of their own choice, but the hapless ones who were deported, not only lost their citizenship and became stateless, but suffered confiscation of property. A more heartless provision can hardly be imagined.

On the same date, in connection with the same communication, STUCKART wrote to LAMMERS stating that he did not contemplate including in the decree the provision contained in the previous draft that the permanent place of residence in the Government General is equal to a permanent place of residence abroad, because it seemed inappropriate to designate the Government General in a decree as a foreign country.

On 2 June 1942, STUCKART wrote the Supreme Reich Agencies and others regarding the payment of pensions to Jews who were deported to Lodz, stating that the Eleventh Decree did not apply to them because Lodz was still a part of Germany, but that because of the confiscation of their property the payments of pensions would be suspended. STUCKART had attended the Wannsee Conference on 20 January, 1942, where the program of deportation and extermination was made clearly apparent.

On 29 November, 1941, when Heydrich sent out invitations to attend the luncheon where the final solution was to be discussed, one of which went to the defendant STUCKART, and the other to Kritzinger of the defendant LAMMERS' Reich Chancellory, he said:

"Concerning the extraordinary importance which has to be conceded to these questions and the interest of the achievement of the same viewpoint by the central agencies concerned with the remaining work connected with this final solution, I suggest to make these problems the subject of a combined conversation, especially since Jews are being evacuated in continuous transports from the Reich territory, including the Protectorate, Bohemia and Moravia, to the East ever since 15 October, 1941."

On 21 September, 1939, Heydrich wrote to the Chiefs of the Einsatzgruppen, copies of which went to STUCKART, in which communication he said:

"Subject: Jewish question in the occupied territory.

"With reference to today's conference in Berlin I am once more stressing the entire measures (ergo the final aim) are to be strictly secret. It has to be discriminated between (1) the final aim (which will take some time) and (2) the sections of fulfillment of this final aim which will be achieved in short term."

In 1938 STUCKART published a monograph entitled, "The Care for Race and Heredity in the Legislation of the Reich" in which he said:

"The aim of racial legislation has been achieved and racial legislation can, therefore, be regarded as essentially complete. It leads, as mentioned above, . . . to a preliminary solution of the Jewish problem and at the same time helps to prepare a definite solution. Many of its decisions will lose their importance as the final solution of the Jewish problem in Germany is approached."

The prosecution insists that in the use of the term "final solution" STUCKART meant the extermination of the Jews.

The first edition of this monograph was published

in 1938, as we have ascertained after conference with counsel for the prosecution and the defense. At the time it was written the plan was not extermination, but emigration or expulsion from Germany. It was not until at least two years later that the plan to murder the Jews en masse was adopted. While this monograph, therefore, does not refer to mass exterminations, it does throw light upon STUCKART'S attitude toward anti-Semitism. His present excuse is that he could not publish his actual views. We do not, however, believe that he had any feeling of tenderness for Jews, or of repulsion against anti-Jewish measures, and that the efforts which he made on behalf of the Mischlings were due largely because he accurately foresaw the psychological effect in Germany which would arise from the breaking up of marriages and the condemnation of those who had at least 50 per cent of German blood in their veins.

We are convinced that STUCKART was fully aware of the fate which awaited Jews deported to the East and there can be no doubt that the legislation and regulations, which he drafted and approved, were a component part of the program which was intended to and did result in the almost total extermination of Jews. If the commanders of the death camps who blindly followed orders to murder the unfortunate inmates, if those who implemented or carried out the orders for the deportation of Jews to the East are properly tried and convicted and punished - and of that we have no question whatsoever, - then those who, in the comparative quiet and peace of ministerial departments, aided the campaign by drafting the necessary decrees, regulations and directives for its execution are likewise guilty.

In all of these matters the skill, learning and legal knowledge of STUCKART was placed at the disposal of those who originated the plan of extermination. The fact that his conscience may have been troubled and the fact that he saw not only the wrong but the folly of the proposals with respect to Mischlings, cannot excuse or condone what he did.

We find the defendant STUCKART GUILTY under Count Five.

VEESENMAYER

In discussing the charges against RITTER under Count Five, we have averted to much testimony which is applicable to the defendant VEESENMAYER, and except where necessary we will not again refer to it. VEESENMAYER was a protégé of the defendant KEPPLER and was employed in what was then known as the KEPPLER Office. He was an enthusiastic and convinced Nazi. He was detailed to accompany KEPPLER when the latter was sent to Austria shortly before the Anschluss, and later was given special assignments to Danzig immediately before the Polish invasion, and to Croatia shortly before the invasion of Croatia, and again when fighting broke out there, and in 1943, was sent twice to Hungary to conduct secret investigations regarding the political situation there. He was also sent to Slovakia in connection with the anti-Jewish campaign in that area. He was selected for these and his final mission as Minister and Plenipotentiary to Hungary because of his ability, courage, and devotion to the Nazi program.

Hungary. By the Fuehrer Decree of 19 March 1944, the defendant VEESENMAYER was appointed Minister and Plenipotentiary of the Reich to Hungary, then an ally of Germany. By it he was made responsible for all political developments in Hungary, and was to receive directives through Ribbentrop regarding same. He was given the special task of paving the way for the formation of a new national government, which would carry out the will of Hitler and obligations imposed

by the Three-Power Alliance; he was charged to keep the Nazi government advised of all important matters and represent its interests -- to insure that the entire administration of the country, as long as German troops remained there, was managed by the new government under his guidance in accordance with German directives. A Higher SS Leader was to be appointed to carry out duties in connection with the Jewish problem, and to act under VEESENMAYER'S political directives. The German troops in Hungary were to remain under Army Command and VEESENMAYER was ordered to meet their requirements. The Army was under obligation to support VEESENMAYER in his political and administrative duties.

Paragraph 4 of the Hitler Decree contains the following language: "German civilian offices of no matter what nature ... may be established only with the consent of the Reich Plenipotentiary and they will be subordinate to him and will act in accordance with his directives." That Ribbentrop placed great importance on this paragraph is clear from the fact that he ordered RITTER to inform all top Reich agencies of it.

The defendant strenuously contends that this clause became a dead letter. The facts concerning it will be discussed in consideration of the defense. VEESENMAYER'S instructions, given him by RITTER were to cause himself to be presented immediately to the Hungarian Regent, Horthy, inform the latter of Hitler's order to form a new government, which was to include Imredy, and in addition VEESENMAYER was to nominate other members, in whom he had confidence.

On the following day, 20 March 1944, RITTER wired him to confer with Kaltenbrunner and arrange that all exits of the castle be watched by the German Secret Police, who were to arrest the former Minister President, Kallay, if he attempted to leave the castle.

Among the reasons which induced Hitler to thus shear Hungary of most of its powers as a sovereign nation was the fact that its policies towards the Jews were unsatisfactory. It had become the great refuge of European Jews, who fled from territories which were occupied by the Germans and its satellite countries, and while, as we have heretofore stated, there was a strong current of anti-Semitism there, and numerous restrictive laws had been enacted, nevertheless, in comparison with what they suffered elsewhere, the Jew's fate in Hungary was at least bearable.

Pressure was brought on Hungary to change its Jewish policy at least as early as August, 1942, when Luther discussed the matter with the Hungarian Minister to Berlin, and on 6 October 1942 again brought the matter up and insisted that all Hungarian Jews in occupied territories must be evacuated, urging Hungary to deprive Jews of their citizenship, so that the deportation measures could be carried out against them, offered to permit Hungary to participate as a trustee in the legal measures pertaining to their properties which were confiscated. He further urged that Hungary take the initiative to solve the Jewish problem within its own borders, by adopting measures to eliminate all Jews from the cultural and economic life, marking them, and evacuating them to the East.

The Hungarian Minister, . while purporting to show understanding of the German position, insisted that Hungarian Jews in territories under German control be treated according to the principle of the most favored group, and inquired as to whether other countries such as Roumania and Italy had agreed to the program with respect to their own Jewish nationals. He further stated that the Prime Minister Kallay was particularly interested in knowing whether a continued existence in the East would be made possible for the Jews after their evacuation; -- that there were many rumors in this connection which disturbed Kallay somewhat, and the latter did not want to be accused of having exposed Hungarian Jews to misery or worse after evacuation. Luther assured him that the Hungarian Jews would be first used in the East for road construction and later settled in a Jewish reserve.

The defendant WEIZSAECKER on 20 October 1942 also discussed the matter with the Hungarian Minister and stated that "the way Hungary treated the Jewish problem has, so far, not been in accordance with our principles." This interview was brought about by the then existing Tripartite Pact and the agreement between Germany and Hungary, and on the same day WEIZSAECKER requested that on his return from Budapest the Hungarian Minister give him a report of what the people there thought of the German proposals concerning the treatment of Jews.

On 16 January 1943 Luther conferred with the Hungarian Minister and expressed his surprise that the Hungarian Office for Jewish Affairs had been dissolved effective

1 January 1943, and reminded him that Hitler was determined, under all circumstances, to remove all Jews from Europe and that Germany was much concerned that Hungary, a friendly country, should shelter approximately 1,000,000 Jews, and said that Germany could not, in the long run, look upon this danger without taking action; that Sztojay's excuses were so unconvincing that one could readily see that he did not himself believe them. Luther, in his report, expressed the hope that "our constant urging" would finally be successful.

The situation did not mend and VEESENMAYER was sent to Hungary to make an investigation, and on 30 April 1943 he rendered a long report to Ribbentrop, a copy of which, on 19 May, was received and initialed by Himmler. In this report VEESENMAYER asserted that the failure, during the winter, of the Hungarian troops in the East was the necessary consequence of the attitude of the Hungarian State and its people; that the key to the defeatist attitude of the Hungarian authoritative circles was to be found primarily in Hungarian Jewry, which amounted to almost 10% of the entire population, and 35% of that in Budapest; that the Jewry's influence was much higher than the numerical percentage indicated; he confirmed that Hungary had made itself a refuge for European Jews in the hope that the benevolent treatment extended them would constitute a guarantee of protection of Hungary's interests at the end of the war, and that this explained Minister President Kalley's attitude in expressing his intention to correct the injustices inflicted on the Jews by his predecessor.

VEESENMAYER was severely critical of Horthy, stating that the only point he had in common with the Reich was his hatred of Bolshevism. He pictured Szalasi and his movement as weak and ineffective; that the Archduke Albrecht could only be valued insofar as he could be utilized, either used or abused; that Imredy and Bardossy were the only men who could be seriously considered for a nationalist government, but that they could do so only if Germany gave them the necessary backing and assistance; that the opposition to the then government had not been able to create in the rising generation any permanent resonance which would make possible an effective fight against the Jews and the system which was created by them; that there was nothing in Hungary comparable with the Ustachi of Croatia; that the situation was such that it would present a greater danger for the Axis the longer the war existed; that the Hungarian police and the gendarmerie were most effective, but apparently devoted to Horthy and the existing government, that its undermining was practically impossible; that it must be recognized that one was dealing with an opponent who was very cunning and knew how to wield his authority in a masterful way; that Kallay was pro-Jewish and, in addition, held an antagonistic attitude towards Germany on other questions, including the Reich drafting of Ethnic Germans into the SS; that any change in the then Hungarian Government could only be successful if Bethlen, Kallay, and the Jews, Chering and Goldberger, not only disappeared from positions of authority, but vanished completely; that

after Horthy's visit to Fuehrer Headquarters, while the Jewish problem had been discussed energetically, nevertheless it had not moved the Regent to permit the necessary measures; that Kallay's tenure in office was uncertain; that after the first shock the Hungarian regime was planning an appropriate substitute for Kallay, who would insure continuous maintenance of the old practice; that the fear existed that German troops would be stationed in Hungary and would demand severe measures against the Jews and that everything must be done to oppose this; that the presence of an SS division in Budapest would mean the beginning of the end of the present Hungarian regime.

In conclusion VEESSENMAYER recommended a thorough shake-up in the government, through, but not without or even against the person of the Regent; that the top clique be removed and supplanted by persons capable of exerting a permanent and beneficial influence upon the Regent from the viewpoint of the Axis, and that, in case Imredy or Bardossy were contemplated for leading positions, it must be recognized that these men represented a red flag to Horthy, and appropriate preparatory measures must be taken or other considerable pressure on the part of the Reich would be necessary. Finally, that the initiative, execution and safeguarding be directed by persistent influence from the outside, in other words, from the Reich.

On 10 December 1943, after a second trip to Hungary, VEESSENMAYER made another report of some 28 pages.

"These are the deep-rooted links, and at the same time the reason why Hungary is not an anti-Semite. The Jews know this very well. It is for this reason that this race, with its characteristic instinct succeeded in gaining refuge in Europe. Undermining of the ancient Danube monarchy was, to my mind, not accomplished by the other nationalities such as Czechs, Poles, Croates, etc., but rather the internally infected Hungarians whom the Jew rules predominantly today, not only in the economic, but also in the political field. The Jew is enemy No. 1. These one and one-half million Jews amount to so many saboteurs of the Reich and an identical, if not double, number of Hungarians are followers of the Jews, their auxiliaries and their camouflage, in order to accomplish the comprehensive plot of sabotage and espionage.

"For the policy of the Reich, a rewarding but pressing task presents itself in the tackling and the strengthening out of this problem. This policy holds all the more good since not a military but almost exclusively a political problem is to be dealt with. If fear and cowardice govern the opponent, plain talk and tough demands are sufficient, supported by the hint of German divisions and fighter squads.

"To sum up, even a Hungarian government represented by the relatively top men of the opposition today can be viewed as a temporary solution, and a realistic expediency. It will only gain full value for the Reich if besides, or rather in addition, a German custodian will be placed in an appropriate manner.

"If these men are honest and violent opponents of Bolshevism, they can be lined up with a 'liberated' Reichsverweser and might amount to an important relief for the Reich by fighting Bolshevism and Jewry.

"Of all the personalities of the national opposition, former Minister President Imredy appears to me still the fittest figure. He is mentally most alert, his personality and character are well integrated; he disposes of a certain reputation and his followers in the country are also well organized.

"For reasons of transitional expediency parts of the present Government Party could be enlisted either for cooperation or for liquidation of their own past.

"The objection of the Reichsverweser designating Imredy as insupportable is correct. This objection results from Imredy's efforts in his previous capacity as Minister President, especially in the field of the Jewish question and the land reform.

"I am definitely convinced that the Reichsverweser will accept any Minister President without ado if the Fuehrer demands or even desires it, just to save himself and his dynasty and to live to see his dream fulfilled to become a duke.

"A keen tackling of the Jewish problems appears for various reasons to be the order of the hour. Its solution is the prerequisite for integrating Hungary into the fight of the Reich for defense and existence."

The demands of space forbid further quotation from this illuminating document and its conclusions, and we content ourselves with the foregoing and the following excerpts from his proposals and suggestions:

"Prompt action is imperative.... The German press should pursue a systematic policy of hammering on the morale of the opponent, including distinguishing between system of the government and the people ... current and ever-growing criticism with regard to the Jewish question ... talks between the Hungarian diplomats and press men from the Foreign Office ... concentration of troop movements on various points of the German-Hungarian frontier ... invitation to Horthy to attend a Fuehrer conference or a visit to Budapest by leading German personalities such as Goering or Himmler; applying to Horthy the method of the kid glove and the iron fist ... outright demand for the removal of the present government without giving detailed reasons ... appointment of a new Prime Minister ... reorganization of the German legation at Budapest ... eventual delegation of a political representative fixed with far-reaching powers for a certain duration ... eventually, the delegation of a special, high-ranking German as permanent military advisor to the Reichsverweser; selection of the most suitable members of the new government to be carefully selected with the new Prime Minister ... the appointment of suitable commissars with far-reaching powers for five districts to be

formed, who must be bloodhounds ... immediate action in the field of the Jewish question after a previously coordinated plan ... notifying the enemy that for every Hungarian killed by bombs, one hundred wealthy Jews would be shot and their property used for restitution of damages."

The recommendations which VEESENMAYER outlined were carried out almost to the last detail, and its author was selected as the one best fitted for the task of executing them. It was only in the latter part of the year 1944, when Horthy attempted to break the bonds imposed upon him by VEESENMAYER that he was deposed and imprisoned. VEESENMAYER insists that these exhibits do not represent the original reports made by him, and that after heated discussion with Ribbentrop they were abridged and somewhat changed. While it may well be that Ribbentrop required the reports to be abridged and even insisted on some changes therein, nevertheless VEESENMAYER signed them. It is far too great a strain on our credulity to believe that had VEESENMAYER been in opposition to the changes, he would have been selected as the man to carry out the recommendations appearing over his signature.

While the defendant is entitled to all reasonable doubts, they must be reasonable and not fanciful. VEESENMAYER had no diplomatic experience, although he had been detailed on several occasions to do work in which the Foreign Office was interested, notably in Serbia and Danzig.

It is idle for the defendant now to assert that he was other than a radical anti-Semite, or that he did not advise or take an active part in the horrible mass deportations which took place in accordance with and in execution

of the very plan which he fathered. Nor are we impressed by the insinuations, which he made while on the witness stand, in his final statement and in his brief, that Horthy was in fact sympathetic with the German program of the deportation of Jews and their subsequent extermination. It is contradicted by the attitude consistently shown by him and quite generally by the Hungarian government, except the few who were creatures of the Third Reich; by the fact that it was found necessary to bring continued pressure on him to obtain an even apparent consent to the proposed treatment of the Hungarian Jews; that he continuously sabotaged this apparent consent; that numerous obstacles, real or fancied, were placed in the path of deporting the Jews; and finally, by VEESENMAYER'S own estimation of Horthy's attitude which is shown by his reports. We recognize that there may be some inaccuracies in Horthy's recollection and testimony, but we find that in the main it states the fact.

VEESENMAYER was the de facto ruler of Hungary. His main role was to outline for the Hungarian Government the policies which it must follow, and to put into power persons who provided sufficient guarantee that these policies would be carried out with the utmost energy. It was through pressure exerted by him that the Minister of the Interior Jarosz was appointed, and his two State Secretaries, Lazlo Endry and Lazlo Baky, were put in office, the last two having command of the gendarmerie and the police, and the first having the mandate to solve the Jewish question. Both Endry and Baky had long been

known as fanatic Nazis completely loyal to the German Reich.

The defendant contends that he cannot be held guilty because he could not commit war crimes against Hungarians inasmuch as Hungary was a military ally of Germany. He relies upon a statement made by the prosecution in Case I (The Medical Case). We have examined the record wherein the following language is found:

"The laws and customs of war apply between belligerents, but not domestically or among allies. Crimes by German nationals against other German nationals are not War Crimes, nor are acts by German nationals against Hungarians or Roumanians."

This language has been taken out of its context. Counsel for the prosecution was, at the time, discussing Article II (b), War Crimes, and not Article II, sub-paragraph (c), Crimes Against Humanity (Control Council Law No. 10). The latter declares criminal "atrocities and offenses, including but not limited to murder, exterminations, enslavement, deportation, imprisonment, torture, raping or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds, whether or not in violation of or against the domestic laws of the country where perpetrated."

We readily concede that acts committed by German nationals against other German nationals or German nationals against the nationals of one of its allies do not constitute a violation of the laws or customs of war, but Count Five is not concerned with those, it deals with Crimes Against Humanity, irrespective of the nationality of the victims.

The question here is whether or not the defendant was a principal or an accessory to, took a consenting part in or was connected with plans or enterprises involving the commission of a crime against humanity. The deportation of Jews from Hungary, either for slave labor or for purposes of mass extermination in the gas chambers of the concentration camps was directed to a class extinction, not by reason of individual or mass action, but solely because of their religion. It may well be, and indeed it would be surprising if it were not true, that many Jews, who had suffered the tortures and persecutions of the Nazi regime, resented such treatment, and, wherever opportunity arose, fought back with all the means at their disposal. It may be conceded that, insofar as such individuals were guilty of espionage or sabotage or other offenses cognizable under the rules and customs of war, they were subject to prosecution and punishment, but no attempt was made to single out or prosecute the guilty, and mass action was taken without distinction against both the guilty and innocent. Men, women, children, the babes in arms, school children, the aged, the invalids, were deported to slave labor and to death. No justification or excuse can be offered for such action. It was carried on as a part and in aid of German aggressions and crimes against peace.

Moreover, it is clear that, among the Jews deported from Hungary, there were refugees from territories occupied by Germany in the course of its numerous aggressions. In Case III (The Justice Case) a number of the defendants were

convicted for crimes committed by them upon German nationals, because such crimes were committed pursuant to and in connection with crimes against peace. In our opinion this defense is without merit and we so hold.

On 14 April 1944, within a month after he had taken over Hungary's affairs, VEESENMAYER reported to Ribbentrop that Sztojay had given him a binding promise that by the end of the month 50,000 Jews fit for work would be placed at the disposal of the Reich; that all Jews between the ages of 36 to 48 not liable to labor service in Hungary would be registered and drafted, and that by this means another 50,000 Jewish laborers would be deported by the end of May; that from 100,000 to 150,000 Jews would be organized in labor battalions in Hungary at the same time.

On 23 April he again reported that in the Carpathian area, the work of putting Jews into ghettos had begun and 150,000 Jews had been evacuated and that by the end of the week the number would probably be 300,000; that the work would then proceed into other districts and finally into Budapest; that the Jews would be transported at the rate of 3,000 per day beginning 15 May, and that Auschwitz (the notorious extermination camp) was their destination; that the transport by marching was impractical, because of difficulties of food, shoes, and guarding.

On 25 May 1944 von Thadden of the Foreign Office reported to Wagner a visit which von Thadden had made to Budapest and where he conferred with VEESENMAYER, Hezinger, Eichmann of the SS, and others. He reported that Eichmann

informed him that up to noon on the 24th approximately 116,000 Jews had been deported to the Reich, 200,000 more were assembled awaiting deportation, coming mostly from the northeastern parts of Hungary; that similar concentrations had been executed in the south, southeast and southwest, and on 7 June concentrations would start in the provinces north and northwest of Budapest, and that by the end of June they hoped to begin the concentration of the Jews living in Budapest; that the round-up would amount to about 1,000,000, possibly even more, one-third of whom should be able to work and would be taken over by Sauckel, Organization Todt, etc., in Upper Silesia; and only 80,000 Jews, able to work, would remain in Hungary under Honved guards and be employed in the armament industry there.

The defense that these deportations were being made in order to put the Jews to work in the Reich is effectively disposed of when from the report itself it appears that only one-third were those capable of work.

The report is further illuminating upon the relationship existing between VEESENMAYER and Hezinger and Eichmann of the SS. The Foreign Office had proposed to recall Hezinger, who was the Jewish expert from the Foreign Office attached to the Embassy. Senior Councillor of Legation Feine informed von Thadden that Hezinger was indispensable. VEESENMAYER told him that, while he realized that Hezinger was only loaned to him, he must make clear that he, the Minister, had an extremely difficult job, that cooperation

with the SS office did not always work smoothly, and that Hezinger not only knew how to carry out his assignment to perfection, but he had established such friendly relations with the office of executive authorities that he was the only one who gave VEESENMYER complete satisfaction and in whose field of work no trouble had thus far occurred; that he was afraid that Hezinger's recall might also cause trouble in this field, and would be very grateful if Hezinger could stay with him for another three or four weeks, but if this was impossible, he would first use Grell mainly for the work on the Jewish problems.

It further appears from this report that Eichmann was anxious to have Hezinger remain so that no really serious mistakes would occur in the treatment of foreign Jews. The attitude thus expressed by VEESENMYER is in direct contradiction to the testimony which he gave, namely, that Hezinger was not subordinated to him and that he was not informed in detail about his activities.

If, as VEESENMYER now claims, these actions were originated and carried out by Eichmann and Winkler of the SS, it seems most extraordinary that Department Inland II, which at that time was the competent department in the Foreign Office for Jewish affairs, should find it necessary to inform Eichmann, the alleged originator of the planned deportation, of VEESENMYER'S reports. But such was done.

The jealousy and bad feeling growing up between VEESENMYER and the SS and Security Police Leaders in Budapest may well be true, and there are strong indications of the fact. The latter had often, as far as they were

able, attempted to assert independent authority and power which, in fact, they did not possess. This was characteristic of the SS. The fight for power and authority; the attempts to keep all jurisdiction one had and to constantly reach out for more, even at the expense of another agency, was the common, almost accepted thing in the Nazi Reich. But it is also true that in almost every case it was not a contest over objectives, or an attempt on one side to defeat and on the other to further the savage programs of Nazi policy, but was one for personal prestige, and increase of influence and power, and authority to implement and carry out those plans.

On 13 April 1944 VEITENMAYER submitted to Ribbentrop a draft of the address he proposed to make when he presented his credentials. Arrogantly it referred to the unusual circumstances which had caused his appointment; that "to hold back the enemy, German troops were on Hungarian soil" and thus many questions, unknown in peacetime and insoluble by methods theretofore used, had arisen and "new ways will have to be found"; that he was convinced that the Hungarian people, after elimination of hostile and seditious elements, would be faithful to its glorious history and conscious of the common fate which it had shared with the German people for hundreds of years, and gather all the powers of the state under the leadership of his Excellency, and fight for the common victory, in its proven comradeship of arms. "I consider it my task to help Hungary according to the best of my ability on this road, carrying out the intentions

of my Fuehrer, and I want to express the hope that Your Excellency will support me fully and completely in the execution of my tasks."

This, apparently, was too much, even for Ribbentrop, who was not noted for delicacy or finesse in diplomacy, and the offending phrases and sentences were eliminated.

It is now asserted on VEESENMAYER'S behalf that he did not prepare the objectionable address, but it was the work of his deputy Feine, a particularly experienced civil servant well versed in international law. One of two things, however, is obvious. Either Feine was not the author, or he was not an experienced civil servant versed in international law. The proposed address follows the procedures and policies expressed by VEESENMAYER in his previous reports to the Foreign Office too closely to permit us to believe that he did not have at least a guiding and controlling hand in its authorship. In any event, he signed it.

On 20 March VEESENMAYER reports a lengthy conference with Horthy, who apparently had refused to appoint Imredy, but said that a government headed by Szotjay or Csatay would be "tolerable" for him, but that he must leave open the question of how long such a government should remain in office; that VEESENMAYER had pointed out to Horthy that he considered an interim solution to be politically unwise and impossible in point of time; that the period of eternal compromising was past and that he, VEESENMAYER, was under the impression that the Regent was trying to gain time, which was not in accordance with the will of Hitler and the

Reich Government. His report charges Horthy with lying and that he was no longer physically able to keep up his duties.

It appears that on 22 March 1944 VEESENMAYER reported to RITTER that:

"... alarm occupation of the castle with distribution of troops will take three hours according to Army Group report. It is hardly possible to surround the castle effectively in view of its sub-cellars and unknown secret exits."

This does not evidence a decision to work with Horthy, as the defendant now claims, but a search for means to compel him to do the defendant's will. One does not discuss the seizure of surrounding of a castle occupied by the head of state when intent upon peaceful negotiations and cooperation.

The final selection of Sztojay as Prime Minister represented a compromise brought about by the belief that the time was not yet ripe to take the final step of removing Horthy from office, which came later, and hope had not yet been abandoned that Horthy would become entirely subservient to VEESENMAYER'S wishes and be dependent on German support for continuance in office. Although Sztojay was a tolerable appointment to the Regent, the Minister of the Interior and his State Secretaries were pro-Nazi and wholly compliant to the demands for the deportation of the Jews. The Ministry of the Interior had demanded command of the Hungarian Police and Gendarmerie, and it was through the cooperation of these officers with the SS that the Jews were seized, concentrated, and finally deported to slave labor or death.

It is apparent from VEESENMAYER'S testimony and from the documents that, throughout the time he was in Hungary, a struggle for power was going on between Ribbentrop and Himmler; that Ribbentrop's foreign policy involved retaining Horthy as the nominal head of state and achieving German aims through the subservience of the Hungarian Ministers, who had been selected and approved by the German Reich, in order that the outside world should not realize that the real governing powers lay in the Nazi Government. On the other hand, Himmler cared nothing for finesse or outward appearances.

VEESENMAYER endeavored to carry out Ribbentrop's policy and from time to time clashed with Himmler and the SS, who desired to proceed with greater speed, without regard for the repercussions which would arise if Horthy finally rebelled.

In July 1944 Horthy forbade the further deportation of Jews and VEESENMAYER proceeded to reproach him for this and informed him that dismissal of the Sztojay government and the proposed arrest of certain of its members, who had carried out anti-Jewish measures, would be regarded as a breach of Hungary's obligations to the Reich, and that Hitler would immediately recall the Reich Plenipotentiary, VEESENMAYER, and take measures which would preclude a repetition of such events in Hungary once and for all.

The ultimatum thus presented by the defendant was in accordance with the detailed, graphic instructions which he received from Ribbentrop. The defendant insists that he omitted informing Horthy of the threats which

were contained in his instructions. This, however, the Regent denied when on the witness stand, and we have no doubt that either VEESSENMAYER read his instructions word for word or gave the substance of them. He made perfectly clear what would be the result if Horthy attempted to carry out his plans.

These threats were effective for the time being, but on 25 August 1944, the day Roumania signed an Armistice, the Regent thought himself strong enough, and Germany's position sufficiently weak, to enable him to dismiss Sztojaj and appoint General Lakatos as Premier. Again VEESSENMAYER intervened and attempted to have pro-German elements included in the Cabinet and Government, but, to a large extent, he was unsuccessful. The Lakatos government remained in office until about approximately 15 October 1944, when it was ousted by force, the Regent deported from Hungary and imprisoned in Germany. Szalasi, head of the Arrow Cross movement and a rabid anti-Semite, was appointed in his place. After Szalasi became Prime Minister, about 16 October 1944, deportations were restarted and tens of thousands of Jews, mainly women, were forced to march on the highways leading from Budapest to the German border in rain and snow, and without food and with no sleep. Thousands of them died on the way or were shot because they could not continue the march.

Lakatos gave an affidavit with regard to the events of these times. He was not submitted for cross-examination and we therefore give the statements in his

affidavit little effect, except in so far as they may be corroborated by other evidence in the case. This corroboration is, in part, furnished by the testimony of Dr. Reszo Kastner, a Hungarian Jewish lawyer who, throughout all this terrible period, was President of the Zionist organization of Hungary, and whose organization kept itself currently informed of the political and racial developments in Hungary. Checking his story with what is revealed by the documents of the Foreign Office, including VEESENMAYER'S own reports, the essential accuracy of his information is verified and substantially corroborates the essential parts of General Lakatos's affidavit. He makes clear that with the appointment of Szarosz as Minister of the Interior in the Sztojay government, and the appointment of the two State Secretaries, Endry and Backy, and their cooperation with the SS, the deportations became merely routine, administrative work.

Kastner aptly describes the situation:

"Q. Do you mean by that, witness, that the defendant VEESENMAYER, was not concerned with the execution of the Jewish deportations which (I will leave open for the moment) was carried out by Jarosz, Backy, Endry, Eichmann, or Winkelmann?

"A. My dear colleague, I do not suppose that you will imagine that a man as intelligent as VEESENMAYER would formally carry out his mandate as Plenipotentiary and Minister of the German Reich in such a way as to transgress his limits by interfering with the executive. He could not and should not have done it under any circumstances and he did not need to. As I said this morning, by appointing a suitable government in Hungary, and laying down the general political directives for it, further activity and closer activity concerned with greater details of the executive was no longer necessary. He was, if I may say so, the spiritual author but he was certainly not the executor."

No one reading the record of this case can be under any doubt but that VEESENLAYER was a conscious and consenting participant in the deportation of Jews from Hungary, that he knew what their fate would be, and that he was a willing, zealous and leading participant therein.

Alleged Diplomatic Immunity. VEESENLAYER asserts the legal defense that inasmuch as he was actually accredited as Minister and Plenipotentiary General for the Greater German Reich in Hungary, his actions were privileged and he is exempt from punishment.

It has been a long recognized rule that within certain well-recognized limits a diplomatic representative is immune from prosecution by the country to which he is accredited. The rationale is well stated by Hackworth:

"The reason of the immunity of diplomatic agents is clear, namely: that Governments may not be hampered in their foreign relations by the arrest or forcible prevention of the exercise of a duty in the person of a governmental agent or representative. If such agent be offensive and his conduct is unacceptable to the accredited nation, it is proper to request his recall; if the request be not honored he may be in extreme cases escorted to the boundary and thus removed from the country. And rightly, because self-preservation is a matter peculiarly within the province of the injured state, without which its existence is insecure...."

(Hackworth, Digest of International Law, Vol. IV, 1942, p. 513.)

This doctrine, however, has not remained wholly unquestioned. (See Stanhope, "History of England," I, p. 171.)

"A foreign minister who conspires against the very Government at which he is accredited has clearly violated the law of nations. He is, therefore, no longer entitled to protection from the law of nations."

In any event, the immunity continues only so long as the diplomatic agent is accredited to the country, plus such additional time as may be necessary to permit him to leave its boundaries.

The rule is thus laid down, on the authority of Professor Binding, himself a German:

"...The incompetence of the local courts is *ratione personae* and ceases when the person concerned loses the status to which immunity from jurisdiction is attached.

"Exterritoriality results in freedom from court process; it operates procedurally, not substantively; in principle it does not result in freedom from punishment, nor exemption from the rules of law, but in non-liability to prosecution.... The former (person enjoying exterritoriality) are immune from prosecution only for the duration of their exterritoriality and certainly during the same period, also, for all earlier acts falling under the criminal laws of the state of residence: after conclusion of the exterritorial relationship they are liable to prosecution for all crimes committed by them while enjoying exterritoriality and previously, in so far as legal action has not yet been outlawed by the passage of time."

In the "Draft Convention on Diplomatic Privileges and Immunities of the Harvard Research in International Law" (1932), is found the following:

"Art. 29 -- Termination of Privileges and Immunities. When the functions of a member of a mission have been terminated, a receiving state shall continue to accord to him and to the members of his family the privileges and immunities provided for in this convention, until such persons have had reasonable opportunity to leave the territory of the receiving state."

In its "Comment" upon the subject, we find the following:

"Comment: Article 16 undertakes to fix a time for the beginning of immunity and protection. This article undertakes to determine the time at which immunities terminate. Both are based upon long practice.

"The functions of a member of a mission may be terminated (a) by the termination of the mission; (b) by the death or abdication of the sovereign, in case the sending state is a monarchy; (c) by revolution in the sending state, as a result of which a new government is established; and (d) by the recall of a member. It is intended that the present article apply to each one of these situations."

Again, in the "Cambridge Draft of the Institute of International Law," 1895, the following proposed codification of the recognized practice is found:

"Art. 5 -- It (the privilege of inviolability) shall continue to be effective as long as the minister or diplomatic official remains, in his official capacity, in the country to which he has been sent.

"It shall hold good, even in time of war between the two Powers, for as long a time as is necessary for the minister to leave the country with his staff and his effects."

Finally, it was held in the case of the former Japanese Ambassador, Oshima, that:

"Oshima's special defense is that in connection with his activities in Germany he is protected by diplomatic immunity and is exempt from prosecution. Diplomatic privilege does not import immunity from legal liability, but only exemption from trial by the Courts of the State to which an Ambassador is accredited. In any event this immunity has no relation to crimes against international law charged before a tribunal having jurisdiction. The Tribunal rejects this special defense."

Here, as well, the defendant is charged with violations of International Law. The evidence establishes he is guilty of such violation. He is not being tried by Hungary, the

state to which he was accredited; his term of office has long since expired; he surrendered himself not to the Hungarian authorities, but to the American military authorities. None of the grounds for exemption upon which he bases his plea here exist, and his special defense with respect to his diplomatic exemption is without merit.

Slovakia. On 13 June, 1944, VEESSENMAYER requested the Foreign Office to bring pressure on the Slovakian Government, demanding that they indicate their fundamental disinterest in Slovakian Jews in Hungary. The reason for this request was that the Slovakian Legation in Hungary, as well as the Slovakian Minister of the Interior, had informed the Hungarian Government and the SD Referent of their special interest in the repatriation of Jews of Slovakian nationality who were then being evacuated from Hungary. VEESSENMAYER stated that this not only disturbed but also complicated the evacuation of them from Hungary, but also gave the Hungarian Government the impression that Slovakia had adopted an attitude fundamentally opposed to the solution of the Jewish problem.

Hans Ludin, the German Minister to Slovakia, deposed that in December, 1943, the defendant VEESSENMAYER called on him at the Embassy and informed him that, by special order of the Reich Foreign Minister, he was to visit the Slovak State President with the object of deliberating with him upon the further deportation of the Slovak Jews; that after

his visit to Dr. Tiso, VEESENMAIER reported the result namely, that the Slovakian State President had agreed to the proposed date, the 1st of April, and until then, all the remaining Jews, not having special status granted by the State President, were to be deported.

On 22 December, 1943, VEESENMAIER reported to the Foreign Office the result of his negotiations with Tiso, that of the remaining Jews in Slovakia, 16,000 to 18,000 would be sent to Jewish camps within the next few months; that Minister Ludin was to come to an agreement with Tiso during the next few days with respect to the execution of the entire operation; that Tiso did not and could not, at the moment, fix any definite date, so VEESENMAIER suggested completing the operation by 1 April 1944 at the latest, and was assured by Tiso that he could make great efforts to adhere to that date; that for reasons of expediency, VEESENMAIER refrained from mentioning the question of the baptized Jews, but in talking the matter over with Minister President Tuka, the latter said he would insist that the question be dealt with anew, with the stipulation that the baptized Jews must be accommodated in a special camp in order to avoid difficulties with the church, and promised his full support to the measures agreed upon between VEESENMAIER and Tiso.

Dieter Wisliceny deposed that he met VEESENMAIER in Bratislava in December, 1943, and on that occasion VEESENMAIER paid a visit to President Tiso; that in the conversation with VEESENMAIER in the ante-room of the

German Ministry, he was informed that VEESENMAYER was to see Tiso on Hitler's orders, and would then take the opportunity of broaching the subject of Jews in Slovakia; that VEESENMAYER asked for a statistical report as to how many Jews were still living in Slovakia, and how many of these had a special permit, and Wisliceny handed this report over to VEESENMAYER; that after the latter's visit to Tiso, Wisliceny saw VEESENMAYER, who reported that Tiso had promised to screen all special permits by the end of April, 1944, and settle the Jewish question finally, and that VEESENMAYER said that he would put his foot down with Tiso on this question.

VEESENMAYER'S explanation is that his visit to Tiso and Tuka was not primarily on the Jewish question, but with respect to other political events, particularly the channels which the Hungarian Government "had through Slovakia into Russia, with the idea of making peace and that the Jewish mission was a camouflage" of his real objectives. He admits however, making the report before-mentioned, and does not deny that the matters therein contained were in fact discussed and agreed upon. He claims, however, that the proposed deportation did not take place, and we have been able to find nothing in the record to indicate that it was actually carried out.

There is evidence that after the Slovakian revolt in September, 1944, many of the remaining Jews in Slovakia were killed, but this apparently has no connection with VEESENMAYER's visit in December, 1943. Therefore the documents

relating to Slovakia, while they tend to prove knowledge of the plan and throw some light on VEESENMAYER's attitude towards Slovakian and Hungarian Jews, cannot constitute a substantive offense.

Serbia. On 8 September, 1941, the Foreign Office received a wire from Belgrade, signed by VEESENMAYER and Benzler, stating that it had been proven that Jews were accomplices in numerous acts of sabotage and revolt, and therefore it was urgently necessary to see to it that at least all male Jews be quickly placed in custody and removed, suggesting that they be deported, sent down the Danube and unloaded in Rumanian territory. The Foreign Office determined that this could not be done and Luther so informed the Plenipotentiary of the Foreign Office at Belgrade.

On 10 September VEESENMAYER and Benzler again wired the Foreign Office that "a quicker and draconic solution of the Jewish question in Serbia is a most urgent and practical necessity" and requested directives from the Foreign Office in order to be able to put the utmost pressure on the military commander of Serbia, saying that it would be most advantageous if Himmler would issue an identical order to the Chief of the Einsatzgruppe of the Security Police and Fuchs of the Security Service.

In the final analysis, Rademacher was sent to Belgrade to ascertain whether these Jews could not be taken care of on the spot. He found that 2000 had already been shot as reprisals for attacks on German soldiers, and states "in

the course of the practical executions of this order, at first the active Communist leaders of Serbian nationality, - about fifty of them, - and then always Jews were shot as Communist instigators; that there were not 8000 to begin with, but only 4000, and only 3,500 could be shot as the remainder are needed by the health police to keep up the health service and discipline in the ghettos which had been established".

As the result of Rademacher's negotiations with the experts on the Jewish question, Sturmbannfuehrer Weimann and Fuchs, it was agreed that the male Jews would be shot by the end of the week, which would solve the problem, and that the rest of about 20,000 Jews, women, children, old people, as well as about 1500 gypsies, except the males who were to be shot, would be concentrated in a ghetto in the gypsy sector of Belgrade, where a minimum of food would be guaranteed for the winter, and as soon as the question of the final solution of the Jewish question was reached, and the technical means were available, the Jews would be deported by water to the reception camps in the East. Thus the quicker and more draconic solution mentioned by VEESEN-MAYER and Benzler became an accomplished fact.

VEESENMAYER'S excuse is that he had been sent to Belgrade to make an investigation of the partisan movement which had started there, and the advisability of organizing a Serbian Government to alleviate the situation, and that he was only called in by Benzler because of his investigation and knowledge of the partisan movement.

This excuse is without merit. He signed the telegrams, he consulted with Benzler regarding the proposed deportation.

However, it did not take place; other agencies intervened, and, as we have seen, adopted measures even more harsh. For those he cannot be held responsible.

SCHELLENBERG

SCHELLENBERG joined the Party in 1933. In 1934 he became a member of the SD and was assigned to the Office of Domestic Intelligence Service. In 1939 he became Chief of AIT IV-E, which had charge of domestic counter-intelligence. In 1941 he was transferred to and became Chief of AIT VI, RSHA, which dealt with foreign intelligence.

The prosecution contends that SCHELLENBERG took an active part in the preparations for the work of the notorious Einsatzgruppen of the East. The record reveals that in the discussion between Mueller, Chief of AIT IV, RSHA, and Quartermaster General Wagner of the Wehrmacht, an impasse arose regarding the use of these Corps in the East and their jurisdiction and competence, and SCHELLENBERG, who was a lawyer by profession, was detailed to take up these discussions and attempt to compromise the difference between the Wehrmacht and the RSHA. This he did, and when his final draft of the agreement had been completed Heydrich and Wagner signed it. He asserts that when the two men came to discuss the details of the plan, he was notified to leave the room, and therefore was not informed of the full scope of the activities of these groups, namely, to engage in mass exterminations of the local population and the Jews.

He admits that some time later he attended a meeting in Berlin at which were present counter-intelligence officers of the Wehrmacht, but states that this meeting continued over a considerable period and he left several days before it concluded, and he assumed that after he left persons then present were probably informed of the work which the Einsatzgruppen were to carry on.

While we doubt that SCHILLENBERG was as ignorant of the mission of the Einsatzgruppen as he now asserts, the proof that he had knowledge does not convince us to a moral certainty. We therefore give him the benefit of the doubt and as to this incident we ACQUIT him.

It is also contended that he was deputy to Mueller, Chief of AMT IV, RSFA. While on one or two occasions he signed in that capacity, the record discloses that Mueller had no regular deputy and only when he was absent from his office did one or another of his section chiefs sign communications in his name.

The prosecution further contends that SCHELLENBERG as Chief of AMT VI himself dispatched an Einsatzkommando to White Ruthenia, but we are satisfied that this group dealt with geological and other scientific research and had no connection with crimes against humanity.

Serbian Jews. While SCHELLENBERG'S office was informed of the slaughter of Serbian Jews, it does not appear that SCHELLENBERG took any part in this other than possibly informing Luther, at the latter's request, of Heydrich's return to Berlin, as Luther desired to have a conference with Heydrich regarding the deportation or other disposition of Serbian Jews. The evidence of SCHELLENBERG'S guilt is not sufficient, and we ACQUIT him with respect to this incident.

Einsatzgruppen. Copies of Operational Situation Report, No. 128, of the Einsatzgruppen, dated 3 November 1941, were

distributed to SCHELLENBERG'S group, and to both AMTS IV and VI. It covers approximately four months' operations. There the program of murder and extermination is set forth in detail. It callously states that approximately 80,000 persons had been liquidated, describes the objections raised by certain commanders of prisoner-of-war camps, how they were overcome, and of the plans for further operations freed from interference by officers of the Wehrmacht. These and the other reports of the Einsatzgruppen were distributed to SCHELLENBERG'S office. His claim that he did not see or paid no attention to particulars in which his office was interested cannot be believed.

We have examined the reports and even the most casual glance would bring out the horrible details. Furthermore, unless we are to assume that his division was so inured to reports of mass murder and that these were no longer deemed worthy of notice and comment, it is inconceivable that his section chiefs would not have called his attention to them. His claim of innocence is wholly incredible. But there is no evidence that he participated directly or indirectly in these atrocities.

Operation Zeppelin. On 13 October, 1941, Mueller, Chief of AMT IV, confirmed his telegraphic order regarding the use of Soviet Russians in concentration camps for labor and for the execution of designated Russian prisoners-of-war.

On 25 October, 1941, he issued a directive stating that for the purpose of selecting suitable informers of the Russian intelligentsia, delegates of AMT VI, SCHELLENBERG'S Division, would be assigned to the Einsatzkommandos of the

SIPO and SD and during their activities in the prisoner-of-war camps, these delegates would be subordinated to the leadership of the Einsatzkommandos. In addition, the order made it the duty of these delegates to collect information about political, economic, and cultural conditions in Russian areas not yet occupied; and that Soviet functionaries who were deemed suitable were to be transferred to Berlin and put at the disposal of AMT VI. Both of these documents were distributed to AMT VI AND AMT IV. This operation was known as "Operation Zepplin".

The counsel for prosecution contends that the use of prisoners-of-war for espionage and other like purposes against their own nation, even if voluntary, is a violation of International Law and of the Hague Convention respecting the Rules and Customs of War. (Article 6 of Chapter II, and Article 31 of Chapter VI of the Geneva Convention.) No other authority other than the Articles themselves has been cited to us, and we have been unable to find any. Ordinarily a national of a country, whether or not he is in military service, who gives aid or comfort to the enemy, is a traitor to his country. But we have never before heard it suggested that the enemy who takes advantage of his treason is guilty of a breach of International Law. We hold that the cited prohibitions of the Hague Convention prohibit the use of prisoners of war in connection with war operations, and apply only when such use is brought about by force, threats, or duress, and not when the person renders the services voluntarily.

We come now to more serious evidence against SCHELLENBERG with respect to Operation Zepelin. In a number of instances persons, who volunteered, were thereafter executed, apparently without trial or notice of any offense of which they were alleged to be guilty. If true, this was a flagrant violation of International Law. It appears from the testimony of the witness Schmolen that he was a political prisoner at the Auschwitz Concentration Camp from June, 1940 to 1941, and was employed as a "responsible prisoner" in the reception office of the political department of the camp which was not under the jurisdiction of the Camp Commander, and that this political department had jurisdiction over Block 11 of the camp; that approximately 200 Russians were executed in that Block; that these prisoners arrived under escort of SD men; the normal entries regarding them were not made in the records; they were not given the usual prison numbers and that the documents which they carried, bearing their personal data, were immediately delivered to the SD upon their arrival; that these men gave no information about themselves and did not have the slightest idea of the fate which awaited them; that they were killed by a shot in the neck within a few days after their arrival; that the papers for their commitment bore the entry "Zepelin Geheimnisträger", - the latter term meaning "One in possession of secret information".

Exhibits 2065, 2066, 2068 and 2069 are the record of some of the men thus executed. We are satisfied that the fifty men mentioned in Exhibits 2063 and 2064 are identical and refer to one operation.

With regard to the cases of Plewako, Kopyt, and Koschilew, the reports state that as a result of various things which happened in the meantime at special camp Wissokoje they were given "special treatment" on 25 November by order of SS Brigadefuehrer Naumann of Einsatzgruppe B. More can be seen from the reports of SS Obersturmfuehrer Sakuth to the RSHA, AMT VI, Department 6-C-Z. In the case of Kosin, it appears that he was sent, by order of AMT VI, to Einsatzgruppe E-B for special treatment. "Special treatment" in the jargon of Nazi Germany meant death, as has been fully established before these Tribunals.

Naumann testified in the Ohlendorf case that in this camp there was a house put at the disposal of AMT VI which was not subordinated to him; that he had no right to order the executions of the inmates thereof, but that it was up to AMT VI to do so.

SHELLENBERG first testified that he knew nothing about these executions, but later, when faced with the documents, contended that the men were killed because they were traitors to Germany. The first three men were executed on 25 November, 1942, and Kosin on 5 December, 1942, and the reports were all made on 5 December, 1942. The reason given for Kosin's death was that he had run away without reason from the SS Special Camp Wissokoje.

Exhibits 3465, 3466, 3467, and 3468 disclose that two Russian prisoners of war who were activists employed by

AMT VI and who were hospitalized for tuberculosis were thereafter ordered by Weissgerber of AMT VI to be given "special treatment".

SCHELLENBERG insists that he had no knowledge of these last sentences but that Weissgerber was one of his assistants, as was Grafe. Thus we are asked to believe that responsible officers of his division, on their own initiative, issued orders for the execution of large numbers of people without his knowledge and without his orders, general or specific. The defense attempts to explain this by affidavits that the head of Operation Zeppelin, although a subordinate of SCHELLENBERG'S, acted independently and did not often consult with him, but we view such testimony with suspicion and with great caution. It does not square with SCHELLENBERG'S character and temperament as disclosed on the witness stand, or by the proof offered in this case. If Weissgerber and Grafe ordered these executions, their action can only be accounted for if the defendant had permitted an utterly callous attitude towards human life to grow up and become established in his division, or if it was a practice so usual that it was unnecessary to consult him. It must be remembered that these were not isolated instances, but at least 200 men were thus executed. In neither case can he avoid responsibility.

With respect to the Koshilew case, the defendant offered parts of Document NO-5446, which were not offered by the prosecution, as part of Exhibit 2068 and others, to prove that Koshilew was a spy, and, furthermore, that this was a matter which AMT IV handled and not AMT VI.

We have considered these documents. It appears that on 16 January 1942 Koshilew was picked up by the Army as a suspected spy, but that the Wehrmacht was not certain whether he was a Russian or a German spy. He was interrogated at least twice and maintained that he was not a Russian spy, but that he worked with the Gestapo. The Army made inquiries of Einsatzgruppe B, the Secret Police, and the Gestapo. This was reported to AMT IV, where it was received on 28 January 1942. On 27 March, 1942 AMT IV-1-B informed Einsatzgruppe B that neither AMTS IV nor VI knew of this man or his alleged contacts. If true, then obviously the man was a spy and subject to the penalty of being caught as such. But it was not.

Exhibit 2068 plainly shows that Koshilew had worked for Referent IV Einsatzgruppe in Smolensk since January 1942. Notwithstanding the denial of 27 March it also appears that at least as late as 1 July 1942 he had been trained at Special Camp Wissokóje, which was an AMT VI establishment, and that he was convinced that Bolshevism must be destroyed, and that he voluntarily reported to the German Staff on 16 January, 1942. Obviously if in March, both AMT VI and AMT IV were convinced that the man was a spy, that his explanations were fabricated, and that he had never worked for the Gestapo, he would not have been placed and trained in the Special Camp, nor would there have been the slightest occasion to wait until December 1942 before executing him. The documents may prove other facts, but they do not prove or tend to prove that Koshilew was a Russian spy.

There is no direct evidence that SCHELLENBERG had knowledge of these incidents, but it is clear that his AMT VI had knowledge of all of them and at least in one instance ordered the murder of these Russians. It was intended that these men should be used in the foreign intelligence work, that is, work behind the Russian lines, and this came within the jurisdiction of AMT VI, which selected these men and determined the field in which they should be employed. This is clear, not only from the documents, but from SCHELLENBERG'S own testimony. When a question arose as to whether or not they were acting in good faith or were, in fact, Russian counter-spies, AMT VI would have been deeply interested in the matter because it lay in their field. It is most unlikely that it would not have been consulted and, in the first instance, determine the question of their loyalty to Germany and what their fate should be in the event that disloyalty was established. True, once the fact was determined, AMT VI might well have turned them over to AMT IV or some other agency for execution, but this does not lessen AMT VI's responsibility or exonerate it from complicity in the execution.

It is significant that when turned over for executions the records merely show that they were "persons in possession of secret information" and not that they were disloyal and had been found to be spies or counter-intelligence agents of the Russians. Furthermore, they were totally ignorant of any accusations against them. It is a fair assumption that if, at the time they were turned over for execution, they had

been regarded as spies, the words "persons possessed of secret information" would not have been used, and the words "spy" or "Russian agent" would have been inserted in their place. Their execution, under these circumstances, was merely cold-blooded murder.

A principal cannot be held criminally responsible for isolated criminal acts committed by his criminal subordinates in the execution of the latter's duty, but where there is evidence that this was an official practice, he cannot escape responsibility on the plea of ignorance, inasmuch as such ignorance was in fact non-existent.

We hold that SCHELLENBERG in fact knew of these practices and is GUILTY of the crimes as set forth.

SCHWERIN-KROSIGK

The defendant SCHWERIN VON KROSIGK, during the entire Nazi regime, was Reich Minister of Finance and a member of the Cabinet. He was educated at the University of Oxford as a Rhodes Scholar and he spent many years in the Ministry of Finance as a civil servant. He faithfully and with complete loyalty served the Weimar Republic under several of its presidents. As time passed, his talents were recognized and he finally became director of its budget.

While von Papen was Reich Chancellor, SCHWERIN VON KROSIGK was appointed Minister of Finance. This appointment was not made due to any political or party affiliations.

Upon Hitler's seizure of power he was retained in office solely because of his expert knowledge of governmental finance, and not because he was looked upon either as a Party man or as being devoted to or convinced of the principles of National Socialism, but we believe because Hitler felt that it was necessary that the Ministry of Finance be put in charge of one who was divorced from the inexperienced, ignorant and predatory characters who had flocked to the Party and he desired one who was incorruptible and would be content to carry out the functions of his office without interfering in matters of politics.

Irrespective of our evaluations of his subsequent official actions, in justice it must be said that SCHWERIN VON KROSIGK'S private life was above reproach. He was and is a man deeply religious in character, devoted to his wife and family, simple in his tastes in life and wholly free from any desire or ambition to use his official position to enrich himself, a decided contrast to many who held high offices in the Reich.

The evidence clearly shows that he was not a member of Hitler's Inner Circle, that he was not one of his confidants and that he came in touch with him but seldom before the war and even less often afterwards. During the course of the years he suffered many conflicts of conscience and was fully aware that measures to which he put his name and programs in which he played a part were contrary and abhorrent to what he believed and knew to be right.

It is difficult to understand what motives or what weaknesses impelled or permitted him to remain and play a part, in many respects an important one, in the Hitler regime. It is one of the human tragedies which are so often found in life. That he could have found or made an opportunity to retire and avoid being made a party to what was done, we have no question. In fact, he is one of the defendants who refused to avail himself of the claim that he was bound to remain in office and could not have retired or resigned had he so desired. He testified that at the time of the Crystal Week Pogrom against the Jews in November 1938 he then and always considered it and the measures which followed it to be a disgrace to the character of the German people.

He states that he remained in the cabinet to raise the voice of reason and justice; that the events of the Roehm Putsch of June 1934 were a shock to him and emphasized in his mind the dangers inherent in the Nazi regime, but that many people urged him to remain in office so that he could act as a brake to the regime; that among others who held the same idea were some of the chiefs of the bourgeois ministries and old civil servants; that as head of the finance administration he desired his officials should keep their integrity; that the tax administration and other divisions should carry on their

tasks with absolute justice; and that he felt as a minister he could influence laws as they were drafted and after their promulgation exert a "defeating" influence; that in the subsequent years he was able, in certain instances, to help those who were threatened by injustice; that by staying in office he was able to save civil servants from the so-called "purge" law; that in the matter of the billion mark Jewish fine, he was able to have the funds paid out by the insurance companies for losses incurred during the Crystal Week, and which could not be paid to the Jews themselves, applied upon their respective shares of the national fine.

He testified that he served the Hitler Government initially, because it was his duty as a civil servant so to do, and later because only from that position was he able to prevent injustices so far as his powers extended, and finally, because he thought it was a manifestation of cowardice to desert a sinking ship; that as he views the matter today in the full view of what he then did not know he deems his behavior politically erroneous, because under a dictatorship all decent and respectable work and all honest efforts must be finally brought under the service of the dictator; but all this comes from after-knowledge, and from the considerations then apparent and known to him, had he again to make the decision he would do as his duty commanded and in the same way.

He asserts that there were no financial considerations which impelled him to remain in office and that had he resigned he would undoubtedly have had opportunities to obtain positions in the commercial and financial field which would in fact have been greatly to his financial advantage; that while he never became associated with any of the resistance groups, because

he felt he could be of more service in the capacity in which he served, he was personally and well acquainted with many of its members; that it was not until 1938, when the Crystal Week and the Sudeten crisis arose, that the resistance groups first came into being, and that after the outbreak of the war it was out of the question to resign as everybody had to work in some position.

We are not inclined to be captious in considering and giving weight to his testimony, although we deem it altogether likely that what he says does not supply all of the lights and shadows regarding his then reactions.

As to many of the decrees, laws and regulations which bore his name as cosignator, he relies upon the so-called "Federfuehrend" doctrine which may be succinctly stated thus, that where one minister had jurisdiction over the major problem of the legislation or regulation involved and other departments were more or less incidentally concerned, the legal responsibility rested upon the first and the other cosignators assumed no responsibility for the measures other than those provisions which might immediately affect their jurisdiction, and, finally, that the right to intervene or object was limited to questions relating to the propriety or practicability of the measures as it affected their sphere of action.

That the principle as thus stated is oversimplified, and the responsibility of cosigners underemphasized, we have no question, as we find in the record instances where the doctrine was rejected and where the proposed cosigner refused to put his name to the document.

There is a further limitation to this doctrine. Cabinet ministers had the right to and in fact did freely express their views as to proposed legislation. In the early years of the Hitler regime cabinet meetings were held in which the same right in principle existed. Even when the cabinet meetings were discontinued, it was the practice, and in fact the invariable rule, that all proposed Reich governmental laws, regulations and decrees were circulated among the cabinet ministers for their objections or suggestions. The defendant LAMMERS testified that, as to this type of regulation and decree, had a majority of the cabinet expressed a negative view, Hitler would not have gone contrary to the views of the cabinet. LAMMERS stated further, however, that negative views were never expressed and, therefore, the Reich Government laws were adopted without dissent. Where the right to object or dissent exists, a majority dissent can only be ascertained if some responsible minister is the first to register his objections. Under these circumstances one cannot sit subinely by and await the voice of another.

Our attention has not been directed to a single instance in which SCHWERIN-KRO SIGK filed his objection or dissent to any proposed Reich Government law, regulation, ordinance or decree which, if enacted, would constitute a crime within the jurisdiction of this Tribunal. Even were we inclined to accept the bald doctrine as of universal application, it could be applicable only to responsibility under German law and is unavailable as a defense to a crime under international law. Furthermore, it cannot be forgotten that, as to the offenses charged under this Indictment, we do not deal with the ordinary processes or policies of national law nor even those where there is room for reasonable differences of opinion on political policy.

The offenses charged in this Indictment deal with policies which fundamentally violate the common law and understanding of nations, and measures which shocked the consciences of mankind, from which there was and is a common revulsion, not limited to those who were or thereafter became political or armed foes of the Third Reich, but among peoples who by choice or necessity remained neutrals. As to those offenses the doctrine of "Federfuehrend" cannot be applied although it may be considered with other circumstances in mitigation.

In our examination into the defendant's conduct we have endeavored to state and concede as far and as fully and as fairly as possible the foundations of his defense. We now proceed to ascertain and analyze the particulars of his conduct, that we may weigh profession against performance and general benevolence with specific acts. A troubled conscience is not a defense for acts which are otherwise criminal. Nor can we hold that he who signed, cosigned, executed or administered measures which violate international law, because he thought that acquiescence would enable him to maintain and safeguard the integrity of his department and the career of his officials or even the life or liberty of individuals whose cases came to his attention, but who by his actions condemned the great inarticulate mass to persecution, mistreatment, brutality, imprisonment, deportation and extermination, escapes responsibility for his conduct.

SCHWERIN-KROSIGK was present at the infamous conference of 12 November 1938 when Goering proposed to levy the billion-mark fine against the Jews. This was shortly after the assassination of von Rath in Paris and the riots and plunderings of the Crystal Week. When the question arose of adopting measures to

prevent Jews from realizing on their securities and disposing of their assets, the defendant said:

"They have to be taken during the next week at the latest."

When Goering said:

"I shall close the wording this way, that German Jewry shall, as punishment for their abominable crimes, and so forth, have to make a contribution of one million -- that will work. The pigs won't commit another murder. Incidentally, I like to say again that I would not like to be a Jew in Germany."

SCHWERIN-KROSIGK remarked:

"Therefore, I would like to emphasize what Mr. Heydrich has said in the beginning: That we will have to try to do everything possible by way of additional exports to shove the Jews into foreign countries. The decisive factor is that we don't want the system Proletariat here. They will always be a terrific liability for us (Frick: "And a danger."). I don't imagine the prospect of a ghetto is very nice. The idea of the ghetto is not a very agreeable one. Therefore, the goal must be, like Heydrich said, to move out whatever we can."

It is difficult to reconcile this language and the attitude which the defendant now claims he then took.

It was SCHWERIN-KROSIGK who issued the ordinances of 21 November 1938 and of 19 October 1939, the first of which levied an assessment of 20 percent and the second an additional 5 percent on all Jewish property, by means of which the billion-mark fine was extracted, and it is he who issued the detailed instructions to the various Reich offices as to how and by what means payments could and should be made.

Regarding the billion-mark fine two things are to be observed. First, it was not a fine or penalty for any act done or committed by the individuals who were compelled to pay it, nor was there the slightest ground for the charge that the assassination of von Rath was the result of a general Jewish plot. It was a deliberate confiscation of property and

a typical piece of the persecution to which German Jews were subjected. Second, this fine and the proceeds of other confiscations of Jewish property were intended to be and were used for the purpose of re-armament and aggression. This statement was made at a meeting of the Reich Defense Council on November 18, 1938. There Goering said:

"Very critical situation of the Reich exchequer. Relief initially through the billion mark fine imposed on Jewry and through the profits accruing to the Reich in the Aryanization of Jewish enterprises."

The defendant offers, and there is no justification or excuse for these measures.

Financing Concentration Camps. As Minister of Finance the defendant furnished the means by which the concentration camps were purchased, constructed and maintained, but it is clear that he neither originated nor planned these matters, and the funds were provided by him on Hitler's express orders. They were Reich funds and not SCHWERIN-KROSIGK'S, and he had no discretion with respect to their disposition. His act in disbursing them for these purposes was actually clerical, and we cannot charge him with criminal responsibility in this matter.

Deportation of Jews to the East. When the cruel deportation of Jews to the East commenced, the defendant caused the necessary instructions to be given to the senior finance presidents throughout the Reich, who were his subordinates, to confiscate the Jewish property. The Jews were only permitted to have 100 Marks and 50 kilograms of luggage apiece. These instructions stated that the administration and utilization of the confiscated property was within the defendant's competency, and he transferred it to the senior finance presidents to perform.

The defendant asserts that by his orders an accurate record of all property thus confiscated was kept, so that at some future time, the owners might be able to reclaim it or be reimbursed therefor. Inasmuch, however, as the confiscation was complete and final, the possibility of reclamation or reimbursement could only occur as and when the Nazi regime ceased to exist. We deem his contentions in this respect to be an afterthought and without reality in fact or intention. His instructions spoke not only of deportations which were then imminent, but of deportations which had already taken place and further of deportations which were to follow. The confiscations included not only money, securities, jewelry, furniture, clothing, works of art, but also real estate owned by Jews.

In March 1942, the defendant's deputy, by his order, instructed the Finance Presidents concerning the seizure of Jewish literature, cultural and artistic works and ordered that they be turned over to the Operational Staff Rosenberg which was the collector and holder of this kind of loot.

On 23 November 1941, the defendant's state secretary, Reinhardt, co-signed the 11th Supplement to the Reich Citizenship Law, which deprived all Jews living abroad of their citizenship, as well as those who might in the future take up ordinary residence there. The decree confiscated their property, together with the property of all those Jews who at the time of the enforcement of the decree were stateless if they were formerly Reich citizens. This decree was issued as a result of a conference in the Ministry of the Interior which the defendant attended.

Various other implementary decrees and regulations for the confiscation of Jewish property were from time to time issued or co-signed by the defendant's Ministry of Finance, including those which forfeited the property of Jews who had committed suicide to avoid deportation. This latter regulation was made retrospective to 15 October 1940. The defendant pleads ignorance as to the issuing of some of these documents, particularly the last, and it is not unlikely that in some instances this was true, but that such measures were taken independently by his subordinates without knowing that they were in accord with the policies of his department is, we believe, highly unlikely, if not wholly impossible.

The defendant SCHWERIN-KROSIGK with the defendant STUCKART signed the decree of 2 November 1942 forfeiting citizenship and confiscating the property of all Bohemian-Moravian Jews who had established domicile abroad, and the defendant approved the draft of the Terboven Ordinance containing like provisions as to Norwegian Jews.

On 3 October 1939 the defendant SCHWERIN-KROSIGK, together with Frick and Ribbentrop, signed a decree providing for the forfeiture of citizenship of all citizens in the Protectorate who may have "acted in a manner detrimental to the interests of the Reich or which damaged its reputation", as well as those who did not return home when ordered to do so by the Minister of the Interior and the decree included a forfeiture of their property as well.

On 4 October 1939 the defendant with Frick signed a decree which authorized the Reich Protector to sequester, for the benefit of the Reich, the property of individuals or

or associations who fostered tendencies deleterious to the Reich, and the Protector and the Minister of Interior were authorized to determine what tendencies were to be so considered.

On 24 October 1942 Reinhardt, for the defendant SCHWERINKROSIGK, and the defendant STUCKART, for the Minister of the Interior, signed a decree conferring jurisdiction on the Protector, so far as nationals of the Protectorate were concerned, and on the Ministry of the Interior, in all other cases, to determine what activities should be declared "deleterious".

The occupation of Bohemia and Moravia and the formation of the so-called Protectorate were, as we have held, acts of aggression and in violation of international law. The enactment of these decrees was unlawful and was a part and parcel of the original unlawful act and scheme and plan.

It is apparent from the record that the defendant's Ministry of Finance was continually engaged in the work of taking over, disposing of, and realizing on Jewish confiscated property. The number and importance of these transactions and the fact that those engaged therein were responsible officials holding high office in the defendant's ministry, forecloses any possibility that they could have taken place without his knowledge and consent or subsequent confirmation and approval. They were a part, and an important part, of the Jewish persecutions carried on in the Reich and constitute violations of international law and agreements and crimes under Count Five.

Not only were these confiscations carried on in the Reich and against Jews of German nationality, but they were extended and came to include Jews of all nationalities living in Belgium or the Netherlands, or having fled from thence to occupied France and those who were residents of occupied France. The use to which much of this property was put was to realize foreign

exchange for the Reich. They were all without justification, excuse or legality. The officials of the defendant's ministry participated actively therein. These acts constitute violations of international law and crimes against humanity under Count Five.

When in June 1944 Himmler made application for the allocation of many millions for the demolition of the Warsaw Ghetto, the defendant SCHWERIN-KROSIGK expressed a willingness to make necessary installments on request, but coupled with it the stipulation that Himmler first use the values represented by goods found in the ghetto and inform him how many goods were to be utilized or had been so utilized. Himmler replied that the movable goods thus confiscated had been realized upon and the proceeds paid into the Reich's Main Pay Office in favor of the Ministry of Finance under a special account "Max Heiliger." Into this account was deposited the money and the proceeds of the dental gold extracted from the exterminated inmates of concentration camps and the jewelry and precious stones of which they were robbed. The defendant testifies that he had no knowledge of this account and does not know why it was given a fictitious name. It is to be remembered, however, that approximately thirty-three tons of dental and other gold alone were shipped to the Reichsbank and credited to this account. That such an acquisition to German gold stocks should not have come to the attention of the Minister of Finance we find it difficult to believe, although it is quite possible that he was not advised of the fictitious name under which the account was carried.

Part of the jewels, gold and works of art which were seized in Paris from the Rothschild family were turned over to and accepted by the defendant and utilized by his department

for Reich purposes. He made some objections to this but these were overcome and he accepted the proceeds which amounted to 1,800,000 marks. This was stolen property to which neither the Reich, the Reich agencies which stole it, nor the Ministry of Finance which accepted it, had the slightest legal claim. It was seized not because of any wrong done by the owners but merely because they were Jews.

Final Solution. The defendant was co-signer with Frick, Minister of the Interior, Bormann, Chief of the Party Chancellory, and Thierack, Minister of Justice, of the 13th Regulation under the Reich Citizenship Law. By its provisions criminal acts by Jews were to be punished by the police and not by judgment of the courts; the provisions of the public penal law were no longer applicable to Jews; on death, the property of a Jew was confiscated to the Reich, and only his non-Jewish heirs residing in Germany became entitled to compensation for the loss of their inheritance; the Minister of the Interior, with the concurrence of the higher authorities of the Reich, was empowered to issue the necessary administrative and enforcement regulations and to determine to what extent those provisions should apply to Jewish nationals in foreign countries, and finally the regulation was made applicable to Bohemia-Moravia and to all Jewish citizens of the Protectorate. This regulation was enacted in the midst of the extermination program and by it the bare shadow of legal form was thrown over the confiscation of property of Jews who were done to death in the East.

The defendant asserts that his only part in the program was to take possession and keep record of the property thus acquired; that Himmler told him the process had been in existence for some months and that he, VON KROSIGK, thought there

was nothing he could do and he "was convinced that the official promulgation would guarantee greater protection under the law than if the police, as heretofore, had handled it anonymously."

This is an explanation which does not explain and a justification which does not justify. It is difficult to say what comfort it would be to a Jew who was about to be murdered, or to his heirs who were about to be disinherited, to know that he was being robbed according to a tidy governmental regulation and that the receipts of the robbery were to go to the credit of the Reich rather than into the hands and pockets of the executioners.

Germanization Program and D.U.T: The connection of the defendant SCHWERIN-KROSIGK in this program consists almost entirely of setting aside Reich funds for the purposes mentioned, and which we have heretofore discussed with respect to the defendant KEPPLER. We find no instance, however, where these things were done at his instigation or other than at a direct order of Hitler. Here again he did not provide or dispose of his own funds nor was he in a position to say whether or not they should be so spent.

It is impracticable, within the compass of this opinion, to recite all of the activities in which the defendant in his department engaged within the purview of the charges alleged in Count Five. It is clear, however, that notwithstanding the conflicts of conscience which he suffered, and of them we have no doubt, he actively and consciously participated in the crimes charged in Count Five. Neither the desire to

be of service nor the desire to help individuals nor the demands of patriotism constitute a justification or an excuse for that which the evidence clearly establishes he did, although they may be considered in mitigation of punishment.

We find the defendant SCHWERIN-KROSIGK GUILTY under Count Five in the particulars set forth.