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# Answer Brief of the Prosecution in the Schellenberg Case

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

CASE No. 11

THE UNITED STATES OF AMERICA

V.

ERNST VON WEIZSAECKER, et al

ANSWER BRIEF OF THE PROSECUTION

IN THE SCHELLENBERG CASE

Nurnberg

15 November 1948

BY: Alexander G. Hardy  
Executive Counsel

Arnost Horlik-Hockwald

FOR: Telford Taylor  
Brigadier General, USA  
Chief of Counsel for  
War Crimes

and

Robert M.W. Kempner  
Director, Political  
Ministries Division

The Tribunal has ruled that briefs in answer to briefs of the opposing party must be filed within a period of ten days after receipt of the first briefs. To date the Prosecution has not received an English translation of a brief for the defendant SCHELLENBERG. However, it has been alleged by counsel for the defendant SCHELLENBERG that his client has not been charged in the Indictment with criminal conduct in connection with the Operation Zeppelin, and it is further alleged that in this respect the Prosecution has submitted evidence for facts which are not even mentioned in the Indictment. Defense counsel draws the conclusion that SCHELLENBERG cannot be held criminally responsible for acts connected with Operation Zeppelin. This argument is without merit.

In paragraph 38 of the Indictment the defendant SCHELLENBERG is charged, together with other defendants, with participation in "atrocities and offenses including murder, extermination, enslavement, deportation, imprisonment, killing of hostages, torture, persecution on political, racial and religious grounds, and other inhumane and criminal acts against German nationals and members of the civilian population of countries and territories under the belligerent occupation of, or otherwise controlled by, Germany." In the same paragraph it is alleged that these war crimes and crimes against humanity were committed "during the period from March 1938 to May 1945".

The following paragraphs of Count V of the Indictment (39 - 50) set forth particulars concerning certain acts alleged criminal by the Prosecution, and certain

of the defendants were listed as having been specially active in and responsible for them. This, however, in no way limits the Prosecution in supporting the basic charge set forth in paragraph 38, by whatever evidence is in the record. It should be emphasized that the basic charge under paragraph 38 of the Indictment is participation in war crimes and crimes against humanity, whatever those criminal acts might have been. In its completely erroneous conception of the Indictment, the Defense confuses the proof to sustain the charge, with the charge itself.

The charge against the defendant SCHELLENBERG in connection with the Operation Zeppelin is participation in murder. That is exactly what he has been charged with in paragraph 38 of the Indictment.

Moreover, Operation Zeppelin was an integral part of the function of the Einsatzgruppen. The Prosecution has introduced incontrovertible proof to this effect. Reference is made in this connection to the Prosecution's final brief against the defendant SCHELLENBERG (Section II C, pp. 52-62). In paragraph 45 of the Indictment SCHELLENBERG is specifically charged with participation for the crimes committed by the Einsatzgruppen, which extended - as set forth in this paragraph - to the extermination of "politically undesirables". Thus the evidence introduced by the Prosecution on SCHELLENBERG's criminal conduct in connection with Operation Zeppelin constitutes admissible proof in support of paragraphs 38 and 45 of the Indictment.

It seems appropriate to refer, in this connection, to the case of the U.S. vs. Karl Brandt et al (Case No. I). In Paragraph 6 of the Indictment in this case

the Defendants were charged as being principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving medical experiments without the subjects' consent, upon civilians and members of the armed forces of nations then at war with the German Reich and who were in the custody of the German Reich in exercise of belligerent control, in the course of which experiments the defendants committed murders, brutalities, cruelties, tortures, atrocities, and other inhuman acts.

Under letters A - L of the same paragraph of the Medical Case Indictment, twelve different types of experiments were particularized and individual defendants were charged with "special responsibility for and participation in these crimes".

The Prosecution adduced proof in support of the charges under Letters A - L, but furthermore introduced evidence in order to show special responsibility for and participation in other criminal experiments not particularized in the Indictment. The Tribunal took cognizance of this latter proof, and found some of the defendants (for example, the defendant Sievers for polygal experiments) guilty for participation in such experiments. On the other hand, the Tribunal ruled that the defendant Rose could not be found guilty for malaria experiments, and wrote:

"However, no adjudication either of guilt or innocence will be entered against Rose for criminal participation in these experiments, for the following reason: In preparing Counts Two and Three of its Indictment, the Prosecution elected to frame its pleading in such a manner as to charge all

defendants with the commission of War Crimes and Crimes against Humanity, generally, and at the same time to name in each sub-paragraph dealing with medical experiments only those defendants particularly charged with responsibility for each particular item." >

"In our view this constituted, in effect, a bill of particulars and was, in essence, a declaration to the defendants upon which they were entitled to rely in preparing their defenses, that only such persons as were actually named in the designated experiments would be called upon to defend against the specific items. Included in the list of names of those defendants specifically charged with responsibility for the malaria experiments the name of Rose does not appear. We think it would be manifestly unfair to the defendant to find him guilty of an offense with which the Indictment affirmatively indicated he was not charged." (Judgment, Case I, page 187).

It is patently clear that if Rose would have been named in the Indictment among those who were specifically charged with responsibility for malaria experiments, the Tribunal would have found him guilty for this crime, or if the malaria experiments had not been particularized, a consistent finding would have resulted.

SCHELLENBERG was specifically charged in the Indictment, Paragraph 38 and 45, for war crimes and crimes against humanity, including murder and the extermination of politically undesirables. The proof adduced in connection with the Operation Zeppelin supports these charges.