10-28-1948

Judgment of the Tribunal (Part 2)

Military Tribunal V
drafted for tasks in another region.

A Division under the XXXIII Corps on 30 June 1943 reported:

"Already, it happened that civilians assigned to fortification work who up to now did not receive supplementary rations for heavy work, collapsed due to exhaustion, especially since Russian civilians are being assigned for labor regardless of their physical fitness." (emphasis supplied)

On 5 January 1944 the 3rd Panzer Army issued a directive for its Corps Headquarters and Rear Area which stated:

"All persons capable of carrying arms and able to work must be seized for the allocation of labor. That is to say, in general, all men and women, age 14 to 55."

It appears beyond question that men and women and even children were drafted for work and that they were used in the main front line. One order says they are to be sheltered and fed and another that they shall be used ruthlessly and if the situation permits, in the front lines also. Another report shows that "the allocation of entire families for fortification construction near the front line met with difficulties."

We are convinced by the documents and the testimony in the case that in the area of Reinhardt's army, enforced labor by the civilians was carried out as a policy and that it was implemented ruthlessly with Reinhardt's knowledge and consent, and even pursuant to his orders.

Deportation and Enslavement for Labor in the Reich

Reinhardt's policy with respect to this matter is shown by an order signed by him as Commander-in-Chief of the 3rd Panzer Army to the effect that:

"The Fuehrer has charged Gauloiter Sauckel with the direction of the entire labor allocation program reaching into the
zone of operations. An intelligent cooperation of the military agencies with the departments of the labor allocation administration must make it possible to mobilize the work capacity of the entire able bodied population. If success cannot be achieved in any other way, coercive measures must now be applied to recruit the required labor for allocation in the Reich." (emphasis supplied)

This order had wide distribution throughout his command.

Having given such an order he must assume responsibility for what was done by his subordinate units in response thereto.

We find in the records a report from the Secret Field Police that a father making his way to the partisans, over the objection of his children, was shot while so doing. The three children were sent to Germany to work.
When the order came down from the OKH to draft the age groups 1925 and 1926, Reinhardt's Chief of Staff of the 3rd Panzer Army gave an order in which it was specified:

"Beginning 5 August 1943 a transport train with eastern workers will be dispatched each Tuesday and Friday from the army area to the Reich."

The proclamation sent out with these orders stated that "whoever tries to evade his service obligation will be severely punished."

A report of 23 July 1943 reveals that a conference was held at the headquarters of the 3rd Panzer Army. This document is rather significant. A notation of one of the matters discussed is as follows:

- Severe sanctions against resistance and transgression.
- Transferring guilty persons to the SD?
- ( Lublin?)
- Family members of persons liable to service who have escaped, to be apprehended without consideration for personal situation for labor allotment Reich; however these are to be cared for and treated like those willing to work."

Three days after this conference, the 3rd Panzer Army reported to the Army Group Center. A trenchant statement contained in that report is:

"Persons apprehended by force after attempts to evade this draft at first will be sent to penal camps which must be run along strict lines."

An activity report of 4 August 1943 of the 3rd Panzer Army with reference to the labor commitment of the civilian population and particularly the 1925 and 1926 classes states:

"The first batches of eastern workers for the Reich have been assigned to the collection camps without use of unpleasant measures. In some areas about 50% of the persons subject to the labor draft have fled, possibly by way of joining the bands."
A notation under date of 30 October 1943 appears in the War Diary of the Third Panzer Army as follows:

"Mjr Bohnisch, Chief of the Labor Group of Economy Headquarters 206 in Vitebsk, reports to O 5 on the allocation of his forces during the 'Heinrich' operation, and on the intended transport of the civilians emanating (Gonachten) from this enterprise. 'All personnel fit for military service and for work, who are seized are to be sent to the concentration camps of Lublin and Auschwitz via the SD camps and Dulag 125. In any case they may not be turned over for free labor allocation in the Reich. Mjr Bohnisch further reports that in the rear area of the IIth Luftwaffe Field Corps there are about 8000 newly arrived civilians, and in the area of the OK. Schumillino about 3000. He asks for a decision whether any recruits may be drawn from these resettled persons for Labor Allocation in the Reich. After being submitted to O Lu this is authorized, but intensive recruiting in Vitebsk, which according to Mjr Bohnisch's opinion would produce 2-3000 persons, is delayed for the time being.'

This clearly disposes of any contention that the recruitment of these classes for labor in the Reich was on any voluntary basis. A situation report of the 3rd Panzer Army, dated 21 February 1944, notes:

"Utmost seizure of all unemployed and able-bodied civilians still loitering about. Recently ordered by Panzer OK 3/10 O Lu/14 dated 10 January 1944, No. 579/44 secret."

Following this, on 4 April, a report of the 3rd Panzer Army shows that 11,000 from the Vitebsk area were found fit for labor assignment to the Reich and deported. The report further notes that there was a continuation of labor assignment according to the most recent draft of the order concerning age groups, 1925-26.

The foregoing and other evidence in the record convince us that the forcible conscription and illegal use of civilians within the areas of Reinhardt's command was a
fixed policy. While he and his witnesses deny that such a policy was in effect, we find their testimony not credible. Not only were civilian workers conscripted for use in the army areas but the orders and reports cited, and others to which we have not referred, show clearly that the deportation of civilian workers to the Reich was of such long continued and general practice, that even were there no orders signed by the defendant authorizing it, he must be held to have had knowledge of the practice and of its extent. The record shows that he did nothing to hinder or prohibit the practice, that on the contrary, he encouraged and carried it out in the area of his command.

**Plunder and Spoliation**

The evidence on the matter of plunder and spoliation shows great ruthlessness, but we are not satisfied that it shows beyond a reasonable doubt, acts that were not justified by military necessity.

**Murder, Ill-Treatment and Persecution of Civilian Populations**

Reinhardt passed on the Barbarossa Jurisdiction Order. On 25 February 1942, he gave the following directions to his troops:

"6.) If weapons are found in the possession of partisans or their partisan activity seems quite obvious, the partisans are to be shot or hung by order of an
officer, and the reasons made public to
the population by some suitable manner
(for instance, a sign attached to the
partisan with the inscription: 'This
is what happens to everyone who falls
a telegraph pole'). Similar treatment
should be given to inhabitants who
support partisans."

This shows clearly that in his area they extended the
terms franc-tireur in accordance with the Mueller directions
at the Warsaw Conference. The LIX Army Corps and Panzer
Group 3, among other things, ordered:

"The holding of hostages may be deemed
necessary. If it is suspected that
roads or places are mined; prisoners
of war or the local population are to
walk in front or clear the mines."

On 31 July 1942 Reinhardt signed an order which, among
other things, stated: "the death sentence may be imposed
on every 10th man if the ring leader or the especially
guilty persons cannot be apprehended." He states further
in the order that every officer or Field Police Official
(not auxiliary police official) is competent to make
the decision, and after careful examination, that such
officer shall order the executions (shooting or hanging).

An order signed by Keitel on 16 December 1942 provided:

"The troops are therefore entitled and
even obliged to employ whatever means
in this fight without any restraint, also
against women and children, as long as
it leads to success."

This order was sent down to subordinate units by the 3rd
Panzor Army on 5 January 1943 and was carried out with
ruthlessness. Reinhardt says his chief of staff transmitted
this during his absence, but throughout the trial it has
been the contention of the defense that the chief of
staff took no authority in matters of policy and did not
sign orders unless he knew that they were in conformity
with the will of the commander. We think that is what
occurred in this case. If the order was not in conformity with his policy, he should have repudiated it. Reinhardt says he did not return to this sector but there can be no question that he returned to his command and we have no doubt he learned what his chief of staff had done in his absence.

The 3rd Panzer Army on 30 March 1943 passed on an OKH order in which it is provided that band supporters and band suspects are to be handed over to the Senior SS and Police Leader for transfer to a concentration camp "providing they have not been shot immediately, respectively hung, or in special cases assigned to the combatting of bands according to Section 11 of the Circular." The XXXIII Army Corps under date of 29 March 1943, suggested to the 3rd Panzer Army the following:

"When in band-infested areas, where the bulk of the bands consists of forcibly recruited persons, bandits are publicly hanged or shot, it must be considered that these forcibly recruited people, if only for fear of a similar fate, will be induced to offer the most active resistance to the troops napping up. If, therefore, it is not succeeded in eliminating the bandits immediately on the battle field, they should rather at first be taken along as prisoners and inconspicuously eliminated only during the transport. Thus, only the fact of the capture will be passed on from mouth to mouth, and the number of deserters will grow in spite of the active counter-propaganda of the commissars. It may be advisable, for propaganda reasons, to dress up some bandit as a member of an East unit or of indigenous auxiliary police (CD), under inconspicuous but strict guard, and to show him very conspicuously to the population in the area of his former commitment. This ruse of war again and again induces bandits to desert as experience shows." (emphasis supplied)

A directive of the 9th Corps dated 25 September 1942 sent to the Jedgkommende (partisan hunters) describes how they shall set traps and wait with patience to catch possible partisans or mine layers. One paragraph in this
directive is as follows:

"If the element of surprise is no longer present; e.g., if by chance local people turn up, the spot selected for activities is to be abandoned at once, unless the inconvenient witnesses can be done away with quietly."

This shows the utter disregard for the life of the civilian population by elements subordinate to Reinhardt.

SD detachments were assigned by the 9th Army to Reinhardt's Panzer Group 3 with directions that the Group make further assignments. An order from the Chief of Staff of Panzer Group 3 to the LVI Army Corps also discloses such assignment. It must therefore be said that Reinhardt knew of the SD being in his area as early as September 1941. That this association with the SD continued when Panzer Group 3 became the 3rd Panzer Army in indicated by the War Diary of the 3rd Panzer Army, wherein is set forth, under date of 30 March 1943, an order by the Chief of Staff of the 3rd Panzer Army in which the following appears:

"1.) Band supporters and band suspects are to be handed over to the competent Senior SS and Police Leaders for transfer to a concentration camp, providing they have not been shot immediately, respectively hung, or in special cases assigned to the combatting of bands according to section 11 of the 'Circular'.

"2.) The population is to be clearly informed of the difference between 'Forced Labor' which is carried out under extremely hard conditions, and the 'Labor allocation to the Reich' on the basis of recruitment of labor by the Plenipotentiary General for Labor.

"In this connection it is ordered:

"I. The band supporters and band suspects apprehended in the army area are to be handed over to the Einsatzkommando of the Security Police and the SD for transfer to a concentration camp. Units of the SD are located at Witebsk, Bobesdoff,
Not only did Reinhardt's army know about the SD, but over a long period of time, it actively cooperated with it in sending suspects of all kinds, including civilian men, women, and children for forced labor in the concentration camps "under extremely hard conditions". Thousands of such unfortunate were deported to the Reich and sent to Lublin and Auschwitz through the instrumentality of Reinhardt's commands.

Among reports indicating Reinhardt's knowledge of the activities of the SD, we find such notations as the following:

"Military Administrative Councillor Matthaeus reports that 700 of the evacuees in PW's transit camp (Dulag) 230 have been screened by the SD and that all of them are intended for evacuation to Lublin."

Dulag 230 was under Reinhardt's control.

Under date of 2 September this notation appears:

"SD Wittelsk reports that the evacuation of supporters of bands to Auschwitz could not be affected as yet because the railroads did not allocate cars."

Under date of 18 September it is noted:

"Qu. 2 arranges with SD that in case the evacuation to the Reich fails to materialize, the people will be deported by the SD to Auschwitz or Lublin as soon as shipment is possible. SD is directed to send the 700 prisoners from Granki to PW transit camp 230."

On 6 October 1943, the Commander of Dulag 230 reported:

"that a convoy of 31 men, 172 women and 240 children had arrived. It consists of the band population rounded up by the troops. There are now about 1000 civilians in Dulag who can be transported";

and also:

"Where old people and small children are concerned, SD cannot (as discussed with Obersturmfuehrer Mader) transport the people to Lublin or Auschwitz."
On 19 October 1943 the following was reported:

"Visit of the Secret Field Police Group 717 concerning the question as to which camp civilian prisoners can be sent to, who are old and infirm and who have small children, and whose kin have been executed as bandits or bandit supporters or have been handed over to the SD to be transported to Lublin. It seems intolerable to settle these persons anywhere in the army area because they spread an extremely poisoned atmosphere against the Germans."

An order of 12 August 1943 by the 3rd Panzer Army contained the following:

"According to Pz. OK. 3, In No. 6282/43 secret, it is ordered to evacuate the area designated in the above reference since it was established beyond doubt that the population helped the bands during the operations of the 2nd and 7th Jaeger Battalions. SD Witobsk has declared itself ready to arrange that the population which is to be evacuated will be sent to an SD camp (Lublin)."

The distribution list shows that the army sent a copy of the order to "SD Witobsk" for information.

Seven days later, on 19 August 1943, another order was issued relating to the same evacuation and by the same authority. Among other things, the order stated:

"... This concerns approximately 2,500 persons from the district of Witobsk, to whom about 500 civilians from the district of Surash will be added. The letter are to be brought to Transit Camp 230 by the IIInd Luftwaffe Field Corps. Sufficient equipment for the trip, including additional food, is to be allowed to the persons to be evacuated. All cattle, agricultural equipment and agricultural products, remaining will be taken over by Economic Detachment, Group Agriculture. Report on the goods taken over is to be made to Q. Gr. 2/IVa by 31 August 1943.

"The request to SD Witobsk, to separate unmistakable band elements in Transit Camp 230 and to take them over for the purpose of accommodating them in Lublin, continues to be upheld.

* * *

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"Besides properly looking after them and feeding them which has already been ordered, Transit Camp 239 will also see to indoctrinating them with the necessary propaganda (especially also informing them of the reason for the evacuation - large sections of the population aiding the bands; the innocent ones must suffer with the guilty ones)."

Reinhardt held the executive power for his area and it was his duty to exercise it for the protection of the population. He was obligated not to deport them, not to despoil them of their property, nor to send both those innocent and those guilty of aiding the so-called bands to concentration camps, as well as sending the 1925 and 1926 groups to forced labor in the Reich. The orders to do those things were criminal orders and they were fully implemented by him. He is criminally responsible for issuing the orders and for the acts done in implementation of them.

Whether or not Reinhardt knew that Lublin and Auschwitz were murder institutions is not material. There is no direct evidence that he did. One of his orders shows he knew that the forced labor was hard. He knew they were penal camps. He sent old men, women, and children to them. His own testimony convicts him of knowledge that the SS killed cripples. He had known this for two years. He knew they operated under their own authority, conveyed by orders of whose origin and nature he professed ignorance and yet he turned over to them large numbers of the civilian population over whom he had power and whom he was under a duty to protect. He turned civilians over to this organization over which he also says he had no control. Slave hunting in his area was so general and long continued that without the direct evidence pointed out, knowledge would
be imputed to him;

The Tribunal, on all the evidence, finds Reinhardt guilty on Counts Two and Three of the Indictment.
HANS VON SALMUTH

Hans von Salmuth was born in Metz on 21 November 1888. He became an officer aspirant in September 1907 and served in the First World War, first as battalion and executive officer and then as General Staff Officer. After the end of the war he remained in the Reichswehr where he held various assignments. He was promoted to Brigadier General in 1937 and became Chief of the General Staff of Army Group Berlin. In September 1939 he became Chief of General Staff of Army Group North and took part in the Polish campaign. At about this same time he was promoted to Major General. From October 1939 to May 1941 he was Chief of General Staff of Army Group B, during which time he was promoted to Lieutenant General of the Infantry. From May to December 1941 he was Commanding General of the XXX Corps and participated in the Russian campaign. From 21 March to 6 June 1942 he was Deputy Commander of the 17th Army and from 6 June to 13 July 1942 he was Deputy Commander of the 4th Army. On 13 July 1942 he was appointed Commander-in-Chief of the 2nd Army and promoted to General in January 1943. In October 1943 he was appointed Deputy Commander of the 15th Army and subsequently became its Commander-in-Chief, a command which he retained until August 1944.

He was not a member of the Nazi Party or any of its formations.

The defendant is charged under Counts Two and Three of the Indictment and the charges urged against him in respect to these counts come under the following headings which we will consider in serial order: (1) The Commissar Order; (2) The Commando Order; (3) Prohibited Labor of Prisoners of War; (4) Murder and Ill-treatment of Prisoners
of War; (5) Deportation and Enslavement of Civilians; (6) Plunder of Public and Private Property and Wanton Destruction; (7) Murder, Ill-treatment, and Persecution of Civilian Population; (8) Discrimination, Persecution, and Execution of Jews, including cooperation with the Einsatzgruppen in this program.

1. The Commissar Order.

The Commissar Order was received by the defendant while he was Commanding General of the XXX Army Corps. The evidence shows that it was distributed to subordinate units by him. He states that he rejected the order and acquainted his divisional commanders with his objections. The evidence does not establish that the order was ever carried out within the XXX Army Corps while it was under the command of the defendant. Two instances are cited which, it is urged, show it was carried out; in one instance within the 17th Army over which he subsequently became the Commander-in-Chief. This instance occurred approximately one month before his arrival. The second instance relied on occurred in the 4th Army approximately one month after he assumed command. This instance is considered ambiguous as to whether or not the commissars were in fact executed after they had been taken prisoner. In neither instance, however, is it considered that the defendant can be charged because from the time element, it cannot be said that they occurred with his acquiescence or approval or due to any order which he had distributed.
2. The Commando Order.

The evidence shows that this order and also Hitler's supplement to it were received by the defendant while Commander-in-Chief of the 2nd Army. On 25 October he transmitted this order for compliance with a cover letter to units within his command and requested that all copies were to be returned to AOK 2 by 10 November. This cover letter was signed by his chief of staff and shows the initials O.B., Commander-in-Chief. The defendant states that his chief of staff should not have signed the letter and was not authorized to do so, but he did nothing to repudiate this action of his chief of staff, nor is it shown that he reprimanded him in any way therefore.

It is shown further that an order for the 580th Rear Army Area, signed by the Quartermaster, was issued, providing:

"Members of terror and sabotage troops, agents, who fall into the hands of the Wehrmacht are to be turned over to the SD without delay."

and that

"Any military detention, in prisoner of war camps, etc. is most strictly forbidden, even if considered only as a temporary measure."

On 8 October 1942 the AOK 2 requested clarification from Army Group B of dubious points arising from application of the Commando Order.

It is obvious that he transmitted this order for execution wherever it was considered applicable, whether to British, Americans, or Russians.


Under the conditions confronting the defendant, it is considered as a matter of fact that the use in the combat
areas of prisoners of war constituted a use in a dangerous area. Numerous documents and the testimony of witnesses including the defendant in this case establish this. Furthermore, Exhibit 226 and rebuttal exhibits 58, 59 and 60 show the illegal use of captured soldiers of the western powers. The western powers were signatories to the Geneva Convention as was Germany, and the uses to which they were put were illegal under the provisions of that Convention. This fact is shown by the documents themselves and the defendant must accept criminal responsibility for his use of prisoners of war both on the eastern and western fronts. Exhibits 524 and 526, among others, are cited to show this illegal use.


On 25 July 1941, the OKH issued an order which was transmitted in the chain of command by Salmuth's XXX Corps. This was obviously an illegal order in that it provided that Red Army soldiers "are to be considered guerillas as from a certain date, to be fixed in each area, and are to be treated as such". This Tribunal finds also that the defendant was criminally responsible for its transmittal.

On 21 November 1941, von Salmuth transmitted an order concerning partisans to subordinate units which provided that "every civilian and also every dispersed soldier who is found in the possession of arms in the region of the XXXth AK is to be shot immediately". Von Salmuth signed this order and it is found to be an illegal order. This order was executed within the command of the defendant. Concerning the treatment of prisoners of war in the areas under the defendant, numerous reports from these areas
show what must be considered as an excessive number of deaths by shooting and otherwise among the prisoners of war. They imply a degree of negligence on the part of the defendant but we need not discuss this question. These reports show that prisoners of war were handed over to the SD, a police organization, and that thereafter the army exercised no supervision over them and apparently had no control or record as to what became of them.

Whether or not they were liquidated, as many of them undoubtedly were, is not the question. The illegality consists in handing them over to an organization which certainly by this time the defendant knew was criminal in nature.

The defendant undertakes to state that he had no supervision over those prisoner of war camps. From the evidence we are of the opinion that the defendant was responsible for prisoners of war within his area and also had control over them and that he must accept criminal responsibility for the illegal transfer of these prisoners to the SD.

5. Deportation and Enslavement of Civilians.

Concerning the question of the use of the civilian population in the army area of the defendant and the illegal recruitment and transportation of civilian slave laborers to the Reich, the evidence establishes the defendant's responsibility. Numerous documents in evidence might be cited and, furthermore, documents introduced in rebuttal show that the extension of this program, both in the west and the east, was one which the defendant strongly urged.
A defense witness, Harteneck, who acted as the chief of staff of the defendant, shows that this labor was compulsory. The documents speak for themselves. But if further evidence is needed, the defendant's own testimony on the stand shows that this labor was compulsory. The record shows the defendant was guilty, both of using prohibited labor of civilians in operations directly concerned with the conduct of the war and of transporting slave laborers to the Reich.


The evidence in this case is not considered sufficient to establish criminal connection for plunder of public and private property.


The evidence does not establish beyond a reasonable doubt the transmission of the Barbarossa Jurisdiction Order by the defendant. The evidence does, however, establish many instances of the illegal executions of civilians by units subordinate to the defendant. From this evidence the following exhibits are cited:

From 15 to 30 April 1942 a report of the Feldkommandantur to the 44th Army Corps of the 17th Army under von Salmuth shows the shooting of persons as partisan suspects, Communists, for stealing army property, as Jews, and the turning over of Jewish women to the SD.

A report dated 2 September 1942 from the Korueck 550 to AOK 2 under von Salmuth shows the hanging of persons "strongly suspected" of sabotage.

Reports from the same Korueck addressed to AOK 2, covering a period from 7 October to 12 November 1942, show
that on 16 October "a large number of suspects" were shot; that in the localities near Weretening, "several hundreds of suspects were liquidated" and the town itself burnt; that a patrol reports "three suspicious looking men" were shot.

A report of 2 September 1942 states:

"If the prerequisites for surprise no longer exist, for instance, because inhabitants appear by chance, the chosen site must be immediately abandoned if the troublesome witnesses cannot be eliminated silently."

A report shows 6,000 persons executed as partisans and agents by all participating agencies (excluding the SD).

The War Diary of the 17th Army under von Salmuth, 24 July 1942, reports that Concentration Camp Gorlowka was dissolved on 22 July and that of six hundred and fifty-five civilians who passed through, one hundred and fifty-eight were liquidated and twenty-three handed over to the SD.

Whether or not these and other executions, shown by the evidence, by his subordinates were pursuant to the Barbarossa Jurisdiction Order is immaterial. These illegal executions were carried out over a wide period of time and by numerous units subordinate to the defendant.

The evidence also establishes in many cases issuance of orders which would naturally result in such criminal acts by his subordinates. Among these is cited an OKW order of 16 December 1942 which the defendant distributed for information and further action, which provided that the order should not fall into enemy hands. This order dispensed with the von Brauchitsch Disciplinary Order as far as partisan warfare was concerned by providing that no punishment should be imposed upon troops because of their conduct and that no sentence should be confirmed which contradicted this order. It also provided:

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"If this war against the bands in the East and the Balkans is not waged with the most brutal methods, the available forces will in the near future no longer be sufficient to overcome this plague.

"For this reason the troops are justified and obliged to resort in this combat to all measures - even against women and children - without leniency, as long as they are successful."

AOK 2, under the defendant, even recommended a supplement to this order, submitted on 12 April 1943 to the Army Group Center which provided:

"During interrogation of bandits, also that of women, all means have to be employed in order to get the necessary statements. Interpreters are to be specially trained for the interrogation of bandits. It is frequently necessary to interrogate an individual bandit several times in order to get a result."

On 7 August 1941, Salmuth's XXX Corps received from the AOK 11 an OKH order of 25 July 1941 concerning the treatment of enemy civilians and prisoners of war. This order he distributed down to the battalions of his Corps. It provided in pertinent part as follows:

"Attacks and all kinds of acts of violence against persons and objects, as well as all attempts, are to be beaten down ruthlessly by use of arms until the enemy is destroyed.

"In cases of passive resistance or road obstructions, shootings, raids, or other acts of sabotage where the culprits cannot be determined at once and taken care of in the already ordered manner, collective forcible measures are to be carried out without delay by order of an officer not below the rank of a battalion commander etc. It is specifically pointed out that it is not necessary previously to take hostages to hold liable for future offenses. The population is held responsible for order in their areas even without special previous announcement and arrest.

"Attacks and assaults on natives assigned by us to work (for instance, road construction, agriculture, trades, factories) and on supervising personnel, constitute attacks on the occupation forces and are to be punished as such."

This and other evidence in this case prescribed the employment of ruthless collective measures and terror.
activities against the civilian population. On 26 November 1941 the XXX Corps distributed to subordinate units an order, in pertinent part as follows:

"The incidents which happened during the last days, during which several German and Roumanian soldiers lost their lives during attacks of partisans, require severest countermeasures.

"2.) Therefore immediately the following persons are to be taken hostages in all places where troops are stationed:
   a.) persons whose relatives are partisans.
   b.) persons who are under suspicion to be in contact with partisans.
   c.) party members, Komsomolzen, party applicants.
   d.) persons who formerly were members of the party.
   e.) persons, who, prior to the moving in of the German and Roumanian troops had any official functions, i.e., village magistrates and deputies, members of the local Soviet, party officials of any kind, directors of state institutions of any kind, sanatoriums, etc.
   f.) persons who are found outside the closed villages without a special permit.

"3.) These hostages are to be accommodated in concentration camps. Their food must be supplied by the inhabitants of the village.

"4.) From these hostages 10 are to be shot for each German and Roumanian soldier who is killed by partisans, and 1 of the hostages is to be shot for every German or Roumanian soldier wounded by partisans; if possible they are to be shot near the place where the German or Roumanian soldier was killed and then they are to be left hanging at that place for 3 days."

The record shows such collective actions to have been carried out by subordinate units under the defendant's various commands.

The Tribunal finds from the evidence above cited and other evidence in this case that the defendant sponsored, acquiesced in, and approved such illegal executions within the areas of his command.
8. Discrimination, Persecution, and Execution of Jews, including cooperation with the Einsatzgruppen in this Program.

On 1 August 1941 a Ukrainian woman reported a secret meeting of some fifty local Jews and Bolshevists who she said planned to collect and destroy leaflets dropped by German planes requesting the Ukrainian population to resume work in the fields, and to attack the German military officers after the Jews had become strong enough by calling in other persons.

On 2 August the XXX Corps reported to the 11th Army, a pertinent part of which is as follows:

"On the basis of this report the SS Einsatzkommando X a, stationed in Olschenka was informed immediately. The Einsatzkommando was requested to dispatch a detachment to Kodyma immediately in order to prevent the execution of the intentions of the Jews and Bolsheviks on the same afternoon by an extensive action in the Jewish quarters. The action was executed under the command of SS-Hauptsturmfuehrers Prast and 300 members of various troop units were also employed to block off the city quarter involved. The action started on 1515 hours and was finished at 1900 hours.

"III. Results

"A total of 400 male persons were arrested, mostly Jews. These were subjected to an interrogation in the market place of Kodyma. It was remarkable that many of these Jews were from Balti, Soroki, Jampol and other localities formerly occupied by German troops, in particular former leading communists. 98 of these 400 persons were proven active members of the Communist Party (functionaries and the like) and/or urgently suspect of participation in the intended plots.

"The rest of the persons consisted to a great part of asocial elements of the Jewish race. The first mentioned 98 persons were shot to death outside of the village pursuant to the directive of SS-Hauptsturmfuehrer Prast, after they were briefly screened and interrogated once more."

On 2 August 1941 the 11th Army made the following entry in its War Diary:
"Preparation of a plot by Jews and Komsomols in Kodyma. Gang leaders and suspects were shot. In addition 170 hostages arrested."

On 3 August 1941 Sonderkommando 10a reported to Einsatz- gruppen D as follows:

"\* \* \* In agreement with the commanding general, 99 of the persons arrested were shot, among them 97 Jews, approximately 175 were taken as hostages, the rest released. Executions were carried out by 24 men of the Wehrmacht and 12 of the Security Police \* \* \*".

On 2 August 1941 Sonderkommando 10a filed a report concerning this instance, pertinent parts of which read as follows:

"By interrogation of and confrontation with Ukrainian inhabitants of the town, 98 persons were identified who had taken part in the meetings or who had behaved in an subordinate manner to the German military, or who had belonged to the Jewish intelligentsia."

The headquarters of the XXX Corps on 1 August was located in Kowno and the defendant was in command of the area, including that city which consisted of about 10,000 people. The defendant on the stand denies his participation in or knowledge of this incident until after it had taken place and he is supported in his position by the testimony of his then chief of staff, Harteneck, and his Io, Eismann. The stories of these three witnesses, however, are not consistent. Nor is the defendant's own testimony consistent with itself.

The record further shows that subsequent to the execution herein described, that on the evening of 1 August and prior to 8:30, the defendant issued a proclamation to the population of Kodyma as follows:

"1.) A number of persons were shot today, because it had become known to the German Command that preparations were being made for secret attacks against the troops of the German Wehrmacht in the town."
"2.) Besides, a further number of persons were taken hostages and brought to the prison camp. They will not be harmed if the population of the town shows a quiet and loyal attitude towards the troop detachments in the town and towards German soldiers.

"3.) However, should any troop detachments or individual German members of the Wehrmacht or any installations of the German Wehrmacht in the town or in the vicinity of Kodyna be attacked, the German Command shall be obliged to have more executions ordered. Only a quiet and loyal attitude of the entire population secures the lives of those hostages.

"4.) It is herewith being ordered that until further notice the population of Kodyna has to provide for the provisioning of these hostages. The Town Major is arranging for details with the local commander and the commander of the prison camp.

"5.) Starting immediately the civilian population is forbidden to leave their homes between 20:30 and 4:00 o'clock in the morning. Anyone being in the streets during this time will be shot.

Kodyna, 1 August 1941.
The German Command.

On 2 August he signed an order to his troops which reads as follows:

"2.) Participation of soldiers in actions against Jews and Communists:

"The fanatical intent of the members of the Communist Party and of the Jews to stop the German Wehrmacht at all cost must be broken under all circumstances. In the interest of the security of the Army rear area it is therefore necessary to proceed with all vigor. Sonderkommandos have been charged with this mission. At one place, however, members of the Armed Forces participated in such an action in an unpleasant manner.

"For the future I order:

"Only those soldiers may participate in such actions who are expressly ordered to do so. I also forbid all members of the troops subordinate to me any participation as spectators.

"In-smuch as members of the Armed Forces are ordered to participate in such actions, they must be under the command of officers. These officers are responsible that every unpleasant excess on the part of the troops be avoided."

It also appears in none of the documents or the testimony herein that the defendant in any way protested against
or criticized the action of the SD or requested their removal or punishment. The only punishment inflicted, according to the testimony, upon any one was apparently a twenty day confinement sentence against a member of his own staff for unauthorized participation in this action.

If we are to accept the rather flimsy pretext that some Jews in Kodyraa were planning action against the Wehrmacht, the evidence established that the executions recorded were far beyond the punishment of those involved in any such conspiracy and constituted a murder action, and the Tribunal finds from these documents and other evidence that the defendant acquiesced in and approved this criminal action.

Certainly from then on the defendant knew of the murder activities of the SIPO and SD. When he turned over prisoners of war and civilians to them, he knew what could be expected as to their fate. When these units operated in his area he knew the murderous functions they performed. Notwithstanding, on 7 August he transmitted the OKH order of 25 July 1941 which provided:

"Suspected elements who, although they cannot be proved guilty of a serious crime, seem dangerous because of their attitude and behavior are to be handed over to the Einsatzgruppen or the Kommandos of the SD (SD). The moving about of civilians without travel authorization must be stopped."

On 24 July 1942 Korueck 580, which was the rear area of the AOK 2 under von Salmuth, directed:

"A Sonderkommando of the Security Police and of SD No. 4 is has been attached to AOK 2 for the carrying out of special security police tasks outside of the jurisdiction of the troops. The Sonderkommando carries out its mission on its own responsibility. The AOK will coordinate the tasks of this Sonderkommando with those of the military counterintelligence, the activity of the secret field police and with operational requirements."

And on 4 July 1943, while Commander-in-Chief of the 4th
Army, the defendant signed a report as follows:

"III. Collaboration with the GFP (Secret Field Police), Senior SS and Police Leaders, Plenipotentiaries of the Chief of Security Police, the SD and the Einsatzstab Rosenberg.

"Collaboration with all German offices was very good. Especially in the Corps areas, the cooperation of the GFP (Secret Field Police) with the Commands proved very advantageous."

On 26 December 1944, he issued a directive signed by his chief of staff, as follows:

"7.) The Sonderkommando 4a of the Security Police and the SD

is subordinate to the Army with regard to routing, supplies and accommodations.

The Kommando receives its operational orders from the Chief of the Security Police and the SD.

The Army has the right to issue orders when they are required in order to avoid interference with operations. Besides, it is the responsibility of the Ic/40 to coordinate the tasks of the Kommando with the interests of the military Counter Intelligence, the activities of the GFP and the requirements of the Operations.

The head of the Kommando must effect a close collaboration with the Ic/40 of the Army. Since the operational area of the Kommando is as a matter of principle restricted to the Army Rear Area (with the exception of individual cases) a close collaboration with the O.Qu./Qu. 2 and the Commander of the Army Rear Area is also indicated.

Counter intelligence tasks within the troops and their counter intelligence protection are the sole tasks of the GFP. (Initial) Kl."

The record does not establish the extent or location of the liquidations pursuant to this program carried out within those areas, but it does establish his cooperation with the Einsatzgruppen, knowing their murderous functions.

On 24 May, while in command of the 17th Army, the defendant distributed an order to subordinate units, requiring the registration of all citizens except Jews,
foreigners, Red Army soldiers, and certain other categories, and provided that:

"Persons supplying shelter to new arrivals (also to members of the family) without the certificate or with a forged certificate are shot to death just as those persons who take quarters in a place (hide overnight), without having obtained the written permission of the mayor."

In other words, the order provided for the registration of certain civilians and excluded others, including Jews, who apparently were to be shot for not having the certificate with which they were not provided.

For the reasons above stated concerning this defendant, we find him guilty under Counts Two and Three of the Indictment.
Karl Hollidt was born in Speyer on the Rhine on 28 April 1891. After a normal education, he became an officer aspirant in July 1909, and in November 1910 became a Second Lieutenant of Infantry. In the first World War he was a combat soldier and was wounded. Subsequent to the first World War he served with the Free Corps and later was accepted into the Reichswehr or One/Thousand Man Army as a Captain. He stated in his affidavit that he was promoted to Brigadier General in the summer of 1933.

He did not participate in the Polish campaign but, at the onset of the war, took over command of the 52nd Infantry Division and was committed for the defense of Saarbrucken in the West Wall. In April 1940 he was promoted to Major General. In November 1940 he was given command of the 50th Infantry Division. He participated in the invasion of Greece and later, from Rumania, participated in the invasion of Russia. In February 1942 he was made General of the Infantry (Lt. General) and given command of the 17th Corps of the 6th Army. In January 1943 he was appointed commander of Army (Armeeabteilung) Hollidt, which was later reorganized as the 6th Army under his command.

In February 1943 he was promoted to General Oberst (General). In April 1944 he was relieved of his command and retired to inactive duty. In March 1945 he became liaison officer of the Chief of Civilian Administration in the Ruhr District where he remained until April 1945.

Aside from the charge of Crimes against Peace, heretofore disposed of in this opinion, we think that charges under Counts Two and Three of the Indictment will be dealt with under the following headings: (1) The Commissar
Order; (2) The Commando Order; (3) Prohibited Labor of Prisoners of War; (4) Murder and Ill-treatment of Prisoners of War; (5) Deportation and Enslavement of Civilians; (6) Plunder of Public and Private Property and Wanton Destruction; (7) Murder, Ill-treatment and Persecution of Civilian Population.

1. The Commissar Order

The evidence shows that the defendant Holliedt received in writing this order or a similar order providing for the shooting of political commissars. The defendant testified that he instructed his regimental commanders not to comply with this order. The only report in evidence as to such executions is from the 50th Division is the ambiguous statement found in Exhibit 1265. A later report submitted by the 17th Army Corps of the 6th Army on 15 February 1942 discloses the execution of two commissars. From this report it is not clear that the commissars were executed after capture. We can only construe such documents favorably to the defendant.

Furthermore, the defendant denies that he on this date had assumed command of the 17th Army Corps and alleges that he did not see this document. It is true that his service record discloses that he was assigned to this Corps in January 1942. However, an assignment and the assumption of command are different; and assuming that he had taken command in January, it can hardly be said that the execution, if such is assumed, grew out of any action or neglect on his part in view of the length of time he had been with the command.

We therefore find from the evidence that the defendant was not criminally connected with this order.
2. The Commando Order

The 17th Army Corps received this order and, on his return from leave in early November 1942, the defendant Hollidt read it. He stated that he saw no reason to pass on the order and the evidence does not establish that he did so, and there is no evidence to show that it was ever carried out by units under the defendant.

We are therefore unable to find the defendant criminally connected with this order.

3. Prohibited Labor of Prisoners of War

Documents pertaining to this matter upon which the prosecution relies pertain to the time when the defendant was in command of the Armeesabteilung Hollidt in the 6th Army. At that time he was in the course of retreat which covered some 1500 kilometers, and his army was in a difficult and deplorable condition at various periods during this retreat, and he defended his use of prisoners of war to some extent upon the exigencies of the situation which confronted him. This constitutes no legal defense but is only in mitigation. From the factual point of view that the defendant was in retreat and subject to heavy, unexpected attacks it is evident that the employment of prisoners of war in constructing field fortifications and for labor with combat units necessarily put them in a position of greater danger than the same use would have subjected them to on a more stable front.

The evidence in this case shows that over a wide period of time prisoners of war were used in the combat zone for the construction of field fortifications by units
subordinate to him which could only have been done with his knowledge and approval. Reports show that prisoners of war were in fact killed and injured by an attack from enemy mortars.

We can only find from the evidence that prisoners of war were used under the defendant in hazardous work with the knowledge and approval of the defendant and that he is criminally responsible therefor.

4. Murder and Ill-treatment of Prisoners of War

This charge is based in part upon certain documents which show that prisoners of war were shot by units subordinate to the defendant. These documents are by no means clear as to the circumstances, or to the effect that the shootings were unjustified; but on the assumption that they were, it is considered that such instances would have to be classified as excesses committed by troops with which no criminal connection of the defendant is established.

The other exhibit on which the prosecution relies under this heading is Exhibit 1828, an order pertaining to the shooting of parachutists. The Tribunal is not of the opinion that this order constituted an illegal order and we therefore find no criminal act established against the defendant under this heading.

5. Deportation and Enslavement of Civilians

The evidence in this case establishes without question the illegal use of civilian labor by units under the defendant's command with his knowledge and consent. This labor was not voluntary and involved the use of civilians in the construction of field fortifications contrary to international law.
The evidence also establishes that the defendant participated in the recruitment of slave labor for the Reich under the compulsion of orders to do so. He alleges that he was opposed to this program of recruitment of labor to be sent to Germany. Hollidt Exhibit 146 shows that any disapproval was based upon the fact that he needed such labor for his own purposes.

6. Plunder of Public and Private Property

In connection with this charge we consider it established by the evidence and particularly by Exhibit 573 that the defendant considered civilian authorities subordinated to the army in matters concerning evacuation, and he directed that "everything which could be usable to the enemy in the area must be destroyed if no evacuation is possible."
The Tribunal does not feel that the proof establishes that the measures applied were not warranted by military necessity under the conditions of war in the areas under the command of the defendant. Nor does the proof establish what property was removed to the rear with his knowledge and consent.

We are therefore unable to find the defendant criminally responsible under this heading.

7. Murder, Ill-treatment and Persecution of Civilian Population

The proof in this case does not establish that the Barbarossa Jurisdiction Order was ever transmitted by the defendant. The order upon which the prosecution relies is a drastic military order for the suppression of partisans and to secure the area of the 5th Infantry Division against
guerrilla activities by the population. The Tribunal does not believe that the issuance of this order in itself constituted an illegal act for which the defendant should be held criminally responsible. It is true that this order provides for the shooting of persons whose "partisan activities are proven by their confessions or by credible testimony of witnesses without court-martial proceedings" and it can be inferred that it was derived from the Barbarossa Jurisdiction Order.

If in fact the Barbarossa Jurisdiction Order was received and transmitted in the 50th Division, the order of the defendant places a limitation upon its enforcement to the effect that only those persons who were proved by their own confession or by credible witnesses to have been guerrillas were to be shot. The above limitation upon the provisions of the Barbarossa Jurisdiction Order is to his credit rather than detriment.

The Tribunal is unable to find beyond a reasonable doubt that the defendant is criminally responsible in these particulars.

Concerning the responsibility of the defendant for actions of the GPF or Secret Field Police, the documents cited do not establish criminal responsibility upon his part under international law.

With regard to the SD operations within the 6th Army, it is considered that there is no evidence to establish that those activities were confined to more than their legal functions as a police organization in connection with guerrilla warfare within the area of the defendant.

For the reasons set forth, in connection with the defendant's criminal responsibility for the illegal use of prisoners of war and for the illegal use of civilians and their illegal deportation to the Reich, we find the defendant guilty under Counts Two and Three of the Indictment.
OTTO SCHNIEWIND

He was born on 14 December 1887, and entered the Navy in 1907 as a Midshipman and received various promotions up to his appointment as Admiral at the end of 1940. He became Commander of the Fleet in 1941 and remained in this position until his retirement at the end of 1944.

The principal charge against him was that of Crimes against Peace, which has been heretofore disposed of in this opinion.

The remaining charges are under Counts Two and Three and are based upon (1) The Barbarossa Jurisdiction Order; and (2) The Commando Order.

The Barbarossa Jurisdiction Order was sent by OKW to OKM on 14 May 1941 and received the following day. The defendant did not see it until 20 May 1941. At that time he was Chief of the Naval Command Office and Chief of Staff of the Navy War Staff, a department in the Naval Command Office. He relinquished this command on 12 June 1941 to become Commander of the Fleet. The Barbarossa Jurisdiction Order was not passed on to subordinate units until 17 June, nearly a week after he had left his command. It seems the delay was due to some question as to the legality of this order. It was first sent to the legal department of the Navy Defense Office before it was passed down to subordinate units, which, as pointed out, was after Admiral Schniewind's departure. The prosecution's brief has this rather naive statement, "For the period after the receipt of this order, during which time he was still Chief of Staff of SKL, Schniewind has offered no proof that he had done anything to discourage or stop the further distribution of this criminal order." We decline to adopt
this line of reasoning.

The Commando Order was distributed by SKL to subordinate units on 27 October 1942, after the defendant became Commander of the Fleet. It was sent to his headquarters and his subordinate units.

There is no evidence it was implemented by him or enforced by any units subordinate to him. From the very nature of the order it is apparent it could have little, if any, relation to his command of the surface vessels engaged in fighting and subordinate to him, viz., the battleships, cruisers, destroyers, torpedo boats, speed boats, and mine laying ships.

We find the defendant not guilty under Counts Two and Three of the Indictment and he will be discharged by the Marshal when the Tribunal presently adjourns.
The defendant Karl von Roques was born 7 May 1880. During the first World War he was General Staff Officer, and after the war remained with the Reichswehr. On 31 January 1931, he was released from active duty until 23 May 1939, during which time he was active in the Civil Air Raid Protection Service at Berlin. On 1 December 1939 he became a divisional commander. From the middle of March 1941 until 15 June 1942 he was Commander of the Rear Area Army Group South. From about 10 September 1941 until 5 October 1941 he held a command at the front, also remaining during this time in command of the Rear Area Army Group South. From 27 October 1941 until 10 January 1942 he was absent from his command on account of illness, during which time Lt. General Friedrici deputized for him as commander of the Rear Area Army Group South. During April 1942 he was absent two weeks on furlough. On 15 June 1942 he was transferred to the Fuehrer Reserve. At the end of July 1942 he was appointed Commander of the Rear Area Army Group A (Caucasus). This appointment became effective for the southern part of the former Rear Area Army Group South at the beginning of August and for the Caucasus at the beginning of September 1942. In the middle of December 1942 the defendant was retired because of old age and did not participate further in the war. His last rank was Lt. General to which he was promoted in 1941.

The defendant von Roques is charged with War Crimes and Crimes against Humanity, which is all that we here consider inasmuch as we have elsewhere disposed of the
charges of Crimes against Peace and the Conspiracy to commit Crimes against Peace. These crimes under the evidence are only such as were committed while the defendant was Commander of the Rear Area of Army Group South and of the Rear Area of Army Group A. We shall consider these under the heading of: (1) The Commissar Order, (2) Prohibited Labor of Prisoners of War, (3) Murder and Ill-treatment of Prisoners of War, (4) The Barbarossa Jurisdiction Order, (5) Hostages and Reprisals, (6) Ill-treatment and Persecution of the Civilian population, (7) Partisan warfare.

Von Roques' testimony discloses that he had in the area of his command executive power as the representative of the occupying power in his area. He stated that he owed a duty to the civilian population because he needed its cooperation. Neither his testimony nor his actions show that he appreciated the fact that he owed a duty as an occupying commander to protect the population and maintain order.

General Halder in his testimony succinctly defined executive power:

"The bearer of executive power in a certain area unites all the legal authorities of a territorial nature and legislative nature in his own person."

The responsibility incident to the possession of executive power is well stated in the Judgment of Tribunal V, Case No. 7, U.S. vs. Wilhelm List, et al, as follows:

"***This duty extends not only to the inhabitants of the occupied territory but to his own troops and auxiliaries as well.

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The commanding general of occupied territory having executive authority as well as military command, will not be heard to say that a unit taking unlawful orders from someone other than himself, was responsible for the crime and that he is thereby absolved from responsibility. It is here claimed, for example, that certain SS units under the direct command of Heinrich Himmler committed certain of the atrocities herein charged without the knowledge, consent or approval of these defendants. But this cannot be a defense for the commanding general of occupied territory. The duty and responsibility for maintaining peace and order, and the prevention of crime rests upon the commanding general. He cannot ignore obvious facts and plead ignorance as a defense."

In the Yamashita Case decided by the Supreme Court of the United States, on which case we have elsewhere commented in the Judgment, it is stated:

"These provisions plainly imposed on petitioner, who at the time specified was military governor of the Philippines, as well as commander of the Japanese forces, an affirmative duty to take such measures as were within his power and appropriate in the circumstances to protect prisoners of war and the civilian population." (Emphasis supplied)

We are of the opinion that command authority and executive power obligate the one who wields them to exercise them for the protection of prisoners of war and the civilians in his area; and that orders issued which indicate a repudiation of such duty and inaction with knowledge that others within his area are violating this duty which he owes, constitute criminality. The record shows orders by the defendant, knowledge, approval and acquiescence in acts by troops under his authority, and by agencies within his area which violated the most elementary duty and obligations owed to prisoners of war and the civilian population by the commander of an occupying army, having command authority and executive power.
We have heretofore held this order criminal and need not further comment thereon. Von Roques admitted that he learned of this order in June or July of 1941. He denies having passed it on but from a consideration of the documents and the extensive implementation of the orders by units under his command, serious doubt is cast on the truth of his testimony and that of some of his defense witnesses; but whether the order was or was not passed on by him, its implementation was so extensive in his territory as to require action on his part to prevent the criminal action that was carried on by the units under him and agencies in his area. Commissars were regularly shot with his knowledge, and he did nothing about it.

One paragraph of the Commissar Order in the light of the documentary evidence is important. It is as follows:

"II. In the Rear Areas.
Commissars arrested in the rear area on account of doubtful behavior are to be handed over to the 'Einsatzgruppe' or the 'Einsatzkommandos' of the SS Security Service (SD) respectively."

The documents disclose that the Security Divisions Nos. 444, 213 and 454 for much of the time were subordinate to von Roques. He contends that in the early part of the war against Russia, these Security Divisions were subordinate to Army Group South, but while they were subordinate to the Army Group in the early days of the war merely for simulating an attack they were "to remain fully subordinate to the Commanders of the Rear Areas of the Army Groups."

On 20 June 1941 the 454th Division had the Commissar Order. An order of this division, 2 August 1941, provided for segregation in the camp of "politically intolerables."

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and suspected partisans, commissars and "instigators" who were to be dealt with by the Camp Commandants, in accordance with special orders issued.

An order of the 444th Security Division, bearing date of 14 June 1942 requires the groups of the Secret Field Police to submit reports to Section 1c of the division by the 10th and 25th of each month, giving the number of commissars identified and listing them as commissars with the troops, civilian commissars, and commissars turned over to the SD; and if no commissars had been identified, a report to that effect is required. This order, as noted before, is dated 14 June 1942 and von Hoques says he left for the Fuehrer Reserve on 13 June. There is a reference in the order to two previous orders that were dated respectively 29 August 1941 and 30 January 1942. It is apparent that the matter covered was not new to the divisions, and that a year after the war began Roques' troops were carrying out the Commissar Order.

A teletype dated 25 July 1941 from Roques' Rear Area Army Group to the Security Division 213 announces the arrival of an SS Brigade on 24 July and says it is to be committed on the 26th to 28th of July. Under the same date, 25 July 1941, Jackeln, the Commander of the SS Brigade, issued an order for a mopping up operation describing towns and locations shown by the operational maps of 20 July and 5 August 1941 to have been throughout that time in von Hoques' Army Group Rear Area. In his order of commitment Jackeln states that contact is to be established with the Ukrainian militia if present in the various towns. He states "that Ukrainians who are still wearing the Soviet uniform are to be treated as prisoners of war for the time being"; that arrested commissars are to be transferred to
him, Jackeln, for thorough interrogation by the SS leader of his staff, and that similar agents or Jews who offered their services to the Soviets are to be treated accordingly. Six days later, this same SS and Police leader, Jackeln, reports as follows:

"To: AOK 6
One copy each to
Reichsfuehrer SS and Chief of the German Police
Korueck
General von Roques
Korueck
Major General von Puttkammer
Chief of the Ordnungs Polizei
General of the Police Daluege

II

1.) By request of General Feld Marshall von Reichenau, the Reichsfuehrer SS made available the 1st SS Brigade for a mopping-up operation in the army rear area and/or Rear Area Army Group.

The carrying out of this operation in the area of Zwichel, Slucz Valley, Northwest of Miropol, Szepetowka, Zaslaw, Ostrog, Horyn Valley, Hoszcza, took place according to the directives of the Chief of Staff of AOK 6 in accordance with the commander of the army rear area, Major-General von Puttkammer, and the commander of the rear area army group, General von Roques.

2.) The units subordinated to me had the order, as far as they were available for this operation:

Arrest and/or execution of
a) remaining parts of the 124th Soviet Rifle Division,
b) armed bands
c) Guerrillas
d) Persons who have assisted the Bolshevist System.

v.) Total number of persons captured:
135 soldiers of Ukrainian nationality transferred to transient prisoner camp (Dulag)
Shot:
73 Russian soldiers (Guerrillas)
165 Functionaries and other persons who have rendered considerable service to the Bolshevist system, among them 4 women.
1658 Jews who have rendered considerable services to the Bolshevist system and who reported Ukrainians to Bolshevist rulers."
It is clear from this that von Roques' army Group South knew of this commitment, permitted it in its area, and received a report after it was completed. It is clear that 73 Russian soldiers were shot as guerillas, that 165 functionaries were shot, and that 1658 Jews were shot. From the face of the report, it is apparent that these 1896 executions were all in violation of International Law. Von Roques says that this was done on Reichenau's responsibility and not his, but a large part of the operations were in the area of his command. He admits that he quartered the SS Brigade and that his Chief of Staff reported the accomplished fact to him. Certainly after 1 August 1941 von Roques could never contend that he did not know that it was the function of the SS and SD to exterminate commissars and Jews.

A report of the Chief of the Security Police and the SD, dated 17 July 1942, shows that the SD at Wladimir-Wolnysk gave special treatment to 36 commissar functionaries from a Russian Officer's Camp and to 76 Jewish Bolshevist officers who were planning to escape. This place was in von Roques' area according to the operational map of 20 July 1941, and von Roques in his testimony said the boundaries of his area were fixed by 10 July 1941.

An activity report of the 454th Security Division for the month of November 1941 stated that 24 Politruks and officials of the NKVD were shot for illegal activities.

On 24 August 1941, only 24 days after the mass killing of Jews and functionaries which we have referred to, von Roques signed an order in which he stated that the SD is to participate in the screening of prisoners in order to have possible unsuitable elements segregated. This order
was with respect to policies for the combatting of partisans. The witness Fruechto was a physician at Dulag 160 in the Rear Area of Army Group South. At the prisoner of war camp, he testified, the SD searched for commissars. His testimony in this respect is as follows:

"To the best of my knowledge there was a directive to the effect that prisoners of war were to be screened for the presence of Commissars and Politruks. In actual practice it only happened very rarely. I only remember two cases, since the Commissars had, in most cases, been liquidated before the prisoners had arrived in the camp. I only know of two cases, one in the Camp Kirovograd where a man who was charged with being a Politruk was interrogated by a judicial officer and by the Commander. The second case which I recall occurred in the main camp Cherev where a non-commissioned officer of the Field Police, when a column of prisoners arrived at the camp, immediately segregated one Commissar and shot him on the spot. He wanted him shot already in the camp, I happened to be in the camp at that time, but I told him that nobody must be shot in the camp. Therefore, he took him away, had him undressed, took off his clothes, and had him shot at the next corner."

"I want to refer back to the other subject matter. I don't believe I was understood correctly. I didn't say then that only on two occasions searches were carried out. Of course, searches were carried out all the time, but only in two cases something was actually discovered. It was a matter of course for the German guards that every incoming transport of prisoners of war was screened as to the presence of political functionaries, but only on two instances something was actually discovered, as I said, because in most cases the people had been liquidated prior to the transport reaching the camp. I wanted to supplement this statement to my last answer."

Dulag 160 where Fruechto was medical officer, was located at Cherev. Fruechto's testimony is supported by that of the witness Blumenstock, who was an inmate of this camp, and testified that there was an order that
commissars, politruks, officers and other staff workers were immediately to be assembled in one group; that on one occasion while there, he saw either seven or nine people shot, and that among them were prisoners of war, commissars and three Jews.

The Commander of the Rear Area Army Group South, the defendant von Roques, is number four on the distribution list of the order from the OKH which we next consider. This order of 7 October 1941 definitely provides for the SD to enter the camps in the rear areas, and there can be no misunderstanding as to what was to happen to those whom they segregated and removed from the camp. Among other things contained in the order are the following:

"**Sonderkommandos of the Security Police and Security Service (SD) will be set up, in accordance with the directives enclosed herewith, in the transit camps of the rear army area to segregate on their own responsibility unbearable elements.**

**p**

"(b) In agreement with the commanding officers of the rear army area (district commanders for prisoners of war), the operations of the Sonderkommandos have to be regulated in such a way that the segregation is effected as unobtrusively as possible and that the liquidations are carried out without delay and at such a distance from transit camps and villages as to ensure their not becoming known to the other prisoners of war and to the population.

**d**

"(d) In the transit camps of the rear army area in which a segregation by Sonderkommandos could not yet be effected, procedure according to previous regulations and under the responsibility of the camp commanders should be carried on. Upon arrival of the Special Kommandos the segregation of unbearable elements is exclusively the task of the latter. Segregations executed jointly, etc., must not take place.

"3. This order must not be passed on in writing - not even in the form of an excerpt. District commanders for prisoners of war and commanders of transit camps must be notified verbally."
It is apparent from this order that it was considered so bestial as to be fit to be seen only by those to whom it was addressed, among whom was the defendant von Roques, for it was forbidden to pass it on in writing, even in the form of excerpts. It provides, as will be noted, that the district commanders for prisoner of war and transit camps must be notified verbally. Von Roques’ Rear Area Army Group received this order for it was on the agenda for discussion at the Commander’s Conference in the Rear Area Army Group South on 17 November 1941 under the heading “Authority of the SD in prisoner of war transient camps (new decree).” Whether Roques saw this order is not material, for operations were carried on in camps under his jurisdiction and control in accordance with it by the SD, who could enter such camps only with his permission.

On 15 May 1942 five hundred prisoners segregated in Dulag 160 were shot. This is testified to by Dr. Fruechte, camp physician at Dulag 160. His testimony on this occurrence is as follows:

“a. Now, with reference to the prisoners who were executed by the SD in Dulag 160, how were they accounted for? Was there any record ever made of what happened to them, or, how they were checked off, or, do you know the procedure?

“A. It was as follows: The SD came to Korol with the mission – I myself talked with the SS Untersturmführer, a non-commissioned officer; their mission was to shoot all Jews and all other persons who were in some way suspects. Some 50 civilians had remained in Korol. Some were craftsmen who were still needed. In addition all prisoners of war had remained in Korol and a number of persons who were detained in the prisoner of war camp as suspects, that is a suspicion of being partisans, Jews, gypsies, communists, functionaries, etc. The SD first had all Jews detained in the local prison in Korol, all of them civilians; then the
SS Untersturmführer went to the camp; in the camp a list had been compiled by the camp management, recording all persons who were not Jews but who were suspect. The Jews didn't have to be checked because they were to be shot just as the Jewish civilians without any formalities. The SD Untersturmführer then had two or three hundred suspects file past him on two days and put on his list, behind each name an 'F', which denoted 'Free', or an 'E', which meant 'to be shot'. All persons who were assigned an 'E' were put together with the Jews and on the 15th of May they were shot together with the Jews.

"Q. And how many were there in all?

"A. I already stated, a total of approximately 500; thus, there must have been 450 Jewish prisoners of war and suspect persons from the camp because 50 local civilians were still there in addition."

No comment is required on this testimony. Again the testimony of the witness Blumenstick corroborated it, for he states that he was marched from Choralj, Dulag 160, to Kremenchug, with 12,000 or 15,000 Russian prisoners of war. Those unable to keep up in the march were shot. Blumenstick testified that three were shot by his side because they were exhausted and fell, and that he thought probably 1200 were killed for this reason. Kruechte also heard from those of the troops who accompanied these marches that the exhausted prisoners of war were shot and left lying by the road side. At the time of these occurrences at Dulag 160 it was within the area of von Koques. All of the foregoing incidents occurred in the Rear Area of Army Group South.

Those hereinafter noted occurred in the Rear Area Army Group A, of which von Koques assumed command at the beginning of August as to part and 1 September 1942 as to the remainder of such rear area. The 454th Division, subordinate
to him shot two partisans for being communists, also 37 active communists. Part of this shooting was done by the SD, though the report showing it is a report of the 454th Division. From the foregoing documents and orders, and oral testimony and other evidence in the record, there can be no question but that defendant von Roques, if he did not hand down the Commissar Order, received it and from the beginning of the campaign knew that it was being carried out in his area.

2. Prohibited Labor of Prisoners of War

Von Roques received the OKH order on 31 July 1941 with respect to the allocation of labor, in which it was directed that commanders in the Army Group Rear Areas would carry out labor allocations in the interest of the operations. It was directed further that prisoners must be offered for work to all large scale organizations, such as supply districts, road and bridge construction battalions, railroad engineer relay points, ground personnel units of the Luftwaffe, economic offices, organization TOGT, and officers charged with the construction of winter quarters. This order probably was illegal in that it may have permitted and authorized work not permissible under international law. Apparently von Roques passed it down to his divisions, but there is no evidence that prisoners were used except for work such as clearing snow from roads and work of this character. There is a picture that shows POW's loading ammunition at a point which on the date of the picture is not shown by the operational map to have been in von Roques' area. Other maps before and after show it in his area. Von Roques testified that no prisoners of war were used for forced labor in his area. On the whole record,
we are not satisfied that the evidence is sufficient to establish the defendant's guilt of using prisoners of war for prohibited labor.

3. Murder and Ill-treatment of Prisoners of War, Generally

Von Roques denies that he distributed the Commando Order, but paratroopers were shot as guerrillas in his area. An order by the Chief of Staff of the Rear Area Army Group South, bearing date of 9 August 1941, was directed to be distributed to all departments. Apparently the order was issued in reply to an inquiry about the treatment of captured paratroopers. Statements contained in the order are as follows:

"It has to be insisted that every paratrooper is a guerilla who, as a civilian, in any way opposes the German wehrmacht and its institutions.

"He is therefore also to be treated as a guerilla on principle.

"Only if paratroopers report to a German headquarters on their own or have themselves brought there by Ukrainian militia to whom they voluntarily surrendered will they be treated as Prisoners of War.

"Statements of captured paratroopers that they were forced into this service are not to be believed at all, since these statements in all probability are made according to orders.

"Only through ruthless measures can the paratrooper plague be opposed successfully."

The defendant von Roques in his testimony said that his troops understood this order in the way he intended it, which was that paratroopers in uniform were not to be shot but treated as prisoners of war. It will be observed that there is no such exception contained in the order. Clearly none was intended. Subordinate units understood it according to its literal terms.
A report of the director in charge of the Field Police in the Rear Area of Army Group 103, which was under Roques, shows the shooting of 49 parachutists as guerrillas.

The War Diary of the 444th Security Division, under date of 21 March 1942 at which time the order of battle shows it was subordinate to von Roques, contains a report of the shooting of nine "parachutists, saboteurs" by the Field Police.

A report of the Einsatzgruppen, bearing date of 12 November 1941, contains the following:

"... Among those executed by Sonderkommando 4a in the second part of the month of October 1941 until the date of this report, in addition to a comparatively small number of political functionaries, active communists, people guilty of sabotage, etc., the larger part were again Jews, and a considerable part of these were again Jewish prisoners of war who had been handed over by the Wehrmacht. At Borispol, at the request of the commander of the Borispol POW camp, a platoon of Sonderkommando 4a shot 752 Jewish prisoners of war on 14 October 1941 and 357 Jewish prisoners of war on 18 October 1941, amongst them some commissioners and 78 wounded Jews, handed over by the camp physician."

Defendant von Roques stated that Borispol at this time was in his area. It will be observed that this action occurred at the request of the camp commander. It will be observed further that it was subsequent to the mass murder by the SD on the 27th and 28th of July, to which we have heretofore referred. Apparently at this time von Roques had taken no steps to advise his prisoner of war commanders that they were to have no further traffic with the SD.

A report of the Feldkommandantur 194 to the Commanding General, Rear Area Army Group South, on 13 April 1942 shows that 126 prisoners of war were handed over to the SD in Tschernigow. While von Roques testified that he was on leave in Berlin and did not receive this report, we do not deem this material because at this time for a
long period of time he had had knowledge that the SD were a murder group, and it was his business with such know-
ledge to see that prisoners of war were not turned over to them. He had had ample time to do this before going on leave to Berlin.

Another occasion on which prisoners of war were murdered is evidenced by a teletype which von Roques ad-
mitted having read. It is a report of the 24th Infantry Division, dated 15 October 1941. Therein is contained the following:

"Devoting every effort to the task, the removal of prisoners proceeds according to order. Insubordinations, attempts to escape, and exhaustion of prisoners make the march very difficult. Already there are over 1,000 dead following executions by shooting and exhaustion. In Alexandria, no preparations have been made by PW transit camp 122 for the permanent accommodation of 20,000. Novoukrainka, allegedly only for 10,000."

On the same day that the above report was received, the Commander-in-Chief of the Near Area Army Group South made a report to the Army Group South in which is stated the following:

"At 24th Inf. Div. the march is made difficult by insubordinations, attempts to escape, and exhaustion of PWs. Following executions by shooting and exhaustion 1,000 dead."

On the agenda for a Commander's Conference on 17 November 1941, under the heading "Prisoners of War" appears this statement:

"Shooting to death by 24th Inf. Div. of prisoners of war unable to march. Countermeasures."

Also appearing on the agenda is the statement:

"Lt. General of the Infantry von Roques, the Commander of the Near Area Army Group South starts a two months furlough for a cure. His deputy is Lt. General of Infantry Friederici. * * *

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It is clearly indicated by this that on 17 November it was known that the shooting of prisoners by the 24th Infantry Division because they were unable to march had occurred.

It is clearly indicated that von der Poques was still in command on 15 October for he initialed the teletype of that date and signed an order, commanding the 24th Infantry Division for its participation in the movement of prisoners, under date of 26 October 1941.

The witness Blumenstick, who made this march as a prisoner of war, testified that three men were shot near him because they were too exhausted to keep up with the march. He testified further as follows:

"From Kovel to Kremenchug, we had to march in groups of 20 men and 5 men in breadth. The Jews who had remained alive were to head this group, then followed some Commissars, another group of officers. They were guarded very heavily and then the other nationalities followed on this march from Kovel to Kremenchug. People who tried to obtain some food were shot immediately, whenever they deviated from the marching formation to the right or to the left. People who were unfit to march, who couldn't go on any more, were shot immediately, and were left to the right and left of the road. They were lying prostrate with their faces to the earth and with their hands stretched forth."

As we prisoners assumed at the time, we estimated the number between 1200 and 1500.

"q. Can you tell the Tribunal how many people were transported at that time?

"a. We estimated about 12,000 to 15,000."

Dr. Pruechte, who was medical officer at the prisoner of war camp, testified as follows:

"I can only remember one instance . . . in which I know positively that on the march prisoners of war were shot, and this march was the one that took place in the middle of October. I cannot recall the exact date but it was directed from Chrolj"
to Krementschug. The Camp Chorolj was too crowded and there was an order to transfer about 20,000 prisoners of war cross country marching on foot to Krementschug. I, as a camp physician, was ordered by the camp management to make notes when the prisoners filed through the gates of the camp and to segregate prisoners who looked weak and exhausted. I did that, and a number of people of whom one could see that they would not be able to physically withstand the strains of the march I segregated. Later on soldiers who either participated in the march or others who passed the stretch of road between Krementschug and Chorolj on vehicles said that all people who were exhausted--"

And:

"A. I said that shortly after the march had taken place, the personnel of the camp was informed by soldiers, some of whom had participated in the march as escorts, or by other soldiers who had passed the stretch of road where the march took place in some way or other, that those people who couldn't march any further were shot. They also told us that the corpses were left at the road and that the whole stretch of road up to Chorolj was marked by the corpses left there.

"Q. Can you tell the Tribunal why you were ordered to segregate the weak people?

"A. So that only those people were to participate in the march who would be able to stand the strain of the march.

"Q. Who gave this order to you please?

"A. The camp commandant."

General von Tettau, who was in command of the 24th Infantry Division, gave an affidavit in which, among other things, he stated that he knew nothing about the shooting of prisoners of war unable to march. Since he knew nothing about it, he could not explain on cross examination how the matter came to the knowledge of von Doques so that he could report it to Army Group South. This affidavit is not convincing on this point. It is proper to state, however, that the order given by Tettau which effected the transfer of the prisoners concerning which Dr. Fruechte testified is a clear and humane order.
An order from the High Command of the Army specifically states that security tasks in the Rear Area of the Army and Army Groups embraces among other things "guarding and transfer of prisoners of war, the allocation of prisoner of war labor detachments." Von Roques as Commander of the Rear Area Army Group had control of the prisoners of war, and it was his duty under international law to provide and care for them within his area and to treat them humanely.

Bearing the date of August 1941 is a report by Jackeln, Sr. SS and Police Leader and Commander of an SS Brigade, giving an account of an operation. This report shows that 73 Russian soldiers were captured and shot as guerrillas.

As showing the general condition that prevailed in the Rear Area Army Group South, a report from von Roques' Army to the OKH, dated 20 December 1941, contains:

"Prisoners of war"

"The mass deaths of undernourished prisoners of war in the Dulags (Transient camps) increasingly attracts unwelcome attention among the civilian population. The mass of the prisoners of war is unable to work due to exhaustion."

Another enclosed report shown in the same document, dated 21 December 1941, sets forth graphically the conditions of the prisoners of war in the Rear Area Army Group South:

"1.) On 20 December 1941 the total of prisoners of war in the 4 Prisoner of War camps located in the Rear Area Army Group was: (Dulag 160, 182, 205, Stalag 348) 52,515 Prisoners of war

"2.) Mortality rate of Prisoners of war in the camps, 20-1.

a) Dulag 160: From 12,959 Prisoners of war an average of 10 deaths per day 28.02% a year.
b) Dulag 182: From 7,507 Prisoners of war an average of 18 deaths per day 87.05% a year."
c) Dulag 205: From 9,271 Prisoners of War an average of 21 deaths per day 82.06% a year.
d) Stalag 346: From 22,776 Prisoners of War an average of 50 deaths per day 80.1% a year."

The testimony shows that many, in fact the greater part, of the prisoners here referred to were taken in the battles of Kiev and Uman, which occurred in the middle of September. This was six weeks before von Roques temporarily left the area. It would not have been possible for the conditions indicated to have grown up during the one month of his absence had proper provisions been made for these prisoners. This occurred in the area over which von Roques had control and is evidence of the gross neglect that was exercised in carrying out the obligations of international law as expressed in the Geneva and the Hague Conventions.

There is evidence in the record that von Roques returned on 10 January 1942. There is a report of the Commander of the Rear Area Army Group South, dated 31 January 1942, which shows that conditions had not improved, and that in three of the Dulags, which then contained an aggregate of approximately 30,000 prisoners, they were dying at the rate of 106% yearly in one, 262% yearly in another, and 254% yearly in the third.

Another report shows the general mortality rate in February in five of the camps, containing 28,508 prisoners of war, to have been 2,814 dead or 7.5 monthly. For the month of March in the same camps, out of a total of 42,078, 1,707 dead were counted, or a mortality rate of 4.1% monthly.

The chief medical officer with the Commander of Rear Area Army Group South reports an inspection of the prisoner of war hospital and the prisoner of war camps of Dulag 205
and states that there are "impossible sanitary conditions and advanced starvation of prisoners of war".

A report of the Commander of the Rear Area Army Group South to the OKH Quartermaster General, which bears von Roques' initials and is dated 16 January 1942, states that on 13 January 1942 there were 46,371 prisoners of war in the camps. The lack of food is stressed and this statement appears:

"Until 1 April, therefore, the high mortality rate will probably account for loss of 15,000 prisoners of war."

The report, which is signed by the chief of the General Staff of the Rear Area Army Group South, concludes with this statement:

"There is no doubt that for the time being labor allocation of these prisoners of war who still are in the camps must be abandoned almost completely. Only by this and by simultaneous improvement of food supplies will it be possible to save at least a fraction of the considerable labor potentiality which lies in the prisoners of war. Otherwise, it has to be expected that about 46,000 prisoners who are now in the Rear Area H. Gr. South will have dissolved in a few months from death and diseases."

No comment is necessary to show the extent of the neglect of these prisoners. Von Roques was responsible for the prisoners of war in his area during the time these conditions existed, as shown by the record in the case.

4. The Barbarossa Jurisdiction Order

We have discussed generally the character of this order, which opened the door for much of the criminal activity of the German Army in Russia. Roques handed it down to his subordinates. He says he emphasized the necessity of maintaining the discipline of the troops. It was sent to his three security divisions, 213, 444 and 454, and to 14 Feldkommandanturen.
The 454th Security Division, on 2 August 1941, issued an order providing among other things, for the arrest of civilians and that, "If they appear in any way suspect, they are to be handed over by the PW transients' camps to the SD", and that, "In the rear area of the Army Group they are to be transferred to the Einsatzgruppen and Kommandos of the Security Police and SD".

An order of the 213th Security Division, dated 22 August 1941, contained the following:

"Civilians, who are sufficiently suspected of espionage, sabotage, or partisan activity are to be shot after interrogation by the Secret Field Police. Non-residents who cannot sufficiently prove the reason for their presence, should, if possible, be handed over to the SD commandos, or otherwise be transferred to a prisoner camp for further action by the SD Commandos. Young boys and girls who are often used by the enemy, are not to be excluded."

Not to be outdone by his divisions in implementing in bloody fashion the Barbarossa Jurisdiction Order, Roques himself, on 23 August 1941, issued an order in which the following appears:

"In case weapons are still found, the offenders will be punished according to the regulations concerning guerrillas with capital punishment. Should the participation of broad circles of the population be probable, or if it is the matter of an ammunition depot, an officer, occupying the post of at least a battalion commander, will order the execution of collective punishment, i.e. mass executions, or that villages be burnt to the ground partially or entirely. The latter shall, however, be carried out only if the billeting of the units is not endangered. In consideration of the Russian conditions it is required that each superior exercises ruthless measures for the security of the unit.

"The execution of collective punishments will be reported daily in the evening reports as a special event."

Later, on 21 March 1942, Roques' Chief of Staff issued an order cautioning units in the combat zone about shooting
those arrested for espionage, suspicion of espionage, sabotage, or partisan activities without informing the Intelligence officer of the Secret Field Police, because by so doing important information might not be uncovered or might be lost. Roques, on his examination, pointed out that such information would be lost "if those people are shot without the Secret Field Police". The life of a suspect was of no concern to the Wehrmacht; but the information which the Secret Field Police might extract from him was precious and must on no occasion be lost. Roques testified at some length that the Secret Field Police did not shoot suspects unless the matter was passed upon by an officer of the rank of Lt. Colonel, but he wavered so much that his testimony is not credible on this point. Roques turned cases over to the Secret Police and used them as his investigators. Under such circumstances, it was his duty to direct and channelize their action in such a manner that they did nothing that he could not control. It was his duty to see that his troops and the Secret Field Police which he used in his area did not have and act within a sphere of competence derived from some other source that permitted action by them that he was charged with a duty to see did not happen.

A teletype to Roques, dated 2 October 1941, initialed by him, shows four suspects shot by the 215th Security Division. A report of 25 January 1942 by the Higher SS and Police Leader of the Commander of the Rear Area Army Group South says that on 23 January four suspect individuals were apprehended and "summarily shot". Roques says it was ordered by the Police Leader on his own responsibility and there was no reason for him to intervene, nor could he.
Other reports show that civilians and suspects were shot without even the minimum of judicial protection being afforded them, but merely on the order of a troop or police officer.

That Hoques knew of the criminal activities of the Senior SS and Police Leaders and their units is conclusively shown by an order issued by him under date of 1 September 1941, which is in part as follows:

"3.) Executive measures against certain parts of the population (in particular against Jews) are expressly reserved to the forces of the Senior SS and Police Leader, especially in those districts which have already been pacified.

"The troops themselves will liquidate on the spot only such natives as have been proved or are suspected of having committed hostile acts, and this only in compliance with orders of officers; collective measures may be ordered only by an officer with at least the rank of battalion commander. No doubts can be admitted in this respect. Any arbitrary shooting of natives including Jews by individual soldiers and any participation in executive measures of the Senior SS and Police Leader must be considered as insubordination and punished by at least disciplinary measures, unless court procedure is required."

From the foregoing and a great amount of other evidence in the case, we find Hoques passed down the Barbarossa Jurisdiction Order; that he personally issued other orders in implementation of it or pursuant to it that are criminal; and that he bears responsibility for the acts of his subordinate units acting under such orders, and for the acts of other agencies acting within his area, which were criminal and which they were able to carry out only with his acquiescence and approval.
5. Hostages and Reprisals

We have commented generally on the fact that the so-called hostage and reprisal orders and killings in this case are not such in fact but merely terror threats and killings.

Roques received an order from Army Group South on 1 October 1941, which he saw because he initialed it, which directed:

"1.) Arresting hostages and all men not residing in any villages near the railway line Nasatin-Fastow-Ohle-Dnjepropetrowsk, possibly also near the line Alexandrija-Dnjepropetrowsk.

"2.) Hanging hostages at the railway tracks in case of new acts of sabotage.

"3.) In case of further acts of sabotage, complete evacuation of a strip 1-2 km wide on either side of the railway line and firing on every civilian approaching the railway tracks."

He immediately sent it on to his subordinate Feldkommandanturen.

We do not find from the evidence that hostages were shot in Roques' area. He says they were not.

6. Ill-treatment and Persecution of the Civilian Population

Many of the documents heretofore set forth show ill-treatment and persecution of the civilians in Roques' area of command. Other documents show the establishment of ghettos for the Jews; requirements that they wear the Star of David; prohibition of Jewish rites; confiscation of Jewish ritual articles; requirements that Jews surrender all foreign exchange securities, precious metals and precious stones; terror killings of suspect partisans and partisan sympathisers; so-called mopping-up exercises and turning over of Jews and Communists to the SD; orders by Roques himself that the troops shall not participate in "arbitrary shooting"
of Jews and the executive measures of the SD; orders that
all headquarters shall help the SD detachments in carrying
out its orders from the Reichsfuehrer SS, other than taking
part in executions; and that "the right to object does not
exist for the subordinated headquarters with regard to
measures carried out by the SD detachments." Such orders
show beyond doubt the complete subservience of the wehrmaht
in Roques' area to the SD and its full cooperation with the
SD program, with knowledge of its debased and criminal
character.

7. Partisan warfare

With respect to partisan warfare in the light of the
foregoing documents and orders set out, we need only say
that the execution of partisan suspects and other civilians
not franc-tireurs was a regular and continued practice in
Roques' area.

On the matters herein pointed out, and the record in the
case, we find the defendant von Roques guilty on Counts
Two and Three of the Indictment.
Hermann Reinecke was born in Wittenberg on 14 February 1888. He was a career officer in the German Army and served in the first World War as a captain in an infantry regiment. After the end of the war, he held various positions until 1936 when he was appointed chief of the newly activated office group, General Wehrmacht Affairs (AWA). In 1936 this group was renamed General Wehrmacht Office (AWA) and Reinecke became office chief which position he retained until the end of the war. He was promoted to Brigadier General in 1938; to Major General in 1940; and to Lieutenant General of the Infantry in 1942.

In addition to his duties as chief of AWA, in December 1943, by a Fuehrer Order, he was appointed chief of the National Socialist Guidance Staff of the OKw.

He received the Golden Party Badge in January 1943 and the Hitler Youth Honor Insignia on 30 January 1944. He states in his affidavit that in 1944, Hitler ordered that bearers of honor insignia would become automatically party members so that this order affected him in the fall of 1944.

Aside from the charge of Crimes against Peace, heretofore disposed of in this opinion, we think that charges under Counts Two and Three of the Indictment may be disposed of under the following headings: (1) Segregation and Murder of Prisoners of War; (2) Ill-treatment of Prisoners of War; (3) The Commando Order; (4) Prohibited Labor of Prisoners of War; (5) Looting; (6) Murder and Ill-treatment of Civilians. We shall discuss these charges in serial order.

1. Segregation and Murder of Prisoners of War.

The record in this case established numerous and far-reaching crimes by the Third Reich and its leaders committed.
against prisoners of war. These concern not only Russian prisoners of war but other allied prisoners of war. The evidence in this case establishes the use of French prisoners of war in the manufacture of arms contrary to the Geneva Convention which was binding upon Germany as to French prisoners of war. It is alleged that this was done by agreement with the ambassador of the Vichy Government to Berlin. There is no evidence of any agreement by the Vichy government in this case.

This matter was considered in both the case of the United States against Milch and the case of the United States against Krupp, et al, both of which Tribunals held such use illegal. We are of the opinion, for substantially the reasons cited in the Krupp case, that if any such agreement existed, it was contrary to international law. Certainly a conquering power cannot set up and dominate a puppet government which barter away the rights of prisoners of war while the nationals of that country under substantial patriotic leadership are still in the field.

Concerning Russian prisoners of war the evidence establishes a series of colossal and stupid crimes under the Third Reich. Hundreds of thousands, millions, were doomed to die through neglect or were killed by ill-treatment or deliberately executed by the agencies of the Reich government in order to exterminate the so-called bearers of communist ideology, the "unfit", Jews, and others. The record also shows shooting of Russian prisoners of war who attempted to escape and were recaptured, and the branding of Russian prisoners of war.

This Tribunal, from the evidence in this case, finds that such uses of prisoners of war and the treatment of prisoners of war outlined above constituted international crimes. It now becomes our duty in this case to determine
the connection, if any, of the defendant Reinecke, with such crimes from the evidence before us.

The authority exercised by the OKW over prisoners of war affairs did not extend to camps within the operational area of the OKW or to camps of the air force and navy. In these camps the appointment of personnel and disciplinary power was exercised by the various services. In the Reich Commissariat the camps were under the jurisdiction of the Armed Services Commander, a subordinate of the OKW; also prisoners of war camps within the Reich and the General Government were under OKW jurisdiction except as to disciplinary powers which in the Reich were exercised by the commander-in-chief of the Replacement Army.

The organization of Prisoner of War Affairs in the OKW is shown by the chart of General Westhoff, Chief of Prisoner of War Affairs in the OKW. Subsequent to the appointment of Inspector of Prisoner of War Affairs it is shown by the chart of General Rottig, Inspector General of Prisoner of War Affairs.

The OKW, within the Reich, controlled the appointment of District Prisoner of War Commanders, Camp Commanders, and other personnel of the Prisoner of War Administration and conducted training courses to prepare such personnel for their tasks although the actual appointment of this personnel was made by the army personnel office.

The Commanding General of the Service Commands exercised a dual function: one, as Commander of Service Commands subordinate to the OKW; and the other as Commander of Troops subordinate to the Replacement Army, but his Referent for Prisoner of War Affairs was the Commander of Prisoner of War Affairs in the Service Command, who in turn was a superior of the various camp commanders. The control of the OKW over
prisoner of war camps and their personnel is shown in the
document pertaining to the Heinel affair. It is also shown
by the testimony of the affiant Westrem wherein he states
in pertinent part as follows:

"The controls from above (OKW, Commanders
of the Prisoners of War, Commander of the P.W.
Base Camps, the competent Battalion Commanders,
whose Company Commanders and officers travelled
around at all times) * * *".

When he testified on the stand, he stated:

"I am of the opinion that the OKW/AVA
was the agency charged with dealing with
prisoner of war matters."

The defendant was the chief of the AWA. One of the
most important sub-sections of this office was that of
Prisoner of War Affairs, and the evidence establishes the
general control and responsibility of the defendant over
these matters within the Reich, the General Government, the
Reich Commissariat, and other areas under the OKW.

On or about July 1943, the General Inspector of Pri-
soner of War Affairs was appointed and was directly subor-
dinate to Keitel and not to the defendant. Notwithstanding
this fact, the testimony of Adolf Westhoff, Chief, Prisoner
of War Affairs in the OKW, shows that this General Inspector
reported concerning conditions of prisoner of war affairs
to the Chief of Prisoner of War Affairs under the defendant.
It also appears from the evidence that there were other of-
ficers who acted as inspectors of prisoner of war camps for
the AWA and who reported directly to the Chief of Prisoner
of War Affairs under the defendant Reinecke.

This organization of prisoner of war matters remained in
effect until Himmler became Commander-in-Chief of the Replace-
ment Army sometime in September of 1944, but apparently the
change in prisoner of war matters did not take place until
October of that year. After this period a great many of the
important functions regarding prisoner of war affairs were transferred from the AWA organization to Berger who operated directly under Himmler. The situation after this change is shown by a chart of Colonel Fritz Heurner, former Chief of Staff under Berger.

Concerning prisoners of war in the camps under his jurisdiction, the defendant Reinecke issued many directives. Whether or not these instructions were designated as "directives," such "directives" issued by the OKW were orders and binding upon subordinate units to whom they were directed. This is shown by the testimony of many witnesses, including that of General Westrem, former Commander of Prisoners of War in Wehrkreis XII, General Schemmel, former District Commander of Prisoners of War, Wehrkreis XIII, General Westhoff, and numerous other witnesses, both of the prosecution and defense. The testimony of the defendant himself also shows that his directives were considered by him as orders binding upon the units to whom they were directed.

We are not concerned in this case with the fact that the defendant did not have direct command authority or disciplinary authority over the personnel of camps or units of the army. He issued the over-all directives in the name of the OKW and the Commander-in-Chief of the OKW, with which they were compelled to comply. The evidence in this case shows that the defendant exercised direct authority over Wehrkreis XIII. That he by-passed the chain of command as stated in the testimony of General Schemmel is immaterial.

The defendant contends that such directives were always issued "by order" of his superior, Keitel, and in this respect the evidence on the whole bears out his contention but that fact does not absolve the defendant for responsibility in connection with such directives. The Chief of the AWA was not
a stenographer who merely transcribed the orders of his superior and passed them on. Keitel undoubtedly had a secretary who performed that function.

The record in this case contains page after page of voluminous orders transmitted over the signature of the defendant by order of Keitel. The fact is that it was one of the defendant's major functions to draft and prepare orders for submission to Keitel for his approval (or sign in his name orders in conformity with his known policies). That this procedure was followed is shown by the testimony of General Westhoff, reproduced on page 55 of the defendant's brief, where he stated:

"I wrote out a draft decree in accordance with the Geneva Convention and sent this draft to General Reinecke. General Reinecke sent back this draft decree to me after he had made a few improvements in it; he turned sentences around, etc., and then he ordered me to send the draft to the various ministers for checking purposes."

and where he states further:

"Then the draft had to be submitted to the Party Chancellory. The Party Chancellory thereupon announced that the draft in no way corresponded with their demands; that it must be altered, and the Party Chancellory then altered about 70 per cent of this draft themselves. This new draft I then received back again by the AW and with the order to submit the decree in its form as it was then, and to submit it for signature."

The statement of the witness Kattner, secretary to the defendant Reinecke, also cited in the defendant's brief, states:

"As a matter of principle, these things were like this: The draft of such an order would be prepared in the prisoner of war department; would then be submitted to the Fieldmarshal and be initialed by him and he would also put a date thereon. Then this draft was returned to us and was copied out and signed by General Reinecke, 'I.A. - Im Auftrage - by order of!'"
In other words, her testimony was to the effect that the drafts of these orders were prepared by the subordinates of General Reinecke before they were submitted to Field Marshal Keitel for his signature or approval. It is not even to be presumed according to normal staff procedure that where the ideas expressed in the order carried out a policy of Keitel known to the defendant, that Keitel saw and approved such orders before they were issued. It is to be noted in this connection that while the office of the AWA was located in Berlin, Keitel undoubtedly remained consistently with Hitler's headquarters in the east. Many of the directives signed by the defendant do not bear Keitel's initials or signature, showing they were seen and approved by him as is the usual procedure where such is the fact. In fact, Exhibits 368, 411, 371, 1243, 363, 210, and 232 show neither Keitel's initials nor his signature.

These matters have been heretofore discussed in this opinion and the defendant in this case cannot escape responsibility for decrees issued under his signature merely by the fact that they were issued "by order". The defendant, in his own testimony, concedes that many of the ideas therein contained were his own but these, according to his contention, were always the beneficial provisions; a contention with which this Tribunal is not impressed in view of all the evidence. It is alleged by the defendant that he could visit prisoner of war camps only with the permission of the Commander-in-Chief of the Replacement Army. This defense is considered without merit. Whether he and his subordinates formally obtained such permission is immaterial. If such a requirement existed, it was a mere formality.

The defendant's supervision and control of prisoners of war and prisoner of war affairs is also shown by the
testimony of General von Westrem, who stated:

"I am of the opinion that the OKW/AWA was the agency charged with dealing with prisoner of war matters."

He further stated:

"Yes, AWA, that is, the Department for Prisoners of War, did use extensively its right to control the prisoners of war and the work in their camps. That was done in the first place by General Reinecke himself, who visited me twice, then by the Inspector of Prisoner of War Affairs who, in behalf of the AWA, was constantly traveling. It was also done by individual officers on the staff of the AWA who, by surprise, came to visit labor detachments and prisoner of war enclosures."

The evidence establishes that he made inspections himself and that the camps were constantly being inspected by his subordinates. Inspection of such camps and knowledge as to what occurred within them was a function of the defendant. Westhoff testified that the Inspector of Prisoner of War Affairs was subordinate to the AWA and could inspect camps within the jurisdiction of the AWA.

A Reinecke exhibit, an affidavit by Rudolf Schleier, shows that the right to inspect was vested in the defendant.

This Tribunal is not concerned with fine formalities or divisions of authority. The evidence establishes overwhelmingly the over-all control and supervision of the defendant Reinecke as to prisoners of war under the supreme authority of the OKW and his power over prisoner of war camps and prisoner of war affairs. The evidence shows that he exercised that authority by issuing orders; that he had the right of inspection both in himself and his subordinate; that such inspection was a duty entrusted to him and carried out by him; that he had the sources of knowledge and the duty was placed upon him to know and supervise what took place in these camps, and that he did know and supervise what took place therein and directed certain
operations in such camps.

As heretofore stated, it is established that prisoners of war were segregated and liquidated under the program of the Third Reich. The process of segregation and the resultant executions have been shown to have been carried out primarily by the SIPO and SD units sent to the camps.

The defendant has denied knowledge of this segregation and liquidation program of prisoners of war under his jurisdiction. The knowledge of the defendant, his approval, and cooperation with this program of murder carried out by Himmler and his police, particularly by the SIPO and SD is established from evidence too voluminous to recite in detail in this opinion. Broadly speaking, however, the sources of evidence may be classified under various headings; first, the directives and reports of the SIPO and SD through their own channels in which they refer to agreements with the OKW as to their operations. These documents, it is true, did not go through military channels, nor were the specific agreements with the OKW set forth, and some of the agreements referred to are antecedent to documents introduced in evidence which show the official sanction of the AWA and OKW in regard to operations of the SIPO and SD in prisoner of war camps. However, that such agreements did in fact exist is not only shown by these SIPO and SD documents, but from the fact that in view of the responsibility of the OKW and AWA over prisoner of war affairs and prisoner of war camps, the activities of the SIPO and SD could not have taken place without the assent of the OKW and AWA.

Most certainly this segregation and liquidation program was known to the commanders of the various camps where the segregation took place and to various other military
officials within these camps. The evidence in this case discloses not only that it was the duty of the defendant to know what took place within them but that in fact from constant inspections by his subordinates and which he made himself, he could not have escaped such knowledge.

Not only did he have this power and duty of inspecting but it is also established by the evidence that at conferences which he called for the camp commanders, he was in contact with personnel who knew very well what was taking place within their camps as to segregation and liquidation.

Another source of evidence which the defendant had as to this program was the various conferences which he is shown to have had with SS Obergruppenfuehrer Mueller who represented Himmler and the RSHA in carrying out this liquidation program. The witness, Otto Breutigan, Liaison Officer between the Ostministerium and the OKW Wehrmacht Operational Staff, has testified to one such conference between Reinecke and Mueller where the liquidation of prisoners of war was openly discussed. He testified that he took to the conference the orders of the SIPO and SD pertaining to this matter and that these orders were brought to the attention of the defendant. Certain conference notes of Ministerial Councillor Dr. Letsch show discussions of liquidation of prisoners of war who had been segregated for that purpose. Another conference between Reinecke and SS Obergruppenfuehrer Mueller and others was attended by Edwin Lehousen, Chief of Counter-Intelligence, Department II, as the representative of Admiral Canaris sent to protest against this program and the witness, Lehousen, testified that not only was the matter discussed but that the defendant signified his approval of the program of Mueller as to
segregation and liquidation of prisoners of war.

The defendant denies any such conference but the evidence, including that of his own witnesses, supports the testimony of Lehousen.

A final and most convincing source of evidence on this point is found in the documents signed by the defendant himself. Exhibit 363 shows an order of the OKW, dated 8 September 1941, distributed "by order" over the signature of Reinecke, providing for cooperation of the camp authorities with the SIPO and SD.

Exhibit 411, dated 24 March 1942, over Reinecke's signature, shows the segregation program of the Einsatzgruppen and the cooperation prescribed for camp commanders with the SIPO and SD.

A decree of 5 May 1942, signed by Reinecke, shows an agreement by him and the Reichsfuehrer-SS in connection with segregation and refers to the "eliminations". This agreement was intended to avoid a double screening and provided that thereafter the screening would be east of the old Reich frontier.

Another decree signed by Reinecke is dated June 1942. This decree is termed "Policy regarding Commissars and Politruks" and provided for the "elimination" of commissars and Politruks while within the General Government. It further provided:

"Within the General Govt., the elimination shall be carried out as before by the Security Police according to directives given by ordinance Az.2 f 24.73 AWA/Pri soners of War Gen. (a) No. 399/42 g, dated 24 March 1942. Those sought out by the SD commissioners shall in future be conveyed to Security Police camps specially prepared for this purpose in the Gen. Govt. or in the Reich and remain in custody there. Special treatment, as hitherto, will no longer be given, unless people are involved who have been convicted of criminal acts such as murder, cannibalism and similar acts.
"To accelerate the proceedings the Security Police shall reinforce their Einsatzkommandos in the Gen. Govt."

This shows the use of the term "special treatment" and that term clearly meant liquidation. Furthermore, the testimony of many witnesses, including the defendant, himself, established beyond a reasonable doubt that the defendant knew, participated in, and approved the segregation and liquidation program carried out by the Sipo and SD as to prisoners of war under his jurisdiction and the evidence in this case establishes that that segregation and liquidation were not confined to political commissars but included many other classifications among the prisoners of war, including the Jews. The evidence also establishes that those sick and unable to work, prisoners of war who had escaped and had been recaptured, and prisoners of war of Polish and certain other nationalities who had had sexual intercourse with German women, were turned over to the Gestapo, Sipo, and SD, and the defendant's connection therewith.

This Tribunal does not propose to enter into the question of how these liquidations were carried out or their precise number. Nor is it concerned with the fact that the program of the Sipo and SD was not entirely co-extensive with the jurisdiction of the defendant. It is shown that it was carried out in camps under his jurisdiction by virtue of directives issued by him. Whether the unfortunates who were segregated were transported to concentration camps to be gassed or worked to death or otherwise disposed of, as described so graphically by the witness, Smolen, formerly with the Political Reception Detachment at Auschwitz, and the question of whether or not their deaths were reported to the Wehrmacht Information Center, WAST, an office under the AWA, as he also testified, or whether as described by
the witness, Ohler, former Inspector of the Nurnberg Gestapo, they were transported to the railroad station by the camp authorities, chained and taken into Dachau where, five at a time, they were taken out, stripped of their clothing, and shot by the Einsatzkommando, is not the question. The fact remains and is clearly proved that the defendant was an active participant in the program of segregation and illegal liquidation of prisoners of war under his jurisdiction; that he knew prisoners of war turned over to the police agencies were to be so eliminated; and that he arranged for turning them over to such units for that purpose.

Nor are we concerned with the fact that having participated in the ruthless policies of the Reich in the early stages of the war with Russia with regard to Russian prisoners of war, ultimately the leaders of the Reich came to the conclusion that they were depriving themselves of a valuable source of manpower and thereafter relaxed in a measure their program of extermination. This is a relaxation for which the defendant or anyone else can claim little credit at best, and according to the defendant's testimony, he can claim no credit because he asserts that he never knew of the existence of any extermination program in the first place.

For the reasons above stated, we find the defendant guilty of participation in the criminal segregation of prisoners of war for liquidation of certain elements and for turning others over to the Gestapo for confinement in concentration camps or elimination as they saw fit.

2. Ill-treatment of Prisoners of War.

The record in this case shows various inflammatory orders concerning prisoners of war issued by the defendant.
and his subordinates. These include Exhibit 1246 and Exhibit 336.

On 24 March 1942 the OKW/A4 issued an order which the defendant claims favorably modified pre-existing directives. However, the purpose of this order was apparently to increase the production of prisoners of war. This order contains the following provisions:

"Ruthless and energetic action in cases of uncooperativeness, refusal to work, and negligence in work, especially toward Bolshevist agitators, is to be ordered; insubordination or active resistance must be completely removed immediately with a weapon (bayonet, gun butt or firearms, no sticks)."

This order directed ruthless and energetic action for uncooperativeness", "refusal to work", "negligence in work", especially "toward Bolshevist agitators". This directive also provided:

"The decree concerning use of arms by the armed forces is to be interpreted strictly. Whoever does not use his weapon or does not use it energetically enough in seeing that an order is carried out is liable to punishment."

On 19 August 1942 Reinecke signed a decree. This order was distributed by the Plenipotentiary for the Four Year Plan and the Plenipotentiary General for Labor Allocation. This order states:

"During these visits it should be mentioned that a further OKW decree pertaining to the treatment of Russian PW's in case of refusal to work will follow soon. Furthermore, inquiries are to be made if and where it has become known that guards have neglected their duty in supervising the work output of PW's. In case this is ascertained, the most drastic steps are to be taken.

"For 10 September 1942 reports will be submitted to the OKW confirming that all NSDAP functionaries (Hochstetterger), in whose districts (Bezirke) PW's have been allocated to work, have received the decree referred to, and where disciplinary action has been taken against guards who have neglected their duty."

This order shows party interference and influence
upon the defendant in connection with his treatment of prisoners of war and also directs vigorous measures in case of refusal to work and to increase the work output of prisoners of war.

On 29 January 1943 von Gravenitz, a subordinate of Reincke, signed and distributed an order extending the power to inflict punishments upon prisoners of war for attacks upon the state. This order was distributed by the Party Chancellory to various Gauleiters.

On 17 August 1944 an "GMW" decree, signed by Reincke, concerning the treatment of prisoners of war, again shows the party influence upon the defendant in regard to this matter. Pertinent parts of this order read as follows:

"...The prisoners of war must definitely know at all times that they will be ruthlessly proceeded against, if necessary with weapons, if they slack in their work, offer passive resistance, or even rebel..."

Paragraph 5 provides:

"...Minor offenses by the guard and auxiliary guard personnel in the treatment of prisoners of war are not to be prosecuted if they serve to help increase production..."

Paragraph 6 provides as follows:
The guard and auxiliary guard personnel must therefore be briefed on political views as often as possible. The commanders of prisoners of war in the Wehrkreis are responsible that official NS political officers are speedily assigned to all men's prisoner camps.** **

This paragraph clearly establishes that the ruthless policy of the Party as to treatment of prisoners of war in work production was put into effect by the defendant Reinecke.

In addition to assisting in the liquidation by the SIPO, SD and Gestapo of "undesirable elements" among prisoners of war, the exhibit above cited discloses that the defendant directed that the remaining prisoners were to work under the merciless lash of the Party. For such inhuman orders and abandonment of prisoners of war under his jurisdiction to the supervision of a ruthless civilian agency, of whose nature and purposes he was advised and which he claims to have resisted, the defendant Reinecke is criminally responsible.

It is small wonder from the above cited directives that General Schemmel testified to the effect that the mortality rate of Russian prisoners of war engaged in heavy labor at Nurnberg was very high.

3. The Commando Order.

The evidence in this case is not considered to establish beyond a reasonable doubt the defendant's connection with the execution of the Commando Order.


The witness, Henri Bousson, former French prisoner of war in Wehrkreis VI, establishes the illegal use of French prisoners of war within Reinecke's jurisdiction in the manufacture of artillery weapons in the Krupp plants.
It is also established by Westhoff's testimony that he called the use of French prisoners of war in armament work to the attention of Reinecke and advised him that it was contrary to the Geneva Conventions, to which Reinecke replied that an agreement had been reached with Ambassador Scarpini and the French Government permitting such use.

This and other evidence in this case clearly establishes the illegal use of French prisoners of war in the manufacture of arms and munitions and the defendant's knowledge thereof. That Reinecke was responsible for this use of prisoners of war is shown from the record which, as heretofore pointed out, establishes authority and jurisdiction over prisoners of war within the Reich. Reinecke's control over such prisoners of war is also shown by Exhibit 230, wherein Goering on 4 November 1943, stated:

"* * *The Italians (Italian military internees) get beaten up when they do not work. If Reinecke cannot do the work, I shall dismiss him and get somebody else." * * *

and by a meeting of the Central Planning Board wherein Field Marshal Milch stated:

"Gablenz, I want you to get in touch with Reinecke concerning these French. I demand that if the people refuse to work they immediately be placed against the wall and shot before all the other workers. * * *"

While the proof in this case establishes many uses of Russian prisoners of war and while it establishes that they were used to replace French prisoners of war for use in the armament industry, it fails to establish the actual use of Russian prisoners of war in the manufacture of arms and munitions.
5. Looting.

On 17 September 1940 Keitel issued an order to the military commander in occupied France providing for the illegal seizure of property and its transfer to the Reich. This order in pertinent part reads as follows:

"Reichsleiter Rosenberg and/or his deputy Reichshauptseelenleiter Ebert has received clear instructions from the Fuehrer personally governing the right of seizure; he is entitled to transport to Germany cultural goods which appear valuable to him and to safeguard them there. The Fuehrer has reserved for himself the decision as to their use.

"It is requested that the services in question be informed correspondingly."

On 10 October 1940 Reinecke wrote to the Supreme Commander in France and requested that the directions given in the above directive of Keitel's be transmitted to the military administration in Belgium.

On 50 October he addressed a communication to the Armed Forces Commander in the Netherlands, supplementing this order of Keitel's, a copy of which he sent for information to Reichsleiter Rosenberg.

For his connection with this looting program of the Third Reich, he is considered criminally responsible.


We do not feel that the proof in this case establishes beyond a reasonable doubt the criminal participation of the defendant in the screening and turning over of civilians to the SIPO and SD, or that he in fact had authority over civilians.

There has been much discussion in this case concerning the defendant's assignment as Chief of the National Socialist Guidance Staff of the OKW for the purpose of
fostering the Nazification of the various services, particularly of the army. But the fact remains that the indoctrination of the army in the Nazi ideology, repulsive as that ideology might have been, does not in itself constitute an international crime, and the fact that he was appointed and carried out such functions is not considered to have any significance in this case other than as it indicates his conformity to the ideals of Hitler and Keitel whose orders and directives he is shown to have formulated and transmitted, and his relation to Bormann and the Party to whom he in a measure surrendered the supervision and treatment of prisoners of war.

It has also been established that he was a member of the People's Court as one of the lay judges thereon and that he sat in the trial of the conspirators of 20 July 1944 where the contemptible Freisler presided, which is perhaps the most infamous travesty on human justice ever so completely recorded in the annals of man.

The fact, however, that he was a member of the People's Court and sat in this trial does not constitute an international crime and is of no significance in this case other than it reflects his character as a trusted and supine instrument of Hitler's will in any capacity.

For the reasons above stated in this Judgment, we find the defendant guilty under Counts Two and Three of the Indictment.
Walter Warlimont was born on 3 October 1894. He saw
service in World War I in the artillery as a combat officer.
At the end of 1920, upon his own application, he was taken
into the Reichswehr. From then on he served in various
capacities and in 1929 was detailed to the United States
Army to study the economic mobilization system. Later on
he served in various capacities, and in April 1933 was
transferred to the Reichswehr Ministry in Berlin, Army Armament
Office, as Group Chief in the Economic Department. In
the summer of 1934 he was appointed chief of this department.
At the end of August 1936 he was sent by the Reich Minister
of War von Blomberg, as Military Plenipotentiary to General-
issimo Franco in Spain, where he remained until November 1936.

In October 1937 he was given command of an artillery
regiment and in 1938, shortly after the Anschluss, he was
ordered to Vienna by Keitel, Chief of the OKW, to represent
the OKW there. After a few weeks he returned to his regi-
ment. On 1 August 1938 he was transferred to the OKW in
Berlin to become familiar with the position of Chief of
the Section of National Defense as a successor to Jodl.
at that time his chief task was to represent the OKW in
ensuing conferences where the military occupation of the
Sudetenland was being arranged with the military representa-
tives of Czechoslovakia and the signatory powers of the
Munich agreement.

On 10 November 1938 he was appointed Chief of the
Section of National Defense and was at the same time charged
with the affairs of the Chief of the Wehrmacht Operational
Office, which shortly before had been activated. In August
1939 Jodl returned to the OKW and took over the affairs of
the Chief of the Wehrmacht Operational Office and the defend-
ant remained Chief of the Section for National Defense.
1 August 1940 he was promoted to Brigadier General. The first of January 1942 the office Chief of National Defense was renamed Deputy Chief of the WfST without incurring any changes in its duties. On 1 April 1942 he was promoted to Major General. On 1 April 1944 he was promoted to Lieutenant General of Artillery. The Department of National Defense consisted of the following divisions:

A. Operations Section Army (OPH (I/H))
   Operations Section Air Force (OPL(I/L))
   Operations Section Navy (OPM(I/M))

B. Quartermaster Section (Qu.)

C. Organization Section (Org.)

When in January 1942 these sections were directly incorporated into the WfST, under Warlimont, Jodl explained Warlimont’s duties as follows:

"Warlimont’s principal activity was to assign the entire work of the staff and to issue directives for that work. He supervised everything. He received orders from me concerning his work, discussed it with the general staff officers, examined the drafts, signed and sent them to me.

"Another special activity was his direct cooperation with Field Marshal Keitel, concerning all the questions which I did not handle, problems which did not concern me. I concentrated almost exclusively on operational problems. Warlimont handled, without my participation, any other administrative questions in the occupied territories, any economic questions, in short, all questions which were not of an operational nature, which had to be sent in the form of orders by Keitel to the other offices.

"As to operational questions, he prepared and submitted them to me. As to others, he cooperated independently with Keitel, who had no staff of his own at headquarters, without my participation, particularly as he was better trained in fact for these matters (political and economic questions), than for the operational ones."

Warlimont is charged under all four counts of the Indictment. Since Counts One and Four have been eliminated by the action of the Tribunal, the remaining charges under
Counts Two and Three may be summarized as charging the criminal connection of the defendant with the following subjects: (1) The Commissar Order; (2) The Commando Order; (3) Prohibited Labor of Prisoners of War; (4) Murder and Ill-treatment of Enemy Belligerents and Prisoners of War; (5) Deportation and Enslavement of the Civilian Population; (6) Plunder of Public and Private Property and Wanton Destruction; (7) Murder, Ill-treatment and Persecution of Civilian Population, in which he is charged with: (a) Criminal Connection with the Barbarossa Order, (b) Illegal Executions of the Civilian Population, (c) Discrimination, Persecution, and Execution of Jews by the Wehrmacht and Cooperation with Einsatzgruppen and SD, (d) Cooperation with the Einsatzgruppen of the Rosenberg Staff, (e) Reprisals against Families of French Officers, (f) The Night and Fog Decree, and (g) Other Illegal Orders. These we will take up in serial order.

1. The Commissar Order

Prior to the Russian campaign, Hitler had announced at a conference of high officers and their military commanders and their chiefs of staff his intention to wage war on Russia, which would be a clash between two ideologies. It would be necessary to fight a war of extermination; it would be necessary to forget the comradeship between soldiers.

Subsequently on 6 May 1941 General Müller of the OKH sent a letter to the Chief of the OKW, marked attention Warlimont or his deputy, inclosing a draft of the directives for the treatment of political functionaries. This draft was the first pertaining to the so-called Commissar Order. Warlimont sent this to the defendant Lehmann, who, after
a telephone conversation with Warlimont on 8 May, returned an amended draft after having crossed out paragraph III and suggested the following words be substituted as a new paragraph III:

"The courts-martial and the drumhead courts-martial of the regimental and other commanders, must not be charged with the execution of the measures indicated under I and III."

The note of transmittal is signed by Lehmann. On 12 May Warlimont submitted a memorandum concerning this matter to Jodl, which shows the OKH draft as altered by Lehmann. This reads as follows:

"I......
Il. Political functionaries and commissars are to be removed.
"2. Insofar as they have been captured by troops, an officer with disciplinary power shall have a final decision as to whether the prisoner in question is to be removed or not. It is sufficient to determine whether the prisoner is a political functionary.
"3. Political commissars among troops shall not be recognized as Pows and shall be liquidated at the latest in the Transit Pw Camps. No evacuation to the rear.
"4. Expert directors of economic or technical enterprises shall be seized only if they offer resistance to the German Armed Forces.
"5. The carrying out of military operations must not be hindered by these measures. Planned searching and purging actions are not contemplated.
"6. In the army rear area, functionaries and commissars, with the exception of political leaders among the troops, shall be turned over to the Special Commitment Squads (Insatzkommandos) of the SD.

"II. On the other hand, memorandum No. 3 of Reichleiter Rosenberg provides that only high and highest functionaries shall be liquidated, since functionaries on the state communal and economic level are indispensable for the administration of the occupied territory."

This memorandum was signed by Warlimont. Warlimont in his affidavit of 14 November 1945 states as follows;
"I recognize a document entitled 'Directives Regarding Treatment of Authorized Political Representatives of the Russian State for the Uniform Execution of the Mission Received on 31 March 1941', which is an excerpt from a proposed directive drafted by the OKH and dated 12 May 1941 (PS-884). That document is a true and accurate statement of the proposals made by the OKH with respect to Soviet political functionaries and military commissars captured with Soviet troops. That document states that political functionaries and commissars among the Soviet prisoners of war are to be eliminated. That document bears my initials indicating that it had been sent to my division in the OKW and had been seen by me before submitting it to General Jodl, my immediate superior. I added to the document Parts II and III before submitting it to General Jodl. In addition, on my own initiative, I sent a copy of the document to the OKW legal department for information, expecting that department to examine the entire question and to render an opinion thereon to the Chief of the OKW."

On 6 June 1941 the so-called Commissar Order was distributed to the OKH, OKL and the OKW, and certain offices, with the request that it be distributed down only to the Army and Air Fleet Commanders and that the other chiefs and commanders be informed by word of mouth. The cover letter is signed by the defendant. On 8 June this order was distributed by von Brauchitsch with certain additional clauses, which read as follows:

"To I Number 1:

"Action taken against a political commissar must be based on the fact that the person in question has shown by a special recognizable act or attitude that he opposes or will in future oppose the Wehrmacht."

"To I Number 2:

"Political commissars attached to the troops should be segregated and dealt with by order of an officer, inconspicuously and outside the proper battle zone."

The idea for the murder of prisoners of war in the name of ideological warfare did not originate with warli-
his part to moulding it into its final form. It was distributed "by order" under his signature. There is nothing to indicate that those contributions which he made in any way softened its harshness, and we find the defendant guilty of a participating part in the formulation of this criminal order.

2. The Commando Order

On 7 October 1942 Hitler made a radio speech in which it was stated:

"All terror and sabotage troops of the British and their accomplices, who do not act like soldiers but like bandits, have in future to be treated as such by the German troops, and they must be slaughtered ruthlessly in combat wherever they turn up."

On 8 October the defendant Warlimont apparently was instructed by Jodl to put the announcement in the form of a military order. The defendant alleges he was given detailed instructions with regard to the contents of the order. On 8 October, Tippelskirch, a subordinate of the defendant and Chief of WPST/Qu (IV), issued a memorandum in which, after referring to the above radio announcement by Hitler, it was stated in paragraph II:

"Supplementary thereto, the Deputy Chief (WPST) Armed Forces Operational Staff issues the following order to Section Qu, which is to be carried out speedily:

"1) Transposition into order-form.

"2) Similar to the Barbarossa-order given previously, this order too, must - in accordance with WR and counter-intelligence - be very carefully considered and worded. Distribution only as far as the armies, from there only orally. To be destroyed after reading.

"3) With regard to the contents of the order, the following must be considered:
In those cases in which temporary arrest of persons takes place in our interest, they must be handed over through the counter-intelligence to the SD, after intensive interrogation at which SD, too, must participate. Under no circumstances confinement in prisoner-of-war camps. Proceedings on the lines of this order are later on to be taken against the people from Norway."
This memorandum also refers to a telephone call to Ministerialrat Dr. Huelle, a subordinate of Lehmann (in WR) concerning which the following entries were made:

"Members of terror and sabotage troops of the fighting forces of Great Britain, who can be proven to have disregarded the rules of honorable combat, are to be treated as bandits:

"They must be ruthlessly eliminated in combat or in flight.

"If military interests necessitate their temporary arrest or if they fall into German hands outside combat activities, they must be taken to an officer for immediate interrogation, and afterwards be handed over to the SD.

"Custody in prisoner-of-war camps is forbidden.

"He remarks further that the formulation could only be based on the facts as they appear in the press."

The significant part of this memorandum is contained in Section 2 which contains the order of the defendant as to this matter and which suggests certain procedure to be followed and certain provisions that must be considered in drafting the order. The defendant's contention that he received detailed instructions as to what the order was to contain is not borne out by the wording of these instructions. In the first place, with regard to the contents of the order, he states that "the following must be considered" (emphasis supplied), which is not consistent with the contention that he had detailed instructions from Jodl. Nor is the substance of the order which he issued to Section Qu. consistent with such contention.

The defendant has also introduced a rather elaborate and unconvincing defense to the effect that it was his intention to sabotage the order, firstly by conferences with

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counter-intelligence and the legal section of the OKW, and secondly to sabotage it by having counter-intelligence examine the persons captured on the theory that counter-intelligence under Canaris would see to it that they were not executed.

In connection with the first defense, it is to be pointed out that the instruction of the defendant was to the effect that the order must be prepared speedily. As to the second defense, the order of the defendant states that the following must be considered:

"In those cases in which temporary arrest of persons takes place in our interest, they must be handed over through the counter-intelligence to the SD, after intensive interrogation at which SD, too, must participate."

By 3 October 1942 intensive interrogation had certainly come to have a sinister significance, particularly when carried out by the SD, which was to participate in such interrogations, and it is difficult to understand how the action of counter-intelligence was to sabotage the order if the SD was to be present. Examination of this document can lead to but one conclusion; that it does not bear out the contention of the defendant of any intention of his part to sabotage the order; and it further bears out the fact that these provisions which were to be considered came from the defendant himself and not from Jodl and certainly not from the radio speech of Hitler, for these matters go beyond the radio speech.

In the light of these instructions of the defendant, it is significant that the order itself as finally issued contains the following:

"4) If individual members of such commandos, such as agents, saboteurs, etc., fall into the hands of the military forces by some other means, through the police in occupied territories for instance, they are to be
handed over immediately to the SD. Any imprisonment under military guard, in FW Stockades for instance, etc., is strictly prohibited, even if this is only intended for a short time."

Prior to the completed order which it is noted was issued on 18 October 1942, only ten days after the matter was submitted to the defendant, other proceedings were had with reference to the preparation of this order. On 9 October 1942 a teletype was sent to the foreign counter-intelligence, inclosing a draft prepared by WR. This teletype was signed "by order" Warlimont. Certainly no time was lost in either the preparation of this draft by WR or its submission to counter-intelligence. This teletype also states:

"A close examination - if necessary under cooperation of the Reichsführer SS - is requested."

Surely the suggestion of a conference on this matter with the Reichsführer SS cannot be assumed as a sabotage measure. The draft submitted also contains provisions pertaining to the matters discussed heretofore in relation to Exhibit 124.

On 10 October a teletype was transmitted to the OKW, WfST, stating the objections of the foreign intelligence office to the draft of the order submitted to it, and on 13 October a teletype to the OKW/WfST signed by the foreign intelligence office, making changes in its original teletype, was transmitted.

On 13 October 1942 a telegram, signed Canaris, was transmitted to the Armed Forces Operational Staff (QM) Prisoner of war Affairs (a) relative to this matter and stating Canaris' objection to it.

On 14 October 1942 a file note was made by Tippelskirch with reference to a telephone conversation with the
chief of the WR in which WR requests a phone call to the Deputy Chief of the Operational Staff and suggests a conference pertaining to the matter.

On 15 October 1942 a letter signed by Lehmann was sent to the Armed Forces Operational Staff, WST, with reference to a previous telephone conversation and for information to the foreign intelligence office, discussing the subject of the treatment of prisoners of war in connection with the proposed Commando Order.

On 14 and 15 October 1942 various drafts pertaining to the proposed Commando Order were transmitted, apparently to Jodl. Exhibit 123 contains various drafts prepared by WStT/In, dated 14, 15 and 17 October 1942, initialed by Warlimont. Pertaining to these drafts the statement of Jodl in his affidavit is quoted as follows:

"In reference to Warlimont's participation in the drafting, formulating, amending and execution of Hitler's 'commando-befehl' of 18 October 1942, and to the documents 508-PS, 531-PS, 1263-PS, and 1273-PS, submitted to me, I declare the following: every time when the heading is 'Wehrmachtfuhrungstab, Qu.', it referred to the quartermaster section. In this case, and as a rule - I say, as a rule, not always - they were matters which were handled by Warlimont directly with Field Marshal Keitel. Sometimes, I saw one thing or another, but generally not. He participated in such things much more than I did. I have worked but little with the quartermaster section. In order to keep a clear head, I did not bother with all these things. Therefore, Warlimont has participated to a greater extent, in all things where it says quartermaster section.

"Of course, I saw many things, but most of them I did not see. Of course, I have seen everything pertaining to operational things with which he dealt, except small matters of a subordinate nature, which he signed himself once in a while, such as unimportant individual orders about which he may have called me up before. Important matters were prepared by him, and then submitted to me."
This affidavit, while not particularly enlightening as to the Commando Order, is most enlightening as to the procedure followed in such matters, and definitely does not bear out the statement of Warlimont that he received detailed instructions from Jodl as to what was to be contained in the Commando Order which he was to draft. The exhibit shows, on page 27, the initials of Warlimont. This was the final form of the draft which he submitted to Jodl. The remaining drafts in this exhibit were apparently prepared by Jodl himself. It is noted in this draft (paragraph 2) that the words "no matter whether as soldiers and/or in what uniform" are contained.

Exhibit 122 shows certain changes in the defendant's handwriting were made therein. (See also his testimony, pages 6968-9 of the transcript.) These changes are not without significance. On page 6993 the defendant claims "the changes in handwriting which I had to read to you, I did not invent myself but they had been ordered to me or at least ordered to this effect." Under the circumstances, the attempt to shift the responsibility for them, presumably to Jodl, is not convincing.

It is argued by the defendant Warlimont in his testimony that since Hitler drew up the final draft of this order himself, that he had no further connection therewith, and his responsibility thereto was terminated. The Tribunal does not agree with this contention. While it appears that Hitler drew the final order, he had before him the ideas which had been expressed by the defendant in various drafts, and part of those were incorporated in the final order. It is significant that the Hitler order departs in many ways from the original radio announcement and goes much further. The ideas of the defendant are
considered by the Tribunal to be a material part of the final product.

The record in this case shows that the Commando Order was carried out, and British, American and Norwegian soldiers were executed under its provisions.

On 26 November 1942 the defendant Warlimont, in a note for personal report, advised Jodl that in the east, the Army General Staff considered the destruction of the written Commando Order issued below Army and Staffs of other Wehrmacht branches of the same level, important in consideration of the situation in the east. Warlimont, on his own initiative, states in this note: "On other fronts also there exists the danger of this order falling into the hands of the enemy." Pursuant to this note and Jodl's order, a teletype was transmitted by the OKW/WFST/Q4, directing that all copies with the German troops in Africa and Finland were to be destroyed. A similar text was sent to the Navy, the Army and the Luftwaffe.

On 13 December 1944, the Armed Forces Commander in Norway sent a telegram to the OKM/WFST stating the importance of interrogating captured commandos before shooting them, calling attention to the protest of the Reich Commissar and the Chief of the Security Police because this had not been done in a case at Eggersund where commando liquidation had been immediate. The purpose of interrogations is clearly brought out by this document. This teletype was answered by the OKM/WFST/Q4 (III), initialed by Warlimont, to the effect that retaining commandos for interrogation conformed to the Fuehrer Order of 19 October 1942.

The evidence in this case establishes that WFST/Q4 tried to assist the Foreign Office in concealing the
nature of the Commando Order, and that the defendant had knowledge of and participated in this effort. Other evidence establishes that the defendant advised the Chief of Prisoner of War Affairs that commandos were not prisoners of war but criminals and therefore their deaths should not be reported to the home country. The defense of this inhuman act on the part of the defendant as found on transcript pages 7014 and 7015 is not sustained by the record.

On 26 February 1944 the defendant prepared and sent a telegram to the Commander-in-Chief, Southeast, which read as follows:

"On the occasion of the reported landings by English commandos on Patmos on the 19 February and on Piskopi on the 25 February, reference is made once again to subject order."

The defendant claims that he knew this telegraph order would not be carried out from conversations which he had with General Foertsch, Chief of Staff of the Southeast Command. The wording of the order is that of the defendant. It provides that with reference to a specific case, "reference is made once again to the Commando Order." The telegraph is addressed to the Commander-in-Chief, Southeast, Iowa. It amounts to a direct order to him to apply the Commando Order. That Foertsch would receive this order we can only infer from his position as chief of staff. That he would ignore it, and his commander-in-chief would ignore it, we are asked to believe on the basis of some conversations of the defendant with him. As has been pointed out so frequently in this case, the chief of staff was charged with the responsibility of bringing such matters to the attention of his commanding general, and had no command
authority over subordinate units of a command. The defendant could not assume that the order would not be carried out.

The defendant states that this order was signed "by order" and therefore it carried the weight of the Supreme Command of the German Wehrmacht. This Tribunal is not impressed with the defense that orders were issued by the OKW and OKH with the intention or understanding that they were not to be carried out, or meant something contrary to their express wording. The history of German arms and the record in this case do not indicate that the German Wehrmacht acted in an advisory capacity to subordinate units and their commanders; orders were issued to be obeyed as written.

In late May or early June 1944 the following teletype was prepared and transmitted to the Commander-in-Chief, Southeast Ic, Top Secret:

"Since details transmitted are sufficient for present tion to the Turkish government, according to information received from the Foreign Office, the English radio operator Carpenter and Greek sailor Lisa, was captured at Allmend, are no longer needed and are released for special treatment according to Fuehrer Order."

This was signed "by order" Warlimont. Pursuant to this teletype, the Commander-in-Chief, Southeast reported these men were released for special treatment. Warlimont testified with reference to another document of 7 November 1943 when asked what he understood by special treatment:

"...at that time I said to myself 'special treatment' meant that these soldiers are not treated as prisoners of war, what further happened to them I didn't concern myself with."

Kipp, a subordinate of Warlimont, in his affidavit, states the meaning of the term as follows:
"Regarding the conception special treatment by the SD I state the following: we never gave it any thought in the WVST as to what ways and means were used in carrying out this special treatment. It was, however, the general feeling that 'special treatment' meant that the persons involved were somehow eliminated by the SD, that is, were liquidated."

This Tribunal finds that in May 1944 the defendant knew that the men whom he ordered released to the SD for special treatment were to be executed.

On 15 June 1944 the Chief of Staff of the Commander, Southeast, reported that pursuant to telephone instructions of Warlimont, the German Military Mission had arranged with the Bulgarian Army to treat enemy agents, saboteurs, etc., in accordance with the Commando Order. On 23 June 1944, in reply to an inquiry of the Commander-in-Chief, West, requesting instructions on the application of the Commando Order in the invasion of the West, Warlimont stated in a confidential memorandum the position of the WVST as follows:

"1. The Commando Order remains basically in effect even after the enemy landing in the West.

"2. Number 5 of the order is to be clarified to the effect, that the order is not valid for those enemy soldiers in uniform, who are captured in open combat in the immediate combat area of the beachhead by our troops committed there, or who surrender. Our troops committed in the immediate combat area means the divisions fighting on the front line as well as reserved up to and including corps headquarters.

"3. Furthermore, in doubtful cases enemy personnel who have fallen into our hands alive are to be turned over to the SD, upon whom it is incumbent to determine whether the Commando order is to be applied or not.

"4. Supreme Command West is to see to it that all units committed in its zone are orally acquainted in a suitable manner with the order concerning the treatment of members of commando undertakings of 13 Oct 42 along with the above explanation."
On 25 June 1944 an inter-office communication of Deputy Chief VFSt to the Operations Office (Qu.) stated:

"Subject: Treatment of Members of Commando Detachments

Chief VFSt desires that the following order be given without any formalities, but clearly and simply:

"1) all sabotage, etc. troops, encountered outside the actual combat area of Normandy will be eliminated, in special cases they will be delivered to the SD.

"2) Concise instructions will be given accordingly to all troops stationed outside the combat area of Normandy.

"3) The Commander-in-Chief West, starting immediately, will make daily reports on the number of saboteurs liquidated in this way. This number shall be given daily in the Wehrmacht report, in order to have a deterrent effect as it was already done in the same manner against previous commando operations. This applies in particular to the operations of the military commander."

This was signed by the defendant. This ruling was transmitted in substance by teletype, signed by Keitel, initialed by Warlimont, to the Commander-in-Chief West.

On 3 July 1944 he initialed a teletype "by order" to the effect that the order was not to be distributed further down than Divisional staffs and comparable staffs, and that copies below this level were to be recalled and destroyed.

On 22 June Warlimont initialed a letter to the WH stating that the Fuehrer Order is to be applied, even if the enemy employs only one person for a task.

On 22 July the opinion of various offices was obtained as to what should be done with regard to military missions captured with partisan groups. Exhibit 165 contains opinions.
of various offices as to the action they believed should be taken. The document, in paragraph three, gives the opinion and proposal of the Armed Forces Operational Staff, which reads as follows:

"According to the Orders issued to date, even for example, the British captured in the 'Kassel-sprung' operation must be treated as prisoners of war."

"The Commando Order has never yet been applied to such missions, its extended application to cover them has not yet been ordered. If the missions are to be treated otherwise than in accordance with the orders to date, it must first be decided whether a foreign mission acting with the partisan groups in the South East is to be called a commando operation and therefore treated as such. Such a decision seems to be indicated even if it does not correspond completely to the wording of the commando order or to the previous definition of a commando-operation (as an especially underhand and still unusual form of warfare which must be combatted with the appropriate counter measures). The principle must be adopted from the start that all members of partisan groups, even in the South East, are fundamentally guerrillas. Indeed, they are treated as prisoners of war, for reasons of expediency, in order to obtain the largest possible number of deserters and workers. There is no reason for this with regard to the members of foreign missions who are not numerous. There is therefore no necessity to treat them in every case, in the same way as the members of partisan groups themselves. Basically, it would be far more appropriate to consider Anglo-American as well as Soviet-Russian military missions as commando-operations and to treat their members accordingly.

"The appended order is therefore proposed."

This part of the document, including the appended order as proposed, is initialed by Warlimont. The minutes of the meeting also inclosed in this document show the handwritten note of the defendant Warlimont.

"why still all these discussions after decisions have been taken according to paragraph 1?" (Initialed Warlimont)

The final draft of the order, signed by Keitel, shows that the proposal initialed by Warlimont to the effect that military missions should be treated as
commandos, became a part of the final order.

On 6 June 1944 Ambassador Neubacher sent a teletype message to the Foreign Office stating:

"Wehrmacht Operations Staff, General Warlimont, gave the order to the Chief of Staff of Army Group F by telephone to hand over the captured war correspondents Talbot, Slapo and Fowler to the SD, after they had been interrogated by military authorities and the Foreign Office, in accordance with the Fuehrer Order of 18 October 1942 on the treatment of prisoners from British Commando operations."

From this evidence it is apparent that not only did the defendant Warlimont contribute to the formulation of this order but that he participated in its enforcement.

3. Prohibited Labor of Prisoners of War

While the record in this case establishes many orders prepared by the sections of the WFS under Warlimont's supervision pertaining to the use of prisoners of war, we are unable to find beyond a reasonable doubt any criminal connection of the defendant as to the illegal use of prisoners of war.

4. Murder and Ill-treatment of Enemy Belligerents and Prisoners of War

In the program adopted by the leaders of the Third Reich wherein they undertook to inspire the German population to murder "allied fliers by lynch law or "mob justice", they were indeed sinking deeper into the morass of depravity. For in this they undertook to incite the German people to set aside the safeguards of law built up through centuries and to resort to mob violence. That such a plan was fostered and encouraged by the Third Reich is established by the record. It has been commented upon in the Judgment of the IMT and was passed upon by Tribunal III in the Justice case.
This plan constituting a crime against humanity, the question arises as to the connection of the defendant Warlimont with this criminal undertaking. As shown by the record, this plan as to so-called Allied terror flyers was divided into two parts. The first of these had to do with flyers who had been captured and were in the air force prison at Oberursel. Those who it was decided had taken part in alleged illegal activities were to be turned over to the SD for liquidation, contrary to the provisions of the Geneva Convention. In this regard the prosecution concedes that the proof does not establish that any orders pertaining to this were ever issued or carried out. The animus of the defendant in this matter, however, is established by documents which show his consent and approval of this proposal.

The second part of this illegal program provided that, through the Party and the agencies of propaganda under Goebbels, the German people were called upon to execute Allied flyers who fell into their hands and were assured that they would not be called to account for their actions in such cases. This was done by orders issued to the police, by information disseminated by the Party, by suspension of prosecutions against the populace, and also by preventing interference of the army in such cases. The record shows the defendant Warlimont was well informed on the entire matter. He attended numerous conferences and personally discussed the matter with Altenbrunner, one of the active participants in the whole procedure, who informed him that lynch law was to be the rule. There was much correspondence, in which he took a part, with the Foreign Office and with Goering, who was reluctant to consent to participation in this scheme for fear of reprisals. The authors of the plan desired on the one hand to intimidate the enemy and at the same time to cloak
its operations in such a manner that it would not result in reprisals. The problem was to outline for publication certain alleged acts of Allied fliers which were contrary to international law and therefore deprived them of the status of prisoners of war. This was not easy to do.

At the conference of 6 June, 1944, attended by the defendant, it is shown that he mentioned that:

"apart from Lynch law, a procedure must be worked out for segregating those enemy aviators, who are suspected of criminal action of this kind, until they are received into the Reception Camp for aviators at Oberursel; if the suspicion was confirmed, they would be handed over to the SD for special treatment.

"For this purpose the WVST would cooperate with the Supreme Command of the Air Force to get out the necessary regulations for the use of the head of the camp at Oberursel.

"Obergruppenfuehrer Haltenbrunner expressed his complete agreement with this view and that the SD take charge of those aviators segregated."

On 14 June a draft was prepared by the Quartermaster Section of the OKW, and initialed by Warlimont, which contained a statement:

"In connection with the press notices at home and abroad about the treatment of terror fliers who fall into the hands of the population, an unequivocal determination of the concept of those facts which characterize a criminal action in this sense is called for."

Regarding this statement, Warlimont made the comment on the draft, "This is not quite the point"; and he further amended the draft by stating that the definition of criminal acts is necessary "only for publication". The matter was taken up with the Foreign Office by Aitel in a letter initialed by Warlimont, requesting approval of the Foreign Office to the proposed action. On the same date a similar letter was sent to Colonel von
Brauchitsch, Goering's Adjutant. This draft was corrected by Warlimont and contains his initials. This letter stated as follows:

"I. On the basis of preliminary discussions and pursuant to an agreement with the Reich Minister for Foreign Affairs and the Chief of the Security Police and SD the following are to be regarded as acts of terror when a case of lynching law is made public and/or to justify the handing over of prisoners of war among enemy fliers from the receiving (Pz) camp for fliers at Oberursel to the SD for special treatment."

On 23 June 1944, a letter prepared by the WFST/Q (Verw.I), addressed to the Supreme Commander of the Air force, for the attention of Colonel von Brauchitsch, undertook to speed Goering's decision with regard to this matter. On 20 June, Ambassador Hitter answered Keitel's letter of 15 June 1944, enclosing a draft by the Foreign Office which states as follows:

"In spite of the obvious objections, founded on international law and foreign politics, the Foreign Office is basically in agreement with the proposed measures.

"In the examination of the individual cases a distinction must be made between the cases of lynching and the cases of special treating (Sonderbehandlung) by the Security Service (SD).

"I. In the cases of lynching law the sharp definition of the criminal acts, as given in numbers 1 to 4 of the letter of 15 June, is not very important. First of all no German official agency is directly responsible; death has already occurred before a German agency is concerned with the case. Furthermore the accompanying circumstances will, as a rule, be such that it will not be difficult to present the case in a most suitable manner when it is published. In the cases of lynching law it will therefore be mainly a question of correctly dealing with the individual case when it is published."

Concerning the last statements of this above-quoted draft, a notation of Warlimont's appears on the margin as follows:

"That is the whole point of our letter" (initialled Warlimont).
In paragraph II concerning airmen captured by the armed forces, Ritter shows that in his opinion these men acquired the legal status of prisoners of war. After this statement Warlimont placed a question mark and noted:

"Precisely, this will be prevented by the proposed segregation". Ritter then went on to state:

"These rules are so precise that any attempt to disguise an individual case of violation by a clever wording of publication would be hopeless."

To this statement Warlimont wrote on the margin:

"No, - through the segregation and immediately following special treatment."

Goering finally agreed in general to the procedure recommended and Warlimont wrote "We finally have to act. What else is required for that?"

During all these discussions the defendant is shown to have had an active part and to have been concerned not only with the legality of the question, but with the possibility of handling the entire matter by publication in such a way as to avoid reprisals.

In a file note dated 2 October 1944 it is stated:

"The Herr Reichsmarschall agrees that the order OKw/WSt Cú (administration 1) No. 05119/44 secret of 9 July 1944 concerning the conduct of soldiers, in case of 'mob justice' being attempted by the population on downed terror fliers, is issued within the Luftwaffe as an order of the Supreme Command of the Armed Forces, but not as an order of the Supreme Command of the Luftwaffe."

It is shown that the Air Force Administrative Command VI (Luftgaukommando VI) Tactical Group (Führungsabteilung) Ta issued on 11 December 1944 the following order, pertinent parts of which are quoted:

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"The Chief OKw has issued the following order (OKw/WFSt/Q (Verw.I) No. 01 119/44 sec. dated 9 July 1944) concerning the behavior of the soldiers in cases of self-help action taken by the civilian population against terror fliers shot down:

"Recently, it has happened that soldiers have actively protected Anglo-American terror fliers from the civilian population, thus causing justified resentment. You will take immediate steps in order to ensure by oral instruction of all subordinate units and command authorities that the soldiers do not counteract the civilian population in such cases by claiming the handing over to them of the enemy fliers as prisoners of war and by protecting, and thus ostensibly siding with, the enemy terror fliers.

"No fellow German can understand such attitude from the part of our armed forces. The inhabitants of the occupied territories, too, must not be restrained from either resorting to self-help out of their justified indignation against the Anglo-American terror fliers, or from giving other utterances to their justified resentment against the prisoners belonging to the enemy powers. In addition, I refer to the article by Reich Minister Dr. Goebbels published in the 'Völkischer Beobachter', Berlin edition dated 27 May 1944, No. 148, and entitled: 'A comment on the enemy air terror.'"

The significant part of this order is that it was based on an order of the OKw/WFSt/Q (Verw.I), dated 9 July, at the time when this matter was being discussed as outlined above. It is contended that from the date of this order it could not have been based upon any order actually issued by the WFSt but must have been based upon a personal order of Hitler as Commander-in-Chief of the Replacement Army. With this contention, this Tribunal cannot agree. Regardless of the date that this order was finally issued by the Luftgau Command, the date of the order referred to derives from the Quartermaster Section under Warlimont, and the date was at the time when he was concerned with this entire matter.

We therefore find the defendant Warlimont connected with the illegal plan of the leaders of the Third Reich.
fostering the lynching of allied fliers and that he contributed a significant part to this criminal program. The record shows many instances where the German population, pursuant to this plan, murdered Allied fliers who fell into their hands.

In commenting upon the defendant, Jodl stated:

"Developed better and better from year to year. In addition to his ever eminent mental qualities, his far sightedness and his comprehensive knowledge and experiences, his National Socialist attitude also has become strongly marked. As my deputy and chief of the whole staff of irreplaceable value to me. Excellent. By the Fuhrer's order compelled to stay in present position."

5. Deportation and Enslavement of the Civilian Population

The record in this case, from various communications, reports and conferences, establishes that the defendant Warlimont was well aware of the criminal program of the Third Reich as to the deportation and use of civilians from the occupied territories for slave labor in Germany. As to his connection therewith, Exhibit 556 shows that Warlimont attended a conference in the Chancellery of the Third Reich, called for the purpose of taking intensive measures for the recruitment of foreign laborers. The minutes of this conference, in pertinent part, read as follows:

"The Deputy of the head of the GWA, General Warlimont, referred to a recently issued Fuhrer Order, according to which all German forces had to place themselves in the service of the work of acquiring manpower. Wherever the Wehrmacht was and was not employed exclusively in pressing military duties (as, for example, in the construction of the coastal defenses), it would be available, but it could not actually be assigned for the purposes of the GWA. General Warlimont made the following practical suggestions:
"a) The troops employed in fighting partisans are to take over in addition the task of acquiring manpower in the partisan areas. Everyone, who cannot fully prove the purpose of his stay in these areas, is to be seized forcibly.

"b) When large cities, due to the difficulty of providing food, are wholly or partly evacuated the population suitable for labor commitment is to be put to work with the assistance of the Wehrmacht.

"c) The seizing of labor recruits among the refugees from the areas near the front should be handled especially intensively with the assistance of the Wehrmacht."

The Tribunal is of the opinion that these suggestions of the defendant Warlimont made at these conferences are themselves sufficient to connect him criminally with the illegal program of the Reich for recruiting slave labor. Further, we find from the evidence as shown in Exhibit 1631 of 1 August 1944 and Exhibit 1632 of 10 August 1944, shortly after the conference of 12 June 1944, that the methods which he suggested were put into operation.

The Tribunal finds the defendant guilty of criminal participation in and connection with the deportation and enslavement of civilians.

6. Plunder of Public and Private Property and Wanton Destruction

The record in this case shows that the defendant Warlimont had knowledge of this matter, but we are unable to find from the evidence in this case beyond a reasonable doubt that he was connected therewith.

7. Murder, Ill-treatment and Persecution of Civilian Population

a. Criminal Connection with the Barbarossa Order

The evidence in this case, including but not limited to exhibits 590 and 593, establishes the criminal participation of the defendant in the formulation of the
Barbarossa Jurisdiction Order and we so find. We have discussed this order in other parts of this judgment, and in particular as to the defendant Lehmann, and shall not go into it further here.

b. Illegal Executions of the Civilian Population

The defendant is also charged with participation in the formulation of the so-called hostage Order. This order is in fact not a hostage order in any meaning of the term, but, regardless of the designation that may be given to it, it is a criminal and illegal order and we so find. It is claimed by the defendant that page two of this order was taken out and rewritten without his knowledge, while page one and three remained unchanged. It is conceded by the defendant, however, that the type is the same on the three pages and that the second page might have been written in the Regional Defense Division of the OKW. Careful examination of this document and the testimony of the defendant in regard thereto brings out further significant facts. Page two begins with paragraph two. It ends with the second paragraph under the heading "c." It is obvious that page three refers to the last paragraph on the preceding page. From the statement "clever propaganda of this kind, etc." it is clear that the first paragraph on page three follows the last paragraph on page two. It is further evident that in the original unchanged document there must have been a paragraph three with sub-headings a, b and c. It is very unlikely that either Hitler or Keitel, in changing a draft of the defendant's with which they were not satisfied, would have followed the paragraphing of the defendant in so doing. Apparently one of these paragraphs
had to do with the number of people who were to be shot in atonement for each German soldier. In respect to that number, the defendant no longer remembers whether or not the original draft, prepared by the defendant, contained the figures 5 to 10 as the ratio established, and he states to the best of his recollection, no figures were contained in the original draft. It is apparent, however, from the evidence that some ratio was to be established. Keitel's testimony before the IMT regarding this matter merely shows that the ratio submitted by him to Hitler was changed from 10 and 5 to 100 and 50 by Hitler.

Paragraph 3 (a) provides:

"It should be inferred, in every case of resistance to the German occupying forces, no matter what the individual circumstances, that it is of Communist origin."

This provision in itself was illegal. Defendant's recollection on the whole matter appears to be somewhat vague but he recalls that in the headquarters it was general talk that Hitler added the zeroes to the 5 and 10 figures. This we can readily believe. The first and third pages of this order, which the defendant admits having drawn, do not support the contention that the second page claimed to have been submitted by him made his draft legal. We are convinced that the original draft as submitted to Keitel was illegal regardless of the figures inserted or whether the ratio was left in blank to be filled in by his superiors.

Warlmont's defense that he immediately took steps to see that it would not be carried out throughout the wide domain of the Wehrmacht to which it was distributed is not convincing. His testimony that his was a negligible
position is not consistent with such a far-reaching
capacity to nullify an order of the OKW.

c. Discrimination, Persecution and Execution of Jews
by the Wehrmacht, and Cooperation with the
Einsatzgruppen and SD

From the record in this case showing the defendant's
official position, his associates, both superior and in-
ferior, from his many activities to which he has testified,
and from the documents before us, this Tribunal is
thoroughly convinced that the defendant knew of the ex-
termination program which was being carried out by his
superiors and associates. Just when he acquired this
knowledge it would be impossible to determine, and we are
unable to find beyond a reasonable doubt from the evidence
before us that he knowingly was connected with or partic-
cipated in its execution.

d. Cooperation with the Einsatzgruppen of the
Rosenberg Staff

From his position as Jodl's deputy as liaison agent
with the Rosenberg organization, we also are convinced
of his knowledge of the illegal activities carried out
by this organization. But we are, from the evidence
before us, unable to find beyond a reasonable doubt that
he was connected with its illegal activities.

e. Reprisals against Families of French Officers

The record in this case establishes the discreditable
and inhumane attitude of the defendant toward innocent
members of families of French officers, but we are unable
to find from the evidence where he participated in any
international criminal act in this matter.
f. The Night and Fog Decree

The question arises as to the connection which the defendant Warlimont had with this decree, but we are unable to find from the evidence beyond a reasonable doubt any criminal connection therewith.

g. Other Illegal Orders

On 1 July 1944 Warlimont sent the following teletype to the Chief of the WR:

"Subject: Combatting of enemy terrorists in the occupied territories

"On account of events in Copenhagen, the Fuehrer has decreed that court martial proceedings against civilians in the occupied territories must be discontinued with immediate effect. WR is requested to submit suggestions for the draft of an order concerning the treatment of enemy terrorists and saboteurs among the civilian population in the occupied territories by 2 July, 20:00 hours.

"Policies:

"Terror can be countered only by terror, but court martial sentences only create martyrs and national heroes.

"If German units or individual soldiers are attacked in any manner, the commander of the unit and/or the individual soldier are bound to take counter-measures independently and, in particular, to exterminate terrorists. Terrorists or saboteurs who are arrested later, must be turned over to the SD."

As a final paragraph, which is hardly adapted to relegate the Commando Order to the oblivion which he claims to have so earnestly sought, the defendant states:

"The Fuehrer Decree on the treatment of enemy commandos, dated 18 October 1942 (The Fuehrer No. 003830/42 top secret (mil.)/OKW/wwFSt) will remain in force as it does not apply to the civil population."
The record in the case shows that the defendant, during the course of the war, was located at Hitler's headquarters and in constant contact with Keitel and Jodl, and attended almost daily conferences with Hitler.

We have found the defendant guilty of participating in many criminal orders which permeated the conduct of the war. He may not have furnished the basic ideas, but he contributed his part and was one of the most important figures of the group which formed them into the final product which, when distributed through the efficient agencies of the Wehrmacht and Police, brought suffering and death to countless honorable soldiers and unfortunate civilians.

The defendant Warlimont is guilty under Counts Two and Three of the Indictment.
Otto Woehler was born on 12 July 1894. He participated in the first world war as troop leader and was wounded three times. Following the war he became an officer in the Reichswehr, or One Hundred Thousand Men Army, and served in various capacities until 1 April 1933 when he was transferred to the staff of the Army Group 5 in Vienna under General List. This became the 14th Army and he continued to serve with this army as Int in throughout the Polish Campaign. After this he was transferred and became Chief of the General Staff of the 17th Corps. He participated as such in the Western Campaign.

In the fall of 1940 he was transferred and became Chief of Staff of the 11th Army which was newly activated. On 1 May 1942 he was transferred and appointed Chief of Staff of the Army Group Center where he remained for ten months. In March of 1943 he was given command of the First Army Corps as acting commanding general and later, on 1 June 1943, was designated as the Commanding General of this Corps. On 1 July 1943 he took over command of the 26th Corps which he held until approximately 14 August 1943. At approximately this time he was transferred to Army Group South and became Commander of the Army Gebirgsdivision which on 16 August, when he took over, was known at times as the Army Gruppe Woehler and ultimately became the 8th Army. He was Commander-in-Chief of the 8th Army until December 1944. On 22 December he was designated as Commander-in-Chief of Army Group South which he held until 6 April 1945.
He did not belong to the Nazi Party or any of its formations.

Aside from the charge of Crimes Against Peace, heretofore disposed of in this opinion, we think that charges under Counts Two and Three of the Indictment may be disposed of under the following headings: (1) The Commissar Order; (2) The Commando Order; (3) Murder and Ill-Treatment of Prisoners of War; (4) Prohibited Labor of Prisoners of War; (5) The Barbarossa Jurisdiction Order; (6) Hostages and Reprisals; (7) Plunder and Wanton Destruction; (8) Deportation and Enslavement of Civilians; (9) Murder, Ill-Treatment, and Persecution of Civilians.

1. The Commissar Order.

The proof in this case shows the defendant, as Chief of Staff of the 11th Army, knew of the receipt of this order. It does not, however, establish any participation in its transmittal to subordinate units. It also shows that he knew of the enforcement of this order in the 11th Army but the responsibility for carrying out this order within the 11th Army must rest with the Commander-in-Chief and not with the Chief of Staff. Criminal acts or neglect of a commander-in-chief are not in themselves to be so charged against a chief of staff. He has no command authority over subordinate units nor is he a bearer of executive power. The chief of staff must be personally connected by evidence with such criminal offenses of his commander-in-chief before he can be held criminally responsible.

2. The Commando Order.

The proof in this case does not establish that it
was distributed by the defendant or that it was executed with his knowledge and consent.

3. Murder and Ill-Treatment of Prisoners of War.

As Chief of Staff of the 11th Army, he is charged with responsibility for an order issued by the OKW for "AOE". While part of this order is considered criminal by the Tribunal, the fact that this order was issued by a subordinate of the defendant in the staff organization over whom he had no command authority leads the Tribunal to conclude that the defendant was not connected therewith. The OKW was a subordinate of the chief of staff but he was also a subordinate of the commander-in-chief and to hold the chief of staff responsible for this order, we must necessarily make the assumption that it was not issued by the commander-in-chief without his intervention, which the document in itself does not establish. The fact that this order was actually carried out by subordinate units as shown by evidence in the record is the responsibility, as stated above, of the commander-in-chief and not of the chief of staff.

As Commanding General of the I Army Corps, the record establishes that he reported to the AOK 18 the illegal shooting of two captured Red Army soldiers. The defendant made these reports as Commanding General and apparently did nothing about them but his acquiescence and approval are not considered established by the evidence.


Documents in evidence show that while Commander-in-Chief of the 6th Army, units subordinate to Weichler used
prisoners of war in the combat area and that such prisoners were allocated to regiments for the construction of field positions. It is the opinion of this Tribunal as heretofore stated, that the use of prisoners of war by regiments and forward units of command in a combat area constituted a use in a position of danger. We are further of the opinion from the evidence that the defendant knew and acquiesced therein. The fact that similar use was made of German prisoners by the enemy is only a factor in mitigation and not in defense.

5. The Barbarossa Jurisdiction Order.

It is shown that this order was received by the 11th Army but no criminal connection with its distribution has been established by the evidence as to this defendant. Criminal acts thereof are to be charged against the commander-in-chief, not the chief of staff as heretofore stated. However, on 5 September 1941, an order was issued by the 11th Army, signed for the OK by Woehler, as Chief of Staff. From the nature of this order, it would appear that it was not of that basic nature which necessarily would be submitted to a commander-in-chief. It is such an order as a chief of staff would normally issue of his own volition. Whether or not that be so, the wording of this order would certainly be a matter that would come within the jurisdiction of a chief of staff of an army. This order provides in paragraph 5 as follows:

"Guarding the front lines alone is not sufficient. Corps as well as the Commander of the Army Rear Area has to send patrols constantly to the main rear lines of communication for raids", which arrest all suspicious civilians and check whether they reside in the area. Civilians who are sufficiently suspected of espionage,
Under this paragraph it is provided that civilians who are "sufficiently suspected" of certain offenses are to be shot, including boys and girls. The defendant's explanation that this order does not mean what it says is not convincing. At its best it could only be construed as ambiguous and if it meant something other than what it states, it was certainly the province of the chief of staff to see that that error was corrected. The Tribunal is of the opinion that it meant precisely what it stated and that the defendant was criminally connected therewith and is responsible therefor.

We are not impressed with the contention that suspects were interrogated before being shot. The record in this case shows that the purpose of such interrogations was primarily to obtain information of value to the German Army and not in the interest of the person interrogated under such orders.

The Kedynia incident has been suggested as establishing criminal responsibility upon the defendant. The record shows that the report on this matter came to Kochler's knowledge and was initialed by him and he testified that he called the matter to the attention of his commander-in-chief. If he did so, this was all that could be expected of him. The responsibility in this case rests with the commander-in-chief and was not a responsibility resting upon the chief of staff.
6. Hostages and Reprisals.

As regards this matter the charges against the defendant are based upon transactions which took place within the area of the 11th Army while he was chief of staff.

No personal action which he took or neglected to take within the scope of his authority is shown by the evidence and for the reasons above stated, the opinion of the Tribunal is that the proof fails to establish his criminal connection.

7. Plunder.

The Tribunal is of the opinion that the evidence in this case fails to establish under this heading any connection of the defendant with criminal responsibility for plunder not justified by military necessity.

8. Deportation and Enslavement of Civilians.

The evidence in this case shows that as Chief of Staff of the 11th Army, orders pertaining to the use of civilians were issued for the 11th Army which were signed by Woehler. These orders are not basic orders and would normally be issued by a chief of staff without even consulting the commander-in-chief and certainly without such orders being drawn by the commander-in-chief. These orders show the illegal use of civilians with which the defendant is criminally connected.

Further, the evidence in this case establishes the practice of compulsory illegal use of civilians under Woehler as Commander-in-Chief of the 8th Army by units subordinate to him. The evidence further shows that on
25 June 1944, an order was issued for the headquarters of the Army Group Wehler "by order" and signed by his quartermaster. This order provided for the compulsory recruitment of civilians and others to the Reich for slave labor in the mines.


The evidence in this case establishes the elimination of so-called undesirable, mostly Jews, within the area of the 11th Army while Wehler was Chief of Staff. This murder program was carried out under the direction of Chlondorf who appeared as a witness for the defense in this case. The approximate number of murders committed within this area was in the neighborhood of 90,000, including men, women, and children. The evidence establishes that this murder program was known in part at least to staff officers under Wehler. The defendant denies knowledge of this program.

The evidence establishes that he held various conferences with Chlondorf and Chlondorf testified that the matter was not specifically discussed because he assumed the defendant was aware of the program. This program was carried out over an extensive period of time and in many places within the occupational area of the 11th Army. It was executed by Einsatzgruppen and Sonderkommandos of the SD and SS, attached to that army, sheltered, fed, and placed by that army. Certainly the slaughter of 90,000 people by these police units under these circumstances could not have escaped the knowledge of the chief of staff of that army unless he was grossly incompetent. The defendant did not indicate incompetence while on the stand.
and the comments of his various commanders as shown by his service record refute any such appraisal. But we need indulge in no general assumptions. The record establishes knowledge by the defendant of the extermination activities of these Einsatzgruppe units.

Ohlendorf, whom the defendant called as his own witness, testified that staff officers of the 11th Army, over whom the defendant exercised supervision, knew of his activities. He also testified that he received cooperation from various units of the army, such as the furnishing of trucks to take his victims to the places of execution, and that at times the army called on him for assistance in these matters. Surely the knowledge of these staff officers was not kept from the chief of staff. Further, the documentary evidence in this case establishes the defendant's knowledge. Among these we cite:

Exhibit 1601 - initialed by Woehlor
Exhibit 871 - bearing his signature
Exhibit 1606 - initialed by Woehlor
Exhibit 761 - pertaining to the execution of some 1194 people in retaliation for activities in Jewpatoria
Exhibit 780 - which refers to the same instance and states that 1300 were executed
Exhibit 883 - a report of the Ortskommandantur, 14 November 1941, to the Army Group Rear area of the 11th Army, which states that 10,000 Jews remaining were being executed by the SD
Exhibit 872 - Report of Ortskommandantur at Holitopol, 13 October 1941, wherein it is shown that 2,000 Jews were executed by the SD; an instance which occurred within 15 to 20 miles of the headquarters of the 11th Army
Exhibit 881 - A communication from the Ortskommandantur of Lwow of 3 September 1941 which reports the shooting of 300 Jews and Jewsesses on 18 August 1941, to the Commandor of the Rear area of the 11th Army
Exhibit 1607 - a report to the 11th Army by Ohlendorf, initialed by Woehler

Exhibit 1608 - a report by Ohlendorf, initialed by Woehler, showing the imprisonment of 227 Jewish suspects and showing the execution of Jews as hostages and the shooting of political functionaries of the Communist Party by the Einsatzgruppe unit

Exhibit 1595 - a report of 4 August 1941 showing that 97 Jews were executed in Kodyma by units of the Einsatzgruppen and 24 soldiers subordinate to Seimuth, which instance Woehler states he reported to his commander-in-chief

Exhibit 1594 - a report of 4 August 1944 by Ohlendorf to the effect that 68 Jews had been shot for Communist activities and showing the establishment of a ghetto in Kischinow and further stating that on 31 July, Jewish hostages were shot.

The defendant disavows knowledge of events occurring in the Rear area of the 11th Army on the basis that the Oberquartiermeister or Q2 did not report to him such matters in connection with the Rear Army area. Field Manual 90 for 1 June 1938, Edition 1940, states "The Oberquartiermeister is subordinate to the Chief of the General Staff of the Army. As Chief of the General Staff of the 11th Army, the defendant was chief of staff for the whole army area including the rear army area. It was his duty as Chief of Staff of the 11th Army to consult with subordinates on his staff as to matters occurring therein and to advise his commanding general concerning such matters. We cannot believe that in neglect of that duty the defendant's knowledge of matters concerning the 11th Army stopped at the boundary of the Rear area.

On this evidence the Tribunal can only find that the defendant Woehler had knowledge of the extermination activities of the Einsatzgruppen when he was Chief of Staff of the 11th Army.
He was not, however, the commanding officer, and his criminal responsibility must be determined from personal acts in which he participated or with which he is shown to have been connected. This resolves itself into the question as to whether as chief of staff he assigned Einsatzgruppen to various localities wherein they operated and carried on their illegal activities. That he did so is shown by both the testimony of Ohlendorf and by documents in evidence. Exhibit 1605 shows that the defendant on 3 July 1941 issued an order, signed by him, assigning a Sonderkommando to Stanca. This order states that the Sonderkommando performs its duties at the order of the chief of the Security Police and on its own responsibility.

On 14 July a similar order was issued, assigning Einsatzgruppe III to LIV Army Corps "in order to carry out its assignment in Kischinow". This order states:

"Einsatzgruppe D of the Security Police, except for the Sonderkommando in action, will continue to be subordinated in Piatra Neamt to OK 11."

It states further:

"In accordance with information received from Army Group South, it is not intended to employ Einsatzgruppe D in the army area."

On 22 July he signed an order stating that the Einsatzgruppe D "except Sonderkommando 11A and 10. is to be moved from Piatra Neamt to Jasi" and providing that "Sonderkommando 11B will be employed in the area of the 2nd Romanian Army with the task to carry out assignments of a political nature."

On 7 August he signed a similar order to the Einsatzgruppe D, stating "The Sonderkommandos which are employed have to look after security in the combat area."
behind the combat troops from the counter intelligence point of view in addition to the tasks given them so far.

This same exhibit shows that on 20 September the defendant initiated a communication addressed to the 11th Army which was transmitted under date of 29 September to the Counter Intelligence Officer to take action, concerning measures taken by the Einsatzgruppen of the 22nd Infantry Division and also shows on 6 October 1941 from Army Headquarters with the subject "Measures taken by the Einsatzkommando with the 22nd Infantry Division" and addressed to the Einsatzgruppe D, the following directive:

"The Einsatzkommando of the Security Police with the 22nd Infantry Division is in the combat area of the Division. It is expected that all measures in the town of Genitchoke, especially public executions, setting up and arming the Ukrainian Home Guard, etc., will only be taken after previous agreement with the Ic of the Division."

This is signed by the OK, Chief of Staff, initialed by Kisson and evidently bearing another initial "R", a Major of the General Staff Corps. This directive to the Einsatzgruppen is also shown in Exhibit 371.

Certainly those orders as to the location of Einsatzgruppe units were not such basic orders as can be charged to the commander-in-chief, but would clearly be within the sphere of authority of a chief of staff.

For the reasons herein stated, and on the whole record, we find the defendant guilty under Counts Two and Three of the Indictment.
Rudolf Lehmann was born in 1890 at Posen. After preliminary education, he studied law and received his doctor's degree in 1920 at Harburg. His practice, however, was interrupted by the First World War in which he participated as an officer in the Reserve. From then on he followed the career of jurist in various capacities.

In 1925 he became an assistant in the Reich Ministry of Justice and continued in the Ministry in various capacities until 1937. In that year he became Presiding Judge at the newly created Reich Armed Forces Court which was the highest military court in the German Reich. He sat on the Tribunal which was appointed by Hitler to investigate the charges against General Freiherr von Fritsch. He testified that he drew up the verdict in this case. On 15 July 1938 he became Chief of the Legal Department of the OKW, designated in the documents as WR, which position he held until the capitulation of Germany. He held this position as a civil servant. On 1 May 1944 he was given the military title of Generaloberstabsrichter which was in fact a General in the German Army, which corresponds to that of a Lieutenant General in the Army of the United States. He was not a member of the Nazi Party or any of its formations. The record does not establish that any honors were conferred upon him by the Nazi Party.

Aside from the charge of Crimes Against Peace, heretofore disposed of in this opinion, we think that charges under Counts Two and Three of the Indictment may be disposed of under the following headings: (1) The Commissar Order; (2) The Barbarossa Jurisdiction Order; (3) The Commando
Order; (4) Night and Fog Decree; (5) Terror and Sabotage Decrees. These subjects will be discussed in the order herein designated.

1. The Commissar Order.

The only connection which the defendant is shown to have had with the issuance of the Commissar Order was an immaterial change in the wording of Section 3 as to courts-martial and the Tribunal is unable to find from the evidence any criminal connection of the defendant Lehmann with the issuance of this order.

2. The Barbarossa Jurisdiction Order.

In this Judgment we have previously discussed the legality of the Barbarossa Jurisdiction Order and have found it to have constituted an illegal order. The question now arises as to the criminal connection of the defendant Lehmann therewith.

The defendant Lehmann first received an order concerning this matter sometime in late April of 1941. The early stages of the development of the order are shrouded in obscurity as far as they appear in the documents in evidence. The defendant Lehmann, in his testimony, has given a rather elaborate statement as to what those developments were and his connections therewith. We shall not go into these early developments extensively. From his testimony it would appear that the circumstances of the order as communicated to him by Keitel's adjutant so aroused him that he drew an impracticable order to the effect that legal officers would be dispensed with in the German Wehrmacht and sent into combat service. According
to his testimony, his reaction to the communication he received was primarily based upon the effect of the order upon military jurisdiction.

The Barbarossa Jurisdiction Order which was finally produced is an excellent example of the fundamental and essential functions which a staff performs in producing a military order from an original idea. The record discloses conferences, telephone calls, and much correspondence, all independent of Hitler. In this way the details of the order were worked out. Many of these details originated in the minds of various staff officers and some in the mind of the defendant.

In summarizing the generally significant parts of these proceedings, it is shown that on 28 April 1941, the defendant prepared a draft of the Barbarossa Jurisdiction Order. On or about 6 May he received a copy of an order which had been prepared by the OKW, apparently by General Müller, the General for Special Assignments with the OKH, which embodied certain ideas of Oberst General Haldor, Chief of Staff of OKH. On 9 May the defendant reported to the Chief, VSt, Department L (Warlimont) concerning certain discussions which he had with General Müller and General Jeschonnek, and also as to discussions with the chiefs of the legal sections. The defendant had conferences with both General Müller and General Jeschonnek concerning this matter. As an outgrowth of these activities a final and fourth draft was submitted to Keitel which, with a few minor modifications, was issued over the signature of Keitel and became what is known as the Barbarossa Jurisdiction Order.

In connection with these various conferences and various drafts and the correspondence connected therewith, it is apparent that the defendant's ideas for good or
evil became a part of this order as issued. On the favorable side as to these details it can be said that he did not embody in the final draft which he submitted the inflammatory language which was contained in the draft submitted by the OKH. Furthermore, in his favor in this connection, it is pointed out that that draft provided that inhabitants "who take part or intend to take part in the hostilities as guerrillas, etc" (emphasis supplied) and that in the defendant's final draft the words "or intend" were not included. His final text, however, contained the provisions as to collective punishments which left the door wide open to the decision of an officer of at least the rank of a battalion commander to impose such collective punishments as he saw fit.

This evidence also shows that due to the influence of the defendant the provision was finally inserted in the order to the effect that troops would dispose of all cases and that courts were to have no jurisdiction whatsoever, whereas General Mueller had urged that troops were to dispose of only those clear cases and that doubtful cases were to be left to the jurisdiction of the courts. The defendant's comments on this matter are significant as shown by the document where he states:

"The draft of the Army comes very near to our own proposals. The only sentence missing is the provision that the courts of the armed forces have no jurisdiction at all over the indigenous inhabitants. General Halder wished to have this jurisdiction maintained for those cases in which the troops have no time for investigations and for the large number of offenses of minor kinds in which execution by shooting is not justified. I have objections to this, shared by General Jeschonnek.

"Once we take this step, we must take it fully. Otherwise it is to be feared..."
that the troops will get rid just of those cases which they consider awkward, namely the doubtful cases by handing them over to the courts. Thus, the outcome will be contrary to the result we aim at.

In this decision his position was approved by the defendant Warlimont as is shown by the same page of the document. This provision in the order, which obviously was not derived from Hitler or Keitel or Jodl, is one of the most vicious parts of the order. The defendant's reasons for this provision appear from the documents and his own testimony to have been that in the event such cases were handed over to the courts, the courts would acquit the defendants for lack of evidence; that those acquittals would bring upon the military courts criticism by Hitler to the effect there were too lenient, as he had done with reference to certain decisions made during the Polish campaign. In other words, it is apparent that, in order to avoid criticism of military courts by the Fuehrer, he was ready to sacrifice the lives of innocent people.

The discussions about the disciplinary features of this order also show the part that a staff officer plays in the final structure of an order. The net result of the entire proceedings as to this order was that Lehmann became the main factor in determining the final form into which the criminal ideas of Hitler were put; that he modified those ideas within his own sphere up to a certain point and placed the whole into an effective military order which was transmitted to the troops and carried out.

Under the record, we find him responsible for criminal connection with, participation in, and formulation
of this illegal order.

3. The Commando Order.

The Commando Order is another example of the part a staff officer plays in the final structure of a military order. Like the preceding Barbarossa Jurisdiction Order, it cannot be said that the whole of the Commando Order, or the major part of it, is a product of one man's mind. We are not concerned with the question of determining just how far the ideas of any one man are embodied in these orders except insofar as ideas that can be traced to a given defendant show his own state of mind in contributing criminal parts to the criminal whole. The basic criminal offense is in the essential part a staff officer performs in making effective the criminal whole.

This was a criminal order in which the defendant Warlimont, as has been pointed out, was a major factor and the defendant Lehmann's activities were subordinate to a large extent. The defendant was well aware of the criminal nature of this order. This had been pointed out by Admiral Canaris in various telegrams with which he was familiar. He made certain suggestions as to methods which might, by a strained construction, give some appearance of legality and be suitable for publication; constructions which he apparently did not believe himself.

We find no provisions in this order where he contributed to its inherent viciousness but he was one of those responsible for its final production in the form in which this criminal order was transmitted to the army and he was criminally responsible for a part
of the vicious product.

4. The Night and Fog Decree.

The Night and Fog Decree basically involved legal questions, and in this, as in the Barbarossa Jurisdiction Order, the defendant Lehmann was the major craftsman of its final form. It was the defendant Lehmann who conducted the negotiations whereby the Ministry of Justice was given the task of trying those persons charged under this decree before the Special and, later, the People's Courts, wherein they were deprived of the rudimentary rights which defendants have in the courts of any civilized nation.

His defense as to this charge is not without some merit, in that it was apparently the original idea of Hitler that those unfortunate were to be turned over to the tender mercies of the police for disposition. But for the reason stated above, we find him guilty as a participant of the final production of this terror program.

5. Terror and Sabotage Decrees.

On 1 July 1944 from WFSt, Cu. Section, Lehmann received the following communication:

"Subject: Combatting of enemy terrorists in the occupied territories.

"On account of events in Copenhagen, the Fuehrer has decreed that court martial proceedings against civilians in the occupied territories must be discontinued with immediate effect. NR is requested to submit suggestions for the draft of an order concerning the treatment of enemy terrorists and saboteurs among the civilian population in the occupied territories by 2 July, 20:00 hours.

"Policies:"
"Terror can be countered only by terror, but court-martial sentences only create martyrs and national heroes."

"If German units or individual soldiers are attacked in any manner, the commander of the unit and/or the individual soldier are bound to take countermeasures independently and, in particular to exterminate terrorists. Terrorists or saboteurs who are arrested later, must be turned over to the SD."

With this directive before him, he proceeded to make effective the illegal desires of his superiors, which apparently bore fruit in the Terror and Sabotage Decree of 30 July 1944, signed by Hitler. In August 1944, apparently in conjunction with the Quartermaster Section of the OKW, he participated in the supplemental order enlarging the scope of the original decree. He was thereafter in a minor capacity connected with both the order and the supplemental directives.

On the matters above noted and on the record, we find the defendant Lohmann guilty under Counts Two and Three of the Indictment.
JUDGMENT in
GERMAN HIGH COMMAND TRIAL
(Case XII)

Count I (Crimes against Peace) and Count IV (Common Plan or Conspiracy) of the Indictment were rejected by U.S. Military Tribunal V. All defendants, with the exception of SCHNIEWIND and SPERRLE (who were acquitted) and von LEEB (who was found guilty on Count III only), were found guilty under Count II (War Crimes and Crimes against Humanity: Crimes against Enemy Belligerents and Prisoners of War) and Count III (War Crimes and Crimes against Humanity: Crimes against Civilians) of the Indictment.

SENTENCES

Hermann REWINICKE - life imprisonment
Walter WALDEMONT - life imprisonment
Georg Karl Friedrich von KUECHLER - 20 years imprisonment
Hans von SALMUTH - 20 years imprisonment
Karl von ROGERS - 20 years imprisonment
Hermann SOTH - 15 years imprisonment
Hans REINHART - 15 years imprisonment
Otto NOCHER - 8 years imprisonment
Rudolf LEHMANN - 7 years imprisonment
Karl HOLLIDT - 5 years imprisonment
Wilhelm von LEEB - 3 years imprisonment
Hugo SPERRLE - acquitted
Otto SCHNIEWIND - acquitted

Each defendant receiving a sentence for a term of years shall receive credit upon the sentence imposed upon him for such a period or periods of time as he has been in confinement, whether as a prisoner of war or otherwise, since 7 May 1945.
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in
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