

CASE No. 4

THE HADAMAR TRIAL**TRIAL OF ALFONS KLEIN AND SIX OTHERS**

UNITED STATES MILITARY COMMISSION APPOINTED BY THE
COMMANDING GENERAL WESTERN MILITARY DISTRICT, U.S.F.E.T.,
WIESBADEN, GERMANY, 8TH-15TH OCTOBER, 1945.

Liability of civilians for killing allied nationals by means of injections. Pleas of Superior Orders, alleged Legality under German Law, Coercion and Necessity.

The accused were members of the staff of a small sanatorium in the town of Hadamar, Germany, and took part in the deliberate killing of, among others, over 400 Polish and Soviet nationals by injections of poisonous drugs. The pleas of superior orders, of alleged legality under German Law, and of coercion and necessity were held not to free the accused from responsibility.

A. OUTLINE OF THE PROCEEDINGS⁽¹⁾

1. THE COURT

The Court was a Military Commission appointed by the Commanding General of the 7th United States Army, Western Military District.⁽²⁾

The Commission consisted of Colonel Edward R. Roberts, F.A., H.Q. 7th Army, Colonel Lonnie O. Field, F.A., H.Q. 7th Army, Colonel John L. Dicks, Q.M.C., H.Q. 7th Army, Colonel Trevor W. Swett, G.S.C., H.Q. 7th Army, Colonel David Wagstaff, Jr., Cav., 15th Cav. Group, Colonel Daniel S. Stevenson, V.C., H.Q. 7th Army, Colonel Leon Jaworski, J.A.G.D., H.Q. U.S.F.E.T. (Trial Judge Advocate), Capt. Wm. R. Vance, J.A.G.D., H.Q. U.S.F.E.T. (Asst. Trial Judge Advocate), Lt. Col. Juan A. A. Sedillo, J.A.G.D., H.Q. XXI Corps (Defence Counsel), Capt. Melvin R. Wintman, Inf., H.Q. 7th Army (Asst. Defence Counsel).

The detail for the Commission provided: "The Commission shall have power, as required, to make such rules for the conduct of its proceedings, consistent with the powers of such commission, as deemed necessary for a full and fair trial of the accused. The Commission shall have regard for, but shall not be bound by, rules of procedure and evidence prescribed for general courts-martial. Such evidence shall be admitted as has, in the opinion of the President of the Commission, probative value to a reasonable man. Peremptory challenges shall not be allowed. The concurrence of at least two-thirds of the members present at the time of voting shall be necessary for a conviction or sentence."

⁽¹⁾ The full transcript of this trial is not available to the Secretariat of the United Nations War Crimes Commission. This report is based on a War Crime Trial Report received from the United States Authorities.

⁽²⁾ See Annex II, p. 113.

2. THE CHARGE

The indictment was worded as follows :

“ Charge : Violation of International Law.

“ Specification : In that Alfons Klein, Adolf Wahlmann, Heinrich Ruoff, Karl Willig, Adolf Merkle, Irmgard Huber and Philipp Blum, acting jointly and in pursuance of a common intent and acting for and on behalf of the then German Reich, did, from on or about 1 July, 1944, to on or about 1 April, 1945, at Hadamar, Germany, wilfully, deliberately and wrongfully, aid, abet, and participate in the killing of human beings of Polish and Russian nationality, their exact names and number being unknown but aggregating in excess of 400, and who were then and there confined by the then German Reich as an exercise of belligerent control.”

3. DIGEST OF THE EVIDENCE

(i) *The General Facts*

The evidence showed that for many years before 1944 (the accused were charged with crimes committed from on or about 1st July, 1944, to on or about 1st April, 1945) there had been operating in the town of Hadamar, Germany, a small sanatorium for the care of the mentally ill. It was a State institution and, during the relevant time, it was under the jurisdiction of the provincial administration located in Wiesbaden. It was subordinate to this provincial administration in that all policies were decided by, and all important orders came from, Landesrat (more probably Landrat) Fritz Bernotat at Wiesbaden, who was in turn subordinate to Gauleiter Jakob Springer. (Neither Bernotat nor Springer was in the dock in the present trial.) It is also shown by the evidence that between January, 1941, and some time in the middle of 1944, as many as 10,000 Germans, alleged to be mentally ill, were admitted to Hadamar and there put to death. At first the bodies of these were cremated. Later they were killed by means of “ medications and injections,” and, apparently, buried in the institution cemetery. The record of the trial contains considerable testimony in which it is attempted to show that there existed a German law or decree authorizing and directing such disposition of the insane. Inasmuch, however, as the accused were not tried for the deaths of these people and since most if not all of such deaths took place prior to the time of the acts for which all the accused were tried (the killing of persons of Polish and Soviet nationality), it was not deemed necessary to do more than state the above facts as a prelude to the relevant elements of the case.

It was clearly established that between 5th or 6th June, 1944, and 13th March, 1945, there took place numerous shipments of Polish and Russian men, women and children to Hadamar from various other institutions and camps in Germany or German-occupied territory. Their number totalled 476 and all were killed within one or two days after their arrival at the institution, either by hypodermic injections of morphine or scopolamine, or derivatives thereof, or by doses of veronal or chloral. It was repeatedly testified that all were killed and that there was no evidence that any who arrived avoided death, except for one woman who escaped from the institution.

The reason given by the officials and employees at Hadamar who directed

and actually gave the fatal injections was that all of the victims were incurably ill from tuberculosis. There is also some evidence that they had been told and believed that the Poles and Russians came under the provisions of the German law or decree which required such disposition of German insane. One witness testified that they had not been so instructed.

The Defence was unable to prove the existence of any such decree, much less its real or purported application to the non-German victims. The ex-chief prosecutor of Wiesbaden testified that some 4 or 5 years ago he reported to his superior his suspicions that German insane patients were being put to death in insane asylums. Following this report, he was visited by the Chief Prosecutor from Frankfurt and was told that all prosecutors and court presidents had been invited to a conference in Berlin where after viewing some pictures of insane persons, they were shown a photostat copy of an order from Hitler authorising the killing of insane persons by physicians in the institutions under certain undefined conditions. This subject was classified as "Secret State Affair," and following its dissemination any charges or complaints based on the death of insane persons were forwarded by the receiving prosecutors direct, without action, to the Ministry of Justice. It was emphasised by the Prosecution that the alleged order applied only to insane German patients.

The exhumation and autopsy by a qualified American pathologist of the bodies of six of the Poles and Russians showed that at least one of the victims had not suffered from tuberculosis and that in none of them was the disease in such an advanced state that death therefrom was reasonably to be expected within a short period of time. There was uncontroverted evidence that incoming Poles and Russians were neither examined nor treated for tuberculosis by the one doctor on the institution's staff, who was actually an alienist or psychiatrist and not a pathologist.

There were at Hadamar none of the customary facilities for treatment of tuberculosis. The cause of death was the injection of excessive doses of narcotic drugs which are not specifics for treatment of respiratory diseases. The victims were induced to receive the injections and take the drugs by assurances that they were being treated for the disease from which they allegedly suffered or that they were being inoculated against communicable diseases. Perfunctory examinations were made by hospital personnel to determine whether the victims were in fact dead, after which they were hurriedly buried in mass graves in a portion of the institution's cemetery.

Upon their arrival at the institution, records were properly made out of their names, sex, nationality and other data. The records of their deaths, however, were always falsified as to dates and causes of death, so that neither the fact that they died as a result of overdoses of narcotics nor the fact that death always occurred within an exceedingly short period of time after arrival, was shown.

(ii) *The accused Alfons Klein*

The accused Alfons Klein was the chief administrative officer of the institution in charge of records, food, housing and reports, and he knew of the deaths of the Poles and Russians, and in fact received the original orders from Bernotat and Springer requiring them to be received and to be put to death, and transmitted such orders to other institution personnel. One

accused stated that the accused Klein "gave all the orders." Klein attended a conference with Bernotat and Springer (in July or August, 1944) in which he was informed that a number of incurable tubercular labourers would arrive at Hadamar. At a later conference he was instructed that these workers were to be killed under the same law and in the same way as the German insane persons had been killed. He alleged that he had protested both against the fact that they were being sent to Hadamar and the fact that they were to be killed, but to no avail. He said he had no authority over their admission or disposition. He feared that if he disobeyed these orders he would have been sent to a concentration camp. At one point in his testimony, Klein denied that he himself ever ordered an injection to be given or that he ever gave one. He was often present, however, when they were given. Upon cross-examination he admitted that he had given orders for injections, but maintained that he "merely transmitted (to the personnel) the order which Bernotat gave me through the Gauleiter." Other orders given by him for the reception of Russians and Poles and their subsequent burial were "purely administrative." The accused never saw the law or decree which was purported to have ordered the deaths, but he did not then doubt its existence. The personnel at Hadamar had been required to take an oath not to reveal anything that happened there. Several former employees who had told of what went on were arrested by the Gestapo and taken to concentration camps and one died there. The accused, however, never threatened personnel in any way.

In his pre-trial statement, Klein had said that personnel were entirely free to leave Hadamar at any time. In his testimony he qualified this by testifying that he had said so because he was told before he made the pre-trial statement that the personnel had made statements that he, Klein, had always given orders to them to have the Russians and Poles killed and that he had threatened them several times with concentration camp if the work was not done. He added that as an "official" rather than an "employee," he himself could not leave. Later on even employees could not leave, because of shortage of personnel. He knew that what was being done at Hadamar was "wrong." In a closing statement to the Military Commission, Klein said that he examined the medical papers of all the imported labourers "specifically"; that they showed the Poles and Russians to have been treated for various periods of time at other hospitals for tuberculosis without effect; that upon personal examination he found that more than half of these persons had tuberculosis; and that because of the sufferings they were undergoing and the danger of their infecting other people, killings could not be considered as violations of international law, because it was "cruel . . . if you would let them live longer."

(iii) *The accused Dr. Adolf Wahlmann*

The accused, Adolf Wahlmann, was the institution's doctor. He was primarily an alienist and a psychiatrist. He became chief physician and the only doctor at the institution in August 1942. He was present at a conference at the hospital with Bernotat and Klein before any of the Russians and Poles arrived, in which conference it was determined that these "patients" were to be killed by the same method as the German patients. He determined the nature and the amount of the drug to be given to each prospective

victim, although there was also some testimony that he left this task to his chief nurses. The pharmacy from which drugs were obtained was in his office. He requisitioned the drugs which were used in the killings, entered the alleged cause of death on the patient's hospital card and signed the death certificate.

(iv) *The accused Ruoff and Willig*

The accused Heinrich Ruoff began working as chief male nurse at the asylum in 1936, about two months after the programme of extermination began. He took an active part in administering the fatal injections. He estimated that Willig and he "gave injections to two or three hundred Poles and Russians, but it could have been four or five hundred too."

The accused Karl Willig was a male nurse at Hadamar. He had been so employed since 1941. He participated equally with Ruoff in the killings by means of administering hypodermic injections of the narcotics and also by orally given doses of veronal and chloral. He later helped in the burial of some of the dead. He attended the daily morning conferences with Dr. Wahlmann and Huber when Ruoff did not; in these meetings plans were made for further disposal of inmates.

Ruoff and Willig were told by Klein and Bernotat that Polish and Russian patients were to be treated as German insane persons—which meant that they were to be killed. They were told that if they complained about their tasks they would "end up in concentration camps." They obtained drugs from Dr. Wahlmann and in obedience to the orders from Klein and Bernotat administered injections which resulted in the deaths of the Polish and Russian victims. The accused Ruoff was unable to estimate how many he had put to death except in his pre-trial statement which was quoted above. He "presumed" that all the Russians and Poles were ill because of their appearances and also because he "saw many diagnoses of the doctors." Upon Klein's instructions, Ruoff gave Merkle some names of Poles and Russians "every now and then to be reported to the statistical office." He made several efforts to leave Hadamar, but his requests were always refused.

In his statement prior to trial, however, Ruoff made no mention of efforts to leave.

Willig admitted assisting Ruoff to kill Poles and Russians, and he testified that together with Ruoff and Blum he was told by Klein that they were to receive incurably tubercular Russians and Poles who were "to be killed like the . . . German mentally diseased."

After Blum had left Hadamar, Willig also took over the burial supervision. He too believed that all the Russians and Poles were incurably tubercular, had been told that there was a law which provided for their deaths and had attempted unsuccessfully to leave Hadamar.

Orders to kill the victims came from Klein. In his statement prior to trial, Willig had said that nobody had ever threatened him with the concentration camp if he left his job at Hadamar. He had no other employment anywhere, and he never tried to be dismissed. Once he asked to be transferred into a different institution, but this was refused. He could not ask to be dismissed

because he would have lost his pension and would probably have been imprisoned.

(v) *The accused Irmgard Huber*

Irmgard Huber was the chief female nurse at the institution, carrying out the orders of Dr. Wahlmann and overseeing the duties of the seven other female nurses. She knew beforehand of the arrival of the first transport and made preparations for housing the victims. There was some evidence that the female nurses actually gave injections. It was at least well established that the accused Huber took part in daily morning conferences at which Wahlmann signed death certificates. She obtained narcotics from the pharmacy in Dr. Wahlmann's office for Ruoff and Willig and she was actually present on at least one occasion when fatal injections or dosages were given to patients, and when false death certificates were made out.

(vi) *The accused Adolf Merkle*

The accused Adolf Merkle began working at Hadamar in 1943. He was primarily the institution's bookkeeper, both for the registering of incoming patients and for purposes of recording dates and causes of death. He knowingly made false entries as to the dates and causes of death of all the victims. Merkle was said by Ruoff to have been thoroughly familiar with what went on at the institution. On the witness stand, he steadfastly denied that he knew the true state of affairs, or that he gave injections or saw any dead bodies. He believed that the persons died of tuberculosis or pneumonia.

(vii) *The accused Philipp Blum*

The accused Philipp Blum had been a doorman and telephone switchboard operator at the hospital since before 1940, had served for a short period of time in the Luftwaffe, and had returned to Hadamar in 1941. After January 1943 he became the chief caretaker of the cemetery until he was again called up in August 1944. Probably only the first batch of Poles and Russians arrived during his presence at Hadamar. Some bodies he buried without the approval of Dr. Wahlmann on his own belief that they were dead. He supervised the burial in mass graves of 100 bodies, "more or less," of Russians and Poles. He knew beforehand that the batch was to arrive and what was going to be done. He was in the ward in which the victims were put to bed, received injections, and died, and he waited for them to die knowing that he would then be required to bury them. There is also in the record one statement by Ruoff that Blum helped to administer the poisons which brought about the deaths. His own pre-trial statement indicates full knowledge on his part of what was intended and what actually did take place.

4. FINDINGS AND SENTENCES

All the accused were found guilty. Klein, Ruoff and Willig were sentenced to be hanged; Wahlmann was sentenced to life imprisonment; and Merkle, Blum and Huber were sentenced to imprisonment for 35 years, 30 years and 25 years respectively.

The sentences were confirmed by the Commanding General, HQ. 7th

Army, Western Military District, and the death sentences also by the Commanding General, U.S. Forces, European Theatre, and were put into execution.

B. NOTES ON THE CASE

1. QUESTIONS OF JURISDICTION

(i) *Jurisdiction of the Military Commission in United States Municipal Law*

The Military Commission was appointed by a special order of the Commanding General, Western Military District, to whom authority had been delegated by the Commanding General, United States Forces European Theatre, who in turn derived his powers from a delegation by the President of the United States.

The traditional jurisdiction of American Military Commissions to try offenders or offences against the law of war has been recognised by statutes enacted by the Congress of the United States, particularly by the Statute known as the "Articles of War." (Section I, ch. II Act of 4th June, 1920 (41 Stat 787), as amended), as has been decided by the Supreme Court of the United States in recent decisions.^(*)

The Supreme Court of the United States held that the United States Congress had recognised Military Commissions and preserved their traditional jurisdiction over enemy combatants. In the present case, the accused were not combatants but enemy civilians. Under the common law of war, the jurisdiction of American Military Commissions comprises also jurisdiction over civilians.

(ii) *Jurisdiction of the Military Commission in International Law*

The accused were only charged with the killing of human beings of Polish and Russian nationality. This is important for two reasons :—

- (1) Crimes committed against Germans and other Axis nationals were outside the scope of the trial, the Military Commission thus not being vested with or assuming jurisdiction over what in the Charter of the International Military Tribunal are called "crimes against humanity" as far as they are not simultaneously violations of the laws and usages of war ; and
- (2) Among the victims of the accused, there were no persons of United States nationality nor had the crimes been committed on United States territory or by United States nationals.

In view of (2), the Commission had to decide the question whether it could assume jurisdiction despite the fact that the crime, committed by foreigners outside United States territory, had not affected United States nationals.

The Commission decided the question in the affirmative.

Provided that the acts, with which the prisoners were charged and of which they eventually were found guilty, were violations of the laws of war,

^(*) For details of the United States Law governing Military Commissions trying war crimes, see Annex II, pp. 111-22.

the following reasons sustaining the Commission's jurisdiction can be adduced :—

- (a) the general doctrine recently expounded and called " universality of jurisdiction over war crimes," which has the support of the United Nations War Crimes Commission and according to which every independent State has, under International Law, jurisdiction to punish not only pirates but also war criminals in its custody, regardless of the nationality of the victim or of the place where the offence was committed, particularly where, for some reason, the criminal would otherwise go unpunished.
- (b) the narrower theory that the United States did have a direct interest in punishing the perpetrators of the offence inasmuch as the victims were nationals of allies engaged in a common struggle against a common enemy ;
- (c) the assumption of supreme authority in Germany by the four great Powers through the Declaration of Berlin, dated 5th June, 1945, the United States being the local sovereign in the United States zone of occupation and deriving jurisdiction both from the principle of territoriality and from the principle of personality, the accused being German nationals.

2. QUESTIONS OF SUBSTANTIVE LAW

(i) " *Violation of International Law* "

The accused were charged with " Violation of International Law." It may be assumed that the offences alleged and eventually proved were held to be violations of that part or branch of International Law which is called the " Law of War," or to be, in the parlance of Article 6 (b) of the Charter of the International Military Tribunal, a violation of the laws and customs of war.

In view of the restriction of the trial to crimes against allied nationals, it was certainly unnecessary to decide whether, in addition to the violation of the laws and customs of war, provisions of any other branch of International Law had been infringed, for instance, those provisions of International Law which now have been laid down under the heading " crimes against humanity."

(ii) *The Status of the Victims*

It was established in the proceedings that the victims were Polish and Soviet nationals, but nothing was said as to whether they had been inhabitants of German-occupied Soviet and Polish territory, deported for labour into Germany. The Military Commission was, of course, in a position to take judicial notice of the fact that hundreds of thousands of Soviet and Polish citizens from occupied territory had been compulsorily deported to Germany for work. This being so, it was obvious that this was a war measure and the murdering of these deported allied nationals a war crime.

(iii) *The Status of the Accused*

The accused were not members of the German armed forces, but personnel of a civilian institution. The decision of the Military Commission is, there-

fore, an application of the rule that the provisions of the laws and customs of war are addressed not only to combatants but also to civilians, and that civilians, by committing illegal acts against nationals of the opponent, may become guilty of war crimes.

(iv) *Alleged Legality under German Law*

The accused invoked in their defence the alleged fact that a German law or decree enacted under the Hitler régime required that incurable persons should be put to death.

As a matter of fact the existence of this alleged German law or decree was not established by the Defence. At the most it was proved, through the testimony of a former Chief Prosecutor of Wiesbaden, that there was an "administrative order" from Hitler's office which permitted it. There was the additional consideration that even if such a decree existed and if it made the killing of incurable persons legal, such provisions could not legalise the killing of other than German nationals, because under general rules of interpretation a rule of this kind would have to be interpreted strictly.

Moreover, the accused could not prove that their victims had actually been incurable persons.

The present case is, therefore, not an express application of the principle that in the case of crimes like these it is irrelevant whether or not they were perpetrated in violation of the domestic law of the country where perpetrated. (Art. 6 (c) of the Charter of the International Military Tribunal.)

(v) *The Plea of Superior Orders*(*)

The accused also pleaded that they had acted under orders received from higher administrative quarters. They were not successful in this plea. The Military Commission applied to the relationship of civilian employees to their superiors the now well-established doctrine that individuals who violate the laws and customs of war are criminally liable in spite of their acting under a superior order, if the order was illegal.

(vi) *Coercion and Necessity*

The accused also pleaded coercion or necessity but the Military Commission considered this defence to be established neither in fact nor in law.

(*) Regarding the development of the law concerning this plea, see the notes on pages 18-20 and 31-33.