

VII. JUDGMENT

A. Opinion and Judgment of the United States Military Tribunal II*

The indictment in this case contains three counts, which may be summarized as follows:

Count One: War crimes, involving murder, slave labor, deportation of civilian population for slave labor, cruel and inhuman treatment of foreign laborers, and the use of prisoners of war in war operations by force and compulsion.

Count Two: War crimes, involving murder, subjecting involuntary victims to low-pressure and freezing experiments resulting in torture and death.

Count Three: Crimes against humanity, involving murder and the same unlawful acts specified in counts one and two against German nationals and nationals of other countries.

For reasons of its own, the Tribunal will first consider counts two and one, in that order, followed by consideration of count three.

COUNT TWO

More in detail, this count alleges that the defendant was a principal in, accessory to, ordered, abetted, took a consenting part in and was connected with, plans and enterprises involving medical experiments without the subjects' consent, in the course of which experiments, the defendant, with others, perpetrated murders, brutalities, cruelties, tortures, and other inhuman acts. The so-called medical experiments consisted of placing the subject in an airtight chamber in which the air pressure is mechanically reduced so that it is comparable with the pressure to which an aviator is subjected at high altitudes, and in experimenting upon the effect of extreme dry and wet cold upon the human body. For these experiments inmates of the concentration camp at Dachau were selected. These inmates presented a motley group of prisoners of war, dissenters from the philosophy of the National Socialist Party, Jews, both from Germany and the eastern countries, rebellious or indifferent factory workers, displaced civilians from eastern occupied countries, and an undefined group known as "asocial or undesirable persons."

* Concurring opinions were filed by Judge Musmanno, see pp. 797-869, and by Judge Phillips, see pp. 860-878.

In approaching a judicial solution of the questions involved in this phase of the case, it may be well to set down seriatim the controlling legal questions to be answered by an analysis of the proof.

(1) Were low-pressure and freezing experiments carried on at Dachau?

(2) Were they of a character to inflict torture and death on the subjects? (The answer to these two questions may be said to involve the establishment of the *corpus delicti*.)

(3) Did the defendant personally participate in them?

(4) Were they conducted under his direction or command?

(5) Were they conducted with prior knowledge on his part that they might be excessive or inhuman?

(6) Did he have the power of opportunity to prevent or stop them?

(7) If so, did he fail to act, thereby becoming *particeps criminis* and accessory to them?

The periods during which these experiments were conducted become extremely significant in determining the responsibility of the defendant. The evidence is uncontradicted that the low-pressure experiments were inaugurated in March 1942, and were concluded by the end of June 1942. The cold water experiments extended from August to October 1942, and the freezing experiments from February to April 1943. During all of these periods the defendant was Under State Secretary of the Reich Air Ministry, Inspector General and Second in Command under Goering of the Luftwaffe, to which post he was appointed 19 November 1941. In these various capacities, certain military duties devolved upon him, especially as Inspector General. For example, he was ordered by Hitler to take an air squadron to Norway on a purely military expedition, and during the siege of Stalingrad, early in 1943, he was ordered by Hitler to attempt to transport into Stalingrad by air food and supplies for the beleaguered German Army. His high military standing is indicated by the fact that he was one of the twelve field marshals of the German armed forces. The major part of his duties, however, revolved around the production of aircraft for the Luftwaffe. He was primarily a production man, charged with the duty of keeping military airplanes supplied in sufficient quantity to the air arm of Germany's military machine. This naturally involved the procurement in large quantities of the two essential ingredients of production—labor and raw material

—and an over-all supervision of any efforts having to do with that arm. One of the defendant's immediate subordinates was Professor Hippke, who held the post of Inspector of the Medical Services of the Luftwaffe. Hippke was a physician, and had supervision of all matters involving the health and physical welfare of the personnel of the Luftwaffe.

The low-pressure experiments at Dachau were conducted by three physicians, Dr. Romberg, Dr. Ruff, and Dr. Rascher. It is quite apparent from the evidence that Dr. Rascher, who was attached to the Luftwaffe but made frantic efforts to have himself transferred to the SS, was principally responsible for the nature of the experiments. Dr. Ruff and Dr. Romberg were also attached to the Luftwaffe and were, therefore, remotely under the command and control of the defendant, but the evidence is persuasive that, although they were interested in and helped conduct the experiments up to a certain point, the excesses which resulted in torture and death are attributable to Dr. Rascher. It is quite apparent that the actual activities of these three physicians were far removed from the immediate scrutiny of the defendant even though their activities were conducted within the orbit of the Luftwaffe, over which the defendant had command.

Approaching now the determinative questions listed above, some progress can quickly be made in arriving at judicially satisfactory answers.

(1) As to the first question, the evidence is overwhelming and not contradicted that experiments involving the effect of low air pressure and freezing on live human beings were conducted at Dachau from March through June 1942.

(2) Approaching the second question, it is claimed by the defendant that only legitimate scientific experiments were conducted which did not involve pain or torture and could not ordinarily be expected to result in death. It is remotely possible that so long as the experiments were under the guidance of Dr. Ruff and Dr. Romberg some consideration was given to the possible effect upon the subjects of the experiments. But it is indisputable that the experiments conducted by Dr. Rascher involved torture and suffering in the extreme and in many cases resulted in death. Under the specific guidance of Dr. Rascher, the air pressure was reduced to a point which no flier would ever be required to undergo (14,000 meters). The photographs of the subjects undergoing these experiments indicate extreme agony and leave no doubt that any victim who was fortunate enough to survive had undergone a harrowing experience. The Tribunal does not hesitate to find that these experiments, performed under the specious guise of science,

were barbarous and inhuman. It has been urged by the defendant that the only persons used as subjects of these experiments were habitual criminals who had been sentenced to death and who were given the dubious option of offering themselves for the experiments and receiving as a reward, if they survived, a commutation of the death sentence to life imprisonment. This claim scarcely merits serious consideration. A number of witnesses stated that they had a vague understanding that this was the case, but the record is entirely barren of any credible testimony which could possibly justify such a finding of fact.

(3) The prosecution does not claim (and there is no evidence) that the defendant personally participated in the conduct of these experiments.

(4) There is no evidence that the defendant instituted the experiments or that they were conducted or continued under his specific direction or command. It may perhaps be claimed that the low-pressure chamber, which was the property of the Luftwaffe, was sent to Dachau at the direction of the defendant, but even if this were true it could not be inferred from that fact alone that he thereby promulgated the inhuman and criminal experiments which followed. The low-pressure chamber was susceptible of legitimate use and, perhaps, had Dr. Rascher not injected himself into the proceedings, it would have been confined to that use.

(5) Assuming that the defendant was aware that experiments of some character were to be launched, it cannot be said that the evidence shows any knowledge on his part that unwilling subjects would be forced to submit to them or that the experiments would be painful and dangerous to human life. It is quite apparent from an over-all survey of the proof that the defendant concerned himself very little with the details of these experiments. It was quite natural that this should be so. His most pressing problems involved the procurement of labor and materials for the manufacture of airplanes. His position involved vast responsibilities covering a wide industrial field, and there were certainly countless subordinate fields within the Luftwaffe of which he had only cursory knowledge. The Tribunal is convinced that these experiments, which fell naturally and almost exclusively within one of his subordinate departments, engaged the attention of the defendant only perfunctorily, if at all.

(6) Did the defendant have the power or opportunity to prevent or stop the experiments? It cannot be gainsaid that he had the authority to either prevent or stop them insofar as they were being conducted under the auspices of the Luftwaffe. It seems

extremely probable, however, that, in spite of him, they would have continued under Himmler and the SS. But certainly he had no opportunity to prevent or stop them, unless it can be found that he had guilty knowledge of them, a fact which has already been determined in the negative. As early as 20 May 1942, the defendant wrote to Wolff, Himmler's Adjutant, stating:

"* * * our medical inspector [Dr. Hippke] reports to me that the altitude experiments carried out by the SS and Luftwaffe at Dachau have been finished. Any continuation of these experiments seems essentially unreasonable * * *

"The low-pressure chamber would not be needed for these low-temperature experiments. It is urgently needed at another place and therefore can no longer remain in Dachau."

Certainly the defendant did not have the opportunity to prevent or stop the experiments if he had been told and was convinced that they had terminated on 20 May 1942, and there is no reason to believe that he did not rely upon Dr. Hippke's report as to their termination. Considerable emphasis is laid upon the testimony that a motion picture of the experiments was brought to Berlin and exhibited in the Air Ministry Building, where the defendant had his office. It may even be said that the picture was brought to Berlin for the defendant's edification. But it appears that he was not present when it was shown and that, in any event, the showing was long after the experiments were concluded, at which time the defendant certainly could do nothing toward preventing them or stopping them.

(7) In view of the above findings, it is obvious that the defendant never became *particeps criminis* and accessory in the low-pressure experiments set forth in the second count of the indictment.

As to the other experiments, involving subjecting human beings to extreme low temperatures both in the open air and in water, the responsibility of the defendant is even less apparent than in the case of the low-pressure experiments. The same letter of 20 May 1942 to Wolff does indicate that the defendant was aware of the proposed sea-water experiments. In it he says—

"* * * the carrying out of experiments of some other kind, in regard to perils at high seas, would be important. These have been prepared in immediate agreement with the proper offices; Oberstabsarzt Weltz will be charged with the execution and Stabsarzt Rascher will be made available until further order

in addition to his duties within the medical corps of the Luftwaffe. A change of these measures does not appear necessary, and an enlargement of the task is not considered pressing at this time."

It is true that Rascher wrote interminable reports as to the results of these experiments, but there is no proof that they ever reached the defendant. On the contrary, they were addressed to Himmler and to Rudolf Brandt, his adjutant. At the Nuernberg conference in November 1943, which was held after all experiments had been finished, reports were made which even to a mildly curious lay person might have indicated that the experiments had been tinged with excesses and fatalities. But two facts are striking. First, the defendant was not present at the conference and only received a report of it later; and, second, the experiments were at that time all over.

It must be constantly borne in mind that this is an American court of justice, applying the ancient and fundamental concepts of Anglo-Saxon jurisprudence which have sunk their roots into the English common law and have been stoutly defended in the United States since its birth. One of the principal purposes of these trials is to inculcate into the thinking of the German people an appreciation of, and respect for, the principles of law which have become the backbone of the democratic process. We must bend every effort toward suggesting to the people of every nation that laws must be used for the protection of people and that every citizen shall forever have the right to a fair hearing before an impartial tribunal, before which all men stand equal. We must never falter in maintaining, by practice as well as by preachment, the sanctity of what we have come to know as due process of law, civil and criminal, municipal and international. If the level of civilization is to be raised throughout the world, this must be the first step. Any other road leads but to tyranny and chaos. This Tribunal, before all others, must act in recognition of these self-evident principles. If it fails, its whole purpose is frustrated and this trial becomes a mockery. At the very foundation of these juridical concepts lie two important postulates (1) every person accused of crime is presumed to be innocent, and (2) that presumption abides with him until guilt has been established by proof beyond a reasonable doubt.

Unless the court which hears the proof is convinced of guilt to the point of moral certainty, the presumption of innocence must continue to protect the accused. If the facts as drawn from the evidence are equally consistent with guilt and innocence, they must be resolved on the side of innocence. Under American law neither

life nor liberty is to be lightly taken away, and, unless at the conclusion of the proof there is an abiding conviction of guilt in the mind of the court which sits in judgment, the accused may not be damnified.

Paying reverent attention to these sacred principles, it is the judgment of the Tribunal that the defendant is not guilty of the charges embraced in count two of the indictment.

COUNT ONE

Count one of the indictment charges the defendant with the commission of specified war crimes, as defined by Article II of Control Council Law No. 10, in that he was a principal in, accessory to, ordered, abetted, took a consenting part in and was connected with, plans and enterprises involving slave labor and deportation to slave labor, resulting in the enslavement, torture and murder of civilians of foreign countries. The indictment further charges that he similarly participated in the use of prisoners of war in war operations and work having a direct relation to war operations, resulting in inhuman treatment and death to captured members of the armed forces opposed to Germany. The indictment alleges that these acts were in violation of international law and the recognized principles of civilized warfare and in specific violation of numerous treaties and conventions to which Germany was a party.

It is claimed by the prosecution that the defendant's responsibility for these alleged crimes arises from his activities in three capacities (1) as Aircraft Master General (Generalluftzeugmeister); (2) member of the Central Planning Board; and (3) chief of the Jaegerstab. The Central Planning Board was established by a decree of the Fuehrer, dated 29 October 1943. That decree fitted the task of production of material goods of every kind into the framework of the Four Year Plan and charged the Central Planning Board with the procurement and distribution of material of every description. The Board consisted of Reich Minister Speer, Under Secretary Koerner, and the defendant. On 1 March 1944, the Jaegerstab was established, consisting of Speer, Saur (a subordinate of Speer), and the defendant. The Jaegerstab concerned itself exclusively with the material needs of the Luftwaffe, and was headed, naturally, by the defendant. It became apparent that neither of these two bodies could adequately deal with the problems of production without constantly dealing with the question of labor supply. Meetings of the Central Planning Board were held at least weekly and the minutes of those meetings which were offered in evidence show a constant and unremitting con-

cern with the problem of labor. Fritz Sauckel was in supreme command of the procurement of labor for the entire war effort, and his conduct in carrying out his task has been vividly portrayed in the judgment of the International Military Tribunal: *

“* * * As local supplies of raw materials and local industrial capacity became inadequate to meet the German requirements, the system of deporting laborers to Germany was put into force. By the middle of April 1940 compulsory deportation of laborers to Germany had been ordered in the General Government; and a similar procedure was followed in other eastern territories as they were occupied. A description of this compulsory deportation from Poland was given by Himmler. In an address to SS officers he recalled how in weather 40 degrees below zero they had to ‘haul away thousands, tens of thousands, hundreds of thousands.’ On a later occasion Himmler stated:

“‘Whether ten thousand Russian females fall down from exhaustion while digging an antitank ditch interests me only insofar as the antitank ditch for Germany is finished * * *. We must realize that we have 6-7 million foreigners in Germany * * *. They are none of them dangerous so long as we take severe measures at the merest trifles.’

“During the first two years of the German occupation of France, Belgium, Holland, and Norway, however, an attempt was made to obtain the necessary workers on a voluntary basis. How unsuccessful this was may be seen from the report of the meeting of the Central Planning Board on 1 March 1944. The representative of the defendant Speer, one Koehrl [Kehrl], speaking of the situation in France said: ‘During all this time a great number of Frenchmen were recruited, and voluntarily went to Germany.’

“He was interrupted by the defendant Sauckel: ‘Not only voluntary, some were recruited forcibly.’

“To which Koehrl [Kehrl] replied: ‘The calling up started after the recruitment no longer yielded enough results.’

“To which the defendant Sauckel replied: ‘Out of the five million workers who arrived in Germany, not even 200,000 came voluntarily.’ And Koehrl [Kehrl] rejoined: ‘Let us forget for the moment whether or not some slight pressure was used. Formally, at least, they were volunteers.’

“Committees were set up to encourage recruiting, and a vigorous propaganda campaign was begun to induce workers to volunteer for service in Germany. This propaganda campaign

* Trial of the Major War Criminals, vol. I, pp. 243-47, Nuremberg, 1947.

included, for example, the promise that a prisoner of war would be returned for every laborer who volunteered to go to Germany. In some cases it was supplemented by withdrawing the ration cards of laborers who refused to go to Germany, or by discharging them from their jobs and denying them unemployment benefit or an opportunity to work elsewhere. In some cases workers and their families were threatened with reprisals by the police if they refused to go to Germany. It was on 21 March 1942 that the defendant Sauckel was appointed Plenipotentiary-General for the Utilization of Labor, with authority over 'all available manpower, including that of workers recruited abroad, and of prisoners of war'.

"The defendant Sauckel was directly under the defendant Goering as Commissioner of the Four Year Plan, and a Goering decree of 27 March 1942 transferred all his authority over manpower to Sauckel. Sauckel's instructions, too, were that foreign labor should be recruited on a voluntary basis, but also provided that 'where, however, in the occupied territories, the appeal for volunteers does not suffice, obligatory service and drafting must under all circumstances be resorted to.' Rules requiring labor service in Germany were published in all the occupied territories. The number of laborers to be supplied was fixed by Sauckel, and the local authorities were instructed to meet these requirements by conscription if necessary * * *.

"* * * the evidence before the Tribunal establishes the fact that the conscription of labor was accomplished in many cases by drastic and violent methods. The 'mistakes and blunders' were on a very great scale. Manhunts took place in the streets, at motion picture houses, even at churches and at night in private houses. Houses were sometimes burnt down, and the families taken as hostages, practices which were described by the defendant Rosenberg as having their origin 'in the blackest periods of the slave trade.' The methods used in obtaining forced labor from the Ukraine appear from an order issued to SD officers which stated:

" 'It will not be possible always to refrain from using force * * *. When searching villages, especially when it has been necessary to burn down a village, the whole population will be put at the disposal of the commissioner by force * * *. As a rule no more children will be shot * * *. If we limit harsh measures through the above orders for the time being it is only done for the following reason * * *. The most important thing is the recruitment of workers.'

"The resources and needs of the occupied countries were completely disregarded in carrying out this policy. The treatment

of the laborers was governed by Sauckel's instructions of 20 April 1942 to the effect that—

'All the men must be fed, sheltered and treated in such a way as to exploit them to the highest possible extent, at the lowest conceivable degree of expenditure.'

"The evidence showed that workers destined for the Reich were sent under guard to Germany, often packed in trains without adequate heat, food, clothing, or sanitary facilities. The evidence further showed that the treatment of the laborers in Germany in many cases was brutal and degrading * * *. They were subject to constant supervision by the Gestapo and the SS, and if they attempted to leave their jobs they were sent to correction camps or concentration camps. The concentration camps were also used to increase the supply of labor. Concentration camp commanders were ordered to work their prisoners to the limits of their physical power. During the latter stages of the war the concentration camps were so productive in certain types of work that the Gestapo was actually instructed to arrest certain classes of laborers so that they could be used in this way. Allied prisoners of war were also regarded as a possible source of labor. Pressure was exercised on noncommissioned officers to force them to consent to work, by transferring to disciplinary camps those who did not consent. Many of the prisoners of war were assigned to work directly related to military operations, in violation of Article 31 of the Geneva Convention. They were put to work in munition factories and even made to load bombers, to carry ammunition and to dig trenches, often under the most hazardous conditions. This condition applied particularly to the Soviet prisoners of war. On 16 February 1943, at a meeting of the Central Planning Board, at which the defendants Sauckel and Speer were present, Milch said:

"We have made a request for an order that a certain percentage of men in the ack-ack artillery must be Russians; 50,000 will be taken altogether, 30,000 are already employed as gunners. This is an amusing thing, that Russians must work the guns.'"

And on 4 October 1943, at Poznan, Himmler, speaking of the Russian prisoners, captured in the early days of the war, said:

"At that time we did not value the mass of humanity as we value it today, as raw material, as labor. What, after all, thinking in terms of generations, is not to be regretted, but is now deplorable by reason of the loss of labor, is that the prisoners died in tens and hundreds of thousands of exhaustion and hunger.'

“The general policy underlying the mobilization of slave labor was stated by Sauckel on 20 April 1942. He said:

“The aim of this new gigantic labor mobilization is to use all the rich and tremendous sources conquered and secured for us by our fighting armed forces, under the leadership of Adolf Hitler, for the armament of the armed forces, and also for the nutrition of the homeland. The raw materials, as well as the fertility of the conquered territories and their human labor power, are to be used completely and conscientiously to the profit of Germany and her allies * * *. All prisoners of war from the territories of the West, as well as the East, actually in Germany, must be completely incorporated into the German armament and nutrition industries * * *. Consequently it is an immediate necessity to use the human reserves of the conquered Soviet territory to the fullest extent. Should we not succeed in obtaining the necessary amount of labor on a voluntary basis, we must immediately institute conscription or forced labor * * *. The complete employment of all prisoners of war, as well as the use of a gigantic number of new foreign civilian workers, men and women, has become an indisputable necessity for the solution of the mobilization of the labor program in this war.’”

Continuing with the quotation from the IMT decision: *

“* * * As the dominant member of the Central Planning Board, which had supreme authority for the scheduling of German production and the allocation and development of raw materials, Speer took the position that the Board had authority to instruct Sauckel to provide laborers for industries under its control and succeeded in sustaining this position over the objection of Sauckel. The practice was developed under which Speer transmitted to Sauckel an estimate of the total number of workers needed. Sauckel obtained the labor and allocated it to the various industries in accordance with instructions supplied by Speer.

“Speer knew when he made his demands on Sauckel that they would be supplied by foreign laborers serving under compulsion. He participated in conferences involving the extension of the slave labor program for the purpose of satisfying his demands. He was present at a conference held during 10-12 August 1942 with Hitler and Sauckel at which it was agreed that Sauckel should bring laborers by force from occupied territories where this was necessary to satisfy the labor needs of the industries under Speer’s control. Speer also attended a

* Ibid. pp. 331-33.

conference in Hitler's headquarters on 4 January 1944, at which the decision was made that Sauckel should obtain 'at least 4 million new workers from occupied territories' in order to satisfy the demands for labor made by Speer, although Sauckel indicated that he could do this only with help from Himmler.

"Sauckel continually informed Speer and his representatives that foreign laborers were being obtained by force. At a meeting of 1 March 1944, Speer's deputy questioned Sauckel very closely about his failure to live up to the obligation to supply four million workers from occupied territories. In some cases Speer demanded laborers from specific foreign countries. Thus, at the conference 10-12 August 1942, Sauckel was instructed to supply Speer with 'a further million Russian laborers for the German armament industry up to and including October 1942.' At a meeting of the Central Planning Board on 22 April 1943, Speer discussed plans to obtain Russian laborers for use in the coal mines, and flatly vetoed the suggestion that this labor deficit should be made up by German labor.

"Speer has argued that he advocated the reorganization of the labor program to place a greater emphasis on utilization of German labor in war production in Germany and on the use of labor in occupied countries in local production of consumer goods formerly produced in Germany. Speer took steps in this direction by establishing the so-called 'blocked industries' in the occupied territories which were used to produce goods to be shipped to Germany. Employees of these industries were immune from deportation to Germany as slave laborers and any worker who had been ordered to go to Germany could avoid deportation if he went to work for a blocked industry. This system, although somewhat less inhumane than deportation to Germany, was still illegal. The system of blocked industries played only a small part in the over-all slave labor program, although Speer urged its cooperation with the slave labor program, knowing the way in which it was actually being administered. In an official sense, he was its principal beneficiary and he constantly urged its extension.

"Speer was also directly involved in the utilization of forced labor as Chief of the Organization Todt. The Organization Todt functioned principally in the occupied areas on such projects as the Atlantic Wall and the construction of military highways, and Speer has admitted that he relied on compulsory service to keep it adequately staffed. He also used concentration camp labor in the industries under his control. He originally arranged to tap this source of labor for use in small out-of-the-way factories; and later, fearful of Himmler's jurisdictional ambi-

tions, attempted to use as few concentration camp workers as possible.

“Speer was also involved in the use of prisoners of war in armament industries but contends that he utilized Soviet prisoners of war only in industries covered by the Geneva Convention.

“Speer’s position was such that he was not directly concerned with the cruelty in the administration of the slave labor program, although he was aware of its existence. For example, at meetings of the Central Planning Board he was informed that his demands for labor were so large as to necessitate violent methods in recruiting. At a meeting of the Central Planning Board on 30 October 1942, Speer voiced his opinion that many slave laborers who claimed to be sick were malingerers and stated: ‘There is nothing to be said against SS and police taking drastic steps and putting those known as slackers into concentration camps.’”

Under the provisions of Article X of Ordinance No. 7, these determinations of fact by the International Military Tribunal are binding upon this Tribunal “in the absence of substantial new evidence to the contrary.” Any new evidence which was presented was in no way contradictory of the findings of the International Military Tribunal, but, on the contrary, ratified and affirmed them.

The next question to be answered is whether or not the defendant Milch in this case knew that foreign slave labor and prisoners of war were being procured by Sauckel and used in the aircraft industry, which the defendant controlled. The defendant’s own words, as gleaned from the minutes of the Central Planning Board and from his own testimony, conclusively answer this question in the affirmative. He testified that he knew that prisoners of war were employed in the airplane factory at Regensburg and that some twenty thousand Russian prisoners of war were used to man antiaircraft guns protecting the various plants. He stated further that he saw this type of war prisoners manning 8.8 and 10.5 [centimeter] antiaircraft guns at airplane factories in Luftgau 7 near Munich. Sauckel, the Plenipotentiary for Labor, sat in on at least fifteen meetings of the Central Planning Board, over which the defendant presided, and discussed at great length and in elaborate detail the problems involved in procuring sufficient foreign laborers for the German war effort. He frankly disclosed the cruel and barbarous methods used in forcing civilians of the eastern countries into the Reich for war work. He related the difficulties and resistance which confronted him and the

methods which he used and proposed to use in forcibly rounding up and transporting foreign workers. The advisability of using prisoners of war and inmates of concentration camps in the Luftwaffe was frankly discussed, with the defendant offering advice and suggestions as to the most effective methods to be used. In the face of this overwhelming evidence, disclosing page after page of discussion between Speer, Sauckel, and the defendant in which the defendant urged more severe and coercive methods of procuring foreign labor from the East, it would violate all reason to conclude that he had no knowledge of the source of this labor or of the methods used in procuring it. His voice is constantly heard, pleading for more laborers from this source and clamoring for a larger share in Sauckel's labor pool. Hildebrand and Sagemeyer for the coal mines, Rohland for the foundries, Kehrl for the coal and iron industries, Bruch and Becht for the rubber industry, Speer for the armament industry, and Milch for the aircraft industry—all these and others joined in a pagan chorus, in which the harmony was frequently strained, but all singing the same song, "We need laborers, men and women. We don't care where you get them, but give us more."

At the 54th meeting of the Central Planning Board, Sauckel stated in the defendant's presence:

"* * * Thereupon I even proceeded to employ and train a whole batch of French male and female agents who for good pay, just as was done in olden times for 'shanghaiing', went hunting for men and made them drunk by using liquor as well as words, in order to dispatch them to Germany. Moreover I charged some able men with founding a special labor supply executive of our own, and this they did by training and arming, with the help of the Higher SS and Police Fuehrer, a number of natives, but I still have to ask the Munitions Ministry for arms for the use of these men. * * *"

"* * * I and my assistants in fact have sometimes seen things happen in France that I was forced to ask, is there no respect any more in France for the German lieutenant with his 10 men? * * * We Germans must make an example of one case, and, by reason of this law, if necessary put Prefect or Burgo-master against the wall, if he does not comply with the rules; otherwise no Frenchman at all will be dispatched to Germany."

The defendant contributed to the discussion by saying:

"* * * As soon as you arrive the men run away to protect themselves from being sent to Germany * * *. The men even then will be whisked away unless quite another authority and power is on the watch, and this can only be the army itself. * * *"

I can find no remedy but that the army should assert itself ruthlessly."

As indicating that the defendant was not indifferent to the problem, at the same meeting, in referring to procuring labor from Italy, he offered the following suggestion:

"We could take under German administration the entire food supply for the Italians and tell them: only he gets any food who either works in a protected factory (that is, a factory in Italy manufacturing German war material) or goes to Germany."

Later in the same conference, the defendant made another contribution to the solution of the problem of foreign labor, saying:

"Now during the transfer it is necessary to see that the people really do arrive and do not run away before or during the transfer. If a transport has left a town and has not arrived, 500 to 600 persons from this place must be arrested and sent to Germany as prisoners of war. Such a thing is then talked about everywhere. If actions like this and other similar ones are carried out often, they would exert a certain pressure. The whole thing would be made easier, if we had control of food."

At the 53d meeting of the Central Planning Board (16 February 1944), the defendant stated:

"Our best new engine is made 88 percent by Russian prisoners of war and the other 12 percent by German men and women."

Instances could be multiplied in which the defendant not only listened to stories of enforced labor from eastern civilians and other prisoners of war and thereby became aware of the methods used in procuring such labor, but in which he himself urged more stringent and coercive means to supplement the dwindling supply of labor in the Luftwaffe. As Germany's plight became more desperate, her loss of military personnel presented an alarming dilemma, resulting in the defection of thousands of workmen to the armed forces. This resulted in a shifting of the dilemma to industry, and spurs were put to the labor procurement officers to fill the widening gap in the industrial labor ranks. Every branch of war industry constantly clamored for replacements and each vied with the others for a greater quota from the labor pool. Confronted by the desperate situation, the labor procurement officers, headed by the implacable Sauckel, cast aside all restraint and set

out systematically to herd into the Reich any human being who could contribute to Germany's war effort. Under Sauckel's whip, no means however harsh were overlooked, and no person however exempt was spared.

The defense on this count is ingenious but unconvincing. As to the use of prisoners of war, the defendant testified that he had been advised by some unidentified person high in the National Socialist Councils that it was not unlawful to employ prisoners of war in war industries. The defendant was an old and experienced soldier, and his testimony revealed that he was well acquainted with the provisions of the Geneva and Hague Treaties on this subject, which are plain and unequivocal. In the face of this knowledge, the advice which he claims to have received should have raised grave suspicions in his mind. Presenting an entirely different aspect to his defense, he testifies that many of the Russian prisoners of war volunteered to serve in the war industries and apparently enjoyed the opportunity of manufacturing munitions to be used against their fellow countrymen and their allies. Other Russian prisoners of war, he states, were discharged as such and immediately enrolled as civilian workers. The photographs introduced in evidence, however, show that they still retained their Russian army uniforms, which makes their status as civilians suspect. Be that as it may, it does not adequately answer the charge that hundreds of thousands of Polish prisoners of war were cast into concentration camps and parceled out to the various war factories, nor the further fact that thousands of French prisoners of war were compelled to labor under the most harrowing conditions for the Luftwaffe.

As to the French civilian workers who were employed at war work in Germany after the conquest of France, it is the contention of the defendant that these workers were supplied by the French Government under a solemn agreement with the Reich. It is claimed with a straight face that the Vichy Government, headed by Laval, entered into an international compact with the German Government to supply French laborers for work in Germany. This contention entirely overlooks the fact that the Vichy Government was a mere puppet set up under German domination, which, in full collaboration with Germany, took its orders from Berlin. The position of the defendant seems to be that, if any force or coercion was used on French citizens, it was exerted by their own government, but this position entirely overlooks the fact that the transports which brought Frenchmen to Germany were manned by German armed guards and that upon their arrival they were kept under military guard provided by the Wehrmacht or the SS.

It was sought to disguise the harsh realities of the German foreign labor policy by the use of specious legal and economic terms, and to make such policy appear as the exercise of conventional labor relations and labor law. The fiction of a "labor contract" was frequently resorted to, especially in the operations of the Todt Organization, which implied that foreign workers were given a free choice to work or not to work for Germany military industry. This, of course, was purely fictitious, as is shown by the fact that thousands of these "contract workers" jumped from the trains transporting them to Germany and fled into the woods. Does anyone believe that the vast hordes of Slavic Jews who labored in Germany's war industries were accorded the rights of contracting parties? They were slaves, nothing less—kidnapped, regimented, herded under armed guards, and worked until they died from disease, hunger, and exhaustion. The idea of any Jew being a party to a contract with Germans was unthinkable to the National Socialists. Jews were considered as outcasts and were completely at the mercy of their oppressors. Exploitation was merely a convenient and profitable means of extermination, to the end that, "when this war ends, there will be no more Jews in Europe". As to non-Jewish foreign labor, with few exceptions they were deprived of the basic civil rights of free men; they were deprived of the right to move freely or to choose their place of residence; to live in a household with their families; to rear and educate their children; to marry; to visit public places of their own choosing; to negotiate, either individually or through representatives of their own choice, the conditions of their own employment; to organize in trade unions; to exercise free speech or other free expression of opinion; to gather in peaceful assembly; and they were frequently deprived of the right to worship according to their own conscience. All these are the sign-marks of slavery, not free employment under contract.

The German nation, before the ascendancy of the NSDAP, had repeatedly recognized the rights of civilians in occupied countries. At the Hague Peace Conference of 1907, an amendment was submitted by the German delegate, Major General von Guendell, which read:

"A belligerent is likewise forbidden to compel the nationals of the adverse party to take part in the operations of war directed against their country, even when they have been in his service before the commencement of the war."

The German manual for war on land (*Kriegsbrauch im Landkriege*, Edition 1902) stated:

“The inhabitants of an invaded territory are persons endowed with rights * * * subject to certain restrictions * * * but who otherwise may live free from vexations and, as in time of peace, under the protection of the laws.”

During the First World War, an order of the German Supreme Command (3 October 1916) provided for the deportation of Belgian vagrants and idlers to Germany for work, but specified that such labor was not to be used in connection with operations of war. The order resulted in such a storm of protest that it was at once abandoned by the German authorities.

It cannot be contended, of course, that foreign workers were entitled to comforts or luxuries which were not accorded German workers. It is also recognized that, especially during the latter part of the war there was a universal shortage of food and fuel throughout the Reich and in the discomforts arising therefrom foreign workers were bound to share. But it is an undoubted fact that the foreign workers were subjected to cruelties and torture and the deprivation of decent human rights merely because they were aliens. This was not true in isolated instances, but was universal and was the working out of the German attitude toward those whom it considered inferior peoples. If any decent human consideration was shown these workers, it was merely to maintain their productivity and did not stem from any humanitarian considerations.

The Tribunal therefore finds the defendant guilty of the war crimes charged in count one of the indictment, to wit, that he was a principal in, accessory to, ordered, abetted, took a consenting part in and was connected with, plans and enterprises involving slave labor and deportation to slave labor of the civilian populations of countries and territories occupied by the German armed forces, and in the enslavement, deportation, ill-treatment and terrorization of such persons; and further that the defendant was a principal in, accessory to, ordered, abetted, took a consenting part in, and was connected with, plans and enterprises involving the use of prisoners of war in war operations and work having a direct relation to war operations.

COUNT THREE

Count three of the indictment charges the defendant with crimes against humanity committed against “German nationals and nationals of other countries.” Sufficient proof was not adduced as to such offenses against German nationals to justify an adjudication of guilt on that ground. As to such crimes against

nationals of other countries, the evidence shows that a large number of Hungarian Jews and other nationals of Hungary and Rumania, which countries were occupied by Germany but were not belligerents, were subjected to the same tortures and deportations as were the nationals of Poland and Russia. In count one of the indictment these acts are charged as war crimes and have heretofore been considered by the Tribunal under that count in this judgment. In the judgment of the International Military Tribunal (*Vol. I, Trial of the Major War Criminals, p. 254*), the court stated—

“From the beginning of the war in 1939, war crimes were committed on a vast scale which were also crimes against humanity.”

This is a finding of law and an interpretation of Control Council Law No. 10, with which this Tribunal is in full accord.

Our conclusion is that the same unlawful acts of violence which constituted war crimes under count one of the indictment also constitute crimes against humanity as alleged in count three of the indictment. Having determined the defendant to be guilty of war crimes under count one, it follows, of necessity, that he is also guilty of the separate offense of crime against humanity, as alleged in count three, and this Tribunal so determines.

In exculpation, the defendant states that he was a German soldier and that whatever was done by him or with his knowledge or consent was done in pursuance of a national military policy promulgated by Hitler and in obedience to military orders. He protests that, no matter how violently he disagreed with the methods used by the German Reich in the furthering of its policy of aggressive war, he was helpless to extricate himself and had no alternative except to stay with the venture to the bitter end. It is true that withdrawal may involve risks and dangers, but these are incidental to the original affiliation with the unlawful scheme. He who elects to participate in a venture which may result in failure must make his election to abandon the enterprise if it is not to his liking or to stay as a participant, and win or lose according to the outcome.

Much significance must be attached to the meeting of 23 May 1939, at which the defendant was admittedly present and in which Hitler spoke at great length as to his plans for the subjugation of friendly minor nations and the ultimate conquest of Europe. A purported record of the events at this meeting has been introduced in evidence and has been found to be reliable and accurate by the International Military Tribunal. The defendant has through-

out insisted that this record is spurious and was made by Schmudt long after the occasion which it records. Of course, it was never anticipated that this record, which was marked "Top Secret, To be Transmitted by Officer Only," would ever be captured and its contents become known. It is not surprising that those who sat and listened to the astounding program of the Fuehrer now wish that they had been absent. It cannot be denied that there was a meeting of some kind which the defendant attended and at which the Fuehrer spoke, and further that it was held a few short months before the actual invasion of Poland, as forecast in the report of the meeting. The Schmudt paper does not pretend to be a verbatim report of Hitler's exact words, but certainly all of the diabolical plans which it reveals were not manufactured by Schmudt out of thin air, attributed to Hitler, and then marked "Top Secret". Even if Hitler said only a small part of what is attributed to him by Schmudt, there was enough said to advise and warn a man of the defendant's intelligence and experience that mischief was afoot. Every sentence shrieks of war. The record hints at nothing else, and, if all references to conquest and war and world domination are eliminated, Hitler did not speak at all. At this early date, the defendant must be charged with knowledge that a war of aggression, to be ruthlessly pursued, was planned. This, then, was the time for him to have made his decision—the decision which confronts every man daily—to be honorable or dishonorable. Life consists quite generally in making such decisions. As an old soldier, schooled in the code of war and well aware of the principles to which an honorable soldier must adhere, he sat complacently and listened to a proposed program which violated national honor, personal integrity and the moral code of an honest soldier. He made his choice and elected to ride with the tyrant.

When the defendant joined the National Socialist Party in 1933, Germany was in the throes of dire economic and political distress and was burdened by a myriad of political parties, each with its separate program and all functioning at cross-purposes. The defendant elected to affiliate with the NSDAP because, he testified, he believed it offered the most likely agency for bringing order out of chaos. But very soon he must have realized that he had joined a band of villains whose program contemplated every crime in the calendar. The Nazi code was not a secret. It was published and proclaimed by the Party leaders in long harangues to the people; decrees and directives were broadcast; the infamous Streicher was spreading anti-Jewish obscenities throughout the Reich in "Der Stuermer"; Roehm and a large number of the SA were murdered by Hitler's orders; hundreds of German citizens were

cast into concentration camps for "political re-education," without hearing or opportunity for defense; the iniquitous Gestapo stormed through the land, with power over life and liberty which could not be questioned; in public view Jews were beaten and killed, their synagogues burned and their stores destroyed. The Party proclaimed its objectives from the house-tops and verified them by open public conduct throughout the Reich. The significant fact which must not be overlooked is that all these things happened *before* the war was launched, at a time when there was no claim upon the loyalty of the defendant as a soldier to protect his homeland at war. He protests that he never subscribed to the master race philosophy, but 13 years before he joined the Party in 1933, its precepts and demands had been proclaimed, among which was Point 4—

"Only a member of the race can be a citizen. A member of the race can only be one who is of German blood, without consideration of creed. Consequently no Jew can be a member of the race."

The humblest citizens of Germany knew that the iniquitous doctrines of the Party were being implemented by ruthless acts of persecution and terrorism which occurred in public view. Thousands of obscure German citizens were only too well aware that they were living under the scrutiny of an army of spies and saw their friends and relatives summarily dispatched to concentration camps for the slightest suspicion of dissidence. The defendant did not live in a vacuum. He was not blind nor deaf. Long before 1939, long before his military loyalty was called into play, long before the door of withdrawal was closed, he could have seen the bloody handwriting on the wall, for murder and enslavement of his own countrymen was there written in blazing symbols. But he had taken on the crimson mantle of the Party, with all its ghastly implication, and he wore it with glory and profit to himself to the end. Others with more courage and higher principles and with more loyalty to the ancient German ideals rebelled and withdrew from the brutal crew—von Clausewitz, Yorck von Wartenburg, Schlegelberger, Schmitt, Eltz von Ruebenach, Tesmer. These men in high positions had the character to repudiate great evil, and if in so doing they took risks and made sacrifices, nevertheless, they made their choice to stand with decency and justice and honor. The defendant had his opportunity to join those who refused to do the evil bidding of an evil master, but he cast it aside and his professed repentance now comes too late.

What a sordid picture of a civilized nation—the nation of

Goethe and Heine, of Beethoven and Schubert, even of Bismarck and von Hindenburg—fawning and cringing at the feet of a small man with delusions of grandeur. Even when madness crept in to intensify his frenzy and fear of defeat put spurs to his ferocity, they still said, "We are his people. He is our immaculate leader." Men of large capacities, even of genius, prostituted their talents before a puny renegade who used them impiously and paid off his puppets with medals and pelf. But the strutting menials stayed with him. So long as success was on the horizon, they bowed and scraped and sought to outdo each other in supine adulation. They tell us now, "Hitler was wrong." But they never told him that. Right or wrong, their only concern was, "Can he win the war? And what will it mean for me?" They heard him proclaim as early as November 1937, "The question for Germany is where the greatest possible conquest could be made at the lowest possible cost," and they nodded and shouted, "Heil Hitler," and maneuvered to get closer to him. Before the invasion of Poland, they heard this bloodthirsty tyrant say, "In starting and making a war, not the right is what matters, but victory." And this defendant, as part of the unholy array, rolled up his sleeves and said, "Let me help. Give me men and more men, no matter where you get them."

In a civilized state which recognizes the sanctity of human lives and human rights, no man—no group of men—should be endowed with omnipotence. The history of human relations, from Herod to Hitler, has repeatedly demonstrated this to be true. Omnipotence is only for God. Be a man ever so wise, ever so benevolent, ever so trustworthy, there still exists in him the frailty, the fallibility, the susceptibility to temptation that is inherent in every man. If the only protection against the tyranny of an autocrat is his own self-restraint, that is not enough, for power feeds on power, and the temptation to stretch authority to its limit is irresistible.

What, then, of the responsibility of those who bask in the reflected radiance of omnipotence, who get their sustenance from it and who arrogantly carry out its mandates and crush any resistance to it? Are they not the hands and limbs of the monster, carrying out the orders of the head? Surely, they cannot be allowed to detach themselves from the corpus by saying, "These arms and legs are innocent—only the head is guilty?"

In an authoritarian state, the head becomes the supreme authority for woe as well as weal. Those who subscribe to such a state submit to that principle. If they abjectly place all the power in the hands of one man, with no right reserved to check or limit or repudiate, they must accept the bitter with the sweet. This is especially true of those in high places in the state—those who choose to enjoy the honor, the emoluments and the power of such

high stations. By accepting such attractive and lucrative posts under a head whose power they know to be unlimited, they ratify in advance his every act, good or bad. They cannot say at the beginning, "The Fuehrer's decisions are final; we will have no voice in them; it is not for us to reason why; his will is law," and then, when the Fuehrer decrees aggressive war or barbarous inhumanities or broken covenants, to attempt to exculpate themselves by saying, "Oh, we were never in favor of *those* things."

One cannot escape the conviction that, had the war terminated in victory for Germany, all of the acts of Hitler, including those related to the charges in this indictment, would have been hailed as strokes of genius, and that this defendant would now be elbowing his way into the front row of those claiming to have successfully and victoriously carried out Hitler's orders and policies—in fact, claiming co-authorship in many. But with Germany defeated and Hitler dead, it becomes naively convenient to take refuge in the flimsy claim that no one except Hitler was in favor of the invasion of Poland and Russia and France and the rape of Holland and Belgium and Norway and Denmark.

The defendant insists that he knew nothing of the atrocities and violence which were cumulating day by day throughout Europe. Being a good German, he says, he supinely obeyed the decree which forbade listening to foreign broadcasts or reading foreign periodicals. He surrendered to a political philosophy which outlawed the ordinary means of knowledge and which prevented the formation of rationalized opinion or judgment. No one might read or listen or talk except in predetermined channels. Ignorance was prescribed by law. The first weapon of tyranny is to keep its victims in darkness. The Germans were an intelligent, cultured people; they were not ignorant serfs. What a travesty to say that a people which has produced some of the greatest intellects in human history is not fit to be told the truth.

Desperate and discouraged peoples, distraught with the crushing problems of hunger and insecurity, have always cried out for a miracle worker to lead them out of the wilderness. Then is the golden opportunity for the mountebank with bland promises and soothing phrases to provide a poisonous panacea for their distress. In their desperation they fail to realize that despotism has a way of beginning with benevolence and ends by being merely despotic. Masquerading in the mantle of a messiah, the wily opportunist lulls them into subscribing to some glib Fuehrerprinzip which means, "Ask no questions; leave everything to me." And when the debacle comes, they realize that they *have* left everything to him—honor, dignity, self-respect, liberty, even life itself—and they end up degraded, ashamed, impoverished, and hopeless. But

have they ended up wiser? The universal fear today is that in their desperation they will repeat the vicious process by saying, "Last time we picked the wrong man. Let us seek a new messiah. He will save us." The lessons of one generation are quickly forgotten by the next, but the inexorable laws of nature are immutable. The tragic fruits of tyranny and intolerance will always be the moral decay of peoples and the degradation of human dignity.

Over the heavy gates which shut in the hapless victims at Dachau is a legend reading, "Work will set you free." The toil of slaves cannot set them free; it only serves to further enslave them. Some day an enlightened German people will storm those gates and all others like them and recast them into an image of Truth—an imperishable figure with eyes open and unbandaged. So long as Truth stands free and untarnished, no future Hitler will ever arise to deceive and degrade the German nation. Then there will never be another Dachau.

[Signed] ROBERT M. TOMS
PRESIDING JUDGE
FITZROY D. PHILLIPS
JUDGE
MICHAEL A. MUSMANNO
JUDGE

SENTENCE

This Tribunal takes no pleasures in performing the duty which confronts it, but the deliberate enslavement of millions must not go unexpiated. The barbarous acts which have been revealed here originated in the lust and ambition of comparatively few men, but all Germans are paying and will pay for the degradation of their souls and the debasement of the German honor, caused by following the false prophets who led them to disaster.

It would be a travesty on justice to permit those false leaders, including this defendant, to escape responsibility for the deception and betrayal of their people. It would be even a greater injustice to view with complacency the mass graves of millions of men, women, and children whose only crime was that they stood in Hitler's way. Retribution for such crimes against humanity must be swift and certain. Future would-be dictators and their subservient satellites must know what follows their defilement of international law and of every type of decency and fair dealing with their fellow men. Civilization will be satisfied with nothing less.

It is the sentence of this Tribunal that the defendant Erhard Milch be confined to the Rebdorf Prison for the remainder of his natural life.

B. Concurring Opinion by Judge Michael A. Musmanno

The defendant is Erhard Milch, Field Marshal in the German Luftwaffe, Inspector General of the Luftwaffe, State Secretary in the Air Ministry, Generalluftzeugmeister, representative of the Wehrmacht on the Central Planning Board, Chief of the Jaegerstab and member of the Nazi Party. He stands indicted of war crimes and crimes against humanity as defined in Control Council Law No. 10, enacted by Allied Control Council on 20 December 1945.

The indictment contains three counts which may be briefly summarized as follows:

COUNT ONE

Erhard Milch is charged with having knowingly committed war crimes as principal and accessory in enterprises involving slave labor and having also willingly and knowingly participated in enterprises involving the use of prisoners of war in war operations contrary to international convention and the laws and customs of war.

COUNT TWO

The defendant is accused of having knowingly and willfully participated in enterprises involving fatal medical experiments upon subjects without their consent.

COUNT THREE

In the third count the defendant is charged with responsibility for slave labor and fatal medical experiments, in the same manner as indicated in the first two counts, except that here the alleged victims are declared to be German nationals and nationals of other countries.

The defendant has entered a general denial of Not Guilty to all counts. To the charges of slave labor he has answered in effect—

1. That the term slave labor is a misnomer and that all foreign workmen in Germany during the war were there of their own free will.

2. That if they did not come voluntarily they were treated humanely, considerately, and were not subjected to any ill-treatment either in transportation or while actively employed for the Reich.

3. That if ill-treatment, fatal or otherwise, of foreign workmen occurred, the defendant was in no way responsible for such ill-treatment.

To the charges of responsibility for fatal medical experiments inflicted on involuntary subjects, the defendant replies substantially—

1. That the high-altitude and freezing experiments were not painful to the subjects, nor did any illegal deaths result therefrom.

2. That if fatalities did occur, they were suffered by those already condemned to death, or were caused by persons over whom the defendant had no control.

3. That in any event, Milch was in no way officially connected with the illegal and fatal experiments.

I. SLAVE LABOR

(a) Methods of Recruitment

The defense has affirmatively asserted that there was no slave labor in Germany during the war, or that if it did exist, its scope was negligible. The Tribunal finds that this assertion is not supported by the testimony in the case. It concludes, on the contrary, from the evidence presented at this trial that the German Reich during World War II did actively and plenarily employ slave labor. It further is of the opinion that the Third Reich used and abused slave labor to an extent and in a manner hitherto unknown in either modern or ancient history. The exploitation of human beings by Germany during the years of the war must take its place, in point of cruelty and inhumaneness, with the most iniquitous slave practices of the ancient Egyptians, Babylonians, Assyrians, and Persians. The building of the Pyramids, the Hanging Gardens of Babylon, and other ancient landmarks under whip and lash have their modern counterpart in the German building of the Western Wall, the Gothic Line, military fortifications, concentration camps, and munitions factories. The guilt of the German Reich is greater than that of the ancient empires because in that area of antiquity the immorality of human bondage was not universally accepted, whereas in 1939 no country in the sisterhood

of civilized nations had failed to condemn and outlaw involuntary servitude in its every form.

It is submitted in behalf of the defendant that foreign workers came to Germany of their own will. It is true that in the early stages of the European conflict, Germany offered such inducements in foreign countries as to persuade numbers of their subjects voluntarily to proceed to that country for remunerative employment. In those first days of Blitzkrieg when nation after nation fell helplessly under the invincible Nazi war machine, workers accepted employment in Germany not only because of promises made, but because exterior evidence to their bewildered minds seemed to portend that soon the frontiers of Germany would be coterminous with the boundaries of Europe itself. Thus, but small choice remained to them; whether they worked at home or in Germany the master was destined to be the same.

However, when the subjugated peoples perceived at Stalingrad that the unbeatable German army could be beaten, when they heard the roar of American propellers in the sky and the clank of British tanks returned once more to the battle, a light of hope gleamed that it might not be true, as Hitler had said, that his rule and order were to endure a thousand years, and then these people refused the coin and currency of the German Reich. From then on the feet of foreign workers were not turned willingly toward Germany. And in the face of this defiance, Sauckel, German Plenipotentiary for Labor, declared, "Should we not succeed in obtaining the necessary amount of labor on a voluntary basis, we must immediately institute conscription or forced labor." (*T-58.*)¹

There is no adding machine tape to which one can turn to determine the exact total number of foreign workers impressed into German industry, but Fritz Sauckel, Plenipotentiary General for Labor, declared, "Out of 5,000,000 workers who arrived in Germany, not even 200,000 came voluntarily." (*T-149.*) Heinrich Himmler placed the number of foreign workers at from 6,000,000 to 7,000,000. (*IMT 243*)².

On 9 November 1941, Hitler declared in a speech—

"The territory which now works for us contains more than 250,000,000 men, but the territory which works indirectly for us includes now more than 350,000,000. In the measure in which it concerns German territory, the domain which we have taken under our administration, it is not doubtful that we shall succeed in harnessing the very last man to this work."

¹ The reference "T" is to the page of the mimeographed transcript.

² "IMT" refers to Trial of the Major War Criminals before the International Military Tribunal, Vol. I, Nuremberg, Germany, 1947.

Hitler was never quite able to achieve the fullness of this ambitious program, but it was not due to any relinquishment of efforts in that direction by himself or his criminal coadjutors. Of course, this program was in direct violation of Article 52 of the Hague Convention which declares—

“Requisition in kind and services shall not be demanded from municipalities or inhabitants, except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.”

In the very initial stages of the German invasions, the officiating agents phrased their demands for labor in language which gave the recruitment an aspect of voluntary action on the part of the workers. Thus, when the German forces entered Lithuania, male and female farm workers were called upon by the military administration to sign up for six months' employment on large estates, but after the signatures were obtained the promises were not kept. (*T-97.*) And it was not long until all pretense at voluntary recruitment was abandoned and then Lithuanians, ordered to official agencies “only for registration”, were held there and taken away under military guards to the local barracks where they had neither the opportunity to bid their families good-by nor to put their most personal affairs in order. (*T-97-98.*)

There were other pacific methods to “persuade” foreign workers into employment for the Reich. Thus, Governor General Frank of Poland recommended that one way to force Polish workers into Germany was to withhold their unemployment insurance. (*T-112.*)

However, these genteel methods in Poland soon gave way to means more direct. Recruitment now degenerated into a fierce man hunt with unsuspecting victims being seized on the streets, in railroad stations, from their homes, even in churches. (*T-83.*)

“Everybody is exposed to the danger of being seized anywhere and at any time by members of the police, suddenly and unexpectedly, and being brought into an assembly camp. None of his relatives knows what has happened to him; only weeks or months later, one or the other gives news of his fate by a post-card.” (*T-83.*)

In Ukrainia skilled workers whose names had been furnished to the police by corrupted village elders were “dragged from their beds at night to be locked up in cellars until shipped.” (*T-67.*)

As neither the male nor the female workers were given time to gather up their belongings they often arrived at the collecting center without shoes or other adequate clothing for the long and torturing journey ahead. (T-67.)

A directive applying to recruitment in White Ruthenia declared—

“All permissible means shall be used to obtain manpower from White Ruthenia. Do not hesitate to apply extraordinary measures.” (T-91.)

In the same directive “the recruiters” are told, “Everything you do for Germany is right, everything else is wrong.” (T-92.) So wide-sweeping was this recruitment drive waged by the SS and police in one area of White Ruthenia that 115,000 hectares of farm land became useless because the whole population had been removed. (T-93.)

Goering bluntly declared in a speech at the Reich Ministry of Air on 7 November 1941, in connection with the Four Year Plan that Poles, Dutchmen, etc., were to be taken, “if necessary as prisoners of war and employ them as such, if work through free contract cannot be obtained. Strong action.” * * * “Foreigners not to be treated like German workers.” (T-53.)

One Leyser in making a report to Rosenberg on the situation in his district of Zhitomir gives the answer to the assertion of voluntary labor when he says—

“It is certain that a recruitment of labor, in the sense of the word, can hardly be spoken of. In most cases, it is nowadays a matter of actual conscription by force. The population has been stirred up to a large extent and views the transports to the Reich as a measure which does in no way differ from the former exile to Siberia during the Czarist and Bolshevist system.” (T-94.)

A report on recruitment measures taken in Holland reveals—

“All Jewish Netherlanders, whom the Germans could lay their hands on, with the exception of a small group of exempted persons, were brought together here; hospitals, old age homes, institutions for the blind and other disabled persons were emptied in order to concentrate the inmates in Westerbork for deportation. Even the inmates of lunatic asylums did not escape deportation.” (T-125.)

On the subject of workers from the Netherlands, Goering said on 28 October 1943, in the presence of the defendant—

"After that has been done once, one has to modify the system for the second blow. Then the Dutch people will be no longer out in the streets on Sunday for pleasure promenades * * *. First, all the people must be brought together in a pen. Then they will be asked individually who works where. Then the men will be selected accordingly." (T-2094.)

And on the subject of foreign exchange at that same meeting, Goering contributed this bit of wisdom in finance—

"All we need to do is to fix the rate of exchange * * * today the German mark equals 20 francs, tomorrow 23, then 27, then 40, and so forth, up to one million, or one billion. We have had all that. The same holds true for the guilder. One cigarette now costs in Holland 1.50 guilders; formerly it cost 10 cents. I merely have to say, 1.50 guilders equal 10 pfennigs or one mark equals 15 guilders." (T-2095.)

It may be well to note at once that all quotations from the transcript represent excerpts from records and documents located in the official files of the German Reich. The evidence advanced by the prosecution in this case was almost exclusively documentary. Thus, if any observation in this opinion seems overly emphatic and appears to go beyond the restraint usually found in judicial pronouncements, it will still fall short of the force of language employed in some of the original reports made by German officials to their own superiors at the time of the events described. A top secret memorandum on conditions in occupied Russian territory declared—

"It is no longer a secret from friend or foe that hundreds of thousands of them literally have died of hunger or cold in our camps * * * We now experience the grotesque picture of having to recruit millions of laborers from the occupied eastern territories, after prisoners of war have died of hunger like flies, in order to fill the gaps that are formed within Germany. Now the food question no longer existed. In the prevailing limitless abuse of the Slavic humanity, *recruiting methods were used which probably had their origin only in the blackest periods of the slave trade.*" (T-121.)

Even Rosenberg acknowledged the severity and harshness of the recruitment program and protested, not, to be sure, on humanitarian grounds, but because "endangered persons prefer to escape their fate" by going over to guerilla bands. (T-78.)

The fury with which the man hunt for workers was prosecuted

reached such extremes that in many instances villages were burned down as "retribution for failure to comply with the demand for the appropriation of labor forces directed to the communities." (T-80.)

And it was not only where large numbers were demanded that savage reprisals occurred. In a little village where 25 workers had been ordered but none reported, the German militia set fire to the houses of those who had fled. Then—

"The people who had hurried to the scene were forbidden to extinguish the flames, beaten and arrested, so that seven homesteads burned down. The policemen meanwhile ignited other houses. The people fell on their knees and kissed their hands, but the policemen beat them with rubber truncheons." (T-80-81.)

All because the mighty Reich needed 25 men to throw into its vast workshop of millions turning out the steel teeth of war.

In the same instance the German militia continued into other villages and where they did not find the workers they seized the parents. "The workers who had not appeared until then were shot." Then, in the report we are quoting from, appears the damning phrase which shows more than anything else to what a low ebb the dignity of man had been reduced and degraded by the German Reich. "*They are now catching humans like the dog catchers used to catch dogs.*" (T-81.) The report closes on a statement which must needs bring a blush of shame to the cheek of every member of the civilized human race—

"People from many villages went on a certain day to a pilgrimage to the monastery Potschaew. They were all arrested, locked in, and will be sent to work. Among them there are lame, blind, and aged people." (T-81.)

It has been asserted that the defendant and others holding high office cannot and should not be held responsible for the acts of subordinate officers in far away places, and of whose activities they could have no knowledge. But these smaller officers were only putting into effect the policies publicly declared over and over by the chieftains. Thus, when a certain Koch spoke in Kiev and declared—

"I will draw the very last out of this country. I did not come to spread bliss. I have come to help the Fuehrer. The population must work, work, and work again * * * for some people are getting excited that the population may not get enough to eat. The population cannot demand that. One has only to remember

what our heroes were deprived of in Stalingrad * * * We definitely did not come here to give out manna; we have come here to create the basis for Victory." (T-86.)

He was only repeating what had been said by Hitler, Himmler, Goering, and Milch, in varying forms. The defendant claims that he did not literally mean the blood and thunder declarations admittedly authored by him, and that phase of the case will be discussed in detail later. But underlings who heard these wild, inflammatory utterances did not know that Milch was only barking, if in fact we are to assume that his ferocious words were only purposeless growlings. The men in the field did not stop at words, because they were in a position to act and did act—directly on the people. Koch was not voicing a concept original with him when he said in that same speech—

"We are a master race which must remember that the lowliest German worker is racially and biologically a thousand times more valuable than the population here." (T-86.)

Unfortunately, however, his utterances were not confined to rhetoric, but being in a position to put them into flesh and blood effect, he did so.

Quotations from documents furnishing further proof of involuntary foreign labor in Germany are too numerous to repeat in the judgment. Reference, however, will be made to but one more before proceeding to the next item for discussion. In the recruitment of 1 million workers demanded in the Ukraine, SS Major Christensen, in charge of operations, declared that whatever harsh treatment was required should be controlled. He thus orders that in arresting communist functionaries it is no longer necessary to arrest all the close relatives of a member of the communist party. He decrees further that in searching for workers "when it becomes necessary to burn down a village, the whole population will be put at the disposal of the commissioner by force." (T-129.)

This is regarded as a concession, and then comes what must be classified as the most heart-rending utterance which has come out of this war—

"As a rule, no more children will be shot."

Not an out-and-out prohibition against shooting children; not that more care should be exercised in the handling of children; but only a general, vague suggestion that this SS battalion of murderers must not fire at children on sight just as one might mow down sparrows or rabbits. However, if the situation requires, then of course, children will be shot with everybody else, for the

order goes on to say, "Slavs will interpret all soft treatment on our part as weakness." "The most important thing," the directive concludes, "is the recruitment of workers." (*T-129-130.*)

(b) Treatment of Workers

On 20 April 1942, Fritz Sauckel announced his labor mobilization program which contained the one supremely cruel proposition regarding treatment of foreign workers—

"All the men must be fed, sheltered, and treated in such a way as to exploit them to the highest possible extent at the lowest conceivable degree of expenditure." (*T-58.*)

After the announcement of this inhuman decree of maximum work with minimum sustenance, Sauckel followed with—

"It has always been natural for us Germans to refrain from cruelty and mean chicaneries towards the beaten enemy, even if he has proved himself the most bestial and most implacable adversary, and to treat him correctly and humanly, even when we expect useful work of him." (*T-58-59.*)

It can be imagined with what kindness an underling of Sauckel's would treat a worker whom Sauckel has already characterized as a "bestial and most implacable adversary".

As a result of the minimum sustenance directive it is not difficult to understand the report of a Dr. Hupe who stated—

"During the last few days we have established that the food for the Russians employed here is so miserable that the people are getting weaker from day to day. Investigations showed that single Russians are not able to place a piece of metal for turning into position, for instance, because of lack of physical strength. The same conditions exist at all places of work where Russians are employed." (*T-55.*)

Wilhelm Jager, senior camp director at the Krupp Works, reported that diet prescribed for eastern workers was 1,000 calories less per day than the minimum prescribed for any Germans. Further, that while German heavy workers received 5,000 calories a day, eastern workers in comparable jobs received only 2,000 calories. Such meat as was allowed the foreign workers was that which had been "rejected by the veterinary, such as horse meat or tuberculin infested". (*T-103.*) The clothing allowed the eastern workers was likewise entirely inadequate. They had no overcoats and, because of the shortage of shoes, many were forced to go to

work barefoot even in winter. In the work camps tuberculosis was widespread among the eastern workers, caused by bad housing, insufficient and poor food, overwork and insufficient rest—

“These workers were likewise afflicted with spotted fever. Lice, the carrier of this disease, together with countless fleas, bugs, and other vermin tortured the inhabitants of these camps. As a result of the filthy conditions of the camps nearly all eastern workers were afflicted with skin disease. The shortage of food also caused many cases of Hunher-Oedem, Nephritis, and Shighakruse.” (T-103.)

These conditions became infinitely worse, of course, during the time of air raids—

“The French prisoner-of-war camp in Nogerratstrasse had been destroyed in an air raid attack and its inhabitants were kept for nearly half a year in dog kennels, urinals, and in old baking houses. The dog kennels were three feet high, nine feet long, and six feet wide. Five men slept in each of them. The prisoners had to crawl into these kennels on all fours.” (T-105.)

A Dr. Stinnesbeck reports on 12 June 1944—

“The PW camp at Nogerratstrasse was in most deplorable condition. The people live in ashcans, doghouses, old baking stoves, and self-made huts.” (T-106.)

Visiting camp Humboldtstrasse, Dr. Stinnesbeck found 600 Jewish women who worked at the Krupp factory. They suffered from festering wounds and other diseases. They had no shoes and went about in their bare feet!

“The sole clothing of each consisted of a sack with holes for their arms and head. Their hair was shorn. The camp was surrounded by barbed wire and closely guarded by SS guards.” (T-106.)

Concentration camp inmates were made to work, to which there can be no objection on the grounds of inhumanity. In fact, some useful toil is preferable to idleness in prison. But camp commanders were instructed that the “employment must be, in the true meaning of the word, exhaustive, in order to obtain the greatest measure of performance.” (T-61.)

“There is no limit to working hours. Their duration depends on the kind of working establishments in the camps and the kind of work to be done. They are fixed by the camp commanders alone.” (T-62.)

Certain "antisocial elements" were by special order "to be worked to death". In the literal Gestapo language "death" was never used rhetorically or figuratively. Those who were to be killed through work were listed as "under protective arrest". This included Jews, gypsies, Russians, and Ukrainians; Poles with more than three-year sentences; Czechs and Germans with more than eight-year sentences. (T-63.)

In these work camps frequently children of tender age were forced to toil.

"An indication of the awful conditions this may lead to is given by the fact that in the camps for eastern workers, camp for eastern workers 'Waldlust', Post Office Lauf, Pegnitz, there are cases of eight-year old, delicate and undernourished children put to forced labor and perishing from such treatment." (T-99.)

Those who were imported for farm work fared no better than their factory brothers. A directive issued by the Ministry of Finance and Economy at Baden on the control of Polish farm workers in Stuttgart and Baden directed that farm workers were to be quartered in stables, and the employer was urged that "no remorse should restrict such action." (T-47.) "Fundamentally", this extraordinary document proclaims, "farm workers of Polish nationality no longer have the right to complain, and thus no complaints may be accepted any more by any official agency." (T-46.)

To deprive a human being of the right to complain is in effect to classify him lower than an animal because even a beast of burden is privileged to announce his objections to harsh and cruel treatment. Nor were the Polish workers permitted the consolation and comfort in adversity which religion affords. "The visiting of churches, regardless of faith, is strictly prohibited." The edict of the Ministry of Finance said further that this prohibition against attendance at churches even excluded the visiting of churches when no service was in progress. The visiting of theatres, motion picture shows, or other cultural entertainment also was prohibited. (T-46.)

"Gathering of farm workers of Polish nationality after work is prohibited, whether it is on other farms, in the stables, or in the living quarters of the Poles. The use of railroads, buses, or other public conveyances by farm workers of Polish nationality is prohibited." (T-47.)

The difference between slave labor of this type and outright slavery is a margin faint and indistinguishable. There was no

limit to the hours of work, and the employer was invested with the right, bestially inherent in the proprietorship of slave owners, to inflict corporal punishment on the worker "if instruction and good words failed". Nor was there any one to determine whether good words had failed because the "employer may not be held accountable in any such cases by an official agency." (T-47.)

Heinrich Himmler took a very active part in the slave labor program. Concerning commitment of manpower from the East, he laid down strict rules which, if violated, brought severe punishment. He decreed that—

"In severe cases, that is in such cases where the measures at the disposal of the leader of the guard do not suffice, the state police office has to act with its means. Accordingly, they will be treated, as a rule, only with strict measure, that is with transfer to a concentration camp or with special treatment." (T-53.)

We learn further on in the directive that the "special treatment" so casually referred to as if it were some slight deprivation of comfort or convenience means nothing less than hanging!

"Special treatment is hanging. Hanging should not take place in the immediate vicinity of the camp. A certain number of the manpower from the original Soviet Russian territory should attend the special treatment; at that time they are to be warned about the circumstances which led to this special treatment." (T-53.)

If workers sought to escape, search measures were to be decreed locally, and when caught the fugitive must receive special treatment. (T-54.)

Heinrich Himmler was one of the most relentless pursuers of slave labor, as, of course, he was the most notorious executant of all that was inhuman, indecent, cruel, and vulgar in the entire Nazi program. Himmler does not defy description, he invites it. He stands out in the whole hideous camp of Hitler barbarians as the most savage of them all. A fiend in human shape, a monster in the clothing of man; there is no wild beast, bound only by jungle code, which, in point of honor, was not his superior; there is no slimy, maggoty larva, wriggling in the stagnancy and stench of the foulest cesspool which could be regarded his inferior. His creed was murder, his religion massacre, his belief kidnapping, his faith treachery, and his dogma oppression in every form. Only one thing mattered and that was German blood—

"What happens to a Russian, to a Czech, does not interest me in the slightest. What the nation can offer in the way of good

blood of our type, we will take, if necessary by kidnapping their children and raising them here with us. Whether nations live in prosperity or starve to death interests me only insofar as we need them as slaves for our Kultur; otherwise, it is of no interest to me. Whether 10,000 Russian females fall down from exhaustion while digging an antitank ditch interests me only insofar as the antitank ditch for Germany is finished * * *. When somebody comes to me and says, 'I cannot dig the antitank ditch with women and children, it is inhuman, for it would kill them,' then I have to say, 'You are a murderer of your own blood because if the antitank ditch is not dug, German soldiers will die, and they are sons of German mothers. They are our own blood.' That is what I want to instill into this SS and what I believe I have instilled into them as one of the most sacred laws of the future. Our concern, our duty, is our people and our blood. It is for them that we must provide and plan, work and fight, nothing else. We can be indifferent to everything else." (T-145.)

When hundreds of thousands of Russian prisoners of war died from exhaustion and hunger, his regret was not that they died, but that it was deplorable "by reason of the loss of labor." (T-144.)

The defense in this case denied that foreign workers and prisoners of war were maltreated, and produced some evidence to dispute the prosecution's contentions in this regard, we quote from the affidavit of one Albin Schirmer, a resident of Nuernberg—

"From the year 1929 onwards, I was employed by the Hercules Works, Ltd. at Nuernberg (Nuernberger Herkuleswerke G.m.b.H.), and worked there in the capacity of foreman throughout the war. The necessary workers were requested by the firm from the Labor Office. The Labor Office allocated French prisoners of war, free French, and Czech workers to the firm. The free foreign workers, who also cooperated in executing the commissions of the Luftwaffe, were treated in every respect in exactly the same way as the German workers. Some lived in furnished rooms. Some lived in a camp as it was cheaper there. Working hours, wages, ration cards, and the supplementary ration cards for workers, whose hours were long, were the same as for any German. Equally, freedom of movement during leisure hours, permission to attend theaters, churches, and cinemas, the protection of the Labor Front and of strength-through-joy, permission to visit public houses and German families were available to free foreign workers as well as to German workers. Intercourse with German girls was also

permitted to free foreign workers. This, however, did not apply to prisoners of war. The sanitary installations of the firm were good, and were available for the use of foreign workers, as well as of the German workers. The prisoners of war had fixed times for taking showers whereas the free foreign workers had their showers at the same time as the Germans. The free French workers were allowed free postal communication with France, and they also went there on leave. I know of only two cases in which free French workers did not return from their leave in France.

Many French prisoners of war volunteered as free workers, in order to be eligible for the resultant advantages. Even the prisoners of war had beer sent to them every day.

During air raids, the free foreign workers played their part with devotion, a thing which they would certainly not have done if they had not considered that they were well-treated.

After the arrival of the American troops most of the French workers said good-by to me in a friendly fashion, shaking hands with me, and wishing me luck. The female workers from the Ukraine too liked it here according to their statements."

Why should one doubt that in the vast German workshop which employed a score of millions, here and there some foreign workers were not abused but in the long run fared well? It would need to be someone wearing spectacles of pitch and groping in a Cimmerian night of prejudice and pique to assert that the German people are incapable of hospitality and generosity. The very fact that there were concentration camps in the land attests to the fact that not everybody accepted Hitler's and Himmler's crackpot master race ideology. However, even accepting Albin Schirmer's affidavit at face value, it is but one little flower in a jungle of evidence establishing that only a very few foreign workers were so fortunate as to be showered with the care and comforts and allowed to revel and luxuriate in the liberties vouchsafed those who were so lucky as to be employed in the Hercules Works, Limited, at Nuernberg.

As against this idyllic picture of happiness in a powder plant or strength-through-joy in Nuernberg, there is recalled the image of the last witness at this trial. He also was a German, Joseph Krysiak, and he too worked in a war factory. In December 1940, he remarked in a conversation to some friends that if America entered the European conflict, Germany could not win. The ubiquitous Gestapo learned of his observation and he was committed to a concentration camp, from which he went daily to work at the Me[ssersmitt] 109 plant at Gusen I. His living conditions

were a trifle less felicitous than those described by Schirmer. Krysiak worked twelve hours a day, he had coffee for breakfast, watery soup for lunch, and at night seven men shared a loaf of bread. If he did not reach the quota of work assigned him for the day, he was beaten. Later he was sent to another factory, and of working conditions there he said—

“We were working at Saint George, Gusen II, for twelve hours. Also, the transport to and from work and back to this camp occupied two to three hours as well, so that these people altogether had only four to five hours sleep under the worst imaginable conditions. Four people had to sleep in one bed.

“Q. Did you work seven days a week?

“A. Yes, and the day and night shift, and Sundays, too.”
(T-2366.)

When asked what effect these conditions had on the health of the workers, he replied—

“The most dreadful effect, the majority died in Mauthausen and Gusen II. It was a rule no one was released, but transports which were filled were where detainees would die.”

And as to his own particular condition, he stated—

“All I can say now is that I suffer from TB and I am medically being treated, and this is what those five years did to me.

“Q. What was your condition before going to the concentration camp?

“A. I was active in sports, and I was a long distance runner. I can say my lungs were not blemished at all.”

The shattering of this man's health is perhaps only a small part of the disaster which has befallen him. From the witness stand he gave the impression of one who had been spiritually crushed by his five years' ordeal. His voice faltered, his shoulders drooped, his eyes looked out into distance. He was alive, but something within him had perished. Perhaps he reflected on the tragedy that this awful thing which had happened to him had been inflicted by his own countrymen, not for opposing his country but for speaking a truth which, if listened to, could have averted not only his own ruin but the misery of millions of his brethren.

II. PRISONERS OF WAR

Article 31 of the Geneva Convention provides—

“Work done by prisoners of war shall have no direct connection with the operations of the war. In particular it is forbidden

to employ prisoners in the manufacture or transport of arms or munitions of any kind, or on the transport of material destined for the combatant units."

The Hague Convention of 1907, Article 6 provides—

"The State may utilize the labor of prisoners of war according to their rank and aptitude, officers excepted. The tasks shall not be excessive and shall have no connection with the operations of the war." (T-155.)

These prohibitions on the use of prisoners of war were flagrantly violated by the Germans in World War II. On 7 November 1941, Hermann Goering, speaking at the meeting in the Reich Ministry of Air, already referred to, declared that "it would be ideal if entire factories could be manned by Russian prisoners of war." (T-52). Then, insofar as feeding these prisoners was concerned the notes of the speech report: "Food is a matter of the Four Year Plan. Supply their own food (cats, horses, etc.)." (T-52).

On 20 April 1942, Fritz Sauckel, Plenipotentiary General for Labor Mobilization, proclaimed that—

"All prisoners of war, from the territories of the West as well as of the East, actually in Germany, must be completely incorporated into the German armament and nutrition industries." (T-58.)

On 26 August 1941, the Reich Labor Ministry directed the presidents of the Regional Labor Offices as follows:

"Upon personal order of the Reich Marshal, 100,000 men are to be taken from among the French prisoners of war not yet employed in armament industry, and are to be assigned to the armament industry (airplane industry). Gaps in manpower supply resulting therefrom will be filled by Soviet prisoners of war. The transfer of the above-named French prisoners of war can be utilized only in quite large concentrated groups under the well-known tougher employment conditions." (T-49-50.)

In a discussion with Sauckel, the defendant, and others on the subject of manpower available for the armament industry, Goering stated on 28 October 1943, that out of 2,200,000 in armament production, 770,000 were prisoners of war. (T-2093.)

On 14 April 1943, Sauckel reported to Hitler that "1,622,829 prisoners of war are employed in the German economy." (T-90.)

Noting that the utilization of prisoners of war in the war pro-

gram was a very profitable enterprise for the Reich, Goering regretted that any had ever been released. However, it was a mistake easily rectified.

"I should like to see that the prisoners of war who have been released, Norwegians and so forth, be taken again. Insofar as officers are concerned, this has been done to a certain extent. It was the greatest nonsense ever committed by us and for which nobody thanks us. We have made prisoners of entire armies and we let them go again. We do not get anything from Norway." (T-2096.)

At a Jaegerstab meeting on 19 June 1944, it developed that 300 American prisoners of war were assigned to work at the Dornier airplane factory at Oberpfaffenhofen, but with good Yankee obstinacy, knowing their rights, they refused to work. Lange, of the Speer Ministry, complaining about this said—

"They simply sat down, drank coffee, and ate corned beef, and could not be persuaded to work in spite of threats of shooting. Now, the question has been asked if we should not start a shooting action." (T-2102.)

And the only reason they were not shot is that the Fuehrer feared reprisals.

III. PARTICIPATION OF MILCH IN THE SLAVE LABOR PROGRAM

It was not contended by the prosecution at the trial that the defendant was aware, nor would it have been physically possible for him to have had knowledge, of all the excesses, inhumanities, and illegalities encompassed in the far-flung slave labor program which spread its cruelties into practically every part of Europe. However, its very bigness and the great production power which it generated in every department of the German war plant negates the defendant's position that he was utterly ignorant of its existence. This opinion has gone to some length in pointing out the numbers involved in the compulsory work program, and the heinousness of some of its operations, and has quoted from official decrees promulgated in its unfoldment, not only for the purpose of demonstrating the basis for condemning the whole illegal enterprise, but also for the purpose of laying the foundation for consideration of Milch's responsibility in this phase of German war guilt.

On 23 May 1939, Hitler outlined his plans for war to his fourteen most trusted and important military chieftains. Milch attended that then secret, and now notorious, conference. Hitler

there said, "The population of non-German areas will perform no military service and will be available as source of labor." (T-37.) This statement is taken from the memorandum made by adjutant Lieutenant Colonel Schmundt, who was present and preserved a drastically condensed record of the speech for the Reich files. The accuracy of the Schmundt record was attacked in the IMT trial and came under fire here. The defendant goes so far as to conjecture that the Schmundt statement was prepared months, perhaps even a year, after Hitler's speech, and was intended to demonstrate Hitler's uncanny and possibly supernatural powers of prophecy by the undeniably sure method of writing up the prophecy subsequent to the happening of the event predicted. The memorandum obviously is not definitely precise because it consists of only ten pages whereas the speech lasted four and one-half hours. As the memorandum manifestly cannot be complete, neither can human recollection (unaided by notes) be infallible. Milch, who made no notes at all, testified that labor was not mentioned in the speech, but Admiral Schniewind, also present, and who testified in court, stated that he did not exclude the possibility that labor was discussed. (T-1326.)

In any event, whether Hitler did or did not mention labor in his utterances of that day is not so important as it is that Milch was present when Hitler made crystal clear his intentions to attack Poland, and, if it became necessary or expedient, to fight other countries as well, with the inevitable subjugation of the conquered peoples. Slave labor was an inescapable concomitant of the type of total war Hitler intended to wage, and the character of which Milch could not fail to appreciate.

As a field marshal in the German Reich, Milch could not ignore the existence of Sauckel's proclamation on 20 April 1942 that "the raw materials as well as the fertility of the conquered territories and their human labor power are to be used completely and conscientiously to the profit of Germany and her allies." (T-57.)

But in the evaluation of Milch's criminal responsibility for Germany's use of slave labor something more is needed in a court of law than presumptions of his assumed general knowledge of what was taking place. It must be established that he, himself, participated in the slave labor enterprises, or knowing that such illegal practices were being committed, he, having the power to do so, made no effort to curb or halt them. The prosecution contends that the defendant, as a member of the Central Planning Board and of the Jaegerstab, and as Generalluftzeugmeister (Aircraft Master General), was thoroughly cognizant of Sauckel's program and that he, Milch, actively participated in slave labor practices.

(a) Central Planning Board

The Central Planning Board was made up of three members, Speer, Milch, and Koerner, each having equal authority, although, as it developed, Speer and Milch dominated the proceedings. The function of the Central Planning Board in the main was the distribution and allocation of raw materials necessary for the entire conduct of the German war economy, the planning of intended construction or enlargement, and the systematization of transportation industry independent of the shortage of raw materials. During the war this Board had 60 meetings and much time was given to consideration of the manpower problem confronting the various departments in the huge German war workshop. Sauckel often appeared before the Central Planning Board to report on the foreign labor situation. Various other officials came before the Board to express their needs in connection with foreign workers. Milch often presided at these meetings. He was absent on several occasions but all quotations from the minutes of the Central Planning Board meetings, cited in this opinion, are from meetings where he was present, and he is therefore chargeable with knowledge of their contents.

Wehrmacht representatives were often in attendance at the Central Planning Board meetings, and on 25 July 1944, Field Marshal von Kluge, Commander in Chief West, issued an order on labor recruitment—

“As the only limitation, the Fuehrer has ordered that no forcible means shall be employed against the population in the actual combat area as long as it shows itself prepared to assist the German Armed Forces. However, recruiting of volunteers from among refugees from the combat zone is to be carried out vigorously. Moreover, every means is justified to seize as much labor as possible, apart from the powers granted to the armed forces.” (T-271.)

It will be noted that the Fuehrer orders that forcible means shall not be used if the population assists. This is comparable to saying that the armed robber is thoroughly peaceful in his intentions because he will not shoot if the victim surrenders his valuables voluntarily.

The proof in this case that foreign workers were brought into Germany against their will generally does not come from them, but almost exclusively from their abductors. At one of the meetings of the Central Planning Board, Mr. Timm, representing the Plenipotentiary General for Labor, reports that they are encountering resistance to recruitment—

"In all countries we have to change over more or less to registering the men by age groups and to conscripting them in age groups. They do appear for registering as such, but as soon as transport is available, they do not come back so that the dispatch of the men has become more or less a question for the police. Especially in Poland the situation at the moment is extraordinarily serious. It is well known that vehement battles occurred just because of these actions." (*T-197-198.*)

The word "recruitment" will be used in this opinion not in its literal sense of voluntary enlistment, but in the broad sense of both voluntary and involuntary gathering up of workers.

It is the contention of the defense that Milch had nothing to do with the actual recruitment. It is, of course, true that he did not go into France, Italy, Hungary, Russia, and other countries, to physically rope the workers and drag them into Germany, but is the guilt any less if one sits back in his office and signs the order which casts the uncoiling rope for the far-reaching lasso?

Goering, in an interrogation conducted 6 September 1946, stated that after the death of Udet it was Milch, as Chief of Supply for the air forces, who put forward the needs of the Luftwaffe for workers. The requests were forwarded to Speer, and Speer would ask Sauckel for the workers for the entire armament branch. Sauckel, on 24 September 1946, made a very important declaration in an affidavit on the part Milch played in the matter of obtaining workers—

"Milch produced the figures for aviation. The same was done by Speer in his sphere of activity. Speer and Milch, however, also exerted influence on the allocation of workers. How far this came within their capacity as members of the Central Planning Board I cannot say; in any case they did this in their ministerial capacity." (*T-281.*)

Thus, if Milch knew how workers were actually being recruited, how they were being transported, and to what they were being transported, he cannot claim exoneration in the assertion that he did not take them in hand personally. And, if this knowledge is established, then he, when he asked for workers, was, in effect, consigning foreign workers to the suffering and torture of which he had cognizance. Behind each requisition for foreign labor there shone the inevitable backdrop of the lurid scenes of labor camps with their "special treatment," disease, vermin, starvation, whipping, illness, and death.

On 8 April 1943, Milch wrote Sauckel and Goering, announcing that in certain sections he had proclaimed an 84-hour week in

the air force industry. (T-196.) The defendant has explained that this applied only to those engaged in guard work. Witness Krysiak testified that he worked 84 hours a week.

At the 1 March 1944 meeting of the Central Planning Board, Sauckel particularly addressed himself to Milch who was presiding, and said—

“Thereupon I even proceeded to employ and train a whole batch of French male and female agents who for good pay, just as was done in olden times for ‘shanghaiing’, went hunting men and made them drunk by using liquor as well as words, in order to dispatch them to Germany.” (T-228.)

As evidence that he was encountering difficulty in obtaining foreign workers, Sauckel pointed out that several dozen of his very able labor executive officers were shot. (T-228.) In France he wrung from Laval the concession “that the death penalty be threatened for officials who tried to sabotage the labor supply.” And then he adds that “if the Frenchmen despite all their promises do not act, then we Germans must make an example of one case, and by reason of this law, if necessary put Prefect or Burgomaster against the wall.” (T-232.)

It is a long speech which Sauckel makes, and then Milch replies, analyzing in his turn the foreign labor question. He complains bitterly that more men have not been called up from France—

“Four whole age groups have grown up in France; men between 18 and 23 years of age, who are therefore at that age when young people moved by patriotism or seduced by other people are ready to do anything which satisfies their personal hatred against us—and of course they hate us. These men ought to have been called up in age groups and dispatched to Germany; for they present the greatest danger which threatens us in case of invasion.” (T-236.)

“If one had shown the mailed fist and a clear executive intention, a churchyard peace would reign in the rear of the front at the moment the uproar starts. This I have emphasized so frequently, but still nothing is happening, I am afraid.” (T-237.)

When Sauckel complains about the trouble he is having in getting workers from Italy, Milch recommends—

“We could take under German administration the entire food supply for the Italians and tell them, only he gets any food who either works in a protected factory or goes to Germany.” (T-240-241.)

When on another occasion one Kehrl declared that it would be difficult to control the food situation in France because food was delivered by parcel post, Milch made the extraordinary pronouncement, "I personally as military commander would confiscate all goods sent by parcel post." (T-295.)

The Tribunal has not been shown any statement wherein the defendant advocated that foreign workers be induced to come to Germany by offering them good wages, good working conditions, pensions, security, and the usual attractions held out to prospective employees. When he speaks on the importation of foreign workers it is invariably in an aggressive and domineering manner. At the 54th meeting of the Central Planning Board, held on 1 March 1944, he explained that force had to be exercised because there was nothing to attract the workers to Germany since they believed that Germany would soon be defeated, and furthermore they were attached to their families and their own countries. A very cogent observation indeed.

Speaking on the French situation, he said—

"Even if Bichelonne and Laval have the best intentions there will be resistance from the mayors, the gendarmes, and the prefects, just because these people are afraid that firstly, they will be called to account afterwards for this affair, and secondly, because of their national point of view, which makes them say, 'We must not work for the enemy of our country.' Therefore I would like to have an authority in our administration which would force these people to do it, because then the French could say, 'If you force us, we will do it, but voluntarily we will not do it.' The same applies to Italy." (T-292-293.)

Once the transportation of workers got under way it was not always certain that they would all arrive. Aside from the unsanitary conditions under which they travelled, frequently without food and in the wintertime without heat, many in desperation escaped. To offset these defections en route, Milch recommended—

"If a transport has left a town and has not arrived, 500 to 600 persons from this place must be arrested and sent to Germany as prisoners of war." (T-294.)

The defense has asserted many times that the foreign workers were not all treated as badly as the prosecution's evidence might indicate. It is unquestionably true that not all foreign workers were starved and tortured, because if this were so they could not

have worked at all, and the German war machine would have ground to a stop long before the spring of 1945. Thus, there is no reason to disbelieve the statement made at one of the Central Planning Board meetings—

“The performance of the Soviet Russians so employed is to be raised by a premium system. For this purpose, the ban on pay restrictions is to be lifted and the manager be allowed to distribute among the workmen, according to his duty and discretion, RM 1 per head per day as premium for particular services rendered. Furthermore, care will be taken, that workmen can exchange these premiums, which will be paid out in camp money for goods. It is intended to put at their disposal various provisions—beer, tobacco, cigarettes and cigars, small items for daily use, etc.” (T-219.)

If the defendant has much to explain in this case it is principally because of declarations made by himself. On 16 February 1944 at a meeting of the Central Planning Board, he announced that the armament industry employed foreign workmen to the extent of 40 percent, and that in maximum production the foreign workers prevailed to the extent of 95 percent and higher. He said further that the Germans’ best new engine was made 88 percent by Russian prisoners of war and the other 12 percent by German men and women. “Only 6 to 8 German men are working on this machine. The rest are Ukrainian women who have beaten all the records of trained workers.” And yet, despite this apparently creditable performance on the part of foreign workers, he complains bitterly—

“The list of the shirkers should be entrusted to Himmler’s trustworthy hands who will make them work all right. This is very important for educating people and has also a deterrent effect on such others who would likewise feel inclined to shirk.” (T-223.)

When Milch recommends entrusting anyone to Himmler’s “trustworthy hands”, the world well knows how bloody and homicidal those hands were.

The charges of maltreatment of foreign workers leveled against Milch could be taken almost literally from his own words—

“It is, therefore, not possible to exploit fully all the foreigners unless we compel them by piece work or we have the possibility of taking measures against foreigners who are not doing their bit. But, if the foreman lays hands on a prisoner of war or smacks him there is at once a terrible row, the man is put into

prison, etc. There are sufficient officials in Germany who think it their most important duty to stand up for human rights instead of war production. I am also for human rights. But if a Frenchman says, 'You fellows will all be hanged and the chief of the factory will be beheaded first,' and if then the chief says, 'I am going to hit him', then he is in a mess. He is not protected. I have told my engineers, 'I am going to punish you if you don't hit such a man; the more you do in this respect the more I shall praise you. I shall see to it that nothing happens to you.' This is not yet sufficiently known. I cannot talk to all factory leaders. I should like to see the man who stays my arm because I can settle accounts with everybody who stays my arm. If the little factory leader does that he is put into a concentration camp and runs the risk of losing the prisoners of war. In one case two Russian officers took off with an airplane but crashed. I ordered that these two men be hanged at once. They were hanged or shot yesterday. I left that to the SS. I expressed the wish to leave them hanged in the factory for the others to see." (T-223-224.)

On the stand Milch denied that he had anything to do with the fate of the two Russian prisoners of war mentioned above. He further claimed that his reference to this episode was made at another meeting (a GL meeting), and that possibly the two stenographers got their notes confused. The defense also introduced affidavits to the effect that Milch was in no way implicated in this happening and that if the two Russians were executed, the execution was performed by shooting and not by hanging. It is probably true that Milch did not order the hanging of these men, but did author the remarks attributed to him because they are in keeping with his many other admitted and proved statements.

Did Milch know that prisoners of war were being used in violation of international convention, and the laws and customs of war?

On 6 March 1944, Milch, Speer, General Bodenschatz, and Colonel von Below conferred with Hitler. Hitler was informed of the Reich Marshal's wishes for the further utilization of the production power of prisoners of war, by giving the direction of the Stalags to the SS. The Fuehrer considered the proposal good, and asked Colonel von Below to arrange matters accordingly. (R-124, p. 168.)

At the 42d meeting of the Central Planning Board, held on 23 June 1943, the intensive discussion on labor needs seemed to settle on the use of Russian prisoners of war as the solution to the problem. It was recommended that the Fuehrer be advised that 200,000 Russian prisoners of war, fit for the heaviest work, should

be made available from the Wehrmacht and Waffen SS through the intermediary of the Chiefs of the Army Groups (T-218.)

However, Milch's participation in the illegal use of prisoners of war is not confined to his knowledge that it was being done. At the meeting on 30 October 1942, Sauckel suggested that as soon as the army took prisoners in operational territories they should be immediately turned over to him as Plenipotentiary for Labor. Instead of objecting to this procedure as contrary to international law, Milch added—

“The correct thing to do would be to have all Stalags transferred to you by order of the Fuehrer. The Wehrmacht takes prisoners and as soon as it relinquishes them, the first delivery goes to your organization. Then everything will be in order.” (T-176.)

Nothing can be more precise and definitive in international law than that prisoners of war may not be compelled to fight against their own country. But Milch treats this matter rather lightly at one of the meetings of the Central Planning Board—

“We have made a request for an order that a certain percentage of men in the anti-aircraft artillery must be Russians. Fifty thousand will be taken altogether; 30,000 are already employed as gunners. This is an amusing thing that Russians must work the guns.” (T-192.)

On this statement the defendant has various explanations. One, that the German word which has been translated into “amusing”, should really have been rendered “mad”. Thus, it is a mad thing to make Russian prisoners work guns against their own allies. In support of this interpretation Milch argues that since he needed these prisoners in his armament program, he could not have approved their use as gunners. He then also denies that they were in fact used as gunners, and if they were, he was not responsible for the deed. But other witnesses called by the defense clearly established that the Russian prisoners were stationed at the guns, either for servicing the pieces, hauling ammunition to them, or actually firing them. It is clear that the Russian prisoners were utilized at the guns and that this type of use of prisoners of war represents an extreme violation of the laws and customs of war.

It has been argued by the defense that since Russia had denounced adherence to the Geneva Convention, Germany was not compelled to treat Russian prisoners with the limitations laid down in that convention. German Admiral Canaris on 15 September 1941, in a memorandum of counsel to the German High

Command, declared that despite Russia's attitude on the Geneva Convention her prisoners were yet entitled to immunities guaranteed under the rules and customs of war—

“The Geneva Convention for the treatment of prisoners of war is not binding in the relationship between Germany and the U.S.S.R. Therefore, only the principles of general international law on the treatment of prisoners of war apply. Since the 18th century these have gradually been established along the lines that war captivity is neither revenge nor punishment, but solely protective custody, the only purpose of which is to prevent the prisoners of war from further participation in the war. This principle was developed in accordance with the view held by all armies that it is contrary to military tradition to kill or injure helpless people * * *. The decrees for the treatment of Soviet prisoners of war enclosed are based on a fundamentally different viewpoint.” (*IMT 222.*)

Admiral Canaris' position was entirely correct and in accordance with accepted international law. In the episode of the Russian gunners adverted to by Milch, he could not help but know the physical facts and could not escape being aware that such use of prisoners of war violated international law. His responsibility here is unequivocal.

On 25 March 1944, the defendant complained that prisoners of war were not being treated with sufficient severity—

“If a decent foreman would sock one of those unruly guys because the fellow won't work, then the situation would soon change. *International law cannot be observed here.* I have asserted myself very strongly, and with the help of Saur I have represented the point of view very strongly that the prisoners, with the exception of the English and the Americans, should be taken away from the military authorities. The soldiers are not in a position, as experience has shown, to cope with these fellows who know all the answers. I shall take very strict measures here and shall put such a prisoner of war before my court martial. If he has committed sabotage or refused to work, I will have him hanged, right in his own factory. I am convinced that that will not be without effect.” (*T-249.*)

When a German field marshal, speaking to men subordinate in rank, declares that “international law cannot be observed here”, it can only mean to those under his command that in the execution of their duties, international law should go overboard and, thus being unlimited in their treatment of prisoners of war, the rights of the prisoners of war must sink also.

Defense counsel insists that Milch had, as a matter of fact, a mild and lenient disposition. Testimony was introduced to show that on several occasions when he sat on courts martial, his judgments were tempered with mercy. Note will be taken of this occasional yielding of an apparently implacable and unyielding spirit, but one must also remark the incongruity that one who, in his references to foreign workers and prisoners of war, had constant harshness on his lips, could have possessed in his make-up no harshness at all. In one of his speeches he complains because the workers collapsed, and that they receive a furlough of three or four days every eight weeks. This he calls "dirty business of the first order, and treason to the country!" (T-249.)

Then he adds—

"I further ask for support by the Luftwaffe physicians. With all the rabble that we have among the foreign workers, there is of course a lot of shirking. At the moment the Russians—that is, the Russian prisoners of war—are feigning a lot of fatigue and illness. The incidence of sickness of one and a half to two percent which we have had up to now has at least doubled and in some factories it has been increased to eight, nine, and ten percent. That is, of course, done by previous agreement. There the official physicians, who have to be very strict, find out that it is not true, and then we return the fellows to work by means of the whip. Then the whip serves as a cure." (T-250.)

Recommending the employment of so merciless an instrument as a whip can hardly be regarded as evidence of a mild disposition. Then he says—

"Let everyone consider that if he does not do his duty, we do not ask whether there is a law; we ask only whether he is the responsible one and then we will seize him no matter who he is * * *. Please go wherever you are going and knock everybody down who blocks your way! We cover up everything here. We do not ask whether he is allowed to or whether he is not allowed to. For us, there is nothing but this one task. We are fanatics in this sphere. We do not even consider letting anything at all distract us from that task. No order exists which could prevent me from fulfilling this task." (T-251.)

Then comes the outburst which is an out and out defiance of all law—

"Gentlemen, I know that not every subordinate can say, 'For me, the law no longer exists,' but he has to have someone who covers up for him, not out of cowardice. But if you act accord-

ing to the spirit of the old field service regulation, 'Abstaining from doing something hurts us more than erring in the choice of the means,' and if, moreover, you keep in touch and immediately clarify difficult points, so that something can be done, then we are willing to accept the responsibility, whether this is the law or not. I see only two possibilities for me and for Germany. Either we succeed and thereby save Germany, or we continue these slipshod methods and then get the fate that we deserve. I prefer to fall while I am doing something that is against the rules but that is right and sensible, and be called to account for it, and if you like, hanged, rather than be hanged because Papa Stalin is here in Berlin, or the Englishmen. I have no desire for that. I would rather die in a different way. But I think we can accomplish this task, too. We are in the fifth year of war. I repeat, the decision will come during the next six weeks!" (T-251-252.)

(b) Jaegerstab

We now come to a consideration of the Jaegerstab, formed on 1 March 1944, for the purpose of increasing production of fighter aircraft to meet the incessant and ever increasingly effective bomber attacks of the Americans and British which had seriously damaged the entire airplane industry in Germany. Every airplane factory with the accessory workshops had been hit at least three times. The Jaegerstab became essentially a concentration of experts drawn from various ministries. Its programs envisaged a decentralization of plane factories by transferring them in part to above-surface localities and in part to subterranean localities. Milch and Speer were joint chiefs of the Jaegerstab, and Karl Adolph [Otto] Saur functioned as Chief of Staff. SS Obergruppenfuehrer Kammler had supervision of the construction program. So far as this trial is concerned, we are interested in the work of the Jaegerstab only to the extent that it involves employment of foreign labor and prisoners of war. Did the Jaegerstab employ labor prohibited under international law, and if so, can Milch be held responsible for such illegal use?

In order to resolve this question we must review the documents submitted in evidence.

On 6-7 April 1944, Milch and Saur reported to Hitler on the achievements, up to that time, of the Jaegerstab and discussed with him the plans for further construction on a second work project. Hitler declared that he desired this project be set up in the Protectorate and, at this point, the minutes read, "If it should prove impossible there too to get hold of the necessary workers, the Fuehrer, himself, will contact the Reichsfuehrer SS and will

give an order that the required 100,000 men are to be made available by bringing in Jews from Hungary." (T-318.) Here Milch is put directly on notice that forced labor is being contemplated.

Fritz Schmelter, director of the Central Department for Employment and Distribution of Labor, and because of that a member of the Jaegerstab, declared in an affidavit on 9 December 1946, that Kammler utilized concentration camp prisoners placed at his disposal by the SS in order to carry out his share of the Jaegerstab construction program. Also, that Xaver Dorsch of the Todt Organization used foreign workers, part of whom were Hungarian Jews, to accomplish his part of the Jaegerstab construction program. Then Schmelter states, "Milch, as one of the two responsible chiefs of the Jaegerstab, personally directed, ordered or approved decisions made in the interests of Jaegerstab undertakings." (T-322.)

On 13 November 1946, Saur, Chief of Staff of the Jaegerstab, declared in an interrogation that in the decentralization program Kammler divided 30 factories into 700 individual workshops, and that the workers used in the project were concentration camp prisoners. (T-323.)

Speer, in an interrogation made shortly after his capture, declared that Hungarian Jews were used in the building program. (T-325.)

At one of the Jaegerstab meetings, presided over by Milch, Stobbe-Dethleffsen, in discussing the matter of labor needed for the Jaegerstab program, requests a few German key personnel to supervise the concentration camp inmates "with the other *subjugated people*." (T-328.)

At a Jaegerstab meeting on 6 March 1944, a Sturmbannfuehrer of the SS declared he had 5,000 prisoners in readiness for work, but needed 750 guard personnel. To this statement Milch commented, "We must distribute our German people as key personnel. That is, out of three construction companies we can probably make ten complete ones by introducing 70 percent foreigners." (T-331.)

At a meeting on 2 May 1944, Kammler, in Milch's presence declares he had 30 men hanged—

"As usual it is because the people have noticed that they are no longer treated severely enough. I had 30 people hanged as a special measure. Since they were hanged, everything has been to some extent in order again. It is the same old story, whenever people notice that they are not being treated so severely as before, they take all sorts of liberties. It is not surprising that a normal soldier, standing guard on people who were previously

always harmless, does not suspect anything of the kind. They are not, however, harmless people." (T-333-34.)

The minutes of the meeting do not indicate that Milch in any way protested Kammler's deeds and utterance, although at the trial he doubted that Kammler had actually hanged 30 people as he had stated.

Although Milch was not present at the meeting on 25 May 1944 of the Jaegerstab, he approved the minutes of that meeting which revealed a discussion among Schmelter (labor expert for Jaegerstab), Schlempp (deputy of Jaegerstab) and Lange, in charge of machinery for Jaegerstab.

Schmelter said—

"The Hungarian Jews are expected now, and they will require some kind of key personnel. Altogether I need about 250,000 construction workers for the large bunkers and for Schlett's installations." (T-334.)

To this Lange remarked—

"You can get them all in Hungary. There are still Jews running about Budapest." (T-334.)

It is to be noted that Lange uses phraseology that one would employ in speaking of dogs or other animals. There are still dogs running around Budapest. There are still Jews running about Budapest.

At the meeting on 26 May 1944, Schmelter reported that two transports of Hungarian Jews had arrived at the SS in Auschwitz, but that they consisted primarily of children, women, and old men. Kammler then declared that he had conscripted his own men by taking 50,000 people into protective custody.

Schlempp, in outlining Dorsch's needs for labor, states—

"Dorsch said yesterday that he wanted to bring 100,000 Jews from Hungary, 500,000 Italians,* 10,000 men from bomb damage repair, also 1,000 from Waldbrohl; then he wanted to get something from Greiser's zone by negotiation, then 4,000 Italian officers, 10,000 men from south Russia, and 20,000 from north Russia. That would be 220,000 altogether." (T-335-36.)

As early as 20 March 1944, we find Chief of Staff Saur asking Milch to inform Sauckel that the group mobilization in Hungary

* Original German document read 50,000 but, due to clerical error, translation of document which was submitted in Court read 500,000. Incorrectness is obvious by total figure of 220,000 in last sentence.

must be placed primarily at the disposal of the Jaegerstab. "Large, heavy labor companies must be formed. The people have to be treated like the prisoners. Otherwise it won't work." (T-342.)

In the face of all these uncontradicted documents and stenographic records of meetings, it would be fatuous for anyone to say that Milch was unaware that forced labor and prisoners of war were being used in the Jaegerstab construction program.

However, there is more than this passive evidence. Milch, himself, contributes the positive evidence of his full knowledge of and unrestrained participation in the Jaegerstab slave labor activities.

On 25 April 1944, he said—

"It will only work if we put these workers into barracks. We cannot exactly treat them as prisoners. It must appear otherwise, but it must be so in practice. * * * I am personally convinced after talking to the Fuehrer that he will agree as soon as it is made reasonable. The people should not be able to mingle with the population and to conspire. Nor should they be allowed to run around free, so that they can cross the frontier every day. Both practices must be stopped. * * * I am of the opinion that that must be done at once. It's all the same to me if individual people do object. Protest does not interest me at all, whether from the Chief of Prisoners of War Affairs or from our side. Kleber, would you be so good as to take care of this?"

KLEBER: "As far as prisoners of war are concerned I can take care of it, but not where it concerns the air force. That must be handled separately."

MILCH: "Naturally. This must be handled by us. There was, in fact, another proposal but we do not want it. Otherwise someone else will come complaining."

KLEBER: "I should like to transfer the prisoners further off to Brunswick."

MILCH: "I think it is an excellent idea for the prisoners to go there if Brunswick continues to be attacked." (T-356-57.)

Article 9 of the Geneva Convention of 1929 provides—

"No prisoner of war may be sent to an area where he would be exposed to the fire of the fighting zone."

At the 4 May 1944 meeting, Saur reported that the Jaegerstab itself, independent of Sauckel, had organized an expedition for the procuring of workers in Italy. On 5 May 1944, Schmelter reported that the Jaegerstab transport from Italy had been delayed because of the lack of guards, whereupon the defendant said—

"Is there someone at the escort detachment headquarters in Italy responsible for seeing that people do not get out and run away during the journey? That is what the escorting personnel is there for. Someone of standing? Dr. Wendt is responsible for the whole undertaking. I am of the opinion that, if anyone jumps out, he should be shot; otherwise a thousand will get on and only twenty will arrive there. The gendarmerie and all military posts must look out for those who abscond on the journey. They will be arrested at once and will appear before a court martial." (T-349-50.)

At a conference held on 22 February 1944, one Rautenbach says—

"That refers to Wernigerode. In Solingen we had the best results with Frenchmen and the worst with Italians, meaning the Italian workers and not the prisoners of war. For that reason we do not employ any Italians here in Wernigerode. They are only 50 to 60 percent efficient." (T-2180.)

And the defendant then remarks—

"Could not the following be done; give the Italians in principle only half of their food rations, letting them earn the other half when they do their work well?" (T-2181.)

It is obvious that, as one of the chiefs of the Jaegerstab, the defendant actively, willingly, and knowingly countenanced, ordered, and participated in slave labor practices and the use of prisoners of war in activities prohibited by international law. Aside from his other statements, the one made on 13 June 1944, where he advocates the exportation from France of machinery and men would, in itself, be enough to convict him of such participation.

"We must write off these areas in France completely, and above all the factories which are situated further into the country towards the south and west. For when the invasion begins, the guarding neither of a stretch of land, nor of a line will be possible, nor will anything function because of sabotage * * *. No Frenchman will work when the invasion begins. I am of the opinion that the French should be brought over again by force, as prisoners."

SAUR: "I should prefer to do it sooner."

LANGE: "We have machines there too, in particular the presses."

MILCH: "Everything must come out; machines and men." (T-358.)

The Jaegerstab functioned from 1 March 1944 to 1 August 1944 and then it expanded into the Ruestungsstab. When the Jaegerstab concluded its efforts a report was made to the Fuehrer, which declared that Jaegerstab had, in spite of air attacks, doubled its aircraft production. (T-360.)

(c) Generalluftzeugmeister

In his capacity as Generalluftzeugmeister, Milch held periodical meetings and conferences in connection with the Luftwaffe armament production. Labor, its procurement, disposition, and treatment, was inevitably a subject for frequent discussion, and in these discussions Milch portrayed himself an intransigent, implacable taskmaster, uninhibited neither by law nor custom, and unrestrained by moderation or regard for the helpless vanquished.

At one of these meetings on 5 May 1942, presided over by the defendant, one Fridag reported—

“The French become worse and worse. I threw out 80 of them who will be sent to concentration camps in Russia. They refused to work. The French say at 4 o'clock: ‘I won't work another hour’, and you cannot make them work another hour. This happened four weeks ago all of a sudden when the first bombing attack on Paris took place, while before that the French were the best people.” (T-2106.)

The fact that the bombardment of the beloved Paris of these Frenchmen would naturally emotionally disturb them was not weighed or considered by the defendant in spite of the fact that Frydag had reported that prior to the bombardment they had been excellent workers. Implacable and unyielding as some story book pagan god, the defendant turns to von Gablenz, Chief of the Planning Office, and declares—

“I demand if the people refuse to work they immediately be placed against the wall and shot before all the other workers.” (T-2107.)

Further—

“I ask you to get in touch with the Reich Fuehrer SS [Himmler] and to ask him to discuss the matter with the Fuehrer. Now is the right time; unless we do something effective now, the others will become bothersome. I ask that their being sent to concentration camps be taken into consideration too. I will tell you afterwards how you should act in such a matter.” (T-2107.)

Later, on 7 July 1942, he indicated a willingness to try more peaceable methods, but if they did not succeed, then—

“I intend to fill the new Heinkel Plant in the East entirely with Frenchmen brought down there by force. If they don't work in France, they may work as prisoners in Poland. After all, we have to remember that it is we and not the French who have won the war.” (T-2116.)

On 28 July 1942 we find him again complaining about French production—

“At the present time we receive six to nine planes from the French. I could well imagine that they would get out 45 for themselves. I shall close up the shop with a single stroke and have the workers and the machines come to Germany. If it does not work on a voluntary basis, then we do it by compulsory contracts. Perhaps I shall first give them a week to think it over. It is a fact that, on the whole, these people work in silent opposition. One cannot blame them for it either, it is true, but they should not have started the war.” (T-2117.)

In this outburst we discover two strange utterances. One, “compulsory contracts”, and the other the statement that the French started the war. Since the word “contract” means a willing agreement between two or more people, a “compulsory contract” is, of course, meaningless because one cannot be forced into a contract. If there is any compulsion, then the operation becomes a matter of outright coercion. With regard to the French starting the war, the defendant had the grace to state during the trial that he now knows that France did not initiate hostilities, although he believed to the contrary at the time.

The defendant has declared repeatedly that he had no connection with, or even knowledge of, concentration camps. He only visited one of them (Dachau) in 1935. At the end of the war he was aware of the existence of but two concentration camps, although 200 were flourishing in all their ghastliness at the time. Yet despite this blissful ignorance of concentration camps the phrase rippled easily from his tongue. At the same meeting above-mentioned he stated that if two certain individuals, Schneider and Bergen, “make difficulties” he would put them into a concentration camp for the duration of the war (T-2118.)

When one Petersen, on 30 November 1942, spoke of obtaining 500 men from a concentration camp, Milch said, “For this purpose we should come to an agreement with Himmler.” (T-2148.)

On 27 April 1943, when one Stahms indicated that concentration camp inmates are almost 3,000 strong, Milch declares that

against a withdrawal of 3,000 foreign workers from the Luftwaffe industry, he attached importance to the assignment of these 3,000 concentration camp inmates to the Luftwaffe. (NOKW-413.)

At the GL meeting of 4 August 1942, someone reported that the French might strike in the event of a British attack. This provoked Milch into the thunderous outburst—

“In such a case I would ask to be appointed military commander myself. I would band the workers together and have fifty percent of them shot; I would then publish this fact and compel the other fifty percent to work by beating if necessary. If they don't work, then they, too, will be shot. I would get the necessary replacement somehow. But I hope the military commander will do his duty. I'm not worried about it. The word 'strike' must never be used. For us there is only 'living or dying' but not 'striking'. That goes for the educated man as well as for the worker, for the German as well as for the foreigner. The word 'strike' means death for the man who uses it.” (T-2121-2122.)

On this quotation in court the following colloquy occurred between a member of the Tribunal and the witness [Milch]:

JUDGE MUSMANN: Curiosity consumes me as to what would happen if an officer inferior in rank to yourself took you at your word and actually executed a number of these workers or prisoners of war. Would that officer then be punished?

THE WITNESS: No one was there who would have been in a position to do so. Apart from that, all those who were under my orders knew me and my way of handling things. They knew exactly that I didn't mean it the way I said it, and apart from that they always laughed about my remarks when I used such strong words.

JUDGE MUSMANN: In other words, the comment of a field marshal in a matter of this seriousness was really of no value?

THE WITNESS: Because the people knew that I got excited very easily about certain things, and these incidents here have been selected and submitted of course. From every one of these meetings, which took place twice a month, there was a report—about this thick—and perhaps, at some time or another, sometimes once, sometimes twice, due to the many reports which I received, there was a certain outburst, and then I would lose my temper as we soldiers used to. However, I didn't intend to do anything about it and I spoke to those under my orders once in a while. They pointed out to me that I used such strong words, and they knew exactly

that this was not meant seriously. They knew exactly that no such order had been given and that I myself would never cause anybody to be punished, not even when it would have been justified, for the very simple reason that I did not have the power to give punishments. (T-2124-2125.)

Then Judge Phillips inquired—

JUDGE PHILLIPS: Well, now, whether you meant it or not, you would say these things, and by so doing you counselled and advised others under you at a meeting which you presided over to do such things. Whether you meant it or not, you did that, didn't you?

THE WITNESS: No. I never gave the order by using these words, because my people spoke with me, and after all they knew from my words that I never meant it earnestly.

JUDGE PHILLIPS: Didn't you say, 'I would band the workers together and have fifty percent of them shot? I would then publish this fact and compel the other fifty percent to work by beating if necessary.' Did you say that or not?

THE WITNESS: I do not remember to have said that. However, three days ago I believe I said that I never knew afterwards when I had such outbursts of rage because I had that rush of blood to my skull due to that injury I had, and I couldn't remember what I said at that particular moment. I just burst out in rage. (T-2125-2126.)

The defendant has constantly denied that he was a moving factor in the foreign workers program. But at the GL meeting on 18 August 1942, we find him asking for a complete report on the labor question, how it has developed, what nationalities are involved, how great is the fluctuation—

"What real requests we now have to make in the different sectors in order to cover the needs for specialists and for skilled and unskilled labor, how many of them are foreigners, etc. What happens to those who leave the industry? Are they compelled to work elsewhere? Are they, as I proposed, under control in the camps supervised by the SS and considered as being in mild concentration camps or are these gentlemen allowed to remain outside and do as they please?" (T-2127.)

When questioned as to the significance of "mild" concentration camps, he explained that these were camps to which people were sent for a short time for "education".

Complaining about "antisocial elements" who "moved from one factory to another," Milch rejected the suggestion that the armed

forces should take care of these people in camps. This could not be done because "they have not been condemned and in no way violated the existing laws."

"That is why Himmler should get these people into his clutches because he can treat them *outside the law*." (T-2134.)

At the GL meeting on 19 October 1943, the defendant spoke on the subject of a possible foreign workers' uprising. He said that he had discussed this eventuality with Himmler, and that he, Milch, had already given orders to the Chief AW* and to the training stations to get military training in this field.

"If for instance in the locality X, an uprising is started, then a sergeant with a few men, or else a lieutenant with 30 men is to turn up in the plant, and first of all shoot into the crowd with a machine gun. What he should do after is to shoot down as many people as possible in cases of revolt. I have given orders to that effect even if our foreign workers are involved. But first of all he must succeed in getting them all laid out flat on the ground. And then every tenth man is to be singled out and shot, while the others are lined up and see it. If our machines are being wrecked, etc., then such measures have to be applied. I said to Himmler: 'I'll go along with you in your efforts.'" (T-2153.)

Milch denied at the trial that he had talked to Himmler about this matter and endeavored to argue incorrectness in the minutes. But the weakness of his attempted exculpation here lies in the fact that he could well have argued the necessity for drastic action in such an emergency, without excesses of course. In fact, he had explained, "If our planes are destroyed in the workshops, an energetic measure should be taken." But in the desire to extricate himself completely from the situation, he challenges the record, he refutes the Himmler conference, and then adds the usual explanation that he was excited at the time.

At a GL conference on 2 March 1943, the defendant was commenting on the fact that foreign workers were becoming hostile.

"On principle I have to be informed of every case of swinishness. I do not understand at all why Germany should put up with it when Poles and Frenchmen explain to the people—today, indeed, you are still sitting in this work; but later we shall be the owners; and if you treat us properly we shall see to it then that you are shot dead immediately and not tortured first. In

* Chef Ausbildungswesen (Chief of Training).

all these matters energetic interference must be made. I am of the opinion that there should be only two types of punishment in such cases; firstly, concentration camps for foreigners, and secondly, capital punishment. If a certain number of such hostile elements are removed and the others are informed, they will then work better. Their love for us certainly won't become any greater; but neither will their hate, for it is already strong enough. In this respect, too, energetic interference must be made and in no case must the works put up with it. The best method is to give one blow with a sledge hammer to the person concerned; and I shall treat with distinction every man who does something like that whenever he hears such stupid nonsense. We are living in total war; and the workers must be told that they don't have to put up with anything." (*T-2169.*)

When the above was read to the defendant in court, he stated that he did not recall the utterance and explained, "that once again it is my well-known rage. I simply let go." However, upon further cross-examination he seemed to recall what it was all about and said, "Yes, and I was enraged here through the report which had been submitted to me as to the fact that our people were being threatened with death. That enraged me considerably; and I blew up." This is an interesting observation. This man, from whose lips death threats fell like acorns from an oak, asks that all his fulminations be ignored. Although he sat on the victors' bench at the time, yet because a worker who had been dragged from his home hundreds, or perhaps thousands, of miles away, blurted from the depth of his misery, that if he got the opportunity he would kill his captor, the captor felt morally justified in recommending the use of a sledge hammer on the head of the defenseless captive. The sledge hammer blow was to be delivered not for a deed committed, but merely for the use of words. To fortify this point, defense introduced an affidavit which declared that the servant girl in the Milch household repeated certain statements as to what her people (she was a Ukrainian) would do in the event they became victorious. On this subject they were so sensitive that even the gossip and chatter of a maid servant threw fear into their hearts, but it is solemnly averred in court that the imprecations of a field marshal were always ignored.

At the same meeting above indicated the defendant said—

"But in the abstract, I see no difficulties in the way of getting 100,000 or 200,000 French workers to Germany, nor do I see any difficulties in the way of keeping them in order. If a case of sabotage occurs in one area, every tenth man in the area

will be shot. Then such acts of sabotage would cease of themselves. The western peoples are very much afraid of death, while it is quite different matter with the Russians." (T-2172.)

In explanation of this remark the defendant said that he did not recall making it. "That was still part of my madness."

On 4 November 1943, Milch conferred with Goering at the Junkers Works at Dessau. Discussing the Italian workers, the defendant said—

"We have to let certain plants go on working in Italy, such as ball bearings, steel castings, and others, and we cannot take the people from there. The same applies to the technical sphere. The people there are working for us. All depends on our policy toward the Italians. I have ordered that they can be beaten up if they do not work. I have also given permission that Italians caught sabotaging be sentenced to death. If this measure is not desired by the higher authorities, which seems to be the case, we are powerless. Then the Italians in the Reich will not be of any use to us." Further, "We could count on millions all together, if we let them starve if they do not work!" (T-2193-2194.)

The defendant denies that he ever gave the order specifically mentioned here, and since he was talking to Goering, he places himself in the position of having lied to his superior officer, something of which, considering his vehement professions of soldier's loyalty to military hierarchy, it would never be expected he could be guilty.

On the subject of French prisoners of war, the defendant said—

"Don't forget that not even 1,000,000 Frenchmen are here as PW's while we have 7 to 8 million soldiers. Therefore, the French are still in a very favorable position. But they must realize that they will be brought to Germany all together if they don't work hard enough at home." (T-2198.)

As Vichy was working hand in glove with Berlin at the time, the defendant contends that coercion was not involved since it was the French Government who had issued the orders for this movement.

Addressing himself on another occasion to the subject of French workers, the defendant stated, "There is no good will in France, and you can really not expect it from these fellows. But we will force them to work by not feeding them." Goering then said, "I can do this here much better." And Milch replied, "That will get us nowhere. We shall then have to shut down the plants in France." (NOKW-245.)

At the GL meeting of 27 May 1942, von Gablenz reported, "Yesterday, the first * has exploded in France, at the Arado plant, an explosive, a float, but no damage has been done." Milch commented, "What measures have been taken in consequence? I want to have a report on what has been done—How many people have been shot and how many hanged. If that guy cannot be found today, fifty men should be selected and if I were you I would hang three or four of them whether they are guilty or not. It is the only way!" (NOKW-407.)

IV. MEDICAL EXPERIMENTS

(a) High-Altitude Tests

On 15 May 1941, Dr. Rascher, medical officer in the Luftwaffe and member of the SS stationed at Munich, wrote Heinrich Himmler asking that Himmler furnish to him two or three professional criminals to be used as subjects in high-altitude experiments. He stated that tests had been made with monkeys, but since their reactions differed from those of human beings, he preferred to work with live men, it being understood that these individuals could, of course, die in the experiment. Himmler replied through his adjutant, Rudolf Brandt, that he would gladly make prisoners available for such high-altitude research, and authorized that the experiments be carried out by Dr. Rascher, a Dr. Kottenhoff, and Dr. G. A. Wertz, who was Chief of the Institute for Aviation Medicine in Munich.

In March 1942, with a low-pressure chamber furnished by the Luftwaffe, the experiments began at Dachau. The apparatus used for these tests was simply a wood and metal cabinet in which air pressure could be increased and decreased, the purpose of the tests being to ascertain the subject's capacity and ability to take large amounts of pure oxygen, and to observe his reaction to a gradual decrease of oxygen approaching infinity. In this manner high-altitude atmospheric pressure would be simulated, and from the results the experimenters were to be able to determine methods and means of maintaining and saving lives among aviators compelled to rise to extreme altitudes, and at times because of war hazards obliged to parachute to the earth. The subjects for these experiments were to be individuals already sentenced to death.

Stated in strictly academic fashion, one could without too much difficulty be persuaded that these experiments were not entirely irrational or inhuman. The subjects were to die anyway, and if in dying they could furnish scientific data not obtainable other-

* A word is missing here in the German original.

wise, data which would save the lives of others, the project would not seem as criminally homicidal as it might appear when stated bluntly that experimenters would kill experimentees.

Whether the project was criminal and inhumane depends upon answers to the inevitable questions:

1. Were the prisoners actually condemned to death previously?
2. If so, for what reasons were they condemned to capital punishment?
3. Were the experiments painful to the subjects?
4. What scientific benefits resulted from the experiments?

If any prisoner used in the experiments was condemned to death merely for opposing the Nazi Regime without actually having committed any physical crime, it does not answer the criminal charge to say that the subject was already doomed to die, because by using that argument the experimenter or his SS superior could easily take any concentration camp inmate and, by merely pointing a finger at him, condemn him to death. Obviously in such a case the slayer could not, after the death, plead innocence on the grounds that the victim was to die anyway. Exculpation from the charge of criminal homicide can possibly be based only upon bona fide proof that the subject had committed murder or any other legally recognized capital offense; and, not even then, unless the sentencing Tribunal with authority granted by the State in the constitution of the Court, declared that the execution would be accomplished by means of a low-pressure chamber.

It has been asserted by the defense in this case that pardons were promised the subjects of these experiments in the event they survived. But the whole record reveals but one such shadowy case. It was also stated by one of the witnesses for the defense (General Wolff of the SS) that the subjects of these experiments were men who, because of their criminal records, had been denied the honor of fighting for the Fatherland, but that by submitting to these experiments they would be allowed, if they survived, to join combat forces at the front. General Wolff furnished no names or specific instances in this connection, nor does it appear that he, at any time, was in attendance upon the experiments at Dachau.

Dr. Romberg, under indictment for these same and kindred offenses, said on 1 November 1946, that he personally witnessed the death of three of Dr. Rascher's subjects, and that he knows that other experimental subjects were killed while he was not present. He estimated that the fatalities totaled between five and ten. He was silent on the character of the victims.

Rudolf Brandt, who is currently on trial in Tribunal I, declared in an affidavit dated 30 August 1946, that Rascher wrote Himmler asking for concentration camp subjects for his high-altitude experiments. "Volunteers could not very well be expected, as the experiments could be fatal under the circumstances." (T-475.) Also "many experiments ended with the death of the experimental subject." (T-477.)

Brandt declared further that after Rascher submitted a report on his first experiments, Himmler ordered him to continue the experiments and authorized the commutation to life imprisonment of those subjects, previously condemned to death, who survived the experiments. However, Poles and Russians were excluded from this declared clemency. For Himmler, to be a Russian or a Pole or a Jew was an offense that could be expiated only with death. Both Romberg and Brandt are interested witnesses since they are defendants in another trial on similar charges. The testimony of one Anton Pacheleff, however, is not burdened with this possible defect as he is not answering to any charges. An Austrian patent lawyer, he was an inmate of Dachau, and while his testimony must still be carefully scrutinized, it does not need to be evaluated on the basis that the affiant has something to gain in exaggerating the nature, extent, and effect of the medical experiments. He declared under oath that Dr. Rascher chose the victims for his researches from the punishment company at Dachau, a group made up of political prisoners marked for extermination. "A few convicts were among the political prisoners, having been placed there merely to depress the morale of the political prisoners, and so a few convicts were killed along with the others." (T-408.)

The most complete account of this entire operation was contributed by Walter Neff, an Austrian who had been committed to Dachau because, prior to the Anschluss, he had testified in an Austrian court against certain Nazi terrorists. Only by coincidence were the experiments enacted in a ward to which he had been assigned as an untrained nurse, and thus he became an unofficial observer. He testified that from 180 to 200 concentration camp inmates were subjected to the high-altitude experiments, and of these, 10 were volunteers. Of all these subjects only one man was ever released, and that was an individual called Zopota.

It was Neff's conclusion that over a period of three months from 70 to 80 persons were killed in the high-altitude experiments. He declared further that approximately 40 of the persons killed were persons not previously condemned to death. One man, according to Neff, was deliberately killed in the low-pressure

chamber by Dr. Rascher so that he could perform an autopsy on him after his death at the atmospheric pressure of 10,000 meters altitude. During one autopsy it was discovered after the breast had been opened that the heart was still beating. "This experiment," Neff said, "caused many cases of death because many more experiments were made in order to see how long the heart of a man could beat thus autopsied." (T-419.)

In this connection, reference must be made to one of the most cruel and fiendish decrees scratched by the claw of Himmler on the horror-filled parchment of his diabolic ingenuity. On 13 April 1942 he wrote Dr. Rascher, "these experiments should above all be evaluated for the purpose of seeing whether it is not possible, through this long functioning of the heart, to bring such people back to life. Should such an experiment of bringing back to life succeed, then it is understood that the person condemned to death will be commuted to lifelong imprisonment in a concentration camp." (1971-B-PS.) Thus, if the lifeless and mutilated body of one of these tortured victims of cold-blooded homicide should be made to function again, its owner would receive from the benevolent Heinrich Himmler the assurance of the luxuries of a lifelong imprisonment in an SS concentration camp!

But this is not the end of the hilarious game of these two death-head players, as they toss human life back and forth. On 20 October 1942, Rascher queries Himmler's adjutant on this subject. He desires to know if, amongst the mythical survivors of his lethal experiments, there should be any Poles or Russians, whether they were also to receive the boon of lifelong imprisonment in a concentration camp. Incidentally, Rascher adds, the only ones he has experimented with have been Poles and Russians. And the reply comes back from Himmler's adjutant that Dr. Rascher, "please," is to be informed that "the decree of the Reichsfuehrer SS Himmler concerning pardoning (they called it pardoning!) of experimental subjects does not apply to Poles and Russians." (!!!)

The manner in which some of the victims were selected is material fit for an Edgar Allen Poe story or a horror magazine. One day after 16 Russian prisoners had been used as experiments, two Jews were scheduled to be killed. Curious as to the identity of the two scheduled for extermination, Neff watched the first victim being placed in the experimental chamber. Something in the man's features forcibly brought to his mind the image of the prison tailor. Hurrying to the tailor shop he learned that indeed it was the tailor, and that he had not been condemned to death, but that an SS-man, one Endres, had placed him among the list of those scheduled to be killed because this tailor had refused to make a civilian suit for Endres!

Neff further testified that at one time the chamber became damaged, but after being repaired more deaths occurred, and on the last day Rascher killed five persons. (T-421.)

On 16 April 1942, Rascher wrote Himmler describing an experiment which he repeated four times "with the same results."

"When Wagner, the last VP (experimental subject) had stopped breathing, I let him come back to life by increasing pressure. Since the VP was assigned for a terminal ('Terminal' meaning 'death-resulting' in this case) experiment, since a repeated experiment held no prospect for new results, and since I had not been in possession of your letter at that time, I subsequently started another experiment through which VP Wagner did not live. Also in this case the results obtained by electrocardiographic registration (Herzstromabschreibung) were extraordinary." (T-431-32.)

Here Rascher, in a macabre demonstration worthy of his record, repeated an experiment four times knowing what the result would be, and then finally killed the subject because he had been marked for extermination anyway.

(b) Were the Experiments Painful to the Subjects

The defense contends that the experiments, even though often fatal, were not accompanied with actual pain to the subjects, and therefore the experiments could not be characterized cruel or inhuman. Anton Pacheleff often stood by the apparatus during the experiments and looked through the observation window of the chamber. He testified—

"I have personally seen through the observation window of the chamber when a prisoner inside would stand a vacuum until his lungs ruptured. Some experiments gave men such pressure in their heads that they would go mad, and pull out their hair in an effort to relieve the pressure. They would tear their heads and face with their fingers and fingernails in an attempt to maim themselves in their madness. They would beat the walls with their hands and head, and scream in an effort to relieve pressure on their eardrums. These cases of extreme vacuums generally ended in the death of the subject. An extreme experiment was so certain to result in death that in many instances the chamber was used for routine execution purposes rather than an experiment." (T-409.)

One report made up by Doctors Ruff, Romberg, and Rascher graphically described the reactions of the subject as he fell from

a height of 47,000 feet. Some of the more unusual reactions are noted:

- 47,200 ft. . . . Lets the mask fall, severe altitude sickness, spasmodic (klonische) convulsions.
- 45,580 ft. . . . Opisthotonus.
- 44,950 ft. . . . Suspended in opisthotonus.
- 44,920 ft. . . . Arms stretched stiffly forward; sits up like a dog, legs spread stiffly apart.
- 43,310 ft. . . . Agonal convulsive breathing.
- 40,030 ft. . . . Dyspnea, hangs limp.
- 23,620 ft. . . . Uncoordinated movements with the extremities.
- 19,690 ft. . . . Clonic convulsions, groaning.
- 18,080 ft. . . . Yells aloud.
- 9,520 ft. . . . Still yells, convulses arms and legs, head sinks forward.
- 6,560 ft. . . . Yells spasmodically, grimaces, bites his tongue, does not respond to speech, gives the impression of someone who is completely out of his mind.
- 5 minutes . . . (after reaching ground level) Reacts for the first time to vocal stimulation.
- 11 minutes . . . Holds his head turned convulsively to the right; tries repeatedly to answer the first question concerning his birth date.
- 28 minutes . . . Sees nothing; runs against open window sash upon which the sun is shining, so that large lump is formed on his forehead; says "Excuse me, please." No expression of pain.
- 37 minutes . . . Reacts to pain stimuli.
- 75 minutes . . . Still disoriented in time; retrogressive amnesia over three days.
- 24 hours Normal condition again attained; has no recollection of the experiment itself. (T-455-56.)

(c) Results Achieved

On 11 May 1942, Rascher made his first report to Himmler on the high-altitude experiments—

"As practical result of the more than 200 experiments conducted at Dachau the following can be assumed. Flying in altitudes higher than 12 kilometers without pressure-cabin or pressure-suit is impossible even while breathing pure oxygen. If the airplane pressure machine is damaged at altitudes of 13 kilometers and higher the crew will not be able to bail out of

the damaged plane themselves since at that height the bends appear rather suddenly. It must be requested that the crew should be removed automatically from the plane, for instance, by catapulting the seats by means of compressed air. Descending with opened parachute without oxygen would cause severe injuries due to the lack of oxygen besides causing severe freezing; consciousness would not be regained until the ground was reached. Therefore, the following is to be requested: (1) A parachute with barometrically controlled opening. (2) A portable oxygen apparatus for the jump. For the following experiments Jewish professional criminals who had committed 'Rassenschande' (race pollution) were used; the question of the formation of embolism was investigated in ten cases. Some of the VP's died during a continued high-altitude experiment; for instance, after one-half hour at a height of 12 kilometers. * * * To find out whether the severe psychical and physical effects, as mentioned under No. 3, are due to the formation of embolism, the following was done: After relative recuperation from such a parachute descending test had taken place, however before regaining of consciousness, some VP's were kept under water until they died. * * * One VP was made to breathe pure oxygen for two and one-half hours before the experiment started. After six minutes at a height of 20 kilometers he died and at dissection also showed ample air embolism as was the case in all other experiments." (T-384-385.)

Dr. Romberg declared in an interrogation conducted on 29 October 1946, that he and other doctors had conducted experiments on themselves reaching altitudes of 17,000 meters (17 kilometers). Beyond that, he said, death was probable. This seems to contradict the report made by Rascher, above referred to, in which he speaks of the impossibility of flight at 12 kilometers (12,000 meters).

But the whole fallacy of the experiments and their sheer futility are revealed in a letter which Dr. Hippke, Chief of the Medical Section of the Luftwaffe, wrote to Himmler under date of 8 October 1942—

"It is true that no conclusions as to the practice of parachuting can be drawn for the time being, as a very important factor, viz., cold, has so far not yet been taken into consideration; it places an extraordinary excess burden on the entire body and its vital movements, so that the results in actual practice will very likely prove to be far more unfavorable than in the present experiments." (T-404.)

If it was impossible perfectly to simulate flying conditions in the low-pressure chamber—and this, if they were scientists at all

worthy of the name, they should have known and must have known—then the tests were only the wildest kind of experimenting. And if the experimenting was done with human lives, as it was, the recklessness and the wanton handling of these human lives, resulting from 60 to 70 times in death, can only be characterized by what it was,—murder.

(d) Freezing Experiments

On 20 May 1942, [Field] Marshal Milch wrote General Wolff recommending experiments "in regard to perils at high seas." (T-393.) As German aviators from time to time were being forced to parachute into the North Seas, and consequently being subject to extreme cold for extended periods of time, the purpose of the freezing experiments was to ascertain the most effective way of rewarming such aviators and thereby saving their lives. (T-480.)

The cold-water experiments were performed between August and October 1942; the dry-cold experiments from February to April 1943. Walter Neff, already identified, described the experimental basin as being made of wood, two meters long, two meters high, and 50 centimeters above the floor. He stated that 280 to 300 prisoners were used in the tests, many of them undergoing as high as three experiments, and that out of the number indicated 80 to 90 died. The selection of the subjects was left to the political department of the camp after Rascher had made requests for a certain number. The eventual victims were made up of political prisoners, foreigners, prisoners of war, and inmates condemned to death. According to Neff, none of the subjects were volunteers. (T-423.)

The experiment was conducted in the following manner. The basin was filled with water and then ice was added until the temperature measured 3° [centigrade]. Now the subject, either naked or dressed in a flying suit, was forced into the freezing liquid. When two certain doctors, Holzloehner and Finke, were performing the experiment, the subjects had narcotics administered to them, but when Rascher took over he refused narcotics because he maintained that "you cannot find the exact condition of the blood, and that you would exclude the willpower of the subject if he was under an anaesthetic." When the subject was experimented on in a conscious state, a much longer time elapsed before the so-called freezing narcosis set in. (T-424.)

Neff, describing the operation, declared that the "sinking down of the temperature until 32° [centigrade] was a terrible plight for the experimental subject." At 32° the subject lost consciousness, but these persons "were frozen down to 25° body tempera-

ture." When Rascher was handling the experiments "a large number of the persons involved were kept in the water so long a time until they were dead." (T-425.)

Many others died during the reviving or during the re-warming procedure. The utterly heartless and fiendish manner in which some of the experiments were conducted can be gathered from the graphic description by Neff of the episode of the two Russians—

"It was the worst experiment which was ever carried out. From the bunker two Russian officers were carried out. We were forbidden to speak to them. They arrived in the afternoon at approximately 4 o'clock. Rascher had them undressed and they had to go into the basin in a naked state. Hour after hour passed and when usually after a short time, 60 minutes, the freezing would have set in, these two Russians were still conscious even after two hours. All of our appeals to Rascher, asking him to give them an injection was without purpose. Approximately in the third hour one Russian said to the other: 'Comrade, tell that officer that he may shoot us.' Then the other one replied, 'Don't expect any mercy from this Fascist dog.' And how can one imagine that we inmates also had to be witnesses of such a death and could do nothing against it, then you can really estimate how terrible it is to be condemned to work in such an experimental station. After these words, which were translated to the Germans by a young Pole in a somewhat different form, Rascher went back into his office. The young Pole immediately tried to give them an anaesthetic with chloroform, but Rascher returned immediately. He threatened us with a pistol, and he said, 'Don't dare interfere and approach these victims.' The experiment lasted at least five hours until death set in. Both corpses were sent to Munich for autopsy in the Schwabisches Hospital there. Q. Witness, how long did it normally take to kill a person in these freezing experiments? A. The length of the experiment varied according to the individual case. It always varied according to whether the subject was clothed or unclothed. If his physical construction was weak and if in addition to that he was naked, death often set in already after 80 minutes. But there were a number of cases where the experimental subject lived up to three hours and remained that way in the water until finally death set in." (T-426.)

On 20 September 1942, Rascher made an intermediary report on these experiments—

"The experimental subjects (VP's) were placed in the water dressed in complete flying uniform, winter or summer combina-

tion, and with an aviator's helmet. A life jacket made of rubber or kapok was to prevent submerging. The experiments were carried out at water temperatures varying from 2.5° to 12° [centigrade]. In one experimental series, the occiput, the brain stem, protruded above the water, while in another series, the brain stem and back of the head were submerged in water * * *. Fatalities occurred only when the brain stem and back of the head were also chilled. Autopsies of such fatal cases always revealed large amounts of free blood, up to one-half liter, in the cranial cavity. The heart invariably showed extreme dilation of the right chamber. As soon as the temperature in these experiments reached 28° the experimental subjects died invariably, despite all attempts at resuscitation. The above-discussed autopsy findings conclusively proved the importance of a warming protective device for the occiput when designing the planned protective clothing of foam type." (T-398-399.)

The sheer monstrosity of this type of experiment reveals itself in the last sentence of the report which states with the flourish of a great scientific discovery that if the back of the head, the occiput is to be submerged in freezing water, there should be a warm, protective device to cover the occiput. If one is to have his feet in icy water, he should wear warm, waterproof boots. If he is to dip his head in the icy water, then his head should also be protected! This, then, is the weighty conclusion of so-called scientists sacrificing human lives for an observation that is obvious to a ten-year-old child.

"During attempts to save severely chilled persons (Unterkuhlte) it was shown that rapid re-warming was in all cases preferable to slow re-warming, because after removed from the cold water, the body temperature continued to sink rapidly. I think that for this reason, we can dispense with the attempt to save intensely chilled subjects by means of animal heat. Re-warming by animal warmth, animal bodies or women's bodies, would be too slow. As auxiliary measures for the prevention of intense chilling, improvements in the clothing of aviators come alone into consideration. The foam suit with suitable neck protector which is being prepared by the German Institution for Textile Research (Deutsches Textilforschungsinstitut), Muenchen-Gladbach, deserves first priority in this connection. The experiments have shown that pharmaceutical measures are probably necessary if the flier *is still alive* at the time of rescue." (T-399-400.)

Here other amazing, fantastic discoveries were made.

1. That something should be done at once to re-warm a body that has been floating about in icy water.
2. That aviator suits be made up with suitable neck protectors.
3. And that if the flier is still alive when rescued, medicine should be prescribed for him. If dead, no pharmaceutical measures are recommended!

In the year 1942, in the name of science, in the name of progress, men trained in medicine calmly and deliberately froze the blood in the arteries and veins of human beings to the point of death to proclaim warm clothing for low temperatures and re-warming and medicine for those who have succumbed to coldness.

Dr. Becker-Freyseng, who participated in some of the experiments, declared that as a result of the freezing experiments conducted at Dachau, they gave orders to flight surgeons that the warm bath method was to be used in reviving aviators who had been chilled. And thus another milestone was reached in science; namely, that warmth revived and comforted these who had been chilled. (T-470.)

On 22 September 1942, Himmler acknowledged Rascher's report, but Himmler who was carrion and obscenity incarnate, ordered that further subjects be frozen, and that re-warming and revival be attempted by the use of naked women. For this purpose Rascher obtained four gypsy women, and the experiments began. The subjects were, in accordance with usual procedure, forced into water in which ice cakes floated and were retained in the freezing compound until unconscious. Then each frozen victim was put to bed with two naked women, and the three were covered with blankets. In still other experiments the unconscious subject was placed in bed with only one woman. From all this revolting and macabre performance, the scientific deduction was reached that the re-warming process was better achieved by one woman than two because with one single partner "personal inhibitions are removed and the woman nestles up to the chilled victim more intimately." This was the great scientific revelation achieved from an obscene spectacle which could have seemed more like the superstitious drum-beating rites of barbarians on some forgotten savage, jungle-infested isle, than the work of educated doctors in the year 1942. Nor was this type of experiment without its fatalities. Of one subject, the report stated, "This person died with symptoms suggesting cerebral hemorrhage as was confirmed by the subsequent autopsy." The Nazi scientists, after this experiment, did however, achieve greatness in stating that this type of re-warming was recommended only when women were available

and other types of re-warming facilities were not available, except in the "case of small children who are best re-warmed by their mothers with the aid of hot-water bottles." (!)

In a final report to Himmler on the super-cooling experiments at Dachau, the ghastly experimenters, after having killed scores of subjects, came to the conclusion that they did not know whether rescued persons should be re-warmed quickly or slowly—

"It was not clear, for example, whether those who had been rescued should be warmed quickly or slowly. According to the current instructions for treating frozen people, a slow warming-up seemed to be indicated. Certain theoretical considerations could be adduced for a slow warming. Well-founded suggestions were missing for a promising medicinal therapy."

The uncertainty is blamed on the "absence of well-founded suggestions concerning the cause of death by cold in human beings." (T-433.)

And now, in order to clarify this question, they decided to go back to animal experiments which would suggest that after all their experimenting and killing of human beings, they are no closer to any scientific discovery than when they started. (T-433.)

However, they still continued the experiments with human beings in another manner. This was the dry-cold process, an operation carried out during the period January-March 1943. The *modus operandi* of this experiment was to place the subject outdoors at night in a nude state, cover him with a linen sheet, and then pour cold water over him hourly. After several operations of this character, Rascher complained that it was a mistake to cover the subjects even with a linen sheet. He must be utterly naked, otherwise "the air cannot get at the person." And from then on the subjects suffered their torture without covering of any kind. Even if it could be assumed that the test could have the slightest modicum of value, it is not understood why the subject had to be utterly naked. As the purpose of the experiment, it is presumed, was to ascertain the reaction of a soldier's body to a frozen state, there is no reason why the subject could not wear some clothes, if only the merest undergarment, because it is scarcely conceivable that a soldier or aviator would be without some clothing on his back. On this subject, Neff testified—

"The next experiment was a mass experiment when the prisoners were also put outside naked at night. The temperature of one of them was measured with a galvanometer, the others with a thermometer. Rascher was present during approximately eighteen to twenty experiments of that type, but I can not remember exactly how many deaths occurred and if deaths oc-

curred in connection with these experiments. I would like to say with certain reservations that approximately three deaths occurred during that period." (T-429.)

On the character of the subjects Neff stated—

"Of the experimental subjects subjected to air-cooling experiments, none were people who were sentenced to death. They were prisoners of various nationalities. There were also German political prisoners and 'green' prisoners.

"Q. And these prisoners had not volunteered, had they?

"A. No." (T-429.)

V. DISCUSSION AND CONCLUSIONS

(a) Responsibility of Milch as to Count One of Indictment

Article II of Control Council Law No. 10, promulgated by the Allied Control Council, representing the nations of the United States, Great Britain, France, and Russia, proclaims the ill-treatment or deportation to slave labor of civilian populations of occupied territories, or the ill-treatment of prisoners of war, to be war crimes, punishable by death, imprisonment, or other penalties.

It is sufficient for this Tribunal to cite Control Council Law No. 10 as authority for its action in this case. Since, however, the Control Council came into being after the ending of the war, and since the laws which it published necessarily also followed the termination of hostilities, it has been argued by defense counsel that it does not comport with justice and reason that a defendant should be condemned for an act which, prior to its commission, was not accepted in international law as a crime. From the day of surrender Germany has been without a government of its own, and as the Allied powers are exercising quasi-sovereign jurisdiction in practically all phases of German relations, both internal and external, the very circumstances of Germany's present political situation not only justifies but demands that the Control Council establish government in its three fundamental phases; namely, the judiciary, the executive, and the legislative. Otherwise chaos would fling Germany into even a more precipitous abyss than the one into which she has fallen, and the supreme and perhaps irreparable disaster, arrested by Allied intervention, would be upon her.

Yet it can be argued and it has been argued that despite the imperative need of an occupational force with its almost unlimited jurisdiction, such an occupying force simply represents the

authority of victor over vanquished. In the discharge of its duties under the law which created it, this Tribunal is not called upon to answer the arguments just indicated, but a respect for the opinion of mankind invites a listing of the reasons which establish the justice of the procedure here invoked and the reasons which must invest its judgment with the solemnity and solidity of accepted international law.

In the first place, it is not Control Council Law No. 10 which makes abuse of civilian populations an international crime, nor even the decision of the International Military Tribunal, which in turn derived its power from the London Charter which had as its antecedent the Moscow Declaration of 1943. International law is not a body of codes and statutes, but the gradual expression, case by case, of the moral judgments of the civilized world, and no international law textbook of the last century ever sanctioned the deportation of a civilian population for labor. Although under Article 52 of the Hague Regulations, the inhabitants of occupied countries may be used for the needs of the occupying army, such civilians may be utilized only in proportion to the resources of the country, and they may not under any circumstances be required to take part in military operations against their own country. L. Oppenheim's Treatise on International Law (Vol. II, Sixth Edition, page 345) states flatly that there is no right to deport inhabitants to the country of the occupant for the purpose of compelling them to work there.

It is submitted, however, that though this is the law and so recognized, total warfare, as it raged in World War II, suspended, if it did not outrightly abrogate, all these rules heretofore respected and esteemed as binding on civilized nations. In this respect defense counsel argues that "modern warfare, having as its aim total annihilation of the armed production of the enemy, brought with it to a great extent warfare against the civilian population," and he cites total blockade as an illustration of his thesis. It is true that total blockade affects the entire blockaded population, as indeed air raids strike at the most helpless and harmless of the enemy's civilians. The writer of this opinion was witness many times to the death and mutilation of inhabitants, including women, children, and old men, in Luftwaffe air raids aimed at legitimate war targets. German civilians also paid with their lives for living in their own country. And thus, it would seem in principle, that if civilians may legitimately be killed through military action, though noncombatant, they may certainly be made to work. But it does not follow that because military necessity unintentionally victimizes a civilian population, political domination may strip them of their civil rights and sub-

ject them to intentional torture and possible death. With all its horror modern war still "is not a condition of anarchy and lawlessness between the belligerents, but a contention in many respects regulated, restricted, and modified by law." (Oppenheim, *ibid.*, 421.)

Though the adversaries descend into the pit of bloody combat, there is always open to them the means of re-ascending to the level of nonhostile negotiations. The matter of temporary truces for recovering the dead and succoring the wounded, the making of arrangements through international relief organizations for the treatment of prisoners, the granting of safe passage through the lines of persons mutually agreed upon by the parties, all are instances which refute the logical development of defense counsel's argument that total warfare justifies the abandonment of every restriction and authorizes the combatants to use all manners and means to win the conflict.

And no one was in a better position to understand this than the defendant. He had participated as a soldier in the First World War; he had, following the war, entered distinguished private enterprise; he had travelled extensively and was induced by none other than Hitler himself to enter the Air Ministry long before the outbreak of World War II because of his talents and abilities. It is idle for defense counsel to say that Milch "was never a good National Socialist." If joining a political party, accepting its benefits and preferments, rising to supreme heights in grade and distinction, offering never-flagging loyalty to the Fuehrer, even in the face of a declared acknowledgment that the Fuehrer was leading Germany to disaster, if this does not make one a full-fledged National Socialist, then nothing does.

Milch did not simply passively ignore international law, he actively expressed a knowledgeable contempt for it. We have seen how he declared at one of the Central Planning Board meetings that "International law cannot be observed here."

Defense counsel made much of the point that the German people did not want war, and the defendant himself described how when the first tanks moved through the streets of Berlin, the inhabitants of that city were silent and worried. But it is not clear how this observation advances the innocence of the defendant. If anything it adds to his moral guilt because the evidence reveals only too well that to the fullest extent of his energies he prosecuted a war which he states was against the will and interests of his people. The indictment has not charged him with waging aggressive war, but in view of his participation in the 23 May 1939 conference when Hitler outlined quite clearly his aggressive intentions, and in view of his (Milch's) never tiring

efforts in the war's various phases—at the front, in the air, in production, in inspection—it cannot be said that to his trained mind the war had the aspects of a defensive and not an aggressive conflict. Although Milch has here repudiated belief in the master race theory, yet we know that he went through a formal procedure to establish the absence of Jewish blood in his veins. This procedure even took the embarrassing turn of statements concerning his parentage. In doing this, Milch could not help but know that the Jews were being persecuted by the political party to which he voluntarily belonged. Nor will the Tribunal believe his declaration that he knew of only two concentration camps in all of occupied Europe. For the Tribunal to acknowledge this statement would be to declare Milch weak-minded if not *non compos mentis*. Milch was constantly threatening workers with the concentration camp. These threats he attributes to excessive anger as he does all his outbursts, to which we have already called attention.

Milch would have the Tribunal believe that his violent language was never intended to produce results. He explained that his declaration that Italian prisoners of war attempting to escape should be shot does not constitute cruelty because, in the words of his counsel, "all countries have prisoners shot who attempt to escape." This contradicts another statement made in court wherein he lauded prisoners who sought to regain their freedom. When confronted with inconsistencies of this character, the defendant invariably sought refuge in the statement that he was never taken seriously in his threats to shoot, hang, or whip. He informs us that he never used a whip, that everybody knew he exaggerated, that nobody took him seriously, and that he did not have full control of himself. But Erhard Milch was not the village idiot. He carried a field marshal's baton, and the lifting of that baton compelled obedience no matter how idiotic might be the demand. Further, Milch's imprecations were not simple interjections; they frequently carried the appearance of orders already given or about to be issued. He may never have actually penned a death warrant or called out the SD with its murder squads, but is it so certain that underlings beyond his cognizance did not carry into effect his sometimes very clear directions on punishments to be inflicted?

Violent language is not as innocuous as Milch would have the present world believe. Even if it should be true that his immediate circle laughed at his fulminations, as was testified, there is no assurance that others laughed. A field marshal's fraternizations are necessarily limited. There were not many who had the privilege to stand beside him, as did General Vorwald, and philo-

sophically muse; "Now his neck is getting red again." There were necessarily hundreds in the course of six years of war who, attending his various meetings, were not informed that his fire and brimstone were froth. Vorwald can laugh at a field marshal and a field marshal can laugh at a Hitler, but the comedy ceases there. Milch has ridiculed Hitler's speeches and pointed out that certain portions of the Fuehrer's orations were known as the "Adam and Eve" section. He indicated further that many of Hitler's thunderings were mere bluff, but who can say today that he was bluffing?

Hitler's most potent force for evil was language. With all that he has to answer for at the bar of history, it can be doubted that there exists proof that he with his own hands killed any man or even the proverbial fly. Hitler's armory was language. It was Hitler's language which mesmerized the German nation. Every one has said so. He had no other abilities. He was no soldier. All the generals were agreed on that. He could not ride a horse, he could not drive a car, he could not build a fence. He could hang paper and he could talk, and the German people regarded that talk as substance. And on the phosphorescent sea of his wildly undulating phrases they launched the ship of their well-being with the tragic result that fragments and splinters of that ship now piteously stare at one from every nook and corner of this once prosperous and happy land.

The greatest individual force of destruction in Germany for nearly 20 years was *Mein Kampf*. And yet *Mein Kampf* was simply language. To the knowledge of the writer of this opinion, *Mein Kampf* was never used as a missile or fired as a projectile, but is there a German sincerely interested in the welfare of his country today who doubts that its words were bullets, its phrases bombs, and its pages poison which, falling into the wells of the nation, corroded the thinking of the innocent and goaded into action the ambitions of the wicked?

As the record shows, Milch incessantly threatened the wildest excesses, he orally directed them, and he reported to his chief on one occasion that he had put certain ones into effect. In spite of his present disavowal, there is nothing in the transcript to indicate that he repudiated his threats at the time of utterance. The defense has repeatedly attacked the accuracy of the minutes of the Central Planning Board, the GL, and the Jaegerstab. All these documents were taken from the official files of the Reich Air Ministry. Furthermore, the defendant's constant efforts on the stand to modify the far-reaching implications of his speeches concede the general correctness of the remarks attributed to him. Thus, making due allowance for stenographic errors, the de-

defendant stands out through the pages of these reports as a resolute, persevering, determined worker, unyielding and loyal to his cause, which was the cause of the Fuehrer.

It can be believed that Erhard Milch was not seeking personal enrichment and a luxurious living, which was so obviously the nefarious and principal goal of his chief, the super-pilferer Hermann Goering. Milch was seeking victory for Germany, for which he held an understandable affection, but his intelligence, training, and experience in the affairs of the world told him inescapably that Germany was waging an aggressive and culpable war. Milch gave of his talents and energies to the winning of a war criminally begun and lawlessly prosecuted, which, had it ended in victory for the aggressors would have resulted in the heartless subjugation of countless millions of innocent and helpless people. The defendant has recounted his worries and anguish and has explained that this mental torment provoked many of his unbridled utterances, but what was the cause of this bitterness and mortification? Not that Europe had become a slaughterhouse, not that blood ran like water, not that the four Horsemen of the Apocalypse were galloping over the continent hurling famine, pestilence, and death into every city, village, and hamlet. Milch's torment and soul-sickness were not that the human race and human dignity were being debased and degraded as they had never been before since man knew shame. It was not for all this that Milch's heart was breaking. His consternation, his panic was that Germany was losing the war!

He said, "I had to walk into defeat with open eyes." (*T-1948*.) Also, "I could see what was coming and I could not help my people." And in his bitterness he increased the fury of his verbal lashes over the backs of the foreign workers, he redoubled his efforts for more importations and screamed for more production. He knew, as far back as November 1941, that the war was lost; this knowledge was confirmed after Stalingrad, and every vestige of doubt as to the eventual result was shattered by the clouds of bombers over Germany every day. He knew that Hitler was leading Germany over the brink to ruin, and yet he called for more and more production to make the disaster all the more noteworthy. He was having difficulties with Goering, Hitler did not want him any more, and yet he stoked the fires of his wrath to an even higher degree of vengeance against the workers because they would not turn out more production for the war, every continuing day of which brought only greater misery to his people. The argument does not ring true. Milch may have believed Germany might lose the war but he certainly made every effort to have it end victoriously. This in itself is honorable for a

soldier, but he allowed himself to use means and methods which the code of a soldier does not authorize or countenance, and therein he fell.

He has related several accidents which may have affected his health. He cracked-up two or three times with his plane and he suffered an automobile mishap as well. It is suggested, although not vigorously pressed, that all this may explain his towering wraths and lightning fury. But the plea in this case is not "Not Guilty because of Insanity." Nowhere is it advanced that the defendant is not now, nor that at any time throughout the war was not, in the fullest possession of his mental faculties. If a temporary aberration is being suggested, it is remarkable that these deviations from the norm occurred only when he was urging the maximum and severest employment of forced labor and menacing with the direst punishment those who did not fulfill to the extreme the commitments of this illegal enterprise. If Milch was at any time deprived of his reasoning faculties, his temporary unbalance had method in it.

The Tribunal finds Erhard Milch guilty on count one of the indictment.

(b) Count Two

In considering Milch's responsibility under count two, we will need to enumerate and weigh each reference to him in the testimony in this connection. The high-altitude experiments began in March and lasted until June 1942. Cold-water experiments were conducted during the period from the middle of August until October 1942. The dry-cold experiments lasted from February through April 1943. During this time Milch was Inspector General of the Air Forces, State Secretary in the Air Ministry, and Generalluftzeugmeister. As Inspector General he was in charge of the office which authorized research and medical experiments conducted in behalf of the Air Forces. General Hippke, physician in charge of the Luftwaffe Medical Department, was directly subordinate to the defendant. As Generalluftzeugmeister, Milch was head of air ordnance. Milch had charge of the development of technical experiments for the Luftwaffe.

All medical institutes and Luftwaffe medical men were subordinate to the Medical Inspectorate Chief, Dr. Hippke. The DVL* was subordinate to Hippke's office in technical matters. Dr. Rascher conducted his experiments at Dachau. He was temporarily assigned to the SS, but retained his status as a Luftwaffe physician, rising from a second lieutenant to a captain in the Luftwaffe.

* Deutsche Versuchsanstalt fuer Luftfahrt (German Institute for Aviation Research). In this case, the reference is to the Medical Section of the Institute.

During the period of the experimentations, Rascher was under the command of the Luftwaffe.

On 20 May 1942, Milch wrote a letter to General Wolff, stating that his medical inspector had reported to him that the high-altitude experiments conducted by the SS and the Luftwaffe had been finished, and he did not recommend that they should be continued. He did, however, authorize experiments "of some other kind in regard to perils at high seas." On 4 June 1942, Milch authorized Hippke the continued use of the low-pressure chamber. On 20 July 1942, Rascher sent Brandt a report on the high-altitude experiments and the accompanying letter stated that it is Himmler's desire that the report should be sent to Milch. On 25 August 1942, Himmler sent Milch a copy of the report and asked that he receive Dr. Rascher and Dr. Romberg for a lecture and a showing of the film made of the experiment.

On 31 August 1942, Milch wrote Himmler acknowledging the report and promising to receive the two gentlemen for the lecture and showing of the film. On 23 August 1942, Sievers wrote Brandt discussing a revival of the high-altitude experiments and stating that a report was to have been made to Milch, but that the report was not made. On 3 October 1942, Rascher wrote Brandt that the report to Milch, planned for September, could not be made because Milch was not present. On 27 November 1942, Wolff wrote Milch a long letter pointing out the need and the great value of the experiments with human beings, stating that Himmler "has accepted the responsibility for supplying death-deserving, asocial persons, and criminals from the concentration camps for these experiments." He asks Milch to assign Rascher to the SS so that he can continue with the experiments directly under Himmler's orders. "In any case, these experiments must not be stopped. We owe that to our men."

Dr. Romberg stated in an affidavit that Milch "was familiar with these experiments." Neff testified that "Milch's name was mentioned in connection with the high-altitude experiments." Sievers, Director of the Research and Teaching Association, stated that "Milch must have known about the experiments of Dr. Rascher." Dr. Ruff stated that to his knowledge Milch was informed of these tests either by Hippke or by the SS. Dr. Becker-Freyseng said that Dr. Kalk told him he had seen Rascher in Milch's office.

When the film was shown in Milch's office on 11 September 1942, Milch was not present. Wolfgang Lutz testified that Milch had negotiated directly with Himmler regarding the execution of such experiments without consulting the Medical Inspectorate. Rudolf Brandt stated that Milch was fully informed about the

low-pressure experiments. As late as January 1943, Milch had not replied to the letter sent him by Wolff, asking for the assignment of Rascher to the SS.

This, in brief, constitutes the case against Erhard Milch in connection with the medical experiments. In order to find Milch guilty on this count of the indictment, it must be established that—

1. Milch had knowledge of the experiments.
2. That, having knowledge, he knew they were criminal in scope and execution.
3. That he had this knowledge in time to act to prevent the experiments.
4. That he had the power to prevent them.

In pressing this count against the defendant, the prosecution has the burden, as it has the burden in every count, to prove the guilt of the defendant beyond a reasonable doubt. We begin our deliberations with the cardinal rule that the defendant is presumed to be innocent. Glancing at the evidence as a whole, it is a facile matter to say that the defendant must have known of the experiments; that, with so much smoke, there must be fire. But in addition to smoke, there must be light.

The proof against Milch on this count is entirely circumstantial, and before we can find him guilty we must conclude that every hypothesis resulting from the circumstances is consistent with guilt and inconsistent with innocence. One can easily reach the hypothesis of guilt from the documents and testimony but that hypothesis in many of its phases is also consistent with innocence. Thus, applying the rule of evidence just cited, the test of guilt fails.

So far as chronology is concerned, Milch does not come into the picture of the experiments until 20 May 1942 with a letter in which he states that his medical inspector informed him that the high-altitude experiments had been completed. Obviously if they were completed there was nothing he could do to prevent them. Nor did the medical inspector or anyone else testify that Milch was informed of the precise nature of the experiments. Further, there is no evidence that Milch ever received any reports at all on the freezing experiments.

No one ever suggested that Milch attended the operations at Dachau or that he ever gave an order that human beings were to be used to the point of death.

If we can imagine the pieces of evidence on this count as irregularly shaped blocks of wood floating on water, we find these blocks occasionally coming together and dovetailing into a

pattern of guilt, but then we find them separating and just as often forming the pattern of innocence. No man should be convicted on evidence that does not remain fixed and immovable in granitic solidity. Guilt cannot be founded on a set of facts from which arguments are equally convincing as to guilt and as to innocence. Remarks such as "the defendant must have known," or "to the best of my knowledge he knew," and other similar inconclusive conjectures frequently used in this part of the case are not the kind of links which are imperatively needed to make up a chain strong enough to sustain the weight of a conviction.

The defendant is found not guilty on the second count of the indictment.

Though Milch is acquitted of complicity and participation in the medical experiments, we have nonetheless commented on those experiments at length. We have done this because otherwise the reference to Milch's acquittal standing alone might convey impression that the experiments themselves were not criminal. The Tribunal holds that the *corpus delicti* was established and a crime was committed, even though Milch is not guilty of it.

(c) Count Three

The third count of the indictment charges the defendant with crimes against humanity (slave labor and fatal medical experiments) committed on German nationals and nationals of other countries. As we have found him not guilty on count two, we necessarily also find him not guilty of the crime of fatal medical experiments in count three. We have, however, adjudicated him guilty on count one, and since the evidence establishes that nationals of other countries were also victims of slave labor under his control, we thus find Erhard Milch guilty on that part of the third count which covers the nationals of other countries. Sufficient proof was not submitted as to slave labor offenses against German nationals to justify an adjudication of guilt on that ground.

Thus, in recapitulation, we find the defendant guilty on count one, not guilty on count two, not guilty on count three insofar as it appertains to German nationals and guilty wherein it refers to "nationals of other countries." In reaching these conclusions, we inescapably ascertain that Erhard Milch was a full-fledged member of the National Socialist Party of Germany. Further, that he adhered to the doctrines of this Party which, with the almost cataclysmic force of planetary violence, achieved more destruction than has been known since man stood upright on the shores of history. The conclusion is also unavoidable that it was individuals like Milch that made the Hitler plan of war

and subjugation possible. Hitler was but one man and it was only because he had brilliant and able coadjutors that he could develop a war machine which achieved the incredible and fantastic record of smashing Poland in 18 days, striking France to her knees in 2 months, driving England from the continent in 6 weeks, overrunning Holland and Belgium in a few days, vanquishing Norway in several weeks, and Denmark overnight.

In those days of spectacular triumph, Milch had no complaint against Hitler. But it was precisely then that Hitler was working his greatest harm to Germany because it was inevitable that the people he had temporarily crushed would rise again and not rest until the evil power responsible for their suffering was destroyed. If Milch had entertained the loyalty to his people which he now professes, then was the time to withdraw from a program which was wreaking a devastation so universal that no country, including Germany, could escape.

The defendant stated from the witness stand he could not withdraw because he owed fealty to Hitler and to the German people. His loyalty to Hitler was loyalty to a man who he now states had marked him for liquidation, and so far as allegiance to the German people is concerned, they can feel no gratitude for an allegiance which increased their ruin, magnified their misery, and pushed them only deeper into the pit of despair. The Germans could do without a devotion of that kind.

The defendant apparently gained the impression in our questioning of him that some heroic sacrifice was expected on his part. We never intended, nor was it suggested, that he should take any action which could result in the forfeiture of his life. But he did himself volunteer from the witness stand that on two occasions he was ready to tell Hitler the truth even if it should mean his execution. If he was prepared to sacrifice his life on so futile a gesture, he could have taken some action which involved less hazard. He could thus, at least to that extent, have contributed to honesty and justice by refraining from threatening with death and whipping those who did not give of their last ounce of energy in the production of ordnance whose muzzles would eventually be turned on Germany itself.

In his last statement in court Milch declared that he was indifferent to his fate but he was interested in seeing Germany relieved of her suffering and re-admitted to the community of nations as an equal partner. We do not believe that any intelligent person can be indifferent to his fate, although one can summon sufficient spiritual fortitude to rise above an immediate regret. With regard to Milch's wish for the German people, he has definitely performed one service in pulling aside the curtain

to disclose to them the stupidities, the vanities, and the arrogances of their leaders which brought about their present state. The record of this case will particularly, of course, expose Milch's own errors and his transgressions against international law, the laws and customs of war, the moral code of humanity and even commandments 4 and 7 of the 10 commandments of the German soldier.

The purpose of these postwar trials obviously is not vengeance. The object aimed at (as in the criminal jurisprudence of all civilized nations) is the ascertainment of truth. When guilt is established, the penalty imposed is to serve as a deterrent to all others who might be similarly minded. Albert Speer, convicted in the first trial, stated here in this courtroom that had trials such as these followed the First World War, the Second World War might have been averted. Erhard Milch may obtain some comfort from the realization that by the publication of the evidence of this trial he is definitely contributing to the education and well-being of Germany's future, as indeed a precise contribution is being made to the cause of world justice itself.

Over 155,000 Americans made the supreme sacrifice in Germany in this war. These lads gave their lives for this ideal of world justice and world peace. America sought no territorial aggrandizement or material advantage. The American flag in this courtroom ensured to the defendant all the guarantees of the United States Constitution as to a fair trial. No person within the continental limits of the United States itself could have wished for a fuller opportunity to demonstrate his innocence of the charges brought against him.

America and her Allies bestowed upon Germany what no desire can achieve and what no money can buy. The Allied nations gave the blood of their youth to water the roots of the tree of liberty and tolerance which had withered in the twelve-year drought of National Socialism. It is to reveal who were responsible and what was responsible for the desiccation of that tree and to proclaim to the world the inevitable consequences to others who degrade the soil with the pollution and prussic acid of oppression that these trials have been established. The present trial is one chapter in the book which will forever condemn *Mein Kampf* and offer to the new German nation a volume of proved fact, whose every page will tell of the sorrow awaiting any people which permit any man or men to hoist deceit above truth, power above justice, oppression above tolerance, war above peace and man above God.

[Signed] MICHAEL A. MUSMANNO
JUDGE MILITARY TRIBUNAL II

C. Concurring Opinion by Judge Fitzroy D. Phillips

This Tribunal has been duly organized and is now existing under the authority of Ordnance No. 7 pursuant to the powers of the Military Governor of the United States Zone of Occupation within Germany expressly conferred therein and further pursuant to the powers conferred upon the zone commander by Control Council Law No. 10 and Articles 10 and 11 of the Charter of the International Military Tribunal annexed to the London agreement of 8 August 1945, and by authority of Executive Order No. 9819 signed and issued by Harry S. Truman, President of the United States of America, the pertinent parts of said order as follows:

"By virtue of the authority vested in me by the Constitution and the statutes, and as President of the United States and Commander in Chief of the Army and Navy of the United States, it is ordered as follows:

"1. I hereby designate Fitzroy Donald Phillips, Judge of a Superior Court in the State of North Carolina; Robert Morrell Toms, Judge of the Third Judicial Circuit Court, Detroit, Michigan; and Captain Michael A. Musmanno (S), USNR, 086622, as the members, and John Joshua Speight as the alternate member of one of the several military tribunals established by the Military Governor for the United States Zone of Occupation within Germany pursuant to the quadripartite agreement of the Control Council for Germany, enacted December 20, 1945, as Control Council Law No. 10, and pursuant to Articles 10 and 11 of the Charter of the International Military Tribunal, which Tribunal was established by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the Union of Soviet Socialist Republics, for the trial and punishment of major war criminals of the European Axis. Such members and alternate member may, at the direction of the Military Governor of the United States Zone of Occupation, serve on any of the several military tribunals above mentioned." and as such Tribunal, has jurisdiction to try and determine this case.

Subsequent to the organization of said Tribunal, Telford Taylor, Brigadier General, United States Army, Chief of Counsel for War Crimes, prepared and caused to be prepared a bill of indictment charging the defendant, Erhard Milch, with certain war crimes and crimes against humanity as will appear more specifically hereinafter in this judgment and on 14 November 1946

caused said bill of indictment to be duly served upon the defendant, Erhard Milch, by the Marshal for the United States Military Tribunals according to the provisions of law.

Thereafter said bill of indictment was made returnable and said cause set for trial before United States Military Tribunal No. II. Whereupon, Dr. I. Friedrich Bergold of the Nuernberg, Germany, bar was duly appointed as counsel for the defendant and accepted such appointment.

On 20 December 1946, at 9:30 a.m. in the Palace of Justice, Nuernberg, Germany, the defendant, Erhard Milch, being present in court and represented by his counsel, Dr. I. Friedrich Bergold, and the United States of America being represented by Telford Taylor, Brigadier General, United States Army, Chief of Counsel for War Crimes, and Honorable Clark Denney of counsel, the Tribunal duly arraigned the defendant upon the charges contained in the bill of indictment against him, and the defendant when called upon to plead to the bill of indictment entered a plea of Not Guilty. Whereupon the Tribunal set the date of 2 January 1947, for the trial of said case and adjourned until said time.

On 2 January 1947, United States Military Tribunal No. II met in the Palace of Justice, Nuernberg, Germany, and commenced the trial of this case.

The bill of indictment charging the defendant, Erhard Milch, with certain and specific war crimes and crimes against humanity is summarized as follows:

Count One: War crimes involving murder, slave labor, deportation of civilian populations for slave labor, cruel and inhuman treatment of foreign laborers, and the use of prisoners of war in war operations by force and compulsion.

Count Two: War crimes involving murder, subjecting involuntary victims to low-pressure and freezing experiments, resulting in torture and death.

Count Three: Crimes against humanity, involving murder and the same unlawful acts specified in counts one and two against German nationals and nationals of other countries.

The trial was conducted in two languages in the main, English and German, and in English, German, and French when French witnesses were testifying.

The hearing of evidence and the arguments of counsel concluded on 25 March 1947.

The prosecution offered three witnesses who gave evidence orally and 161 written exhibits, several exhibits containing many documents. The defense offered 27 witnesses who gave evidence orally and the defendant also testified in his own behalf, and in

addition to oral evidence the defendant offered 51 written exhibits. The exhibits as offered by both the prosecution and defense contained documents, photographs, affidavits, interrogatories, letters, maps, charts, and other written evidence.

A complete stenographic record of everything said and done in court has been made as well as an electrical recording of all the proceedings.

Copies of all the documents and written evidence offered by the prosecution have been supplied to the defense in the German language. The applications made by the defendant for the production of witnesses and documents were passed upon by the Tribunal and orders made in pursuance thereof. The Tribunal, after examination, granted all of the defense applications which in their opinion were relevant to the defense of the defendant and denied a few that the Tribunal found not to be relevant. Facilities were provided for obtaining those witnesses and documents granted through the Office of the Secretary General of the Tribunal.

Much of the evidence presented to the Tribunal on behalf of the prosecution was documentary evidence captured by the Allied armies in German army headquarters, government buildings, and elsewhere, and some of said documents were captured in the private files of the defendant himself. The case therefore against the defendant rests in a large measure on the documents thus obtained. The documents offered against the defendant on the part of the prosecution were in a large measure of his own making or those that were made in the organizations of which he was a member and largely under his control, and the authenticity of which has not been challenged except in a few cases and in those he challenged them mainly on the correctness of the transcript and not upon the subject matter as a whole. The evidence, oral and written, together with exhibits and documents contain approximately 3,000 pages which constitutes the record in this case.

The trial was conducted generally along the lines as are usually followed in trial courts of the United States except as to the rules of evidence, and as to those the Tribunal was not bound by technical rules of evidence and admitted any and all evidence which it deemed to have probative value and in strict compliance with the provisions of Article VII of Ordinance No. 7.

The Tribunal has kept in mind throughout the entire trial that this was a Tribunal established for the purpose of trying major war criminals and in this particular case a fallen military field marshal of a conquered nation, and that he was entitled to the Anglo-Saxon and English common law presumption that he was innocent until his guilt was established beyond a reasonable doubt.

Article II of Control Council No. 10 is as follows:

“ARTICLE II

“1. Each of the following acts is recognized as a crime:

“(a) *Crimes against Peace*. Initiation of invasions of other countries and wars of aggression in violation of international laws and treaties, including but not limited to planning, preparation, initiation or waging a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

“(b) *War Crimes*. Atrocities or offenses against persons or property constituting violations of the laws or customs of war, including but not limited to, murder, ill-treatment or deportation to slave labor or for any other purpose, of civilian population from occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

“(c) *Crimes against Humanity*. Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.

“(d) Membership in categories of a criminal group or organization declared criminal by the International Military Tribunal.

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

“3. Any person found guilty of any of the crimes above-mentioned may upon conviction be punished as shall be determined by the Tribunal to be just. Such punishment may consist of one or more of the following:

“(a) Death.

“(b) Imprisonment for life or a term of years, with or without hard labor.

“(c) Fine, and imprisonment with or without hard labor, in lieu thereof.

“(d) Forfeiture of property.

“(e) Restitution of property wrongfully acquired.

“(f) Deprivation of some or all civil rights.

“Any property declared to be forfeited or the restitution of which is ordered by the Tribunal shall be delivered to the Control Council for Germany, which shall decide on its disposal.

“4. (a) The official position of any person, whether as Head of State or as a responsible official in a Government Department, does not free him from responsibility for a crime or entitle him to mitigation of punishment.

“(b) The fact that any person acted pursuant to the order of his Government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation.

“5. In any trial or prosecution for a crime herein referred to, the accused shall not be entitled to the benefits of any statute of limitation in respect of the period from 30 January 1933 to 1 July 1945, nor shall any immunity, pardon, or amnesty granted under the Nazi regime be admitted as a bar to trial or punishment.”

The defendant stands indicted for the violation particularly of the provisions of section *b*, which defines war crimes, and for the violation of the provisions of section *c*, which defines crimes against humanity, and for the violations of certain provisions of international conventions, particularly of Articles 4, 5, 6, 7, 46, and 52 of the Hague Regulations, 1907, and of Articles 2, 3, 4, 6, and 31 of the Prisoner-of-War Convention, Geneva, 1929, the laws and customs of war, the general provisions of criminal law as derived from the criminal laws of all civilized nations, the internal penal laws of the countries in which such crimes were committed, and further as particularly defined in Article II of the Control Council Law No. 10.

The first count in the bill of indictment has been designated by the prosecution as “Slave Labor,” the second count as “Medical Experiments” and the third count as “Slave Labor and Medical Experiments upon German Nationals.” The pertinent rules of law that are applicable in this case will now be considered, and we shall consider briefly some salient precepts and prohibitions of international law up to and including the provisions of Control Council Law No. 10.

The prosecution has offered evidence which tended to show that

much of the labor which supplied Germany with the tools of absolute and total war was extracted from people who had been uprooted from their homes in occupied territories and imported to Germany against their will and often under the most trying and difficult circumstances. Displacement of groups of persons from one country to another is the proper concern of international law in as far as it affects the community of nations. International law has enunciated certain conditions under which the fact of deportation of civilians from one nation to another during times of war becomes a crime. If the transfer is carried out without a legal title, as in the case where people are deported from a country occupied by an invader while the occupied enemy still has an army in the field and is still resisting, the deportation is contrary to international law. The rationale of this rule lies in the supposition that the occupying power has temporarily prevented the rightful sovereign from exercising its power over its citizens. Articles 43, 46, 49, 52, 55, and 56, Hague Regulations, which limit the rights of the belligerent occupant, do not expressly specify as crime the deportation of civilians from an occupied territory. Article 52 states the following provisions and conditions under which services may be demanded from the inhabitants of occupied countries:

1. They must be for the needs of the army of occupation.
2. They must be in proportion to the resources of the country.
3. They must be of such a nature as not to involve the inhabitants in the obligation to take part in military operations against their own country.

Insofar as this section limits the conscription of labor to that required for the needs of the army of occupation, it is manifestly clear that the use of labor from occupied territories outside of the area of occupation is forbidden by the Hague Regulations.

The second condition under which deportation becomes a crime occurs when the purpose of the displacement is illegal, such as deportation for the purpose of compelling the deportees to manufacture weapons for use against their homeland or to be assimilated in the working economy of the occupying country. The defense as contained in this case is that persons were deported from France into Germany legally and for a lawful purpose by contending that such deportations were authorized by agreements and contracts between Nazi and Vichy French authorities. The Tribunal holds that this defense is both technically and substantially deficient. The Tribunal takes judicial notice of the fact that after the capitulation of France and the subsequent occupation of French territory by the German army, a puppet government was

established in France and located at Vichy. This government was established at the instance of the German Army and was controlled by its officials according to the dictates and demands of the occupying army and a contract made by the German Reich with such a government as was established in France amounted to in truth and in fact a contract that on its face was null and void. The Vichy Government, until the Allies regained control of the French Republic, amounted to no more than a tool of the German Reich. It will be borne in mind that at no time during the Vichy regime a peace treaty had been signed between the French Republic and the German Reich but merely a cessation of hostilities and an armistice prevailed, and that French resistance had at no time ceased and that France at all times still had an army in the field resisting the German Reich.

The third and final condition, under which deportation becomes illegal, occurs whenever generally recognized standards of decency and humanity are disregarded. This flows from the established principle of law that an otherwise permissible act becomes a crime when carried out in a criminal manner. A close study of the pertinent parts of Control Council Law No. 10 strengthens the conclusions of the foregoing statements that deportation of the population is criminal whenever there is no title in the deporting authority or whenever the purpose of the displacement is illegal or whenever the deportation is characterized by inhumane or illegal methods.

Article II (1) (c) of Control Council Law No. 10 specifies certain crimes against humanity. Among those is listed the deportation of any civilian population. The general language of this subsection as applied to deportation indicates that Control Council Law No. 10 has unconditionally contended as a crime against humanity every instance of the deportation of civilians. Article II (1) (b) names deportation to slave labor as a war crime. Article II (1) (c) states that the enslavement of any civilian population is a crime against humanity. Thus Law No. 10 treats as separate crimes and different types of crime "deportation to slave labor" and "enslavement." The Tribunal holds that the deportation, the transportation, the retention, the unlawful use, and the inhumane treatment of civilian populations by an occupying power are crimes against humanity.

The Hague and Geneva Conventions codify the precepts of the law and usages of all civilized nations. Article 31 of the Geneva Convention provides that labor furnished by prisoners of war shall have no direct relation to war operations. Thus the convention forbids (1) the use of prisoners of war in manufacture or transportation of arms or ammunitions of any kind; and (2) the

use for transporting of matériel intended for combat units. The Hague Regulations contain comparable provisions. The essence of the crime is the misuse of prisoners of war derived from the kind of work to which they are assigned, in other words, to work directly connected with the war effort. The Tribunal holds as a matter of law that it is illegal to use prisoners of war in armament factories and factories engaged in the manufacture of airplanes for use in the war effort.

Now, considering the basic charges and the law governing the charge against the defendant in which it alleges his responsibility for and participation in the medical experiment program, the fundamental crime with which the defendant is charged in this connection is murder. Also involved are various atrocities, tortures, offenses against the person, and other inhumane acts. The provisions of Control Council Law No. 10, which are applicable to this charge, to wit, Article II, are "b. War crimes" and "c. Crimes against humanity." The bill of indictment charges:

"A. War crimes, namely violations of the laws and customs of war as to medical experiments performed involuntarily upon persons, some of whom were prisoners of war and citizens of countries who were at war with the German Reich, and other deported citizens from other countries who were at war with the German Reich involving the commission of murders, tortures, and other inhumane acts.

"B. Crimes against humanity, namely medical experiments performed upon involuntary German nationals and nationals of other countries in the course of which brutalities, murders, and other inhumane acts were committed."

The prosecution contends that the defendant Milch did not personally participate in or personally direct, counsel, or initiate such medical experiments but that the same was done by members of his command and that he was personally responsible for their conduct by virtue of the authority that he held over his subordinates.

In this connection in the recent case before the United States Supreme Court in *re Yamashita*, the opinion of which was handed down by the Supreme Court of the United States at the October term, 1945, of said Court, some of the pertinent holdings in this case are as follows:

"It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders or efforts of their commander would almost certainly result in violations which it is the purpose of the law of war to prevent. Its purpose to protect civilian populations and prisoners of war from bru-

tality would largely be defeated if the commander of an invading army could with impunity neglect to take reasonable measures for their protection. Hence the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates.

"This is recognized by the annex to Fourth Hague Convention of 1907, respecting the laws and customs of war on land. Article I lays down the condition which an armed force must fulfill in order to be accorded the rights of lawful belligerents, that it must be commanded by a person responsible for his subordinates.

"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. This duty of a commanding officer has heretofore been recognized, and its breach is penalized by our own military tribunals.

"* * * It is plain that the charge on which petitioner was tried charged him with a breach of his duty to control the operations of the members of his command, by permitting them to commit the specified atrocities. This was enough to require the commission to hear evidence tending to establish the culpable failure of the petitioner to perform the duty imposed on him by the law of war and to pass upon its sufficiency to establish guilt."

I am of the opinion and find as a fact from the evidence in this case that the defendant Milch between the years 1939 and 1945 was State Secretary in the Air Ministry, Inspector General of the Air Force, Deputy to the Commander in Chief of the Air Force, a member of the Nazi Party. The defendant Milch was also Field Marshal in the Luftwaffe, 1940 to 1945; Air Quartermaster General, 1941 to 1944; member of the Central Planning Board, 1942 to 1945; and Chief of the Jaegerstab, 1944 to 1945.

After hearing the evidence of both the prosecution and defense, and after having heard the arguments of counsel, and after having fully considered all of the evidence, the following facts are concluded:

COUNT NO. 1

SLAVE LABOR

That the defendant, Erhard Milch, was born in Germany on 30 March 1892, that he was a member of the Air Force of the

German Army in World War I and was a contemporary in said air force with Goering, Udet, and others; that after the termination of World War I he returned to Germany, had a business and later was connected with the manufacture of civilian airplanes.

Prior to the outbreak of World War II he became a member of the Nazi Party and materially aided in the rebuilding of the air force of the German Reich. Shortly prior to the outbreak of World War II he visited various countries as a personal emissary of the Fuehrer, Hitler; to France, England, Holland, Italy and other countries in an effort to establish so-called permanent peace between the German Reich and these nations. That on 23 May 1939, the defendant attended a conference for the purpose of planning World War II with the following present: Hitler, Goering, Col. Gen. von Brauchitsch, Col. Gen. Keitel, Gen. Halder, Gen. Bodenschatz, Rear Admiral Schniewind, Col. (GSC.) Jeschonnek, Col. Warlimont, Lieut. Col. Schmundt, Captain Engel, Lieut. Commander Albrecht, and Captain v. Below. At the time of this meeting the defendant held a high position in the German Army, to wit, the rank of colonel general. *

At this meeting the Fuehrer, Hitler, gave his plan of aggressive war, and in this plan was included the attack of Poland at the first suitable opportunity; what the struggle would be like; the question of a short or long war; England's weakness; the consequences of such a war; the unrestricted use of all resources available; the plan of attack; and the working principles of an entire and complete program. Aggressive war was planned and initiated at this meeting, and the defendant was one of the high-ranking officers who counseled and approved of the plan.

After the outbreak of the war and the subsequent attack on Poland, the defendant actively participated in the prosecution of aggressive war until after the capitulation and fall of France. From that time on he did not participate as a combat officer but was used in the general economy for the prosecution of war in Germany, and particularly as to the building and maintenance of the Luftwaffe. Later he was elevated to the rank of field marshal in the Luftwaffe and was second in command only to Goering.

The defendant was a member of the Central Planning Board which was established and organized in April 1942, and said organization served as a means of consolidating in a single agency all controls over German war production. The Central Planning Board held regular meetings, and the defendant presided over and was present at a majority of such meetings. The Central Planning Board at each meeting kept full minutes, and a great number of

* See Table of Comparative Ranks, p. 331.

said minutes have been submitted to the Tribunal and reflect the fact that the defendant had a dominant role in the meetings of said board. The scope and authority of the Central Planning Board is contained in the minutes of a meeting held on 27 April 1942, and the duties and responsibilities of the board, according to said minutes, were announced as follows:

"The Central Planning in the Four Year Plan (Decree of the Reich Marshal of Greater Germany of 22 April 1942) is a task for leaders. It encompasses only principles and executive matters. It makes unequivocal decisions and supervises the execution of its directives. The Central Planning does not rely on anonymous institutions difficult to control but always on individuals and fully responsible persons who are free in the selection of their work methods and their collaboration as far as there are no directives issued by the Central Planning."

On 20 October 1942, the statutes of the Central Planning Board were published and distributed, a portion of which are as follows:

"The Central Planning Board, created by the Fuehrer and the Reich Marshal in order to unify armament and war economy, deals only with the decision of basic questions. Professional questions remain the task of the competent departments, which in their field remain responsible within the framework of the decisions made by the Central Planning Board."

The Central Planning Board was superior to "the highest Reich authority, the Reich protector, the Governor General, and the executive authorities in the occupied countries."

The International Military Tribunal found that the Central Planning Board "had supreme authority for the scheduling of German production and the allocation and development of raw materials." The International Tribunal found further in its opinion, in the case of *United States vs. Goering and others*, "that the Central Planning Board requisitioned labor from Sauckel with full knowledge that the demands could be supplied only by foreign forced labor and that the board determined the basic allocation of this labor within the German war economy." The International Military Tribunal found further in its opinion the following:

"In the fall of 1943 Funk (who was then indicted before said Tribunal in regard to deportation and the use of foreign forced labor in the German Reich) was a member of the Central Planning Board which determined the total number of laborers needed for German industry, and required Sauckel to produce them, usually by deportation from occupied territories * * * but Funk was aware that the board of which he was a member was

demanding the importation of slave laborers, and allocating them to the various industries under his control.”

The prosecution offered evidence which tended to show that Albert Speer was the Plenipotentiary for Armament and was the nominal head of the Central Planning Board and that the defendant was a member of said board and was, by the order of Hitler, assigned to assist Speer as the head of said board. During much of the time of the existence of said board Speer was ill and unable to attend the meetings and look after the duties of the board and during this time the defendant was the acting head of said board and presided over its meetings as chairman.

Fritz Sauckel was Plenipotentiary for Labor and was directly responsible for the procurement and allocation of labor to the various war industries. However, the Tribunal finds as a fact that although Sauckel had the primary duty of procuring and allocating labor, the Central Planning Board on many occasions, as the minutes of the meetings of said board show, called Milch into conference with the members of the Central Planning Board and in such conferences labor was assigned and allocated by the Central Planning Board and Sauckel. The minutes of the Central Planning Board, as introduced by the prosecution, show that the members of the Central Planning Board knew and discussed the fact that labor was being deported from occupied countries against their will and were being used in various factories manufacturing armaments, airplanes, and other articles essential and necessary to the war effort, that such foreign workers were being forcibly taken from their homes without knowledge of their destination, and by force and against their will, crowded into box cars without food or water or toilet facilities, transported great distances, and forced to work in factories manufacturing war materials and other necessary items for the prosecution of the war as slave laborers.

I find as a fact that the defendant Milch had knowledge of the way and manner in which such labor was procured and the work that they were forced to do, and that he aided, abetted, counseled, advised, and assisted in the deportation, allocation, and work of said slave laborers.

The documents and reports of the meetings as offered by the prosecution are too voluminous to incorporate herein, but said records clearly show that the defendant was one of the authorized agents who dealt with the procurement, deportation, and work of thousands and thousands of slave laborers from occupied countries.

JAEGERSTAB

I find as a fact that it was the defendant who conceived and instigated the formation of the Jaegerstab, and that the defendant

directed its activities and acted as its chairman. The Jaegerstab assumed control over fighter production and exploited foreign forced labor in the armament industry and directed the use of the same. The Jaegerstab was assigned top priority for their projects, for the recruitment and committment of manpower in the air armament industry. From the meetings of said board as offered in evidence by the prosecution, the question of manpower was time and time again referred to by the defendant. When other methods of obtaining its labor was not forthcoming, the Jaegerstab recruited its own labor either directly or by engineering snatching expeditions for the seizure of manpower arriving on transports from the East.

At one of the meetings of the Jaegerstab, Prosecution Exhibit 54, page 28, the defendant made this statement to his subordinates, that "international law cannot be observed here." When the question of Italian civilian labor was being discussed at a meeting of the Jaegerstab, the defendant made the statement and advocated the shooting of those who attempted to escape in transit.

I find as a fact that the Jaegerstab was not a mere discussion group but was an agency with absolute authority over fighter production and acted by orders and directives, fixed hours of labor and conditions of work, and on one occasion fixed the established hours of work per week in the aircraft industry at seventy-two hours.

Much of the labor employed by the Jaegerstab in aircraft production and in the air armament industry was from concentration camp inmates and foreign forced labor. The defendant was well acquainted with the procurement and allocation of this labor.

I find as a fact, from the evidence offered in the case, that after the arrival of forced slave labor from occupied countries they were poorly fed, poorly clothed, were forced to work an excessive amount of hours each week, and that their general condition and treatment as a result of such forced labor resulted in the death of a great many and the permanent disability of others, both in body and in mind.

GENERALLUFTZEUGMEISTER

I find as a fact from the evidence offered in the case, that the defendant, as Generalluftzeugmeister, had complete control of aircraft production and that he requisitioned labor for the aircraft industry with knowledge of the brutal and inhuman techniques in recruiting these laborers; and that he gave directives for the criminal treatment of the same in the centers of production. Fritz Sauckel, Plenipotentiary for Labor, stated that it was "Milch who produced manpower figures for aviation." Albert Speer testified

as follows: "The requests of the air armament industry for laborers were presented by Milch, and he did not permit anyone to take this right away from him until March 1944."

I find as a fact from the evidence offered on the part of the prosecution, that prisoners of war were included in the manpower that the defendant was requisitioning and distributing to the aircraft industry with full knowledge that they were prisoners of war. As chief of aircraft production, the defendant regulated the treatment of foreign forced labor in the German aircraft industry, fixed hours of labor and conditions of work, and by directives to his subordinates formulated the basic policy for the handling of such labor within the industry.

The evidence presented by the prosecution tended to show that the defendant advocated the most extreme measures in dealing with foreign forced labor, inhuman measures which violated every recognized principle of decency. When foreign forced laborers refused to work, the defendant ordered that they be shot. When they attempted to revolt the defendant directed that some of their numbers be killed, regardless of their personal guilt or innocence. In the case of prisoners of war who attempted to escape, the defendant ordered that these prisoners be shot and later hanged in the factory for all to see. On one occasion the defendant made the following statement, Prosecution Exhibit 145:

"The other day I talked to Himmler about it, and I told him that his main task should be to see to the production of German industry in case of internal uprisings of the foreign workers. I said that consequently a well established method should exist, and I have already given orders to the Chief A. W. * and to the training stations to get military training in this field. If, for instance, in the Locality X an uprising is started, then a sergeant with a few men, or else a lieutenant with thirty men has to turn up in the plant, and first of all shoot into the crowd with a machine gun. What he should do after is to shoot down as many people as possible in case of revolt. I have given orders to that effect, and even if our own foreign workers are involved—and then every tenth man is to be singled out and shot while the others are lined up and see him."

On another occasion, Prosecution Exhibit 148, when the defendant was speaking of the treatment of foreign workers, he made the following statement.

"In all these matters energetic interference must be made. I am of the opinion that there should be only two types of punish-

* Chief Ausbildungswesen (Chief of Training).

ment in such cases; firstly, a concentration camp for foreigners, and secondly, capital punishment."

The prosecution offered a great number of documents containing statements made by the defendant in regard to orders and threats of violence, for mistreatment and punishment, tortures, killings, and hangings of foreign workers. Space is too short to quote in this judgment all of such pertinent documents.

Although the defendant denied making a number of these statements appearing in the documents, he admitted the authenticity and utterances of many, with the excuse that he was a man of very violent temper, who, when worried from overwork, was not wholly responsible for many utterances made by him. He protested further that he did not actually mean nor intend for orders given in such fits of temper to be carried out, but they were simply the result of uncontrolled anger, and understood by his associates and subordinates to have been uttered in such vein. In further extenuation he declared that head injuries resulting from two serious accidents were largely responsible for such uncontrollable temper.

I have given due consideration to the explanation given by the defendant and am compelled to reject it. If but only a few of such remarks could be attributed to the defendant, his protestations might be given some credence; but when statements such as appear in the documents have been persistently made over long periods of time, at many places and under such varying conditions, the only logical conclusion that can be reached is that they reflect the true and considered attitude of the defendant toward the Nazi foreign labor policy and its victims and are not mere aberrations brought on by fits of uncontrollable anger. I find as a fact, therefore, that the true attitude of the defendant toward foreign laborers and prisoners of war is that reflected in the documents of the prosecution and was not the result of uncontrollable fits of temper. I find, further, that the defendant ordered, advised, counselled, and procured inhumane and illegal treatment of foreign workers resulting in permanent injury and death to many.

COUNT NO. 2

MEDICAL EXPERIMENTS

The prosecution contends that in violation of the laws of war and of crimes against humanity, high-altitude and freezing experiments were carried out by the Luftwaffe physicians at Dachau, and that said physicians who conducted such experiments were under the command of and subordinate to the defendant Milch.

I am of the opinion from the evidence offered on the part of

the prosecution that illegal and inhuman medical experiments were conducted at Dachau by Luftwaffe physicians who were under the command and subordinate to the defendant Milch and from which a great number of deaths ensued to concentration camp inmates and that great pain and suffering and permanent disability resulted to many others. I find as a fact from the evidence offered on the part of the prosecution that Dr. Erich Hippke was the Medical Inspector of the Luftwaffe and was the direct subordinate of the defendant Milch; that Hippke gave authority and ordered Dr. Rascher, a Luftwaffe physician, in the early spring of 1941 to use concentration camp inmates and prisoners of war as high-altitude experimental subjects for the benefit of the Luftwaffe. I further find, as a fact, that the witness Hippke at no time communicated this information to the defendant Milch, nor has the prosecution offered any direct evidence to the effect that the defendant Milch knew that such experiments had been conducted until after their completion. All of the testimony and the evidence, both for the prosecution and the defense, is to the effect that the defendant Milch did not have such knowledge of the high-altitude or low-pressure experiments which were carried out and completed by Luftwaffe physicians at Dachau until after the completion of such experiments. The evidence offered as to the knowledge or responsibility of the defendant Milch was not of such a nature as to show guilty knowledge on his part of said experiments.

As to the cooling or freezing experiments performed at concentration camp, Dachau, for which the defendant is charged with responsibility, I find as a fact that the defendant ordered experiments to be conducted at the camp for the benefit of the Luftwaffe. In a letter from Milch to Obergruppenfuehrer Wolff of the SS, dated 20 May 1942, the following is stated:

“In reference to your telegram of 12 May our medical inspector reports to me that the altitude experiments carried out by the SS and Luftwaffe at Dachau have been finished. Any continuation of these experiments seems essentially unreasonable. However, the carrying out of experiments of some other kind in regard to perils at high sea would be important. These have been prepared in immediate agreement with the proper offices. Oberstabsarzt Weltz will be charged with the execution and Stabsarzt Rascher will be made available until further order in addition to his duties with the medical corps of the Luftwaffe. A change of these measures does not appear necessary and an enlargement of the task is not considered pressing at this time.”

Further evidence makes it manifestly plain that subsequent to the receipt of the letter of Wolff, officers of the Luftwaffe, under the command and subordinate to the defendant, conducted medical experiments on concentration camp inmates at Dachau, against their will, by placing such experimental subjects in tanks of water of freezing temperatures, and requiring them to remain there for long periods of time while certain medical data concerning such subjects was gathered; and that as a result of such experiments, many of the human subjects died or were gravely injured.

The defendant admits giving orders for the conduct of experiments within the scope of the authority conferred by the letter, but contends that he did not know of, or contemplate, that the experiments would be conducted in an illegal manner or would result in the injury or death of any person. The defendant further asserts that he did not know or have any reason to believe that the experiments were conducted in such manner until after they had been completed. He therefore insists that he was and is not responsible for the unlawful manner in which the experiments were actually conducted by the Luftwaffe officers, and that he is not guilty of any crime as a result thereof.

The Tribunal, in its majority opinion, has fully considered the decision of the United States Supreme Court in the judgment in re Yamashita, and has found that said decision is not controlling in the case at bar. In weighing the evidence, the Tribunal was mindful of the fact that the defendant gave the order and directed his subordinates to carry on such experiments, and that thereafter he failed and neglected to take such measures as were reasonably within his power to protect such subjects from inhumane treatment and deaths as a result of such experiments. Notwithstanding these facts, the Tribunal is of the opinion that the evidence fails to disclose beyond a reasonable doubt that the defendant had any knowledge that the experiments would be conducted in an unlawful manner and that permanent injury, inhumane treatment or deaths would result therefrom.

Therefore, the Tribunal found that the defendant did not have such knowledge as would amount to participation or responsibility on his part and therefore found the defendant not guilty on charges contained in count 2.

CONCLUSIONS

(1) I concur in the opinion of the Tribunal that war crimes and crimes against humanity were committed by the defendant, including deportation, enslavement, and mistreatment of millions of persons; and that as a result thereof and in furtherance of such treatment, murders, brutalities, cruelties, tortures, atrocities,

and other inhumane acts were committed in a large scale measure upon citizens of occupied countries, prisoners of war, Jews, and other nationals. I agree further that the defendant was a principal in, accessory to, ordered, abetted, and took a consenting part therein. I also agree that for such acts and conduct on the part of the defendant, he is guilty of charges contained in count number one of the indictment.

The evidence produced during the trial upon the charges contained in this count showed conclusively that countless millions of persons were unlawfully deported, enslaved, and murdered. Especially were the Jews mistreated, tortured and murdered merely because they were Jews and their extermination desired. History discloses the fact that as early as the year 1349 in the city of Nuernberg, and within sight of where this opinion is being written, the citizens of Nuernberg drove the Jews from their city, confiscated their property, and erected a market place on the site of the Ghetto and the Liebfrauenkirche in place of the Synagogue. The hatred of the Aryan German for the Jew seems to have been constant during the many intervening years. History will record such conduct as a blot upon the name of the present German generation for many years to come.

(2) The Tribunal found the defendant not guilty of the charges contained in count number two, and I concur in such finding.

Under the American concept of liberty, as brought to us by our Anglo-Saxon heritage and the English Common Law, every person accused of crime is presumed to be innocent until proof of his guilt is established by the evidence and beyond a reasonable doubt. This presumption follows him throughout the trial and until he is found guilty beyond a reasonable doubt. In applying this God-given principle of liberty, one eminent American jurist uttered the following words:

“After considering and weighing all of the evidence you then find that your minds are disturbed, your convictions tempest-tossed, and your judgment, like the dove of the deluge, finds no place to rest; the law says you must acquit.”

The defendant was given the full benefit of these great and lasting rules of law and has received at the hands of the Tribunal a fair and impartial trial in full accord with the American concepts of justice under the law.

(3) Count three of the indictment charges the defendant with crimes against “German nationals and nationals of other countries.” I am of the opinion that sufficient evidence was not produced by the prosecution to justify an adjudication by the Tribunal of guilt as to German nationals alone. However, as to such crimes

against nationals of other countries, the Tribunal has heretofore considered such charges and has made an adjudication concerning the same in count number one of the indictment. The conclusion of the Tribunal is that the same unlawful acts of violence which constituted war crimes under count one of the indictment also constitute crimes against humanity as alleged in count three of the indictment. Therefore, the Tribunal found the defendant guilty of crimes against humanity under count three, with which finding I concur.

In weighing the evidence, the Tribunal simulated the ancient customs of using the seed of the oriental carob tree to balance the scales of justice. The defendant should not now complain.

Therefore, for the reasons stated, I am in full agreement with the judgment of the Tribunal and concur therein.

Respectfully submitted this the 15th day of April, 1947

[Signed] FITZROY D. PHILLIPS
Fitzroy D. Phillips
Judge, Military Tribunal No. II