X. SUPPLEMENTAL JUDGMENT OF THE TRIBUNAL

As stated in the original judgment, the defendants were arraigned on 10 March 1947, and the taking of proof began on 8 April 1947. During 101 court sessions, terminating 22 September 1947, the prosecution offered in evidence 742 documents, and the defendants 614 documents. The transcript of the proof consisted of 8,048 pages, exclusive of the judgment. The transcript of the closing argument of the prosecution consists of 73 typewritten pages. The transcript of the closing argument of the defense counsel includes the following:

Oswald Pohl	152 pages
August Frank	79 pages
Georg Loerner	63 pages
Heinz Karl Fanslau	19 pages
Hans Loerner	18 pages
Erwin Tschentscher	56 pages
Max Kiefer	36 pages
Franz Eirenschmalz	50 pages
Karl Sommer	54 pages
Hermann Pook	22 pages
Hans Baier	41 pages
Hans Hohberg	63 pages
Leo Volk	55 pages
Karl Mummenthey	33 pages
Hans Bobermin	55 pages
Josef Vogt	39 pages
Rudolf Scheide	43 pages
Horst Klein	31 pages
Total	909 pages

On 3 November 1947 the judgment was read in open Court and sentence imposed upon those defendants found guilty. Subsequently, counsel for the convicted defendants filed petitions with the Military Governor of the United States Zone of Occupation asking revision of the sentences under Article XVII(*a*) of Ordinance No. 7. In these petitions various reasons were given for revision of the judgment, including claims that the proof had not been properly evaluated by the Tribunal, that various exhibits had been misinterpreted, that findings of fact were not supported by the evidence, and that there was injustice in the disparity of sentences. Two defendants stated that in preparing the judg-

ment, the Tribunal had denied the defendants the right to answer prosecution's briefs filed against them. The Military Governor did not pass on the contentions of any of the defendants, but instead, at the request of the Tribunal, issued General Order No. 52, dated 7 June 1948, ordering it to reconvene on or about 12 July 1948, "for the purpose of permitting such reconsideration and revision of its judgment as may be appropriate." The Tribunal accordingly reconvened, and on 14 July 1948 entered an order reading in part as follows:

> "In conformity with the policy of the Tribunal to afford defense counsel every possible opportunity to present full and complete arguments in behalf of the defense, such counsel as wish to do so will now be permitted to prepare and submit briefs in reply to the prosecution's briefs. If, after fully considering such defense briefs, it should appear to the Tribunal that the judgment heretofore entered as to any defendant is not then supported by the evidence and that his guilt has not then been proved beyond a reasonable doubt, or that the sentence imposed is injust, the Tribunal will thereupon vacate, modify, or amend the judgment now entered in accordance with the facts and the law as so determined."

It will be observed that this order gave opportunity to all defendants to submit any arguments they wished, based on the record in the case. This completely removed any possibility of prejudice arising from the manner in which defendants claimed the original judgment had been prepared. It gave the defendants an unrestricted opportunity to supplement the 909 pages of defense argument already submitted with further briefs of any scope desired. In addition, the Tribunal ordered the return of all defendants to Nuernberg from the Landsberg prison so that their counsel could have free opportunity to consult with them.

It is the firm opinion of the Tribunal that this fulfilled every requirement of full and complete justice to the defendants, and gave them all the protection in their legal rights which could be asked.

Reconsideration of the evidence after judgment and new findings of fact based thereon are not new concepts in Anglo-Saxon Law. Motions for new trial, motions for rehearing, motions to reduce the verdict of a jury to conform to the proofs, and motions for judgment *non obstante veredicto* are familiar procedural steps in all courts. That is exactly what is being done in this case. No new or additional proof is being offered or received. The entire evidence heretofore received is being reexamined, and reanalyzed *de novo,* with the aid of additional defense arguments now submitted in briefs. The fact that a judicial conclusion was

reached in the original judgment does not preclude the Tribunal from reaching a different judicial conclusion, if, after further deliberation, with or without briefs, such conclusion appears just and appropriate. Judicial judgments are not immutable. If the original court or an appellate court in the interest of justice sees fit to modify them, the power and authority to do so, even on its own motion, is undoubted, with the possible limitation that no penalty fixed by the original judgment could be increased. Defense counsel have taken the strange position of objecting to a supplemental proceeding which could not be prejudicial and could be beneficial to their clients.

There is a constant strain prevalent in the defense in all of these cases. Throughout the entire organization of WVHA, there is a disclaimer of any authority to do anything which might be interpreted as culpable. To illustrate, the Tribunal sets out to examine operation Z which seems to have certain elements of criminality. From the table of organization, it appears that this operation pertains to office A. Upon further inquiry, the head of office A protests that he had no authority to conduct operation Z, and that if he signed or received any documents connected with it, he was merely a conduit between two other offices. Upon inquiry, those other offices also claim that while operation Z seems to come within their sphere of competence, actually such operation started in office B, and terminated in office C. A composite picture of these defenses would lead the Tribunal to the conclusion that no one in the entire organization had any real responsibility or authority, except for the most perfunctory and casual tasks. Somewhere within this complex and elaborate organization, there must have been sources of authority for launching and implementing important functions. Organizations of such size and importance are not inert. They are set up to get things done and to get them done quickly and efficiently, and in order to accomplish that end, definite broad authority must be delegated. But according to the contention of the defendants, no one in the organization had any authority to do anything important. Even Pohl, the chief of the WVHA, depreciates his own power almost to the vanishing point. He denies any control of Maurer and Gluecks and the Inspectorate of Concentration Camps, and takes the position that in most important respects, especially if they involve suspected criminality, he was merely a mouthpiece for Himmler. If this was the German conception of a chain of command, the whole chain was composed of fragile links, only strong enough to carry a very light load. The testimony of the defendants and the briefs of their counsel are replete with statements such as these:

"I did not have anything to do with the personnel of concentration camps. For this, there was a special personnel office within department D."

"It is true that I signed Exhibit X, but this letter was dictated by another."

"I did sign these orders of transfer, but they are really extracts from an order issued by the Main Office. I merely had to perform the subordinate function of passing on these excerpts."

"There were hardly any administrative tasks left which still needed to be dealt with."

"I had no insight into the activities of other departments."

"Nothing which had to do with administration proper belonged to his sphere of responsibility. There were other departments between him and the concentration camps which were responsible."

"It is correct, that on the plan of organization he appears as such, but no letter of appointment has been submitted."

These contentions, if true, go only to the *extent* of participation, by the several defendants. They serve, not as alibis, but as extenuating circumstances, at best. The most that they could do would be to exert a sort of centrifugal force in removing the defendant from the vortex of the criminal project toward, but not beyond, its perimeter.

In its original judgment the Tribunal indicated *(Tr. p. 8079)* that it "realized the necessity of guarding against assuming criminality, or even culpable responsibility, *solely* from the official titles which the several defendants held". This should not be interpreted to mean, however, that the fact that a defendant occupies an important organizational position is of no consequence and has no probative value. People are placed in high positions for the purpose of exercising authority and performing duties pertaining to that position. If a man is designated as a purchasing agent, it can be fairly assumed that his duties and powers pertain to the making of purchases. If a defendant is designated as head of an Amtsgruppe, it is logical to assume that this was done with a purpose and that he was expected and authorized to perform the functions of an Amtsgruppe chief, and not merely to occupy an office with no duties or responsibilities or authority.

Several defense counsel have urged the contention that other persons, more responsible than their clients, have not been indicted or tried, and one has even gone so far as to suggest that his client should not be tried or sentenced unless and until his superior officer has been indicted and tried and judgment entered against him, a situation which might never arise. This results in

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the novel proposal that unless all suspects are accused, none should be indicted or tried. This would require the Tribunal to go far beyond its proper jurisdiction, and is, on the face of it, impossible. The sole province of the Tribunal is to judge those who are brought before it by the duly constituted prosecuting authorities who are entirely independent of the Tribunals. The judicial power does not extend to the institution or launching of criminal proceedings.

Defense counsel further urged that there is a noticeable disparity between the sentences imposed in comparable cases by the several Military Tribunals. They urged that even with respect to sentences imposed in cases concluded months after the judgment in this case was entered, some sort of uniformity should be achieved. To do this would involve deferring sentences in all cases until the last one had been tried, then reshuffling all the defendants into rough categories and imposing sentences by some undisclosed use of the law of averages. This strange and unique procedure is obviously impossible.

The burden of much of the defense briefs is that defense counsel disagree with the conclusions of the Tribunal drawn from the proof. As they did in their lengthy closing arguments, they repeat their concepts of the weight of the evidence and the credibility of the witnesses. Incriminating documents are met by the statement, "But the defendant denies this", or "the affidavit of witness X refutes this." Such a situation is, of course, typical of any judicial proceeding, but in the last analysis, it is the province of the Tribunal to determine the facts from conflicting proof. With the facts as so determined, it is to be expected that one side or the other will forever disagree.

Some defense counsel, including counsel for Georg Loerner, have undertaken to analyze the concurring opinion filed by Judge Musmanno and to dispute the conclusions therein. It is to be observed that this concurring opinion forms no part of the judgment of the Tribunal. It was filed by Judge Musmanno for the purpose of recording for historical purposes a complete story of the concentration camps. It was not read into the record on 3 November 1947 at the time of the rendition of the judgment, and was not read or considered by the other judges prior to that date. The Tribunal, therefore, has not considered statements in defense briefs dealing with this concurring opinion.

Some of the defense briefs have been presented with several affidavits attached, purporting to give factual support to the contentions in the briefs. These affidavits cannot be received as an extension of the proofs in the case. They have never been offered or received in evidence, nor has the prosecution had any oppor-

tunity to cross-examine the affiants or submit counter affidavits or other impeaching proof. The Tribunal has clearly stated that it would review the record as it stood on 22 September 1947 when the prosecution and the defense rested their cases.

POHL

An elaborate and complex operation, such as the deportation and extermination of the Jews and the appropriation of all their property, is obviously a task for more than one man. Launching or promulgating such a program may originate in the mind of one man or a group of men. Working out the details of the plan may fall to another. Procurement of personnel and the issuing of actual operational orders may fall to others. The actual execution of the plan in the field involves the operation of another, or it may be several other persons or groups. Marshaling and distributing the loot, or allocating the victims, is another phase of the operation which may be entrusted to an individual or a group far removed from the original planners. As may be expected, we find the various participants in the program tossing the shuttlecock of responsibility from one to the other. The originator says: "It is true that I thought of the program, but I did not carry it out." The next in line says: "It is true I laid the plan out on paper and designated the *modus operandi*, but it was not my plan, and I did not actually carry it out." The third in line says: "It is true I shot people, but I was merely carrying out orders from above." The next in line says: "It is true that I received the loot from this program and inventoried it and disposed of it, but I did not steal it nor kill the owners of it. I was only carrying out orders from a higher level." To invoke a parallelism, let us assume that four men are charged with robbing a bank. The first makes a preliminary observation, draws a ground sketch of the bank and of the best means of escape. The second drives the others to the bank at the time of the robbery and spirits them away after its completion. The third actually enters the bank and at the point of a gun steals the money. The fourth undertakes to hide or dispose of the loot, with knowledge of its origin. Under these circumstances, the acts of any one of the four, within the scope of the over-all plan, become the acts of all the others. Control Council Law No. 10 recognizes this principle of confederacy when it provides in Article II paragraph 2 "any person * * * is deemed to have committed a crime as defined in paragraph 1 of this Article, if he was (*a*) 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 * * *." Typical of the attitude of the defendant is this statement in the brief filed 26 July 1948 on behalf of Pohl:

"Neither Pohl nor the WVHA had any decisive part in the organization of the liquidation of Jewish property. Neither Pohl nor the WVHA played any part in the execution of this liquidation but that their participation was limited to the duty of delivery ordered by the Reich Government, as far as valuables came to hand within the sphere of the WVHA."

In order for Pohl to have been criminally liable for the liquidation of the Jews and the appropriation of their property, it was not necessary for him to have had a decisive part in formulating the original plan, nor in carrying it out later. It would be sufficient to inculpate him, if he was an accessory to or abetted the criminal program or took a consenting part therein or was connected with plans or enterprises involving its commission. This could occur at any point in the course of the program.

Counsel for Pohl, in his closing argument, urged that Himmler's order to tear down the Warsaw ghetto was addressed to the Higher SS and Police Leader in Krakow, and not to the defendant Oswald Pohl, who was merely ordered *(NO–2494, Pros. Ex. 501)* "to have the prisoners collect and salvage the millions of bricks, the scrap iron, and other materials of the former ghetto."

The evacuation of the Jews from the Warsaw ghetto was accomplished by Stroop through the use of military force between 19 April and 16 May 1943. Six months before that, Himmler had ordered that all the Jewish workers in the ghetto "are to be gathered together in concentration camps on the spot, that is in Warsaw and Lublin, by SS Obergruppenfuehrer Krueger and Pohl." This was the document *(NO–1611, Pros. Ex. 498)* in which Himmler stated:

"Of course, there, too, the Jews shall some day disappear, in accordance with the Fuehrer's wishes."

It thus appears that at the very inception of the Warsaw operation, Pohl was made an active participant by Himmler's order, with definite duties and responsibilities. The document shows that Pohl's name is the first on the distribution list.

In January 1943, 3 months before the violent evacuation program was launched by Stroop, Himmler wrote to Krueger complaining that his evacuation program was not being carried out with sufficient speed to suit him and ordering the immediate transfer of 16,000 Jews to a concentration camp at Lublin. Pohl's name appears on the distribution list of this letter *(NO–1882, Pros. Ex. 499).*

On 16 February 1943, two months before the program of

demolition was inaugurated by Stroop, Himmler wrote directly to Pohl, with a copy to Krueger *(NO-2514, Pros. Ex. 500)* as follows:

"(1) I am giving the order to establish an *X concentration camp in the ghetto of Warsaw.*

(2) All Jews living in Warsaw are to be transferred to this concentration camp; Jews are not permitted to work in privately owned enterprises.

(3) The former privately owned enterprises in the ghetto of Warsaw are being taken over by the concentration camp (Reich enterprise).

(4) The concentration camp Warsaw as a whole, including its enterprises and its inmates, is to be transferred to Lublin and its surroundings as quickly as possible, but in such a way that production does not suffer."

From these documents, it appears conclusively that Pohl was by no means a mere salvage contractor who was brought in to clear up the rubble after the destruction of the ghetto had been accomplished. The establishment of concentration camps, the elimination of private Jewish firms, the displacement and transfer of the entire Jewish population of the ghetto, of which Pohl had notice and in which he was ordered to participate and cooperate, are all antecedent to his final task of razing the buildings in the ghetto. In July, Pohl reported to Himmler that he had appointed Goecke as commandant of the new concentration camp established by Himmler's order in the Warsaw ghetto, and pledges the closest collaboration with Stroop.

The contention of Pohl that his only participation in the Warsaw program was to clean up the rubble, after the demolition had been accomplished by others not connected with him, is incontrovertibly refuted by these exhibits.

Counsel for Pohl takes exception to the phrase in the judgment, "great industrial empire" *(Tr. p. 8080)*. This empire, he contends, consisted of the Deutsche Erd- und Steinwerke (DEST), the Deutsche Ausruestungswerke (DAW) and about 35 medium sized plants, employing less than 40,000 workers. In his closing argument (p. 148), counsel states that this activity involved the administration by WVHA of 13 concentration camps and about 500 labor camps. In his brief he states that in the last half of 1944, there were 12 concentration camps and 504 labor camps, in which 650,000–700,000 prisoners were employed. The Tribunal feels that the phrase "great industrial empire" is not a misnomer as applied to enterprises of this scope and magnitude.

On transcript page 8082 of the original judgment, the Tribunal stated:

"As chief judicial officer of the SS, he had full disciplinary power over all guards who served in the concentration camps. All judgments arising in disciplinary proceedings against SS guards were submitted to Pohl for modification or confirmation."

This is an error. Pohl's authority to judicially review disciplinary measures was confined to the personnel of WVHA and did not extend to the concentration camp guards.

Pohl's counsel argues that the "primary criterion of any responsibility is the authority to punish," and that Pohl had no such authority over concentration camp commanders or guards. The conclusive answer to this is that the criterion of responsibility in this case has been fixed by Article II, paragraph 2, of Control Council Law No. 10, to which reference has been repeatedly made herein.

"In this military set-up there was no room for an administrative official to cooperate by issuing orders", counsel suggests. But Pohl *made* room. In R–129, Pros. Ex. 40, signed by Pohl (not "by order"), he signed a document which he designates as an order, addressed to chief of department [Amtsgruppe] D (Maurer) and *all camp commanders* and work managers, defining the policy in concentration camps and the responsibilities of commanders and work managers, requiring that work must be exhaustive, that working hours are to be fixed by camp commanders and that "sentries on horseback, watch dogs, movable watch towers, and movable obstacles are to be developed." In NO–1290, Pros. Ex. 60, Pohl orders that the working hours of prisoners be kept at 11 hours daily, 6 days per week, with a half day on Sunday. This order is addressed to all concentration camp commandants. In Document NO–1245, Pros. Ex. 89, Pohl orders all camp commanders to maintain closer supervision by guards and to forbid conversation or contact with inmates. In NO–1544, Pros. Ex. 137, Pohl ordered each noncommissioned officer and guard to make loafing prisoners work. The number of such instances could be multiplied, but these are sufficient to show that Pohl found ample room, even as an administrative officer, to issue orders concerning the operation of concentration camps.

Counsel states in his brief (p. 17):

"The securing and allocation of workers for the armament industry was examined by the Reich Ministry for Armament and War Production and was subject to direct approval. It was not possible within the framework of this planned economy that Pohl on his own responsibility could allocate workers from the concentration camps to the armament industries."

The record is replete with proof that the defendant Sommer,

head of Amt D II (inmate labor commitments) was charged with filling requisitions for labor from the concentration camps. We recognize that neither Pohl nor Sommer were charged with labor procurement. That was the task of Sauckel and the Secret Police. Nor did Pohl or Sommer initiate requisitions for labor. But when a request for 1,000 laborers for Mauthausen or Auschwitz came into WVHA, through the Reich Ministry for Armament and War Production, Sommer, as Pohl's subordinate in Amt D II, filled the order and through him the required number of inmates was assigned. No juggling of words can make anything of this except "allocation of workers for the armament industry." As a striking example of inconsistency, compare this statement in defendants brief (p. 20):

"This measure (the appointment of Sauckel as Plenipotentiary General for Labor Allocation) by Hitler also forced Himmler to remove the labor allocation of concentration camp inmates from the general jurisdiction of the Inspectorate of Concentration Camps and, by transferring it as a special task to the chief of WVHA (Pohl) as the proper authority, raise it to the ministerial level."

Let us look at them vis-à-vis (p. 17): It was not possible that Pohl could allocate workers to the armament industries (p. 20). Himmler removed the labor allocation of inmates from the Inspectorate and transferred it to Pohl on a ministerial level. To these may be added a third inconsistent position (p. 21):

"* * * it was Pohl's duty to supervise the smooth execution of all orders. The cooperation of all those engaged in this special task was the prerequisite for success."

That is exactly what the Tribunal has stated and restated many times. That is exactly what Control Council Law No. 10 referred to in Article II, Paragraph 2. It was Pohl's "supervision of the smooth execution" of criminal orders that makes his "prerequisite cooperation" criminal.

Much point has been made of Pohl's alleged mental and physical condition, arising from claimed brow beating and abuse, at the time he signed the numerous affidavits which were submitted in evidence. The evidence of such abuse is insinuated into this case by quoting from Pohl's testimony in Case No. 2 before another Tribunal more than 6 months after rendition of the judgment in this case. Each of the several affidavits signed by Pohl contained immediately before his signature the following statement:

"I have read the above statement consisting of 3 (three) pages in the German language and declare that this is the full truth according to my best knowledge and belief. I have had the opportunity to make alterations and corrections in the above

statement. I have made this statement of my own free will without any promises of reward whatsoever and I was not subjected to any kind of threat."

This repeated affirmation by Pohl makes the Tribunal somewhat skeptical of the tale of the effect of claimed abuse on a "highly emotional and sensitive person" (p. 25) like himself, but passing that, if every affidavit of Pohl was deleted from the record or had never been offered in evidence, the tremendous volume of credible proof remaining would be more than ample to establish his guilt of the crimes of which he was convicted. It would be equivalent to removing a bushel of sand from a carload.

The comments of Pohl's counsel on the concurring opinion filed by Judge Musmanno have already been answered herein. It would be useless to repeat or elaborate upon them here. It is pertinent to conclude by stating that the prosecution never filed a closing brief as to the defendant Pohl, but rested upon its final argument in open Court on 22 September 1947.

After a careful review of the entire evidence and a thorough study of defense counsel's brief, the Tribunal is of the opinion that no reason has been disclosed for modifying or amending the judgment entered on 3 November 1947 as to the defendant Pohl and said judgment is accordingly affirmed in all respects including the sentence imposed thereunder.

FRANK

Counsel for defendant Frank states in his brief (p. 2): "All important factors which had any bearing on the trial as it stood at the time of the pronouncement of the judgment were taken into account at the time of my final plea (argument)". He, therefore, "considers it useless and superfluous if I am to be limited * * * to a reply to the prosecution closing brief", unless a complete new trial is held, the record reopened and further proof taken. In order to keep an anchor to windward, however, he says, "I nevertheless submit to the Court at this stage a preliminary review showing how I *should* present the case of my client in the event of a full resumption of the case." Under this statement, the Tribunal would be justified in foregoing any reconsideration of the judgment in Frank's case, but the Tribunal has no inclination to be technical, and will, therefore, carefully consider the arguments which counsel so grudgingly offers (or would offer) in Frank's behalf.

Counsel constantly refers to matters outside the record in this case. He quotes from testimony given in trials of other cases before other Tribunals, offered long after the judgment in this case was delivered. Sometimes he paraphrases, sometimes he

quotes brief excerpts. He quotes from a decree *(NO-4905, Pros. Ex. 2452)* of the Reich Ministry of Finance introduced in evidence in Case No. 11 * and published in the Reich Law Gazette, in which the confiscation of the property of the Jews was delegated to fourteen Senior Finance Presidents, who, with the Gestapo, "removed and utilized * * * billions worth of property." He states that only one of these Senior Finance Presidents has ever been brought to trial, and that another even acted as President of a denazification court. He quotes a New York newspaper which states that the Army of Occupation "amassed booty * * * exceeding a total value of one billion dollars." What is the purpose of injecting these impertinent statements in his brief? They certainly do not rise to the dignity of proof, and in any event have not the remotest relation to the issue before the Tribunal in this case.

Frank's counsel states that "Frank's position as official group chief was purely administrative * * *. He could not give even the least executive order." We presume the emphasis is on the word "executive", meaning an order for which he was the original authoritative source. In an organization such as the WVHA, the difference between executive orders and implementing orders is one of degree only. Executive orders are not self-executing. They require the efforts of perhaps a number of intermediaries to make them effective. This point has been more elaborately discussed elsewhere in this supplemental judgment. That Frank was one of the most active of these intermediaries is shown by his own testimony that "he signed thousands of orders in nineteen months". His counsel follows this with this incredible non-sequitur: "There is no more convincing evidence that Frank had no official contact with the concentration camps." The theory of Frank's defense is epitomized in this statement in his brief: "Himmler issued instructions for the handing over (seizure) of valuables, Globocnik confiscated the valuables as prescribed by (German) law. The Reich Bank received the valuables for the credit of the Reich * * * . Frank was neither the instigator, the chief nor the beneficiary." Counsel deftly skips over Frank's place in this program. There were many steps and many actors between Himmler and Globocnik and between Globocnik and Puhl. Some steps were vital, some were merely auxiliary (or, as has been said, administrative). Some actors were primary, others were subordinate. But all served to keep the program moving smoothly and efficiently. In this coordinated movement, Frank had his place and it was not an insignificant one.

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* U. S. A. *vs.* Ernst von Weizsaecker, et al., vols. XII, XIII & XIV.

The provisions of Article II, paragraph 2, of Control Council Law No. 10, are clear and unambiguous. It enumerates, in a descending scale of culpability, the persons who are deemed to have committed crimes:

(1) Principals.

(2) Accessories or abettors.

(3) Persons taking a consenting part.

(4) Persons connected with plans or enterprises involving its commission.

(5) Members of certain organizations or groups.

(6) Holders of high political, civil, or military positions.

The burden of most of the defense briefs is that the defendants do not come within class 1, so Q.E.D., they are innocent. That is exactly the position taken by counsel for Frank, as indicated by his argument quoted above. Of course, he was "removed" from the fountain head of the criminal project but not removed far enough to escape implication in it. Much time and language has been spent in these trials in ingenious attempts to distort or evade the plain meaning of the clear language of Control Council Law No. 10, especially Article II, paragraph 2. Frank's efforts to do this are futile.

After a careful review of the entire evidence and a thorough study of defense counsel's brief, the Tribunal is of the opinion that no reason has been disclosed for modifying or amending the judgment entered on 3 November 1947 as to the defendant Frank and said judgment is accordingly affirmed in all respects including the sentence imposed thereunder.

GEORG LOERNER

On behalf of the defendant Georg Loerner, it is claimed that Document NO-2147, Pros. Ex. 30, designated as a report of Georg Loerner and others to Pohl, which was referred to in the original judgment as a "significant document", was not, in fact, signed by Loerner. This contention is correct, but it must be stated that in the English translation of this document contained in document book 2, page 46, the document purports to have been signed by Loerner, and his typed signature appears at the end of the translated document. This exhibit was admitted in evidence without objection, and the only form in which it came to the Tribunal was translated into English in document book 2. It was only after the judgment had been entered that attention was called by defense counsel to the fact that the original German document

bore the signature of Kammler instead of Loerner, a fact which it was impossible for the Tribunal to know before writing the judgment.

If this document constituted the only proof against Loerner, his guilt would, of course, not be established, but even after discarding this document as we do, there remains an overwhelming quantum of evidence which is amply sufficient to establish his guilt. Had the Tribunal never seen Document NO-2417, Pros. Ex. 30, it would nevertheless have arrived at the same conclusion.

Counsel for Loerner insists that Document NO-1990, Pros. Ex. 73, referred to in the original judgment *(Tr. p. 8118)*, and which is a report from Burger of Office D IV to Loerner stating that over 600,000 additional prisoners from the East were expected immediately for confinement in concentration camps, proves nothing, because the 600,000 prisoners never actually arrived, but only a small percentage of them actually reached concentration camps. Counsel for defense entirely misconceives the significance of this exhibit. The size of the group of anticipated arrivals may mean little, but the fact that there was included in the list former Polish officers, advised Loerner of the fact that it was common practice to commit prisoners of war to concentration camps to be employed in war work. Leaving out all figures from this exhibit, it was sufficient to inform Loerner of this unlawful practice, and the fact that Burger felt obliged to report to Loerner on this subject fixes Loerner's responsibility as a participant.

Loerner's counsel contends now (but not at the trial) that this letter was merely a subterfuge, with fictitious figures used, to assist Loerner in securing larger allotments of clothing and raw materials for the slaves and prisoners of war who actually *were* in the concentration camps. If that was its purpose, the motive cannot be condemned, but it conclusively shows Loerner's knowledge of the fact of slave labor. He knew there were *some* slaves in the camps, even if less than 600,000, and that it was his task to procure clothing for them. How can it be said that this did not constitute a "consenting part" in the crime of enslavement? Was he not "connected with a plan and enterprise" involving enslavement?

Some testimony was offered from which it might be inferred that Loerner was responsible for the furnishing of food to the concentration camp guards and inmates. This testimony was later repudiated or explained by the witnesses who offered it, and the Tribunal now places no reliance upon it. The Tribunal now finds that Loerner was not responsible for the furnishing of food

to the inmates, but that this was done by the camp commanders from local civilian sources through the channel of Amtsgruppe D and the Reich Food Ministry. It remains true, however, that as stated in the original judgment *(Tr. pp. 8119, 8120)*, Loerner did have the duty and responsibility of procuring and supplying clothing and raw material for the manufacture of clothing. Finished articles were distributed from the supply point at Ravensbrueck and raw material was fabricated at Dachau. It is true, as contended by Defense Counsel, that Loerner did not have the responsibility for *distributing* clothing to the concentration camps, but he was charged with keeping up the supply of clothing and raw material in the warehouses from which distribution was made.

Defense counsel contends that although Georg Loerner was appointed as Pohl's deputy, there was no documentary proof that he ever actually functioned in that capacity. He quotes Pohl as testifying that Loerner's appointment was "only a formality in order that a deputy might be at hand." This is specious reasoning. This is equivalent to saying that a man holding the office of fire chief was really not such, because he never attended a fire. The fact remains that by reason of his appointment, Loerner stood high in the councils of WVHA, ready to act as Pohl's deputy should the need arise. The fact that he was clothed with the authority fixes his status, even though the proof discloses no occasion when he exercised his authority.

An attempt has been made to play down and minimize Loerner's connection with the W enterprises. Defense counsel states:

> "No proof has been furnished that Georg Loerner's connections with these companies were anything more than formal and that he was more than a straw-man in Pohl's hands, nor that he gave advice to which attention was paid. Only a few records of meetings have been cited in which he participated. However, it has not been proved that he made any suggestions in any of these meetings."

It is useless to try to make of Loerner the mute and servile pygmy which counsel portrays. It is interesting to note that Frank, who, with Loerner, was one of the two original incorporators of the Textil and Lederverwertung in June 1940, also attempts to assume the same unimportant and humble role as Loerner in the organization of this company which employed inmate labor at Dachau, Ravensbrueck, and Oranienburg. This would imply that neither of the original incorporators of this large concern ranked much higher than an office boy or a messenger. The record refutes any such conclusion beyond any doubt. Counsel urges that Loerner was merely a member of the Auf-

sichtsrat of the Cooperative House and Home Building Company, a firm which was incorporated into WVHA "in organization, personnel and business matters."

The Aufsichtsrat is defined by Tribunal VI in Case No. 6 as follows:

> "This body was in the nature of a supervisory board, somewhat comparable functionally, to those members of a board of directors of an American corporation who are not on the executive committee and who do not actively participate in the management of the business. Under German Law the Aufsichtsrat elected and removed members of the Vorstand, called special meetings of the stockholders, and had the right to examine and audit the books and accounts of the firm."

Whether or not one chooses to define Loerner's participation in this enterprise as merely formal or on a low level, the fact remains clear that he was in the front office and part and parcel of the executive group.

Counsel discusses Document NO–2133, Pros. Ex. 387, book 14, which is a letter from Maurer to several office chiefs, with copies to Loerner and Gluecks, as counsel states "for their information." That is exactly the point. As early as 24 January 1942, shortly before the organization of WVHA, Loerner was informed that land was to be purchased and a concentration camp housing 25,000 inmates was to be constructed at Stutthof. The acquisition of the land fell within Loerner's province as head of the legal division of Main Department I/2. Thus he had early knowledge of the existence, and at least partially, of the scope of the system of concentration camps. This early knowledge is only one factor in his guilt. Standing alone it is not enough, but it is a piece in the mosaic which *in toto* spells slavery.

After a careful review of the entire record in the case and a thorough consideration of the final arguments of defense counsel and briefs filed supplemental thereto, the Tribunal is of the opinion that the judgment of guilty under counts two, three and four of the indictment as determined on 3 November 1947 should be affirmed. A certain disparity, however, which might be claimed to be unjust is found in a comparison of the sentences imposed upon defendants Georg Loerner and August Frank. The similarity in length of service with WVHA, and as deputy to Pohl, a consideration of their respective ranks, and of the counts on which they were found guilty convinces the Tribunal that the sentence imposed upon Georg Loerner as announced in the original judgment on 3 November 1947 should, in the interest of justice, be modified. Although Georg Loerner was designated as deputy to Pohl, the record discloses no occasion on which he actually

fuctioned in that capacity and no document signed by him as such deputy has been disclosed.

The judgment of guilty under counts two, three and four as set forth in the original judgment of 3 November 1947 is hereby in all respects affirmed. The sentence imposed on the defendant Georg Loerner on said date will be modified and amended as hereinafter provided.

FANSLAU

Counsel for this defendant insists that the Tribunal, in its original judgment, misconceived the import of Documents NO–4560, Pros. Ex. 716 and NO–4505, Pros. Ex. 720 in stating that he (Fanslau) personally signed orders transferring camp commanders *(Tr. p. 8105)*.

Document NO–4560, Pros. Ex. 716 states in part "Sturmbannfuehrer Max Pauly, hitherto concentration camp Stutthof commander, is transferred to concentration camp Neuengamme as camp commander." This exhibit is signed by the defendant Fanslau as chief of the personnel office.

Document NO–4505, Pros. Ex. 720 states "SS Obersturmbannfuehrer Erich Schellin * * * is, effective 1 August 1942, transferred to the Higher SS and Police Leader East Krakow as SS Economist." This exhibit also is signed by Fanslau as chief of the personnel office.

The Tribunal recognizes, and at the time of writing the original judgment also recognized, that these exhibits should be considered in connection with Documents NO–020a, Pros. Ex. 81 and NO–2128, Pros. Ex. 331, the underlying orders of Pohl for the reassignment and detachment of certain camp commanders, which were merely implemented by Fanslau in Documents NO–4560, Pros. Ex. 716 and NO–4505, Pros. Ex. 720. The Tribunal was, and is, aware that in signing these orders, Fanslau did not exercise original authority, but the statement in the original judgment that "he personally signed orders transferring camp commanders" is borne out by the documents, and is true. On this basis, it is undoubtedly true that Fanslau was a proximate participant in the process of transferring concentration camp commanders. Assuming that he was not the initiator, nevertheless he was the instrument used by Pohl to make such transfers effective.

In his appeal to the Military Governor, Fanslau states that he "could only draw the conclusion that the labor allocation aimed at training asocial elements for work and preparing them for their reinstatement into the human society." Assuming that the concentration camps furnished a convenient place of imprison-

ment for these asocial persons who dared to dissent from the Nazi policy of tyranny and oppression, and who might be considered a source of danger within the Reich, certainly no person could be so naive as to believe that this was the only group confined in concentration camps. This specious brand of exculpation cannot be accepted, nor can it be believed that a man in Fanslau's position to know was unaware that the concentration camps also contained uncounted thousands of men, women, and children from the Eastern territories who had been abducted from their homes by force and herded into concentration camps to be worked to death for the German war machine. Can Fanslau claim with any sincerity that he did not know of Ravensbrueck, where thousands of women and children were confined? Can he with any degree of honesty claim that these women and children constituted asocial elements who were being prepared for their reinstatement into the human society? This Tribunal would be credulous indeed to arrive at such a conclusion.

In stressing his contention that the duties of the several Aemter in WVHA were completely separated and that no connection or common responsibility existed among them, counsel for Fanslau uses an interesting but inapt illustration. He says:

> "If one assumes that the entire administrative work carried out by the SS in the Economic Administrative Main Office corresponds to the building of a house, it becomes clear that different worksmen are entrusted with different tasks:
>
> The bricklayer builds the walls, the slater completes the roof, the plumber the sanitary fittings, the electrician the electric installations, the carpenter the windows and doors etc. Thus, if after the conclusion of the building or during the construction a faulty part is detected somewhere in the house, only the person who has built this part of the house can be made responsible for this fault, and not another person who was employed in a heterogeneous job on the same house. Thus, for a fault in the roof the slater, for a fault in the electrical installation the electrician will be responsible. Besides that only the architect supervising the building of the house could be made responsible."

There was nothing wrong with the planning or construction of the house of WVHA. It was skillfully planned and expertly constructed. It was a good house, but it sheltered criminal activities. It is the use to which it was put that was wicked. A noble cathedral may be the rendezvous of thieves and kidnappers and counterfeiters. WVHA was not a group of detached cottages. It was a single edifice but with many connecting rooms, and the corridors and halls between them were thronged with busy men, all hurry-

ing on the business of their common master—Himmler. The Tribunal finds no reason to retract or modify its statement on this subject in the original judgment *(Tr. p. 8096 et seq.)*.

Defense counsel raises the point that "Fanslau is responsible within the framework of troop administration only * * * but which is not liable to punishment." He reminds the Tribunal that administrative office heads of the Reich Security Office, the Wehrmacht, the Luftwaffe, and the navy have not been accused or convicted of crimes against international law. Let us repeat what has been so often said before. Fanslau has not been condemned because he was a military officer or because he ministered to the needs of the troops. His crime consists in using his position as an SS officer in WVHA to aid and abet a Nazi-sponsored system of slavery, spoliation, and looting. Field Marshal Milch, who was convicted by this Tribunal in Case No. 2, was not condemned because he was a field marshal and second in command of the Luftwaffe, but because in that capacity he participated in war crimes and crimes against humanity.

Fanslau's claim that as chief of Amt A V, the personnel office, his only function was to "replace administration officers for the paymaster service for Amtsgruppe D to be employed in the concentration camps" and involved only 5 or 6 men, finds no credible support in the record in this case. The claim that in signing (not promulgating) orders for the transfer of camp commanders, Fanslau was merely certifying to the correctness of an order of the Personnel Main Office has been sufficiently discussed and disposed of in this judgment under Frank's case. It need not be reexamined here. The Tribunal cannot accept the conclusion that the chief of Amt A V and later the chief of Amtsgruppe A was merely a stenographer, and his high position and official acts belie such a menial classification.

HANS LOERNER

With reference to Loerner's budget duties and activities as head of Amt A I and A II *(NO-2672, Pros. Ex. 36)*, the Tribunal in its original judgment *(Tr. p. 8108)* stated:

> "In connection with the concentration camps, Kaindl, and later Burger of Amt D IV, concentration camp administration, assembled the budget items for the concentration camps and passed them on as part of the entire budget of the Waffen SS to Loerner in Amtsgruppe A, who reviewed it and put it in shape to be transmitted to the Main Department of Finance in Berlin."

A careful review of the record convinces the Tribunal that this statement is accurate and true. Requests for money appropria-

tions for the concentration camps originated in the camps were sent by the camp commanders to Amtsgruppe D of WVHA. These requests, together with those from other activities of the SS, were then forwarded to Amt A I of which the defendant Loerner was chief. Loerner thereupon assembled all the budgets so forwarded to him and transmitted this entire budget of the Waffen SS to the Main Department of Finance in Berlin. The Tribunal did not and does not assume or find that Loerner had any authority to promulgate a budget, to raise it, or lower it, or to deny or allow it, and nothing in the original judgment implies any such finding. The testimony of Loerner's codefendant, Pohl, who was the chief of the entire WVHA and who must be presumed to know something of the powers and duties of his subordinates, states in part as follows *(Tr. p. 1880):*

"Office group A put together the whole of the budget by listing together the various contributions * * *. The administrative office of the Inspectorate, that is office D IV, put together the budget for all concentration camps and then passed it on as part of a whole budget of the Waffen SS to office group A, which then put together the entire budget."

There appears to be no substantial dispute as to this method of procedure, but counsel for Loerner disagrees, as is his privilege, with the conclusions which the Tribunal has drawn as to Loerner's culpability arising from these facts.

It is to be observed that the Tribunal in the original judgment *(Tr. p. 8107)* recognized Loerner's contention concerning the adoption of the open budget and its effect on his duties and responsibilities. It cannot be claimed that the Tribunal ignored this fact in reaching its conclusions.

A comparison between the case of Schwarzenberger, who was acquitted in Case No. 8, and Loerner, who was convicted in Case No. 4 is emphasized by Loerner's counsel. In his argument in Case No. 8, the prosecutor said:

"Loerner and Schwarzenberger joined the SS about the same time. Both served as administrative officers until August 1939, when both went into the army for a short time. Both were later transferred from the army to administrative positions. Loerner attained the rank of lieutenant colonel; Schwarzenberger that of colonel. Both were budget and finance officers. Both were administrative officers. Both participated in a criminal program."

Some similarity between the two men as to rank and function must be conceded, but it must be observed that the facts in no two cases are identical. Similarities may exist to a greater or lesser degree, but not absolute identity. Nor is it possible to assure

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entire unanimity in the findings of separate Tribunals. Disparity in conclusions, or findings of fact, may result from the disparity in emphasis which separate Tribunals may accord to the evidence. A single document may in the opinion of one Tribunal assume controlling force, and in the opinion of another Tribunal be given lesser weight. One Tribunal may find the testimony of one witness true, and another Tribunal may discredit it. In appraising the preponderance of the proof for and against the defendant, one Tribunal may find the scales to be tipped in one direction and another Tribunal in the other. This factor is inherent in any judicial proceeding in which human beings are involved. It has always been true, and doubtless, always will be. It is the only system we have, and we must use it as best we can. It is necessary in any judicial system that there be some place where factual determination becomes final and incontrovertible, even in the face of an apparently contradictory determination by some other judicial agency.

In the instant case, however, there are sufficient factual distinctions between this case and the Schwarzenberger case to make reconciliation between the judgments unnecessary. It is apparent from the record in this case that Loerner operated in a far wider field than Schwarzenberger (Case No. 8), said in its judgment rendered 4 months after the judgment in the instant case:

> "His duties consisted almost entirely of paying out funds on lump-sum requisitions submitted to him by various organizations, and that, as chief of finance, he had no power to approve or disapprove requisitions for funds, which was a duty resting solely with the Reich Minister of Finance. He contends, furthermore, that not even in the requisitions and bills submitted to his office was there anything indicating the purpose for which the funds were to be used or had been used, and he never had knowledge of the purpose for which these funds were being disbursed. Schwarzenberger's contentions are supported by an abundance of evidence. It would appear from the evidence that Schwarzenberger's principal task was to submit to the Reich Minister of Finance a budget containing the estimated operational needs of the various departments; and upon approval by the Reich Minister of Finance, the funds were deposited with Schwarzenberger's office for payment to the various organizations. Volumes of documents have been introduced by the prosecution in this case—hundreds pertaining to the various organizations involved—and Schwarzenberger's name is conspicuous in its absence among these documents. No documentary evidence of an incriminatory nature has been offered against this defendant."

Schwarzenberger's duties were apparently those of the ordinary cashier and disbursing officer. By contrast, Loerner's duties covered a far wider field and entered the realm of departmental policy, involving judgment and discretion. He did far more than merely receive funds and disburse them upon the order of higher authority. These instances are particularly referred to in detail in the original judgments of the Tribunal. For reference purposes, the following exhibits are pertinent:

NO–266, Pros. Ex. 204, book 7.
NO–098, Pros. Ex. 234, book 9.
NO–2789, Pros. Ex. 530, book 22.
NO–3161, Pros. Ex. 543, book 22.
NO–554, Pros. Ex. 448a, book 17.
NO–725, Pros. Ex. 481, book 18.
NO–243, Pros. Ex. 553, book 23.

Document NO–2117, Pros. Ex. 78, book 4: Dr. Schmidt urges that this report of Loerner's as to a financing plan for the Stutthof camp was not based on his own personal knowledge of the conditions in the camp, but was merely a summary of a statement of the position adopted by the Higher SS Leader in Danzig with reference to the fiscal position taken by the Reich Finance Office. His contention seems entirely beside the point. From the exhibit, it is apparent that as chief of the budget office, Loerner and Hildebrandt had been trying to straighten out the financing involved in the change-over of the Stutthof camp from the police jurisdiction to that of the WVHA. After a conference with Peukert of the Reich Court of Accounts, Loerner follows it with a written analysis and history of the change-over which discloses an intimate knowledge of the whole transaction. The exhibit is, on its face, a written opinion as to the auditing procedure involved. He decides definitely that "any demands made by the German Reich during the time the camp was subordinated cannot be made valid." This document is much more than a mere "report summarizing a statement of the position adopted by the Higher SS and Police Leader in Danzig regarding the representations made by the Reich Finance Office." It is, on the contrary, an official opinion and ruling by Loerner.

Document NO–504, Pros. Ex. 41, book 2: Dr. Schmidt contends that this 6–day budget conference concerning SS personnel concerned only peacetime plans which were of no significance for the war budget and which were conducted during the war simply to create a peacetime financial basis for the SS. It is true that the conference, in setting up a table of organization, was taking a long range view extending into the time of anticipated peace, but it also specifically deals with personnel organization and

strength for the current year of 1942. It was an integral and important part of the war program of the SS, and in it Loerner actively participated for 6 days. The document is significant in showing that Loerner was no mere figurehead charged with casual unimportant duties on behalf of the SS, but, on the contrary, was entrusted with grave responsibilities.

Document NO–517, Pros. Ex. 86, book 4: This is a memorandum by Baier as chief of staff W, concerning camp regulations for prisoners which Pohl had requested him to draw up. The regulations were to contain, among other things, comprehensive provisions for fixing the so-called wage scale for prisoners. In the work of drawing up the camp regulations, Baier specifies that Loerner should be consulted. Dr. Schmidt's contention is that Loerner was never actually consulted, and, therefore, the exhibit is insignificant. On the contrary, it is significant as showing the recognition of Loerner's position as a consultant, even though his services in that capacity may not have been actually used.

Counsel for Loerner in his brief (p. 5) states:

> "In my opinion it is not admissible to draw a connection which is relevant under criminal law between a person, solely because of his employment in an office dealing with the administration of concentration camps, and the crimes committed in the concentration camps, unless there can be ascertained a demonstratable causal connection between the actions of this person and the crimes indubitably committed in the concentration camps, and, in addition, unless it can be ascertained that the defendant himself consciously and deliberately was guilty of acts of omission or commission."

In this opinion the Tribunal readily concurs, and so stated in the original judgment *(Tr. p. 8079)*. Nor has the Tribunal deviated from that principle in this supplemental judgment. We pause to state, however, that any indignation over the concept of "mass punishment" and "group condemnation" appears somewhat hypocritical in the face of a national policy which condemned to summary death *all* Jews, *all* Bolsheviks, *all* Communists, *all* gypsies, *all* asocial persons, *all* dangerous elements, *all* "subhumans". The SS was an organization with the primary objective of meting out mass punishment and it savagely pursued that objective on a scale never before dreamed of. Now these defendants, members of that same SS, shrink with horror at the mere suspicion that such a policy is being used against them. The Tribunal has heretofore stated and now repeats its repudiation of the theory of mass punishment or group condemnation with all its implications.

Pursuant to an order issued by the Tribunal dated 15 June 1948, the defendant Erwin Tschentscher filed a closing brief in answer to the brief of the prosecution on 9 July 1948 and on 29 July 1948 he filed an additional brief in consequence of an order of the Tribunal dated 14 July 1948. The Tribunal further considering the judgment and sentence heretofore imposed against the defendant Tschentscher finds and concludes the following:

The defendant objects to the interpretation placed by the Tribunal upon a personal declaration made by the defendant when testifying in his own behalf, and to the importance given said declaration by the Tribunal in its judgment. The English translation of this declaration appearing in the record is as follows:

> "It was our specific intention that these people be able to recover somewhat so that they would regain a better physical condition and be able to perform their work better."

In his brief the defendant contends that the correct English translation of the declaration should have been as follows:

> "It was our specific intention to give those people at last the possibility to recover, so that they would regain a better health condition and by this a better working state."

It is a further contention of the defendant in his brief that the complete statement of the defendant which was in connection with this declaration should have been taken into consideration by the Tribunal and quotes the following:

> "I must say that I did not need any confirmation because just when I saw the people it was rather unnerving; and one could count on the fact that when an epidemic occurred the inmates did not any longer have any physical resistance, and one could predict that a catastrophe might occur in that field. I only had one thought, to help them as quickly and to as large an extent as possible so that these things would not happen."

This testimony of the defendant was fully considered by the Tribunal on Transcript page 8126 of the judgment.

The Tribunal concluded that the significance given the utterance and the findings deduced in its original judgment are correct. The Tribunal can find no material difference between the meaning of the passage as stated in the English translation appearing in the record and the translation contained in defendant's brief.

The defendant further complains in his brief that the following findings of the Tribunal in its judgment were not borne out by the evidence.

> "The Tribunal is fully convinced that he knew of the desperate condition of the inmates, under what conditions they

were forced to work, the insufficiency of their food and clothing, the malnutrition, and exhaustion that ensued and that thousands of deaths resulted from such treatment. His many visits to the various concentration camps gave to him a full insight into these matters."

These findings so adduced by the Tribunal are amply supported by the evidence. The admissions of the defendant, the testimony of the witness Barnewald *(doc. book 3, p. 108)*, the affidavits of Dr. Schiedlausky *(doc. book 3, p. 28)* and Hermann Pister *(doc. book 3, p. 109)*, and other evidence in the record showed conclusively the correctness of these findings and conclusions by the Tribunal.

The closing brief of the defendant dated 29 July 1948 reiterates his contentions as contained in his brief of 9 July 1948 and, in addition thereto, its further contents consisted almost entirely of arguments which stated the contentions of the defendant as to the conclusions found by the Tribunal in its judgment. The Tribunal considered such arguments, but with these arguments the Tribunal does not agree. The Tribunal has again carefully reviewed the entire judgment and sentence, together with the two closing briefs filed by the defendant and with the entire record in the case and finds no valid reason to disturb or modify the same.

Therefore the Tribunal reiterates and reaffirms its original judgment and sentence as to the defendant Erwin Tschentscher as heretofore entered in this case.

KIEFER

On 14 July 1948 the Tribunal entered an order reading in part as follows:

"In conformity with the policy of the Tribunal to afford defense counsel every possible opportunity to present full and complete arguments on behalf of the defense, such counsel as wish to do so will now be permitted to prepare and submit briefs in reply to the prosecution's brief. If, after fully considering such defense briefs, it should appear to the Tribunal that the judgment heretofore entered as to any defendant is not then supported by the evidence and that his guilt has not been proved beyond a reasonable doubt or that the sentence imposed is unjust, the Tribunal will thereupon vacate, modify, or amend the judgment now entered in accordance with the facts and the law so determined."

This order gave to the defendant the right to submit any and all further arguments that he desired to submit, based on the record in the case. The defendant elected not to submit a closing

brief in answer to the prosecution's brief but did, on 28 July 1948, file a document with Office of the Secretary General which he termed a "statement". In the concluding paragraphs of this document the defendant stated in part as follows:

> "* * * the defense must expressly decline to remedy the procedural deficiency which has thus arisen by submitting a brief in reply to the closing brief.
>
> "The whole trial has been legally concluded and it is now the task of the Military Governor, who is alone authorized to do so, to make up for procedural shortcomings in considering the clemency plea.
>
> "He is, therefore, awaiting the decision of the Military Governor, to whom a copy of this brief will be sent."

Thus the defendant spurns the offer of the Tribunal which allowed him the opportunity of filing a closing brief and relies upon his appeal to the Military Governor for clemency. His appeal to the Military Governor for clemency makes no contentions that the Tribunal used the prosecution's brief in preparing its judgment but, in his "statement" of 28 July 1948, this contention is made.

On 13 October 1947 an order of the Tribunal was filed with the Secretary General to the effect that trial briefs filed by the prosecution would be disregarded. However, through misunderstanding or confusion between what had been announced in open Court and the true contents of the order of 13 October 1947, some members of the Tribunal considered excerpts from some of the briefs filed by the prosecution in the preparation of the judgment as to certain defendants only.

When the question of the use of prosecution briefs was raised by defense counsel following the judgment, the Tribunal at once advised the Military Governor for the United States Zone of Occupation that the Tribunal should be reconvened to allow defense counsel every opportunity to reply to prosecution briefs and to submit additional briefs if they so desired.

Notwithstanding the fact that the defendant refuses to file a closing brief in answer to the prosecution's brief, and further, that he is relying solely upon his appeal for clemency to the Military Governor and in order to be eminently fair to this defendant, the Tribunal will again consider the pertinent questions raised in the defendant's "statement" and reconsider the judgment and sentence in the light of the record.

In the defendant's "statement" he complains of a portion of the judgment appearing on Transcript page 8133 and contends that it is not supported by any evidence in the case. This portion of the judgment is as follows:

"In the year 1914 he completed his studies in architecture, was graduated, and soon thereafter became city architect for the city of Aachen."

This finding was taken from the affidavit of the defendant, Document NO–1922, Prosecution Ex. 11. Portions of this affidavit which are pertinent to this finding are as follows:

"Then I studied for two and one-half years at the Munich Technical Academy and proceeded Easter 1910 from Munich to the Aix-la-Chapelle [Aachen] Technical Academy where I passed my examination as an architect in 1914.

"Subsequently I was employed by the government at Aix-la-Chapelle as chief of office and leading architect for the new building for the district court and the local court at Aix-la-Chapelle."

On Transcript page 3298 of the record, when the defendant was testifying in his own behalf, he testified to the following:

"In 1914 I was graduated as an architect and a city architect in Aachen."

Therefore it may be readily seen that the statement in the brief of the defendant to the effect that the finding of the Tribunal on this point was a complete fabrication is entirely unfounded, the truth being that this conclusion and statement by the Tribunal was taken from the sworn testimony of the defendant himself.

This sort of misrepresentation causes the Tribunal to suspect the integrity and sincerity of many other statements in the briefs filed by defense counsel.

The defendant complains that the following passage which occurs on Transcript page 8134 of the judgment, is incorrect and avers that the defendant, in cross-examination, expressly cleared up this matter. This passage is as follows:

"The defendant as chief of office C II was also head of the main department in charge of general affairs of the Building Inspectorate."

In Document NO–1288, Pros. Ex. 44, doc. Book 2, page 83, the following appears:

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"DIVISION C II

Special Construction Tasks

Chief:	SS Sturmbannfuehrer Kiefer
Deputy:	SS Obersturmfuehrer Funke
Bureau:	SS Strm. Tautz
	SS Strm. Haack
	Z.A. FRL. Friedel

Section C II z.v.B.	General affairs relating to the building inspectorate
Chief:	SS Sturaf. Kiefer
Deputy:	SS Ostuf. Funke"

Although the defendant, on cross-examination, denied that any duties relating to the building inspectorate constituted any part of his field of tasks, the Tribunal did not accept his denial in fact of the matters contained in the document. Therefore, it may be clearly seen from what source the Tribunal based its finding for the foregoing excerpt from the judgment.

The remaining paragraphs of the defendant's "statement" are merely arguments as to why the Tribunal should have not reached the conclusions as found by it. He complains particularly of the finding of the Tribunal that the defendant was Kammler's deputy. The Tribunal had ample evidence to support this finding from the appointment of the defendant by Kammler as his deputy, as set out in Document NO–1244, Pros. Ex. 45. The defendant further complains of the finding of the Tribunal that the defendant prepared plans and drawings for concentration camp installations. The Tribunal had ample evidence to support such findings from Documents NO–4470, Pros. Ex. 662 and NO–4471, Pros. Ex. 663, both of which the defendant admitted having signed.

Therefore the Tribunal, having again fully considered the closing statement of the defendant, together with his statement filed on 28 July 1948, together with the judgment and the entire record, and finds no legal or valid reason to modify, vacate, or amend its original judgment and hereby reiterates and reaffirms the same, except the sentence, which will be dealt with in another portion of this opinion.

EIRENSCHMALZ

On 14 July 1948, the Tribunal issued an order entitled "Order permitting defendants to file additional briefs". Among other things this order stated the following:

> "In conformity with the policy of the Tribunal to afford defense counsel every possible opportunity to present full and complete arguments in behalf of the defense, such counsel as wish to do so will now be permitted to prepare and submit briefs in reply to the prosecution's briefs. If, after fully considering such defense briefs, it should appear to the Tribunal

that the judgment heretofore entered as to any defendant is not then supported by the evidence and that his guilt has not been proved beyond a reasonable doubt or that the sentence imposed is unjust, the Tribunal will thereupon vacate, modify or amend the judgment now entered in accordance with the facts and the law so determined.

"The Tribunal will receive and consider any briefs filed in conformity herewith provided such briefs are in the hands of the Translation Division on or before 30 July 1948."

On 29 July 1948 the defendant filed what purported to be a brief. It consisted largely of the following: motion for the Tribunal to disqualify itself on account of alleged bias, motion for a new trial and that oral proceedings be resumed, summation of errors, incorrect statements and contradictions allegedly appearing in the judgment, arguments in regard to conclusions reached by the Tribunal in its judgment, a copy of defendant's appeal for clemency to the Military Governor for the United States Zone of Occupation, a large number of affidavits, all of which were filed and dated subsequent to the rendition of the judgment, testimony taken from witnesses before a Commissioner for the United States Military Tribunal IV in Case No. 11 which were taken during the month of June 1948, approximately eight pages of alleged errors in translation in the record and one error in translation which the Tribunal corrected by order.

In his so-called brief of seventy-two pages the only reference to the closing brief of the prosecution is found on page two and states the following:

"With regard to the Tribunal's decision of 23 July 1948 I wish to give my opinion on the closing brief of the prosecution and on the judgment which thereupon was announced by the Tribunal on 3 February (November) 1947, a verdict which was given following upon the closing brief of the prosecution and in a large measure based upon it. I am restricting myself to the most important points but add the brief submitted as a clemency plea to Military Governor General Clay on 17 November 1947, and make it an integral part of my arguments."

The brief of the defendant does not attempt to nor does it in any manner reply to the prosecution's brief. Therefore it is not in conformity with the order of the Tribunal. The Tribunal, by virtue of the order of the Military Governor dated 7 June 1948, is convened for the purpose of receiving such brief in reply to the prosecution's briefs as counsel for the defense wished to file and to then "reconsider and revise its judgment as may be appropriate." The brief of the defendant does not state in what factual excerpts the brief of the prosecution is in error but it

merely attempts to point out errors committed by the Tribunal in its judgment, together with arguments as to the reasons why the Tribunal should not have so adjudicated.

Even though the defendant has not filed his brief in conformity with the order of the Tribunal, the Tribunal will reconsider its judgment and sentence as to this defendant and make such additional adjudication as justice may demand.

The opinion of the Tribunal has ruled on the consideration to be given of affidavits and to the documents and matters attached to defense briefs which were not a part of the record when the case was concluded and it is not necessary to again discuss the point here. Therefore the Tribunal will not consider affidavits, documents and other matters attached to defense briefs which were not a part of the record of the case when it was concluded.

Defense counsel, in his brief, alleged many errors in translation. In the preparation of its judgment the Tribunal relied upon an expert corps of translators, fully qualified and experienced. The translations were furnished to the defendant's counsel each day in the German language. No objection was made at any time during the trial as to any of these alleged errors in translation.

The Tribunal will now consider the main objections stressed by the defendant in his brief.

At the beginning of page 3 of his brief he states the following:

"Other evidence discloses that while the defendant Eirenschmalz was in the Main Office, Budget and Buildings, he ordered the erection of a crematory in Dachau in the summer of 1940 *(NO-2256, Pros. Ex. 541)* and that at approximately the same time he ordered the construction of a crematory in Buchenwald." *(NO-4400 and NO-4401, Pros. Ex. 649 and 650.)*

In connection with this passage of the judgment he avers the following:

"In contradiction to this, the Tribunal on page 98 established that at that time the defendant was no longer in that office. It says there:

'From July 1934 until approximately the summer [autumn] of 1939 he was in the office "Budget and Buildings". In 1939 he was transferred to the Main Department for the Building Management of the Waffen SS and to the administration as chief of the office V/5.'

"The first line of the passage of this portion of the judgment should read as follows:

"From July 1934 until approximately the summer of 1940" instead of "1939". This error arose in the judgment from the

defendant's own testimony *(Tr. pp. 3405, 3505)*. The defendant was not certain from his own testimony whether he was transferred from this office in the fall of 1939 or in the spring of 1940 but from the affidavit of Hans Peter Eichele, Document NO–2756, Pros. Ex. 541, Document Book 21, page 19, the following appears:

'In the summer of 1940 the Building Management Dachau erected a crematory, the order having been issued by the Main Office for Budget and Buildings (Standartenfuehrer Eirenschmalz), the leading official for building matters at the Administration Office SS.' "

The correct date is further confirmed by Documents NO–4400, Pros. Ex. 649 and NO–4401, Pros. Ex. 650, Document Book 27.

The Tribunal is mindful of the fact that it is a contention of the defendant that the witness Eichele revoked this affidavit in his presence but it is the opinion of the Tribunal notwithstanding the contention of the defendant that this affidavit is true.

The defendant, in his brief, complains of the following finding by the Tribunal:

"His chief, the defendant Pohl, recognized his success in the fields of tasks assigned to him in the WVHA and, when recommending his promotion, gave a glowing account of his achievements and his devotion to duty."

It is true that the recommendation for promotion made by his codefendant Pohl was dated in the year 1937 and that the WVHA was organized 1 February 1942 but it must be remembered that his codefendant, Pohl, was his chief for a long period of time both before and after the creation of the WVHA. Therefore his codefendant, Pohl, had a much better knowledge of his qualifications than someone who had known him only after the WVHA came into existence.

The defendant, in his brief, complains of the following finding of the Tribunal:

"Sometime between February 1942 and September 1943 he was appointed deputy chief of office group C—thus Kammler's deputy."

This finding is substantiated by the affidavit of the defendant himself and the affidavit of his chief, Pohl. Pohl states in his affidavit that Eirenschmalz was deputy chief of Amtsgruppe C from January 1943 until May 1943 *(NO–2616, Pros. Ex. 523)* and Eirenschmalz, in his affidavit of 29 March, states the following:

"Kammler's deputy, as chief of division C, was for 1942 SS Obersturmbannfuehrer Buschling, and from January 1943 until 1 May 1943, I myself was the officially-nominated deputy of Kammler * * *." *(NO–2613, Pros. Ex. 12, doc. book 1.)*

Thus it may readily be seen that this finding is based upon evidence of which the defendant cannot complain.

The remaining portions of the defendant's brief which complains of the findings of the Tribunal and his arguments against such findings are concluded on page 11 and are merely recapitulations and reiterations which were made by the defendant in his closing statement. A careful review of the entire record leads the Tribunal to a contrary view of these arguments and contentions. A minute and careful examination of the entire record in the case, together with the closing statement of the defendant and his closing brief, leaves no doubt in the minds of the Tribunal of the guilt of this defendant beyond a reasonable doubt and as adjudged by the Tribunal in its original judgment. The evidence clearly discloses that the defendant, with others, operated and maintained the gigantic enterprises which resulted in the unlawful deaths of millions of slave laborers from occupied territories, and prisoners of war, and that he was a principal in, accessory to, ordered, abetted, took a consenting part in, and was connected with plans and enterprises involving the commission of war crimes and crimes against humanity and reiterates and reaffirms its original judgment and sentence in this case.

SOMMER

On 12 July 1948 counsel for the defendant Sommer filed a tentative brief pursuant to the order of the Tribunal dated 15 June 1948. At this time counsel for the defendant did not have the German translation of the brief filed by the prosecution against the defendant Sommer. Pursuant to the order of the Tribunal dated 14 July 1948 counsel for the defendant filed a brief dated 27 July 1948. In this latter brief counsel for the defendant deals with the case in a three-fold manner; first, when he answers the brief of the prosecution as to factual matters; second, he deals with the facts and conclusions as found by the Tribunal in its judgment and third, it consists of arguments as to what the Tribunal should have found from the evidence in the case. In support of his arguments he quotes portions of judgments of other tribunals which were entered subsequent to the trial of this case, excerpts from a diary, and other matters which are not a part of the record in this case and which were never offered in evidence nor considered by the Tribunal.

In dealing with the closing brief of the prosecution, counsel for the defendant, in his brief, says as follows:

"In this connection we deal with the contents of the closing brief only insofar as the statement made by the prosecution

cannot be recognized at once in the open but may be evaluated as creating atmosphere.

"The closing brief of the prosecution evaluates the evidence submitted in the case Sommer in a manner and a form which is anything else but objective. The statements by the prosecution are, from the beginning aimed at creating a certain impression and are often made in a tone which make it difficult to formulate the answer in an objective manner in keeping with the dignity of the Tribunal."

On page 11 of the defendant's brief counsel for the defense states the following:

"1. The judgment passed by the Military Tribunal II Nuernberg, on the defendant Karl Sommer included grave factual mistakes, most of which are taken from the closing brief of the prosecution."

In his brief of fifty pages there is no contention made by the defendant that any sentence or any paragraph of the judgment was taken from the brief of the prosecution. Neither does he quote any part of the judgment which he says was taken from the brief of the prosecution. In the preparation of its judgment as against the defendant Sommer the brief of the prosecution was not referred to nor was it used in any manner.

In his attempt to show that certain findings by the Tribunal were taken from the brief of the prosecution, counsel for the defendant enumerated certain findings as being incorrect and then attempted to answer the same by his interpretation of what should have been the correct findings of the Tribunal. An example of these statements is as follows:

"4. Incorrect is the statement of the judgment that Sommer was 'transferred' to the DEST in March 1941. Correct is Sommer 'joined' the DEST on the basis of a private employment contract as a bookkeeper in 1941.

"5. Absolutely incorrect. It is the allegation of the judgment that 'later on Mummenthey managed to get Sommer employed by the office D II to collaborate with Maurer in the allocation of prisoners'. In fact, Sommer was requested by Maurer for office D II against Mummenthey's wishes."

It is interesting to note that not in a single instance has counsel for the defense shown where any finding of the Tribunal was taken from the brief of the prosecution. Of course, it is true that the prosecution, in its brief, gave fully and completely its contentions as to what the evidence disclosed and its contentions as to what conclusions the Tribunal should reach but this is natural when the prosecution was dealing with the evidence in the light of the prosecution's case.

From a careful review and consideration of the defendant's brief the Tribunal can find nothing new. It is largely the reiteration and recapitulation of his closing argument made in open Court and of which the Tribunal gave careful consideration in the preparation of its judgment.

The defendant, in his brief, complains particularly of certain conclusions in the judgment with reference to labor allocation of detainees in office D II. The brief does not quote from the judgment but states conclusions as to what the Tribunal found to be true in its judgment.

In his brief the defendant states that all of the following statements made in the judgment are factually incorrect and are in direct opposition to the result of evidence. The Tribunal will deal with each of these statements as they appear in the brief.

> "6. In the description of the labor allocation of detainees in office D II the judgment states that: 'At that time the defendant Sommer had had most detailed information about the extent and type of work done by them, their living conditions, treatment, food, clothing, and quarters.' *(Page 119 of the German version of the judgment; page 8151 of the English transcript)*".

From an affidavit of the defendant of date of 4 October 1946 *(NO-1065, Pros. Ex. 304)* he gave detailed information concerning the allocation of inmate labor from his own recollection. Approximately eleven pages of this affidavit dealt with such allocations, from which particular concentration camp inmates were taken, their numbers including male and female inmates, the kind and type of work to be performed, and to whom sent. The affidavit concluded with this statement:

> "All together about 500,000 to 600,000 concentration camp inmates were furnished by the Economic Administration Main Office for the commitment of labor. (This at the end of 1944)."

It should be remembered that all of this information was the direct result of the defendant's own recollection and was sworn to and subscribed by him in this affidavit. In this connection it will be remembered that the defendant, when testifying in his own defense in regard to this affidavit, made the contention that his recollection was refreshed by the interrogator by showing him numerous documents and other material. From his admitted numerous visits and inspections of the concentration camps and other evidence in the case, the living conditions of the inmates, their treatment, food, clothing, and quarters were well known to him. Hermann Pister, camp commander at Buchenwald, in his affidavit states the following:

> "Karl Sommer—I saw him repeatedly at the commander

conferences which took place in Berlin-Oranienburg at average intervals of 3 to 4 months. Once he was in Buchenwald concentration camp, where he had a discussion with the Chief of the Labor Allocation.

"The commander conferences which took place at intervals of 3 to 4 months opened on the first day, mostly beginning at 1500 hours, on Pohl's direction in the WVHA in Berlin, besides the commanders of the main camps, sometimes all the Amtsgruppen chiefs and the Aemter chiefs who were concerned with CC's were present. To these participants belong: Pohl, Gluecks, Tschentscher, both Loerners', Dr. Volk, the Chief Physician Dr. Lolling, Frank—the latter until his assignment as administration chief of the police only—Mummenthey, Opperbeck, Maurer, Sommer and Schmidt-Klevenow.

"The questions which were discussed at these meetings were mostly the following: labor assignment, food rations, clothing, quarters, treatment of the prisoners, nature of punishment and the carrying out of punishments, erection of new outside camps, evacuation of invalids to other camps, questions of troops and guards, particularly—since there was a considerable shortage of guards—training of female wardens and their recruiting. These meetings took place partly in the WVHA in Berlin and partly in the building of Amtsgruppe D in Oranienburg." *(NO-2327, Pros. Ex. 75, doc. book 3, pp. 109, 110.)*

The defendant contended that he did not attend such meetings but was there on one occasion outside. The Tribunal finds that there can be no doubt of the defendant's intimate knowledge as to all of these matters.

b. The defendant Sommer had seen some Russian prisoners of war, of whom he states that they were volunteers *(p. 119 of the German version of the judgment; p. 8152 of the English transcript)*. This was taken directly from the testimony of the defendant and can be readily seen from the record, in which he stated that he saw a number of Russian prisoners of war in concentration camps, but he assumed that they were volunteers for labor.

c. The defendant Sommer had stated that he had personally visited every concentration camp during his activity in office D II. *(P. 119 of the German version of the judgment; p. 8152 of the English transcript.)* This was taken directly from the testimony of the defendant and can readily be seen from the record of his testimony. On page 3838 of the record he testified in substance that he had visited Sachsenhausen approximately fifteen times, had visited Auschwitz on two occasions *(Tr. p. 3839)*, Buchenwald and Gustloff *(Tr. p. 3841)*, Dachau *(Tr. p. 3843)*, Oranienburg

(Tr. p. 3852), Gross-Rosen *(Tr. p. 3853)*, and many other pages of the record disclose visits to other concentration camps. He further testified that on one occasion, while visiting the protective custody camp of one of the concentration camps, he saw the prisoners and that one inmate was not receiving his diet, that he immediately called the camp doctor and told him to make sure that he would receive it. This, of itself, would tend to show authority on his part in dealing with the welfare of the inmates.

d. The defendant Sommer had testified that in course of the conversation with Gluecks, the chief of the Amtsgruppe D, and Inspector of the Concentration Camps, he had been informed of the extermination program concerning the Jews at Auschwitz and that immediately after this conference with Gluecks, Pohl had given an order to Maurer referring to this Auschwitz program. *(P. 120 of the German version of the judgment; p. 8152 of the English transcript.)*

In regard to this conclusion in the brief, the judgment contains the following:

"He further testified that during a conversation with Gluecks, the chief of Amtsgruppe D and Inspector of the Concentration Camps, he was informed about the program for the extermination of the Jews in Auschwitz, but that he did not participate in this program in any way, even though he was asked by Gluecks to do so. Immediately after this conversation with Gluecks, Pohl gave to Maurer an order concerning this program at Auschwitz." *(P. 8152 of the English transcript of the judgment.)*

On Transcript page 3765 this excerpt from the judgment is clearly shown, and after the defendant had explained this matter, he completed his testimony regarding this incident in the following words: "That is how I heard about the extermination of Jews in Auschwitz."

e. The evidence shows that the defendant Sommer of office D II had procured guards for the prisoners. This finding is substantiated by the evidence in the case.

f. The evidence shows that the defendant Sommer had drawn charts showing the wages which the DAW owed for services of concentration camp detainees and that he submitted a report to the effect that during the month of July 1944, 36,784 detainees for Lublin had been placed at the disposal of the DAW and that the DAW had been charged with RM 55,176 for the work of these laborers. In this connection the Tribunal refers to the Document NO-2523, Pros. Ex. 710 *(p. 120 of the German version of the judgment; pp. 8152–8153 of the English transcript)*. Document NO-4181, Pros. Ex. 710, document book 30 not only con-

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firms this finding by the Tribunal but additional facts in regard thereto. It further showed that between 1 July 1944 and 30 September 1944, many more detainees from Lublin concentration camp had been placed at the disposal of the DAW and a much larger sum was due for their services.

It is significant to note that this exhibit is divided into three parts and each part is signed by the defendant as follows:

"Substantially correct and checked.

"For the chief of the Amt D II.

"ACTING FOR:

[Signed] SOMMER
SS Hauptsturmfuehrer and Main Office Chief
.... "
[Rank]

Thus it may also be seen from this document that the defendant was then acting as deputy and Main Department chief when signing these documents.

g. One of the affidavits made by the defendant Sommer *(NO–2739, Pros. Ex. 630)* shows clearly that the defendant was completely familiar with the extermination program of Auschwitz and with the illegal medical experiments which were made in some of the concentration camps. *(Pp. 120–121 of the German version of the judgment; p. 8153 of the English transcript.)* These findings are confirmed by Document NO–2739, Pros. Ex. 630 but the Tribunal considered this only as to knowledge of the over-all picture of concentration camps by the defendant as he was not charged with any participation in these programs. These findings are also confirmed by the testimony of the defendant when testifying in his own behalf.

h. The evidence shows beyond doubt that the defendant was familiar with the "Action Reinhardt," and that he was guilty of personal participation in this illegal and unjust action. *(P. 121 of the German version of the judgment; p. 8153 of the English transcript.)*

These findings are confirmed by conclusions reached by the Tribunal from the defendant's own evidence. On transcript pages 3865 and 3872 the defendant testified in detail in regard to the watch repair shop at Sachsenhausen, that this property was confiscated enemy property which was property illegally taken from Poles, Jews, and Russians. The defendant had charge of this plant which repaired this confiscated property and which was illegally taken and confiscated by "Action Reinhardt." The defendant testified further that he knew that this property was private property.

i. There is evidence which seems to prove that the defendant

Sommer actually knew of the existence of crematories and gas chambers in the concentration camps and of the purposes they served. That portion of the judgment which this erroneous statement refers to, reads as follows:

> "There is evidence in the case which tends to show that the defendant Sommer actually knew of the existence of crematories and gas chambers in the concentration camps and the purposes for which they were used."

(This finding is confirmed by the testimony of the defendant while testifying in his own behalf).

j. Office D II and the defendant Sommer played a prominent part in the perpetration of cruelties and murders in the concentration camps and the defendant was, according to penal law, responsible for such participation. *(P. 122 of the German version of the judgment; p. 8154 of the English transcript).*

This was a conclusion and finding made by the Tribunal from all the evidence in the case and it constitutes a part of the adjudication of the Tribunal as to the guilt of the defendant.

In this connection it is interesting to note that the authority that the defendant had in affairs of Amt D II is described by the defendant in his own testimony on transcript page 3873 of the record:

> "In 1943 Maurer appointed me his deputy. * * * someone versed in all matters pertaining to his sphere of work."

The remaining parts of the defendant's brief which dealt with excerpts from his diary and other matters which were never offered in evidence during the trial, the Tribunal cannot now consider. They constitute no part of the case and the Tribunal is not now permitting further proof to be offered.

The defendant complains of the following excerpt from the judgment which reads as follows:

> "Without attempting to pass judgment upon his guilt or innocence the Tribunal deplores the fact that Gerhard Maurer was not apprehended prior to the commencement of this case in order that his responsibility, if any, for the operation of D II could be determined."

He says that this remark seems to indicate that the Court had certain misgivings as to its verdict in the case of Sommer. This contention is entirely erroneous. The Tribunal had no misgivings as to its verdict and the guilt of the defendant Sommer, but merely deplored the fact that all persons connected with the case could not be tried at one time rather than in a number of cases.

The gist of the remaining portions of defendant's brief consists of arguments and conclusions which were contained in detail in the defendant's closing plea and which have been reiterated

here. However, the Tribunal has again carefully considered these arguments and contentions in connection with the judgment and the entire record in the case and fails to agree with the conclusions reached by the defendant but finds and adjudges to the contrary.

After a most careful review of this case in connection with the closing brief of the defendant and the entire record, the Tribunal finds no legal or just cause to alter, amend, vacate, or modify its original judgment and sentence. Therefore the Tribunal reiterates and reaffirms the original judgment and sentence heretofore entered in its original form and substance.

POOK

The Tribunal pronounced judgment and sentence against the defendant Hermann Pook on 3 November 1947, as appears of record. The prosecution, on 29 September 1947, filed its closing brief against this defendant. On 8 October 1947 the defendant Pook filed his closing brief in answer to the closing brief of the Prosecution.

Pursuant to an order of the Tribunal dated 15 June 1948, the defendant filed a closing brief dated 12 July 1948. Pursuant to an order of the Tribunal dated 14 July 1948 the defendant filed a statement in supplement of his brief of 12 July 1948.

In the preface of his brief of 12 July 1948 counsel for the defense stated the following:

> "In the case of the defendant Dr. Pook the prosecution handed in a closing brief against this defendant, dated 29 September 1947, which was then included in the judgment, partly literally and partly in paraphrase, without the defendant having been given any opportunity to reply to it. This reply cannot and will not be made now * * *."

On 14 November 1947 the identical defense counsel filed in the Office of the Secretary General his appeal for clemency to the Military Governor of the American Zone of Occupation. In this appeal for clemency counsel for the defendant stated the following:

> "The prosecution, after the conclusion of the trial, has presented a closing brief dated 29 September 1947. I have answered it on 8 October 1947. As I must assume that the Court has no longer taken into consideration this reply of mine in its finding of the verdict, permit me to enclose a copy of it with the present application. *The closing brief of 8 October 1947 is to be a component part of my present application.*"

The Tribunal is astounded by this false assertion made by counsel for the defense in the preface to his brief of 12 July

1948. Such conduct on the part of defense counsel causes the Tribunal to have grave doubts and genuine suspicion as to many other assertions made by defense counsel in his closing briefs.

The closing brief of the defendant, dated 8 October 1947, contained approximately 11½ pages, answering in minute detail every assertion of fact made by the prosecution in its closing brief. For a period of approximately 25 days prior to the rendition of its judgment and sentence the Tribunal had, for its consideration, the closing reply brief of the defendant.

In preparing its judgment the Tribunal gave careful considerations to the written closing argument of the defendant which was delivered in open Court, together with his closing brief, and failed to agree with his contentions as to what constituted facts of the case. After a careful review of the entire record and after due consideration given to the closing brief of the defendant the Tribunal found and concluded otherwise.

Therefore the Tribunal, after having again fully considered the closing brief of the defendant dated 8 October 1947, together with his brief of 12 July 1948 and his statement of 27 July 1948, with the entire record of the case, the Tribunal is of the opinion that the defendant has had a fair, just, and complete hearing of his case and now finds no just cause to vacate, modify, or amend its original judgment and sentence and hereby reiterates and reaffirms the same.

HANS BAIER

Counsel for Hans Baier begins his brief with a reference to the Court Order of 13 October 1947. On 3 October 1947, the prosecution filed a closing brief against Baier. It is evident that the prosecution did not regard the statement in open court on 15 August as a bar to filing briefs. It is evident that counsel for the defendants Pook and Klein did not regard the statement in open court on 15 August as a bar to filing briefs. It is evident that a misunderstanding occurred on the subject of filing briefs. It must be emphasized, however, that the facts in the case are not altered by briefs. To the extent that assertions in any of the prosecution briefs were accepted by the Tribunal, the assertions were based on the documents and the transcript of the record. The documents and the transcript speak for themselves regardless of the briefs. Nonetheless, with the reconvening of the Court, counsel was given every opportunity to file briefs which, because of the Order of 13 October they felt they were not entitled to file. Counsel for Baier has availed himself of this opportunity.

The comparisons between prosecution brief and judgment have

been discussed in the Hohberg Judgment and need not be repeated here. The Tribunal here finds that in each instance of comparison drawn by defense counsel, the conclusions reached by the Tribunal were based on the record.

In his brief, defense counsel says:

> "There is no proof for the assertion that Baier's functions embraced the carrying out of the slave labor program. The individual cases cited by the Tribunal in proof thereof clearly disclose that there were either special orders given to Baier by Pohl which did not fall within the field of work of my client, or that they did not concern any activity on the part of Baier but merely his taking notice of them."

Here defense counsel is relying on the defense of superior orders, but superior orders do not constitute a defense, although they may be pleaded in mitigation of punishment. That mitigation has been considered and passed on.

It is strenuously argued by defense counsel that Baier was entirely ignorant of concentration camp atrocities. Concentration camp inmates were being used by SS industries without remuneration. In their work they were abused, maltreated, starved, and some killed, either because of ill treatment, lack of care, or through punitive companies. Much of this was done for the industries controlled and directed by staff W. Yet it is argued that those who directed the enterprises but had no contact with the inmates are not guilty of war crimes or crimes against humanity. A machinery of misery and destruction is put into operation and yet no one seems to be responsible for the resulting physical and moral devastations except perhaps Pohl.

It is admitted by counsel that Baier knew the prisoners did not receive wages. Being prisoners he knew they were deprived of their liberty. And all this adds up to slavery. But defense counsel says that Baier was a soldier in time of war and he could not resign without risking life and liberty. But there is no evidence that he protested his work, nor is there any evidence that he tried to get out of it, or that he did it with lack of enthusiasm. He joined the Nazi Party as far back as 1933, so it must be assumed he knew of Nazi policies and that he approved of them. Thus it is too late for him now to say there was nothing for him to do. Not all the Germans in Germany are in prisoners' docks or felons' cells. The vast population is free. They stayed out of trouble, they did not commit war crimes and crimes against humanity. That possibility was open also to Baier, as it was open to all others, but he chose the fruits and the glory of National Socialism, and as a consequence he finds himself in his present position.

Baier not only was aware that inmates were unpaid, but he knew which industries employed them. Pohl testified as follows in this connection:

"Q. As a matter of fact you told Baier, did you not, to compile a list of all of the industries in Amtsgruppe W which used concentration camp inmates for the purpose of discussing the question as to how much the inmates should receive, or, rather, how much the industries should pay for the use of inmate labor. You did that, didn't you?

"A. Yes. We discussed that.

"Q. You talked about the use of inmate labor when you discussed that, didn't you?

"A. Yes, certainly, of course.

"Q. There is no doubt in your mind that Baier knew which of the industries used inmate labor?

"A. That he knew very well." *(Tr. p. 1821.)*

Baier as chief of staff W could also not fail to know of the cruel principle underlying the entire program of the utilization of concentration camp labor. Document NO-1016, Pros. Ex. 46, dated 13 July 1944, concerning W Contribution to Lectures, and addressed to SS Oberfuehrer Fanslau, contains some highly illuminating passages:

"Office group W comprises all economic enterprises under SS control. In studying the W enterprises first of all the urgent question arises: Why does the SS engage in business? * * *.

"The Reich Leader SS in his capacity as chief of the German Police was confronted with the task of solving problems, which the Reich as such was not able to solve, viz to get hold of all antisocial elements which no longer had a right to live within the National Socialist State, and to turn their working strength to the benefit of the whole nation. This was effected in the concentration camps. The Reich Leader SS, therefore, delegated SS Obergruppenfuehrer Pohl to set up concentration camp enterprises. In addition he gave orders to establish companies on a private economy basis for the purpose of employing the prisoners." *(II/105-107.)*

Defense counsel says that Baier once visited the Dachau concentration camp, but he could find nothing which would have permitted the conclusion that the detainees were treated inhumanely.

The concentration camp at Dachau was one of the most notorious in all of Germany. In fact its reputation was so well known to the German people that Dachau became a symbol for all concentration camps and the mere mention of the world "Dachau" conjured up human suffering in its most miserable forms. If

Baier found nothing inhuman at Dachau, the next logical query should be, what constitutes inhumanity?

Defense counsel says further:

"But he did not know at that time that arbitrariness and forcible methods were the bases of the commitments to a concentration camp. Like many other Germans, Baier was of the opinion that legal proceedings had to precede any commitment to a concentration camp. It would have been impossible for him to have exact knowledge about that because the WVHA had nothing to do with the commitment of people to a concentration camp and the only agency designated to have such authority was the Reich Security Main Office. There is no further need for dwelling on the fact that severe secrecy regulations, protected by threatened draconic punishment, threw a veil over the methods practiced by the Gestapo. The so-called whispering propaganda on the nature of the commitments to concentration camps was certainly least apt to reach members of the SS because everybody was particularly careful and reserved in expressing such views to the face of SS members."

The Tribunal must reject this line of reasoning completely. To say that of all people, the SS did not know why people were sent to concentration camps and what happened to them, especially the SS charged with running the plants using concentration camp inmates, is to argue what is sheerly unacceptable and contrary to the facts in the case and all reasonable observation.

Defense counsel seeks to absolve his client from guilt by arguing percentages:

"The evidence has shown that out of about 50 companies of the DWB only a few used inmate workers *(record pp. 5015, 5016)*. The evidence further revealed that in those few W concerns which used inmate labor only a small percentage—namely 5–10 percent—of the concentration camp inmates were used."

But the fact remains that concentration camp inmates were *used* in W industries and used in an inhuman manner, and that constitutes war crimes and crimes against humanity.

Defense counsel says:

"The fact that the W concerns belonged to the same WVHA as the concentration camp administration does not permit the conclusion that they were internationally connected because until 1942 the concentration camp administrations were not part of the WVHA at all."

But the admission that the W concerns belonged to the same WVHA as the concentration camp administration in itself reveals the tie-up between the two, at least after 1942, and the crimes enumerated in the indictment certainly go beyond 1942.

Defense counsel says:

"The finding in the judgment that an increase in the compensation for prisoners would have benefited the SS is incorrect; it does not tally with the result of the evidence presented. The exact opposite is true. The compensation for prisoners, which had to be paid by the W enterprises, was a payment to the Reich, i.e., an expense and not a gain for the W enterprises. The compensation was paid exclusively to the Reich into a special account. The fact that 5–6 million RM were booked in this account, can therefore not be regarded as an incrimination of Baier, but can only serve to exonerate him."

It is not clear that this exonerated Baier. The W enterprises paid to the Reich, of which they were certainly a part, 5,000,000–6,000,000 Reichsmarks for the use of slave labor. The Reich had no legal rights to payment for these prisoners, it had no legal rights in the prisoners whatsoever. If A kidnaps B and then hires him out to C who knows of the kidnaping, C is certainly not free from crime because he had nothing to do with the kidnaping or did not actually receive any money from the kidnaper or the victim. It is certain, in such a case, that C would have benefited from the use of the victim, as the W enterprises certainly benefited from the use of this "cheap" labor.

With reference to the Judgment wherein the Tribunal imputes knowledge to Baier of the excessive work hours imposed on the inmates, defense counsel says:

"Just in passing, I wish to mention here—because it is characteristic of the situation as it was at that time—that SS members, civilian employees, and civilian workers in the WVHA worked 12 hours per day."

But there is an abysmal difference between working on one hand for pay and, let us suppose, for one's country too, and on the other hand slaving gratuitously and being beaten, starved, and in many instances being required to manufacture arms and equipment to be used against one's own countrymen!

The Tribunal did not convict Baier of complicity in the OSTI operation, but it did say that "his office trafficked in the ill-gotten gains from OSTI." Defense counsel says in his brief:

"It is merely established that Pohl as chairman of the supervisory board, for want of another office, gave the order to the staff W to supervise in a legal capacity the liquidation of the OSTI in order to see to it that the business was properly wound up."

Staff W cannot plead innocence and certainly not ignorance of the evil doings of OSTI, and while this is not a major element of proof against Baier, it all argues against his oft repeated

statement that he was entirely ignorant of the illegal and criminal deeds of WVHA. It was well established at the trial that OSTI was listed under the heading staff W as one of its activities. The functioning of staff W as described in the judgment herein on Hohberg was equally as effective under Baier as it was under Hohberg who preceded Baier as chief of staff W.

Defense counsel says that Baier's participation in the Litzmannstadt affair reacts to his credit. The sad and tragic end of the Litzmannstadt operation is discussed in the case of Volk. There it will be seen how much credit either Volk or Baier is entitled to for the frightful treatment accorded the inmates of the Lodz ghetto.

Defense counsel disclaims for his client any responsibility for obtaining barracks at the Auschwitz concentration camp for prisoners being used by Getwent G.m.b.H., by saying that Pohl ordered Baier "to requisition the huts in his name" from the commander of the camp. Here again we have Pohl being advanced as the universal scapegoat and here again it must be asserted that Baier was not a mere "messenger," as suggested by defense counsel, nor was he a mere lance corporal in the SS. He held high position and rank. With them went not only objective rewards and preferential treatment but also responsibility.

That responsibility he has had to meet at this trial.

After considering the briefs and arguments submitted by defense counsel in this proceeding and reviewing the entire record, the Tribunal finds no reason to disturb the judgment rendered on 3 November as to Baier, and accordingly confirms the judgment and sentence imposed.

HANS HOHBERG

Defense counsel has gone through the forced process of comparing statements in the judgment with assertions in the prosecution's briefs, as if a paraphrase or similar clause would in itself establish innocence of his client. As a matter of fact, this enumeration only emphasizes all the more the guilt of the defendant because in each instance where the judgment has been quoted, the record reveals the emphatic and conclusive evidence of Hohberg's culpability. We will take up the various sentences in the judgment which defense counsel has quoted and then immediately thereafter quote the record in authentication and substantiation of the Tribunal's finding:

JUDGMENT	THE RECORD
"* * * He sought to deny that he was chief of staff W, but the defendants Volk and Baier, as well as defense witness Karoli from staff W, all confirmed his (Hohberg's) official position."	Volk's testimony— "Q. The Prosecution has submitted that Hohberg had been the first Chief of staff W, and then after him, Baier. That is page 1009 of the German transcript, is that correct? A. That is entirely correct." *(Tr. p. 5041.)* Volk's testimony— "Herr Dr. Hohberg was an auditor and, apart from that, he also had the title Chief of staff W. That can be seen from the documents. I don't have to tell you more." *(Tr. p. 5156.)* Baier's testimony— "Q. (Judge Phillips) You state at the end of page 7: 'The auditor, Dr. Hohberg, was my predecessor as chief of the staff W in the WVHA.' Is that true or false? "A. That is true." *(Tr. p. 4864.)* Statement by Hans Baier— "The auditor, Dr. Hohberg, was my predecessor as chief of staff W in WVHA." *(Doc. NO–1377–I/82.)* Karoli's testimony— "Q. (Judge Phillips) Who did the defendant Baier succeed as chief of staff W? "A. Herr Dr. Hohberg." *(Tr. p. 4863.)*
"The task of coordination and directing W Industries at the top level was the task of staff W, whose chief, according to the business order of SS-WVHA, had many duties."	Letter to Fanslau on SS lecture— "According to this identity in the field of production and single economic enterprises maintained by the SS are united in the office W I–VIII. *At head of these offices stands the W staff* of the SS Obergruppenfuehrer Pohl regarded from the point of view of private economies the Deutsche Wirtschaftsbetriebe G.m.b.H." *(Doc. NO–1016, II/108.)* [All italics supplied.]

The comment of defense counsel here that "From 30 June 1943, Hohberg did no longer work but joined the army," in no way influences the applicability of the business order of the WW-WVHA because, although promulgated 24 November 1944, it only confirmed the theretofore existing practice. In this respect, the defense witness Karoli testified:

JUDGMENT	THE RECORD
	"Actually it only confirmed the conditions which *already existed in the WVHA*, namely, the tasks within Amtsgruppe W were actually fixed and compiled into one report in the form of a business regulation." *(Tr. p. 4673.)*
"He was the economic advisor to Pohl * * *."	"The Chief W *is the economic advisor* of the chief of the Main Office." (Pohl) *(Doc. NO–3170, XXIV/53.)*
"* * * assisted Pohl in the discharge of his duties of management * * *"	"* * * in addition he *assists* the Chief of the Main Office (Pohl) in the *discharge of his duties of management*." *(Doc. NO–3170, XXIV/53.)*
"* * * and the chiefs of the offices in department W were to report to Pohl only after conferring with the chief of staff on all financial, economic and other important matters concerning the management of the enterprises."	"The office chiefs (there were 8) have the right to report directly to the Chief of the Main Office. It is their duty to report orally to the Chief of the Main Office *on all financial, economic and other matters which are of importance as far as managing the enterprises and concerns is concerned*: This is to be done *after consultation with the chief W*." *(Doc. NO–3170, XXIV/54.)*
"The chief of staff W was to supervise the manner in which all funds and moneys furnished by or through DWB were to be used * * *"	"The following duties have been turned over to the chief W * * *. Supervision *of the manner in which all funds and monies furnished by or through the DWB* to the enterprises, *are used*." *(Doc. NO–3170, XXIV/53.)*
"He was to supervise business transactions of all SS Industries * * *."	"In this respect he is especially charged with the *supervision* and with giving economic and financial advice to *the enterprises* and offices." *(Doc. NO–3070, XXIV/53.)* See also transcript, page 4531: Hohberg's testimony: "Q. * * * *You supervised the economic enterprises from the point of view of finance, organization and legality?* "A. *That is correct*."
"He was to examine the purchase and sale of all plots of land."	"The following legal transactions are subject to *examination* by the chief W— * * * 1. *Purchase, sale,* Mortgaging of *Plots* or rights to such plots." *(Doc. NO–3170, XXIV/53.)*

"* * * and he employed and discharged all employees in staff W."	*"Hiring and firing of employees* (except Prokuristen) with a monthly salary of 600 RM and above." *(Doc. NO–3170, XXIX/53.)*
"In his testimony Pohl declared that staff W was the instrument which he used as the sole business manager of DWB in the supervision of the economic enterprises."	Pohl's testimony— *"The Staff W was the instrument which I used as the sole business manager of the DWB when I supervised these enterprises." (Tr. p. 1546.)*
"All W Industries obviously were an essential part of the concentration camp system."	*"Office Group W comprises all economic enterprises under SS control.* In studying the W enterprises first of all the question arises: Why does the SS engage in business? * * *. "The Reich Leader SS, therefore, delegated SS Obergruppenfuehrer Pohl, to set up *concentration camp enterprises.* In addition he gave orders to establish companies on a private economy basis for the purpose of employing the prisoners." *(Doc. NO–1016, II/107.)*
"Himmler, in his Metz speech, declared: 'We cannot exist without the business enterprises.'"	From Himmler's address to officers of the SS Leibstandarte 'Adolf Hitler' on the 'Day of Metz' (Presentation of historical Nazi flag.) *(Doc. 1918–PS, XXVI/18):* *"We cannot exist without the business enterprises."*
"* * *. In fact on the stand he described himself as the godfather of DWB."	Hohberg's testimony— "That was the foundation period of *DWB.* But when he had Prokuristen I had, of course, to resign, and legally, I, so to speak was the *godfather* of this baby, and then I withdrew." *(Tr. p. 4564.)*
"Karoli testified that Hohberg was the expert and economic brain of the enterprises."	Karoli's testimony— "A. To put it very briefly, I reached that conclusion because, as soon as Dr. Hohberg left, the *expert and the economic brain disappeared* from staff W." *(Tr. p. 4731.)*
"When the workshops in the Dachau concentration camp were organized and incorporated into DAW, it was Hohberg who handled the financial aspects of the transaction and advised Pohl as to what steps should be taken."	Hohberg's letter to Pohl, dated 3 September 1940. "Berlin, 3 [18] September 1940 St. W.Ho/Ha. *"To SS Gruppenfuehrer Pohl, Here.* "By your letter of 31/1/40 addressed to Standartenfuehrer Dr.

Salpeter you have given instructions for the transfer of the *Economic Enterprises Dachau to the German Equipment Works (Deutsche Ausruestungswerke)* on the basis of the former's balance sheet of 31 December 1939.

"SS Sturmbannfuehrer Maurer, [Amt D II], guarantees the assets on the balance sheet of the Economic Enterprises not to be overestimated and all liabilities to be included in the balance sheet. Checking of the assets is therefore not necessary, since they will be examined anyhow in the course of the review of the German Equipment Works due on 31/12/40.

[Signed] Hohberg"

"Testifying on the matter of the remuneration for the use of concentration camp inmates, Hohberg stated: 'I saw the amount of daily wages paid for the inmates and as an auditor I had to give my opinion on what these enterprises should pay to the Reich'."

Hohberg's testimony—

"I saw the amount of daily wages paid to the inmates, and as an auditor I had to give my opinion on what these enterprises should pay to the Reich." (Tr. p. 4373.)

"Through Hohberg's efforts, the German Lebensmittel, the Textile and Leather Company, and the Osti —all using inmate labor—were given the form of a company."

Hohberg's testimony—

"* * *. After all, these plants had already been in existence before and later, upon my suggestion, they only received the form and the title of a company. I mention these enterprises as the *German Lebensmittel* G.m.b.H., the *Textile and Leather Evaluation* G.m.b.H. or Deutsche Textil- und Lederverwertung G.m.b.H., and in the last month of my activities it was the *OSTI*." *(Tr. pp. 4261–2.)*

"He was frequently consulted when these enterprises were being founded."

Hohberg's testimony—

"Q. Were you called in any capacity, as a *consultant*, for instance when these *enterprises were being formed?*

A. Not always, but quite *frequently*." *(Tr. p. 4354.)*

"The commanders of the concentration camps functioned under Pohl's direction as Works Managers of the various economic enterprises."

Order of Pohl to chief department D—30 April 1942:

"The management of a concentration camp and of all the economic

enterprises of the SS within its sphere of organization is in the hands of the camp commander. He alone is therefore responsible that the economic enterprises are as productive as possible * * *. He needs a clear professional knowledge of matters military and economic. *(Doc. R–129, II/68.)*

That concentration camp commanders functioned as works directors is established (among other evidence) by Document NO-2160, III/116:

"I herewith announce, that effective 31 August 1942 SS Oberfuehrer Loritz will leave his duties as commander of the concentration camp Sachsenhausen * * *. SS Obersturmbannfuehrer Kaindl will take his place effective 1 November 1942 * * *. Please transfer to the account known there (and) for SS Obersturmfuehrer Kaindl as the *works director* the living cost allowance in question for *the concentration camp Sachsenhausen.*"

"When the matter of transferring armament production to concentration camps was discussed, Hohberg accepted appointment as expert for the WVHA. People desiring to know the details of the transfer of armament enterprises to Neuengamme, Auschwitz, Lublin and Ravensbrueck, were referred to Hohberg as being the person in WVHA competent to conduct negotiations."

Letter from Kammler—Subject: Armament Plants for Concentration Camps.

"2. Staatsrat Dr. Schieber especially welcomed the standpoint of the chief of the main office to transfer suitable armament orders to the existing concentration camps. For this purpose Staatsrat Dr. Schieber will conduct final negotiations with the Army Ordnance Office, etc. during the next few days, in regards to orders for the following concentration camps:

a Hamburg-*Neuengamme*
b *Auschwitz* (production of parts for anti-tank guns envisaged)
c *Lublin*
d Ravensbrueck — Manufacture of armaments for the air-force—Dr. Schieber will exercise the pressure necessary to push on the construction measures required for this purpose.

In regard to these negotiations I referred to *Dr. Hohberg, as being competent* within the Economic Administrative Main Office. *Staatsrat Dr. Schieber will then discuss the draft with Dr. Hohberg.*

The Chief of Amtsgruppe C
[Signed] KAMMLER."

(Doc. NO–1215, book 3.)

"When the Hermann Goering Works wanted inmate labor, Hohberg attended the conference which considered the ways and means of supplying these inmates. The memoranda written by Hohberg reveal an intimate knowledge of concentration camp labor problems."

Reference to Document NO–1914, XIV/65 and Document NO–1916, XIV/69 being memoranda written by Hohberg will conclusively demonstrate Hohberg's intimate knowledge of concentration camp labor problems. Only one paragraph will be quoted:

"Unless the Reich Leader SS desires to assist the Hermann Goering Works with prisoners out of personal or economic reasons, our participation in the form provided has not much point from the financial angle except if the Hermann Goering Works should agree to hand over part of the turnover to the 'Lebensborn' or some other office of the Reichsfuehrer."

The documentation in this operation reveals the important part played by Hohberg therein. Volk wrote:

"Concerning the establishment of the slag-utilization plant of the Hermann Goering Works at Linz, SS Obergruppenfuehrer Pohl has given instructions that Dr. Hohberg shall handle the transactions (translated also 'hold the pen'). I therefore request all offices in the building to keep in touch with Dr. Hohberg, since he alone is to keep the Obergruppenfuehrer informed by memo." *(Doc. NO–1915, XIV/68.)*

"Hohberg himself testified that he handled the financial, organizational, and legal problems of the Economic Enterprises."

Hohberg testimony:

"Q. (By the President) * * *. You supervised the *economic enterprises* from the point of view of *finance organization and legality?*

A. Yes. That is correct." *(Tr. p. 4531.)*

JUDGMENT	THE RECORD
"Hohberg testified that he left the WVHA because of his disapproval of its activities."	"The defendant never made any secret of his hostile attitude to the SS." (Final plea Hohberg, p. 27) "Hohberg, from the introduction of the National Socialist way of thinking, was an uncompromising enemy of National Socialism and its ideology and never changed his opinion." (p. 28) "Since his Lublin trip, Hohberg pressed for his release." (p. 56) "His decided stand against the SS system and the National Socialist regime expressed itself through manifold revolutionary propaganda." (p. 60) "Hohberg also planned to remain active later on as advisor of the DWB Concern, but not as an advisor of an SS Concern, but of a Reich Concern from which the influence of the SS or the WVHA was entirely excluded" (p. 62). Hohberg's testimony: "By the middle of 1942, roughly, on the basis of an arrangement with my friend, Dr. May, *I turned away from the ideology of the WVHA entirely* and we also hoped to have the political power of the DWB concern transferred somewhere else which is what I wanted to express here." *(Tr. p. 4320.)*
"But even after leaving, he accepted a contract from Pohl by which his family received 2,000 RM per month."	Hohberg's testimony— "Q. * * *. How much did your family get monthly? A. Nineteen hundred and sixty-six marks. Q. In other words, roughly, 2,000 marks? A. Yes." *(Tr. p. 4431.)*
"In 1944, after having left the WVHA, he carried out successful negotiations with Pohl and obtained the cooperation of the SS enterprises in the production of jet-propelled planes."	Hohberg's testimony— "Q. Wasn't it you who, in 1944, suggested to Pohl to incorporate the SS enterprises into the Fighter Program? A. Yes." *(Tr. p. 4435.)* "I went in to see Pohl and I asked him to incorporate his enterprises into the jet-propelled fighter plane * * *. We got a deal through with Himmler, that Pohl actually had to

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join this program which was the Me-162, the jet-propelled plane." *(Tr. p. 4435.)*

"Staff W played an important part in 'Action Reinhardt', in the supervision of Osti, and in handling loans from the Reinhardt funds."

Hohberg's testimony—

"Q. Was the Osti part of staff W?

A. Yes. It was. Herr Pohl ordered that the Osti be incorporated into staff W on the organizational chart, because according to branches there was no possibility open to incorporate that company in some other box of the organizational chart. *(Tr. p. 4390.)*

Document NO-1039, book 14, pages 31-33.

"17. *Reinhardt Funds:*

The contract between the Reich and the DWB concerning the loan from the Reinhardt funds must be drawn up in writing.

[Signed] HOHBERG

8 August 43"

Document NO-1039, book 14, pages 23-24.

"To the Reich Leader SS 'T' *Ostindustrie G.m.b.H. Lublin* (abbreviated: OSTI (Eastern industrial Limited Lublin).) Newly founded Company for the exploitation of the balance of Jewish property and of Jewish labor in the government general."

Document NO-1015, book 16, page 93.

"To the Deutsche Wirtschaftsbetriebe G.m.b.H. Attention: Dr. Hohberg, Berlin W 35, Potsdamer Str. 95.

"As a result of consultation with IVa of the chief of the SS and Police Leader for the district Lublin, SS Sturmbannfuehrer Wippern, a total of Zl. 1,200,000—has been made available to us up to date. We are now asked to assign the available funds to the Economic and Administration Main Office, in care of SS Hauptsturmfuehrer Melmer, in favor of the 'Reinhardt' scheme. On the strength of the consultation, we had the impression that these credits would be available to us until at least 1 October of the current year

in order that from the capital which has meanwhile accrued, and in connection with the impending increase of capital, we may possess the capital without having to fall back on bank credits. We now ask that negotiations should be made with SS Hauptsturmfuehrer Melmer to see if the funds made available to us so far can be left at our disposal until 1 October of this year, and that in addition to this, we may obtain credits for RM 3,200,000 on which we could draw any time through the garrison administration in Lublin."

"Osti is listed as part of staff W on the chart of WVHA which was assigned by Pohl."

Pohl's testimony—

"Q. * * *. You also included Eastern Industries Ltd. in your chart which you looked at this morning, and said it was correct. That was included under staff W, wasn't it on the chart, do you recall that?

A. Yes, of course." *(Tr. p. 1846.)*

In his brief, defense counsel refers to the business order for economic enterprises of the SS, and states that it cannot apply to Hohberg because Hohberg had already left when this order was promulgated, but, as previously stated, Karoli testified that this order only confirmed an already existent procedure. The Tribunal accepts Karoli's testimony as trustworthy.

The statement by counsel that staff W was merely a title and not an official office without employees runs counter to all evidence in the case. Document after document refers to staff W, and Karoli himself was an employee of staff W. *(Tr. p. 4658)*

In laboring his argument that Holberg was not chief of staff W, defense counsel seeks to minimize statements made to that effect by the codefendants Baier, Volk, Pohl, and the defense witness Karoli, but no reason has been advanced as to why these persons would want to perjure themselves on this point.

Defense counsel says that Hohberg never once saw the inside of a concentration camp. Hohberg was asked: "Q. Did you know anything about labor conditions in the enterprises which employed inmates?"

And he replied: "A. Yes. I visited several of those enterprises where inmates were working because I was under legal obligation to do so." *(Tr. p. 4345)*

The term concentration camp in its broad sense includes not only the place where the inmates sleep but the immediate curtilage as well. Most of the atrocities associated with concentration camps occurred in the plants and industries operated by the concentration camps.

Max Wolf who testified for the defendant declared:

"I saw an industrial concentration camp, which was the mechanical workshop at Neubrandenburg. There the whole industrial enterprise was built up in the shape of a concentration camp, where even the engineers had to work who were members of my organization." *(Tr. p. 4623)*

As indicated earlier in this opinion, the concentration camp commanders were responsible for all economic enterprises within their sphere of organization. *(Doc. R–129)*

It is futile for Hohberg to plead innocence of concentration camps. He visited Auschwitz and spoke to the commander there, the infamous Hoess, although Hohberg did state that the visit occurred in the commander's office.

The witness Wolf verified Hohberg's knowledge of conditions in concentration camps:

"Q. Is it true, witness, that in 1942 Hohberg told you about atrocities that were being committed in concentration camps?

"A. Yes. I said so; he reported that to me.

"Q. What was the earliest date that he told you about these things? Was it as early as 1941?

"A. Yes." *(Tr. p. 4629)*

In his pretrial affidavit, Hohberg said:

"As long ago as 1942 it was clear to me that prisoners were employed for the economic concerns. Dr. May, the manager of the 'German Equipment Works' (Deutsche Ausruestungswerke) asked me to have a look at his concern, and in the course of doing so, I inspected the works in Lvov, Lublin, and Auschwitz. On this occasion I saw, among other things, how 5,000 women marched barefooted to their work, and this gave me a true picture of existing conditions." *(Doc. NO–1294, I/83.)*

He knew as early as 1940 or as early as 1941 that DEST was using inmate labor.

"Q. When did you first learn that the DEST was using inmate labor?

"A. I heard that at a very early time, either at the end of 1940, or early in the course of the auditing 1941. At that time, I paid a brief visit to the DEST at Oranienburg and I walked through the plants there." *(Tr. p. 4478)*

Hohberg knew that concentration camp inmates were not paid for their work:

"THE PRESIDENT: Well, the Reich, we'll say, had 5,000 human machines, just as it might have had 5,000 motors and it said to the factories, 'We'll rent those human machines to you for so many Reichsmarks per day.'

THE WITNESS: Yes. That is the way it was.

THE PRESIDENT: Just as they could have rented 5,000 motors for so many Reichsmarks per month.

THE WITNESS: Yes, quite so; exactly the same thing.

THE PRESIDENT: The 5,000 human machines just got food and shelter.

THE WITNESS: Yes.

THE PRESIDENT: And nothing more.

THE WITNESS: No, nothing at all."

Hohberg offered a rather grim reason for the impracticability of paying and cumulating wages:

"However, the problem is entirely different even if it had been the way you say it was, namely, that the inmate was to be paid a daily wage and the pay had accumulated. Then what use is it to the inmate if he dies later, or if he is gassed or something similar?" *(Tr. p. 4371)*

In reviewing the entire record in the Hohberg case, it becomes evident that in comparison with the sentences imposed on other defendants Hohberg fared well. The fact that he was not a member of the SS weighed in his favor, and the fact that once he left the WVHA he lent some aid and comfort to the anti-Nazi movements also contributed to the light sentence which he received.

On the basis of his activities in WVHA he could well have received a much severer punishment. He not only was aware of the abuse of concentration camp inmates but through his intense energies and zealous concern for the economic enterprises he materially contributed to their exploitation and oppression.

He proudly testified on the witness stand that he had saved the economic enterprises 10 million marks through the advice he had given them. It does not appear that this advice anywhere along the line included any plea for better food and treatment for the inmates.

Hohberg knew that in the infamous OSTI operation Jews were killed:

"A. * * *. I have seen from the documents that actually the position was that utilization of the Osti later on, when the Jewish inmates had been taken away, became quite impossible; and these Jews were killed apparently at Himmler's orders; but their killing cannot have been the primary intention because otherwise there would have been no point in establishing these enterprises.

"Q. Let me ask you this, at the time that you participated in this conference about OSTI, did you already know at that time that Jews were being gassed in Auschwitz?

"A. Yes." *(Tr. p. 4518)*

He knew that the taking of the Jewish property in the "Reinhardt Operation" was outright spoliation and plundering:

"Q. * * * was payment made to those owners for the factories and the machinery which were confiscated by the Reich?

"A. No. I am sure of that. I can guarantee you that now. No. They did not get that. Let's assume, for instance, it was mainly Jewish property; they did not even get a nickel for that." *(Tr. p. 4396)*

He knew about OSTI from the beginning:

"Q. Did you know at that time anything further about the OSTI?

"A. Yes. I knew about the principal and fundamental plans by the first conference which took place in January. During it the three following fundamental points of view were decisive." *(Tr. p. 4391)*

Hohberg's tie with the WVHA was only a contractual one, so that when he learned of the gross crimes being committed by that organization it was within his privilege to depart. He chose, however, to remain, calculating, undoubtedly, that it was to his advantage to remain. He entered the organization in the first place in order to avoid military service.

His witness Max Wolf testified:

"I believe there were three motives which I would like to stress. First of all he was interested in his job, then he had the wish to become more independent and, finally, thirdly, he had the possibility here to be able to dodge the draft." *(Tr. p. 4599)*

Hohberg devoted himself with as much energy to his tasks in staff W that when he left, the office lost much of its importance. Karoli testified:

"* * *. In my opinion, therefore, staff W, as a result of the departure of Dr. Hohberg, had lost a considerable part of its importance." *(Tr. p. 4710)*

It is obvious from all this that Hohberg enjoyed his work with the WVHA. He was proud of the important part he played in the economic enterprises of WVHA, even though this included, through slave labor, the degradation of human beings. His was no insignificant auditor's position. He was an advisor, instigator, planner, and organizer, and he did his job with such verve and ability that when he left, the office he had held diminished in authority and force. He did his job so well that his family was

awarded a pension of 2,000 marks a month. He did his job so well that even after he had left he was called back for consultation. He worked well with Oswald Pohl, the primary criminal of WVHA and concentration camp administration.

Karoli testified:

> "I think the fact that Hohberg was an expert—and was regarded as such—made him, in Pohl's eyes and those of the other office chiefs, indubitably more important when he was consulted in matters of general economic importance to give his opinion." *(Tr. p. 4753)*

Hohberg may have later repented for the dynamic part he played in the operation of a machine which crushed human beings spiritually and physically, and the Tribunal has given him generous credit for such reformation, but nothing can wipe out the history of his complicity in the nefarious WVHA which operated a human factory of misery, known as the concentration camps.

After a thorough review of all the evidence in the case, the Tribunal finds that the original judgment and sentence should be confirmed and it is hereby confirmed.

LEO VOLK

Dr. Klinnert in his able brief of fifty pages in behalf of his client Leo Volk covers many subjects, but practically they are all related to his main argument, namely, that Volk is not guilty of crime because he was only a soldier doing his duty and that the guilty ones, if there is guilt, were the superiors who issued orders to him. Since, in every military, or civil organization either for that matter, everyone has a superior except the man at the very peak of the pyramid, Dr. Klinnert's argument, if carried to its logical extreme, would acquit everyone in the Nazi State but Hitler and possibly Himmler. But it is obvious that Hitler and Himmler could never have achieved alone the great destruction they inspired unless they had many coadjutors, helpers, and executants. Control Council Law No. 10, under which this Tribunal operates, specifically states that superior orders are no defense although they may be pleaded in mitigation of punishment.

Leo Volk may have been in himself a rather unimportant figure, so far as the Nazi supreme hierarchy is concerned, but the evidence establishes that he was an essential, integral member of the organization which accomplished crimes, atrocities, and inhumanities unparalleled in the history of the human race. The crime of the concentration camps of the Third Reich is a

crime the whole world knows. This judgment does not suggest that Leo Volk actively participated in the beatings and other ill treatment practiced on the concentration camp inmates, but it does declare, as it did in the original judgment, that he was a vital figure in one branch of the WVHA responsible for the concentration camps of Germany and occupied countries.

Defense counsel very properly says: "The concentration camp policy was a violation of the principles of Christianity." From this statement he argues that Volk could not have participated in furthering the concentration camp policy because Dr. Volk came from a strictly Catholic family. The fact remains, however, that Volk joined the National Socialist party as early as 1933 and never left it, even after its anti-religious program became evident to everyone. That Volk is a kindly person at heart, as counsel points out, is not disputed. Nonetheless he remained part of a system which enslaved, tortured, and killed masses of population in the concentration camps he helped to administer. The fact that the Inspectorate of the Concentration Camps did not come within the framework of the WVHA until April 1942, does not change the fact that concentration camp inmates were used in the SS industries. On 30 April 1942, Pohl said:

"The mobilization of all prisoners who are fit for work, for purposes of the war now, and for purposes of construction in the forthcoming peace, come to the foreground more and more. From this knowledge some necessary measures result with the aim to transform the concentration camps into organizations more suitable for the economic task, whilst they were formerly merely politically interested." *(II/67, Doc. R-129.)*

Dr. Klinnert says:

"1. Some of the industrial enterprises of the branch companies of the DWB, i.e., the DEST G.m.b.H., and the DAW, employed concentration camp prisoners in their plants at a time when the Inspectorate of the Concentration Camps did not yet belong to the WVHA and Pohl was not in charge of the supervision."

This only emphasizes the policy of the industrial enterprises to exploit concentration camp labor regardless of the method of administration. Defense counsel says further that only a very small part of the more than 50 branch companies of the DWB employed concentration camp prisoners during the war. They did, however, use them and Volk was aware of that use. Dr. Klinnert says that Volk had no knowledge of the circumstances which made labor allocation of concentration camp inmates criminal. In this respect Dr. Klinnert falls into the same error committed by his predecessor who, in his trial brief for Volk, said:

"It is therefore very doubtful whether the mere use of prisoners for unpaid work alone is sufficient to comply with the definition of the crime of enforcing so-called slave labor."

Here we repeat what was said in the original judgment, following the above observation:

"But, if forcibly depriving a man of his liberty and then compelling him to work against his will without remuneration does not constitute slave labor, then the term has no meaning whatsoever."

Defense counsel states the judgment declared that Volk had visited the Flossenbuerg concentration camp. The judgment did not so state. The episode of the visit to Flossenbuerg is described in the Mummenthey supplementary judgment and need not be repeated here.

Dr. Klinnert denies that Volk knew that "internees of the concentration camps included prisoners of war." Document NO–1292 speaks of the "employment of an increased number of prisoners, prisoners of war and Jews," and not "prisoners of war and internees", as counsel says in his further brief:

"The fact that prisoners of war and internees are mentioned separately, clearly shows that these prisoners of war were in PW camps and not in concentration camps, because otherwise they, too, would have been internees and there would have been no need to name them separately."

But here he overlooks the word "Jew". Using his reasoning, there would be no object in mentioning "Jews" either because they also would have fallen within the larger category of "internees". Nor is his argument convincing that it was not proved that Volk knew of this document, even though the accompanying letter bore the receiving stamp with Volk's initials. One signs one's initials for a purpose and the only purpose here would be to show that Volk had noted the contents of the document.

Defense counsel also says:

"According to the verdict the tribunal has seen a significant feature of evidence with regard to slave labor in the fact that the internees were not paid for their work. This was not known to Dr. Volk either. This knowledge has not been asserted in the verdict."

Since the nonpayment of concentration camp inmates was a fact established in the general opinion, it was not necessary to mention it specifically in Volk's judgment. Since it was proved in this case that the defendant participated in the exploitation of concentration camp labor, that finding necessarily included the finding that he knew the inmates were not paid, for this constituted an integral part of the charge of slave labor.

It has been argued that Volk could have assumed that internees were paid but as a legal expert for DWB it would have been impossible for him to have accomplished his tasks over a period of years without knowing the facts in connection with so important an item as the matter of financial expenditure for wages, if there were any.

Defense counsel says:

"As has been stated in the verdict, it must also have been established that Dr. Volk consented to the exploitation of the internees, that he—in the words of the verdict—supported the system of exploitation of the concentration camp internees and the concentration camp policy."

The judgment found that Volk supported the concentration camp policy. It is no excuse to say that Volk was working for the holding company and did not employ any internees when it is known that the subsidiary companies, without which the holding company could not exist, employed concentration camp labor.

Dr. Klinnert says that Volk was never deputy chief of staff W, but in this connection reference is made to Document NO–3831. Under the heading, "Specification of the fields of work," this item appears: "Work domain of the deputy chief W, SS Hauptsturmfuehrer Dr. Volk: deputy for the chief W."

Defense counsel attacks the validity of this document but his predecessor, in making his final argument to Court, practically admitted that Volk was deputy, for, in arguing that Volk was not the chief of staff W, he said: "From the wording of the document, too (another document) it follows that Dr. Volk was only *a deputy." (P. 37, final plea.)*

It is to be observed also that during the absence of Hohberg, Volk, for one month, functioned as chief of staff W.

It is not correct, as defense counsel says, that Volk had no influence over the business management of the holding company since he handled only legal affairs. (Further brief 14.) Paragraph 2 of Volk's contract with the DWB read: "It is Herr Dr. Volk's deputy to manage the business transactions of the DWB (German Economic Enterprises) with the care as befits a proper business man."

This document also negates the argument that Volk's job was a compulsory military one, leaving him no choice. Paragraph 7 of the contract stated:

"Herr Dr. Volk has the right after accepting a public position, to terminate the contract by giving 3 months notice in agreement with the chief manager of the DWB (German Economic Enterprises). The DWB (German Economic Enterprises) has the right to impose a fine, censure, or compensation up to

the amount of half a month's salary if Herr Dr. Volk contravenes the above-mentioned regulations. Herr Dr. Volk is not entitled to make a complaint in court."

Defense counsel states that if Dr. Volk "has shown full understanding of the nature of the SS enterprises, this in no (way) proves committance of a criminal act." But cognizance of the criminality of an operation and a continued participation in the administration of that operation brings the administrator within the scope of an illegal act. Otherwise it would mean that the man who plans a fraudulent bond transaction would be excused from responsibility simply because he did not actually deliver the false certificates.

The judgment did not say, as defense counsel declares, that Volk held a leading position in a subsidiary firm, but it did say that Volk was syndicus of the Portland Cement Company. Defense counsel denies that Volk was appointed syndicus as the judgment states. In this connection reference is made to Document NO-3909 which states:

"Poznan, 18 February 1943

"For the completion of your files I report that as of 29 October 1942 the following have been appointed:

"1. *Members of the Aufsichtsrat.*

Ministerialdirektor Oswald Pohl, Berlin to be chairman of the Aufsichtsrat.

"Diplom-Kaufmann Georg Loerner, Berlin to be deputy chairman.

"Diplom-Ingenieur Dr. Hans Kammler, Berlin.

"Syndikus Dr. Leo Volk, Berlin."

Defense counsel makes a point of the fact that "Volk had no control over the internees." It was not claimed by the prosecution, nor found by the judgment, that Volk directly controlled internees. If this had been established, Volk's sentence would have been far severer because in that event he would have been directly charged with the inhuman treatment accorded the internees. The extent of his participation in the inhuman treatment accorded internees was a "consenting part," as defined in Control Council Law No. 10.

Defense counsel denies for his client all responsibility for internee employment by saying that his duties necessitated his "almost continuous presence in the Konzern's offices in Berlin." But the evidence reveals, and defense counsel even refers to the fact, that Volk made various trips into the field in connection with his work.

That the Inspectorate of the Concentration Camps was not part of the WVHA until January 1942, is of no great consequence in

determining Volk's guilt. It was part of WVHA for over three years while Volk functioned in the WVHA set-up. It is also obvious that there was an active cooperation between the Inspectorate and the SS Industries prior to the amalgamation in January 1942.

The constant assertion that Volk had nothing to do with concentration camps is refuted many times in the evidence. The very document which defense counsel quotes in this respect shows the contrary. In Dr. Volk's memorandum of 12 January 1942 (quoted by defense counsel, p. 24), this passage appears:

"With the funds invested in the concentration camp, the Vistula SS administrative district intends to finance the settlement which is to be set up for SS men, thus requiring the major portion of the money which has been used for the erection of the KZ [concentration camp]."

The judgment made reference to Volk's visit to Lodz with regard to considering whether the ghettos there should be converted into a concentration camp, thus showing Volk's familiarity with concentration camp matters. The concentration camp project did not materialize and from this defense counsel draws the following conclusion:

"These statements in themselves prove that Dr. Volk could not have supported the KZ policy. By his attitude he only opposed such a policy, with all his power. What else could Dr. Volk have done to demonstrate more clearly his opposition to the KZ policy?"

But it was not because of Volk's opposition to a concentration camp policy that the Lodz project was abandoned. The reason was a grimmer and more tragic one. It was decided, as the result of the conference, that the concentration camp project would not be a profitable one. Document NO–519 states that the population of Lodz in 1944 was 80,062 Jews, of which 5,363 were children. The reductions by death were 500 per month or 6,000 per year. In Gauleiter Greiser's report of 9 February 1944, the following significant items appear:

"*a.* The personnel of the ghetto will be reduced to a minimum and retain only the number of Jews essential to the interest of the armaments industry.

"*b.* The ghetto therefore remains a Gau ghetto of the Reich Gau Wartheland.

"*c. The reduction will be carried through by the special SS detachment (Sonderkommando)* of the SS Hauptsturmfuehrer Botmann which already had prior activities in the Gau. *The Reich Leader will give orders to withdraw SS Hauptsturmfuehrer Botmann and his special command from his mission*

in Croatia and again place him at the disposal of Gau Warthe-land.

"*d.* The disposal and valuation of the contents of the ghetto remains in the hands of the Reich Gau Wartheland.

"*e. After removal of all Jews from the ghetto and following the dissolution of it,* the entire grounds of the ghetto are to go to the town of Lodz." [Italics supplied.]

Volk would have the world believe that he knew nothing about concentration camps. On 12 January 1942, he wrote a memorandum on the Stutthof concentration camp project. The memo contained the following paragraph:

"The Deutsche Wirtschaftsbetriebe G.m.b.H. get from the forestry administration the *ground which is necessary for building the concentration camp.* The square meter for this, according to the preliminary negotiations, shall cost 0.15 RM. As soon as the Deutsche Wirtschaftsbetriebe has obtained the ground they sell the *entire concentration camp*—insofar as it is built by this time—to the Reich at the estimated price."

No intelligent person could fail to know in 1942 that concentration camps under the Reich were places where people were not only denied their liberty but subjected to cruel and degrading treatment, perilous to health, limb, and life.

Defense counsel argues that Volk contracted with the DWB for his services because otherwise he would have had to do military service. But when it became evident to him that DWB was engaged in a criminal enterprise, he could at any time have denounced his contract and entered the military service. He cannot absolve himself from criminal responsibility by complaining that if he had not taken the civilian work he would have had to join the colors. Many of his countrymen were themselves being called to the military service. In time of war no one's life is a bed of roses, but one can at least keep one's conscience clean and avoid the stigma of war crime by declining to participate in obvious crimes against humanity.

Defense counsel argues:

"If he had been an important man in Amtsgruppe W, as the reasoning of the judgment tries to show, he would necessarily have had a military service grade which would have enabled him to issue instructions to the individual office chiefs."

In the first place, the grade of army captain is not an insignificant one, and in the second place, Volk's crime does not arise out of his having given orders to any one, but consists of his voluntary participation in a criminal project.

It is denied that Volk had anything to do with the OSTI enterprise or the Action Reinhardt. The judgment does not con-

vict Volk of active participation in either of these nefarious enterprises, but it does declare Volk's knowledge of the nature of these transactions, all of which goes to negate Volk's contention throughout the trial that he was entirely innocent of the criminal ventures in which WVHA was constantly engaged.

On 30 July 1948 defense counsel filed a brief in addition to the one which has just been discussed. This additional brief argues the matter of the Court's declaration of 15 August and the Court order of 13 October regarding trial briefs. One of the reasons why the Tribunal reconvened was to give defense counsel an opportunity to file reply briefs to the prosecution briefs. Defense counsel has pointed out that the prosecution trial brief declared that the task of coordinating and directing W industries at the top level was the task of staff W and that the judgment came to the same conclusion. The similarity of language between the prosecution brief and the judgment in this respect is of no consequence so far as guilt is concerned as the conclusion reached by the Tribunal is based on the evidence in the case, and which fact defense counsel does not deny. This statement was taken by the Tribunal not from the prosecution brief but from one of the documents in the case.

> "According to this identity in the field of production, the single economic enterprises maintained by the SS are united in the offices W I–VIII. *At head of these offices stands the W staff* of the SS Obergruppenfuehrer Pohl regarded from the point of view of private economies the Deutsche Wirtschaftsbetriebe G.m.b.H." *(Doc. NO–1016, II/108.)* [All italics supplied.]

With regard to the judgment's conclusion that the defendant, because of his numerous positions, at times was not aware himself in which capacity he was functioning at the particular time, reference is made to his own statement on the witness stand:

> "Q. Then, were you handling this matter as the personal referent of Pohl or as legal expert in Amtsgruppe W?
>
> "A. Well, that's difficult to say that. You could say in both capacities, actually. Mr. Prosecutor you know I would like to tell you in advance that even my secretary did not always make a difference between the two. She wrote letters, sometimes under staff W and sometimes under personal Referent and, if I didn't pay good attention, then the letters were sent out under the wrong heading. *I really could not judge the matter so severely and differentiate between the two." (Tr. p. 5185)*

The defendant was not in any way prejudiced by the misunderstanding which brought about the confusion in the matter of filing briefs because the judgment was founded on the record and not

on statements in the brief. Nonetheless, since the point was raised by defense counsel and so that no possible injustice could result because of the defendants not filing a reply to the prosecution briefs, this opportunity has been afforded the defendant to file additional briefs which he has now done twice.

In reply to the prosecution's brief, defense counsel, in his second further brief mentions four points. Number one has already been explained in the Mummenthey judgment as heretofore stated. Numbers two and three were already discussed in the defense counsel's final plea and were considered in arriving at the original judgment. The Tribunal sees no reason to change its conclusions with regard to these two items.

With regard to number four, the Tribunal has found from all the evidence that Dr. Volk's activities within the WVHA clearly established that he took a consenting part in the commission of crimes against humanity. This matter has also been discussed at some length in this supplemental opinion.

Defense counsel stated in his second further brief:

> "If one denies any personal initiative on the part of a general, as chief of staff of an army, in action which he takes within his sphere of jurisdiction by virtue of his position because solely the commander is responsible, then this principle should be applied to Dr. Volk who could not possibly have acted on his own initiative in the DWB G.m.b.H."

The answer to this is a simple one. If the chief of staff simply performs military duties, he commits no crime, but if he himself violates the rules of war and the laws of humanity as established by international law he is responsible. Field Marshal Keitel, Chief of the High Command of the German Army [Armed Forces] was found guilty of war crimes and crimes against humanity and was convicted and executed even though he claimed that he had committed all his acts under the order of Hitler.

After a thorough reconsideration of the entire record in the case of Leo Volk, the Tribunal finds no reason to disturb its judgment of 3 November. The judgment and sentence against Leo Volk are therefore reaffirmed.

KARL MUMMENTHEY

On 16 November 1947, defense counsel for Karl Mummenthey filed a petition with the Military Governor for modification of sentence imposed on his client, alleging therein certain errors on the part of the Tribunal. On 12 July 1948, as the result of the order of the Tribunal defense counsel filed a "memorandum" in which much of what was argued in the petition for modification

of sentence was repeated. Since the former presentation is the longer one and covers practically everything mentioned in the latter, the Tribunal will take up from the petition the various matters advanced by defense counsel as error.

Defense counsel is of the impression, or at least so argues, that preference was given to the prosecution over the defense in the matter of consideration of arguments respectively submitted. At the termination of the trial, defense counsel submitted a written argument of 33 single-spaced typewritten pages which covered most thoroughly and ably the case of Karl Mummenthey. The prosecution, in its closing summation of 73 pages against *all* the defendants, devoted less than 2 pages to the case of Karl Mummenthey. To supplement this meager treatment of Mummenthey's case, a trial brief which analyzed the evidence as it applied particularly to Mummenthey, was submitted by the prosecution. In both his petition and his memorandum, defense counsel makes much of the fact that five sentences or phrases taken from the judgment bear some resemblance to phraseology in the prosecution's trial brief. Since the material used by both the prosecution and the Tribunal, as well as the defendant, was necessarily all the same material, it is not so extraordinary that the Tribunal's findings should in some instances parallel the contentions of one or the other of the litigants. It is not contended by defense counsel that anywhere in these five fragments of similarity, the statements made by the Tribunal are not supported by the evidence. In one instance, a sentence taken from the judgment uses almost identically the same language employed by the defendant himself on the witness stand. In speaking of the defendant's efforts to ascertain whether inmates were paid, the Tribunal said that the defendant said: "He tried to find out but never got a satisfactory answer." The defendant's actual words in Court were: "I tried to find out * * * but I was never given a satisfactory reply." *(Tr. p. 5605.)*

In view of the Court order of 13 October defense counsel were entitled either to file replies to the prosecution briefs or the prosecution briefs should be disregarded. However, any use of the prosecution briefs prior to the order of 13 October could not in any way prejudice the defendant's cause since, as heretofore pointed out, the briefs could only speak of evidence already within the knowledge of the defendant as much as it was within the cognizance of the prosecution.

Nonetheless, since some ambiguity did result about the entire matter of filing trial briefs, the Tribunal resolved to reconsider its whole judgment so that no defendant could by any chance suffer through the lack of having filed every argument he desired

to file. Thus defense counsel for Karl Mummenthey, as all other counsel, were informed on two different occasions to file further briefs if they chose to do so. Defense counsel for Mummenthey filed what he called a memorandum in which he repeats some arguments made in his petition which already covered fifty pages.

In the reconsideration of this case, the Tribunal now excludes from the evidence the letter allegedly written by Mummenthey on 2 May 1944 to the codefendant Baier. The prosecution has acknowledged that although it had stated in open court that it intended to present this document, it did not, through an oversight, actually present the document.

Defense counsel in his petition, after making the statement, "The following immediately refutable findings are chosen at random," enumerates certain alleged errors in the findings, which will now be taken up seriatim:

a. "In 1934 Mummenthey did not join the General SS, but the riding units of the SS."

In this respect, reference is made to Karl Mummenthey's own testimony, in which the following appeared:

"Q. * * *. You joined the SS in 1934, is that right?

"A. Yes.

"Q. That's the Allgemeine SS?

"A. Reiter SS and *Allgemeine SS.*" *(Tr. p. 5680.)* [All italics supplied.]

b. "Mummenthey did not enter the administrative office as legal advisor, but as a legal assistant."

In this connection, reference is again made to Mummenthey's own statement:

"In the legal department of the administrative office of the SS, I worked mainly on *giving expert opinion* on contracts of all types." *(Tr. p. 5518.)*

There can be no doubt that one who gives expert opinion is certainly a "legal advisor."

c. "Mummenthey did not arrange with Salpeter to be taken into the Waffen SS in order to avoid being drafted into the army. Rather, he was drafted into the Waffen SS at the instigation of Salpeter."

Again we will look at Mummenthey's own words to support the statement in the opinion:

"* * *. In the year of 1940, since I had served with the Wehrmacht, I received an order to report to a rifle battalion, and I received that from the army corps area, Berlin-Wilmersdorf.

I submitted this order to report for military service to Dr. Salpeter, and he told me that this was completely out of the

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question. *He told me that a different settlement would be reached, and then he saw to it that I was conscripted into the Waffen SS.* At the same time I was put on detached service in order to work for the DEST. *(Tr. p. 5666)*

"* * *. In my opinion, my conscription into the Waffen SS was to serve the following purposes. One, persons who worked in the economic field were not to be subjected to the jurisdiction of the SS; two, these people were to be declared indispensable in this way. That is to say, *this was to prevent their being conscripted by any military agencies." (Tr. p. 5667.)*

d. "The Bohemia was not subordinated to office W I, but was only attached to it."

Whether the Bohemia establishment was subordinated to Office W I, or only "attached", as defense counsel argues, is of little moment. The fact remains that it came under the jurisdiction of office W I.

"From the fall of 1941 the direction of the so-called office W I and the leadership of the DEST and also *Bohemia* and Allach, which at that time from the organizational point of view, had been included in the DEST, were in the hands of Opperbeck and myself * * *. In this connection I would like to state that immediately after the departure of Dr. Salpeter the *Bohemia,* Allach, and Forbach, which actually did not belong in the DEST, by order of Pohl *were included in a group of firms* with the DEST." *(Tr. p. 5529.)*

On page 5704 of the transcript, prosecution counsel asked Mummenthey "the largest number of inmates employed in these 14 enterprises of DEST, and also *Bohemia* and Allach." Mummenthey replied that the total figure was approximately between 14 and 15 thousand. Further:

"Q. *Now, how did W I control and check on the operation of these plants?* One way was that you made trips to the plants frequently, isn't that right?"

"A. Yes. As a business manager of the DEST, yes."

All this certainly indicates that Mummenthey regarded the Bohemia plant as being subordinate to W I. There would be no point in his making inspection trips to these plants unless they were subordinate to the direction and control of his office.

e. "Kruse did not declare that the death rate in the camp was from 8,000 to 12,000, but only said 'from 8 to 12 percent'; therefore the death rate did not climb up to 20,000, but only to 2,000."

The testimony of the witness Kruse on this subject is as follows:

"* * *. The monthly death rate in the camp of Neuengamme

amounted to probably between 8 and 12 percent. He also mentioned that during the construction time of the Clinker Works, the death rate had climbed up to 20 percent, particularly during the winter months. I also remember that he said, 'Once we had 1,200 dead this month'—and I believe that was in the month of January 1943."

Due entirely to a typographical error in the final stencilling process, the "8 to 12 percent" became 8 to 12,000 and the "20 percent" became 20,000. In considering the case of Karl Mummenthey, the Tribunal accepted the testimony as it was actually given by the witness, namely, 8 to 12 percent and 20 percent. It did not consider the typographically incorrect 8,000, 12,000 and 20,000. It did, however, take note of the 1,200 dead referred to by the witness. It is to be observed in this connection that, so far as criminality is concerned, the guilt would be no less if Mummenthey were responsible only for 1,200 instead of 20,000.

f. "Mummenthey only admitted that he personally dealt with labor allocation when this was necessary."

Of course, to say that Mummenthey only admitted dealing with labor allocation when necessary is begging the question because certainly he would only ask for inmates when it would be necessary. It was not contended by the prosecution or found by the Tribunal that he used inmates when they were not necessary. The fact *is* that Mummenthey *dealt* with the matter of labor allocation:

"*Here we dealt with the office D II with regard to all questions arising out of the inmates.* We dealt with them whenever locally no agreement could be reached." *(Tr. p. 5720.)*

g. "Mummenthey did not say that the workers were well fed, but said that they were adequately fed in consideration of war conditions."

Mummenthey certainly intended to convey the impression that, insofar as he was concerned, the workers of DEST were well fed. Even defense counsel went on the record as saying, in commenting on Mummenthey's testimony in this regard, that the inmates received four times the amount of food received by Germans today. *(Tr. p. 5619.)*

Mummenthey testified that he saw the workers at lunch and observed that most of them could get second helpings. *(Tr. p. 5625.)* He said that the food was served warm because he could see the hot steam rising from the special containers. *(Tr. p. 5654.)* Testifying to the appearance of the inmates, Mummenthey said: "I would like to say that they were well rounded." *(Tr. p. 5712.)*

Defense counsel declared that the Tribunal "levelled most de-

rogatory criticism at Mummenthey" and "compared him to a robber and murderer." This statement is utterly without foundation. What the Tribunal said in this connection was the following:

"Mummenthey's attorney in his final argument before the Tribunal said: 'Without the connection with its Holding-Gesellschaft and Pohl's power of command, and without Mummenthey's membership in the SS, the DEST and thereby Mummenthey also, would hardly have to defend themselves before this forum.' But it is precisely this which condemns Mummenthey. It is like saying that were it not for a robbery or two, a robber would not be a robber. It was Pohl's command, and by his command the entire WVHA is involved, plus Mummenthey's command as an SS officer, which made DEST what it was, an organization engaged in human slavery and human degradation."

Defense counsel states that the Tribunal did not give sufficient consideration to the witness Bickel's estimate of Mummenthey. Bickel did have words of commendation for Mummenthey, but it is not to be overlooked that although Bickel was a defense witness, he testified in the most graphic language to the atrocities, sufferings, beatings, starvation, and deaths in concentration camps, including Mummenthey's own plants. Nor did he spare Mummenthey completely. He was asked by prosecution counsel:

"Witness, didn't the defendant Mummenthey know from these monthly reports or otherwise gain knowledge of the high death rate, of sickness, of poor food, clothing, and bad physical condition of the inmates?" *(Tr. p. 5482.)*

And the witness replied:

"About the bad conditions of the inmates he must have had knowledge."

Defense counsel states that the Tribunal disregarded Bickel's testimony that the "plant and the plant management are not responsible for any deaths." However, Mummenthey, in addition to being business manager of DEST, was also chief of Amt W I. In this connection prosecution counsel asked Bickel if office W I would not know because of the high death rate in the Clinker Works there was being almost a complete turn-over of employees every year. And Bickel replied:

"Office W I, of course, would obtain knowledge about the problem which you have just described. It would hear about the following: the form and extent of the mechanization in the Clinker Works made it very desirable and required that the number of employees remained the same. However, the inmates where the mortality rate was extremely high, as well as concentration camp inmates, were included in the mortality

rate. The inmates who worked in the mechanized part of the plant had a lower death rate than the inmates who worked outside." *(Tr. pp. 5480–5481.)*

He did say later that he believed Mummenthey was told lies about the high mortality rate, but if the statement is true, it still does not excuse Mummenthey from the grave responsibility of ascertaining what was happening to his employees.

Defense counsel says that the opinion in the Mummenthey case was "one-sided," as in contrast to the opinions in all other cases. This assertion is obviously a gratuitous view because the sentence imposed on Mummenthey was not as severe as that imposed on several other defendants.

After complaining that the judgment treated Mummenthey harshly, defense counsel then points out the statement in the judgment:

"* * *. He (Mummenthey) is too lacking in imagination to conjure up the planning of murder and equivalent enormities."

It is precisely for this reason that the sentence in Mummenthey's case was not capital. Defense counsel, in questioning his client, occasionally made some chiding remark about his client's phlegmatism. *(Tr. p. 5611.)* Whether it was because of Mummenthey's lack of awareness, or whether it was just wanton indifference on Mummenthey's part, which contributed to the enormities in the DEST establishment under Mummenthey's active direction, is immaterial. He was the responsible person. He did not even deny this:

"Q. * * * do you accept the responsibility for operation of the DEST enterprise?

"A. I was a co-business manager of DEST German Earth and Stone Works and, in that capacity, which according to commercial law, namely according to G.m.b.H., I have to bear the responsibility for it." *(Tr. pp. 5682–84.)*

The witness Kruse, to whom defense counsel referred, spoke of the treatment accorded concentration camp inmates in the Klinker Works which belonged to DEST:

"* * *. If an inmate collapses while he was working, which was absolutely natural due to undernourishment there and it was a daily occurrence, then he was thrown into a closed in area, closed in by barbed wire, in which daily there were between ten and thirty inmates, and they had to lie there on the bare earth regardless of whether it was winter or summer. *(Tr. p. 451).*

"Q. Now, were beatings a frequent occurrence on the works?

"A. Beating was a daily occurrence in the Clinker Works." *(Tr. p. 452.)*

Working in this establishment for 2½ months his weight decreased from 136 pounds to 90 pounds. Had he remained there 3 or 4 weeks longer he "would have gone through the crematory."

Mummenthey visited the DEST factories, conferred with the works managers, saw the inmates, and cannot plead ignorance to the inhuman treatment which no one can seriously deny was administered to concentration camp inmates.

Defense counsel argues that to charge Mummenthey with responsibility for conditions existing in the plants under his direction would be the same as charging "all members of all nations" with "crimes against humanity because they blinked at the commission of inhuman acts of their own nationals or those of other peoples." This statement ignores the fundamental fact that Mummenthey was *legally charged* with responsibility for the people under *his* direct management and control.

Defense counsel states that in contrast to the concluding opinion in the cases of the other defendants, the judgment does not contain the statement that the findings were established beyond a reasonable doubt. Defense counsel completely ignores what the Tribunal said on transcript pages 8059–60 in this regard:

> "Every defendant in a criminal case is presumed to be innocent until the prosecution by competent and credible proof has shown his guilt to the exclusion of every reasonable doubt. This presumption of innocence follows him throughout the trial until such degree of proof has been adduced. * * *
>
> "If any defendant is to be found guilty under counts two or three of the indictment, it must only be because the evidence in the case has clearly shown beyond a reasonable doubt that such defendant participated as a principal in, accessory to, ordered, abetted, took a consenting part in, or was connected with plans or enterprises involving the commission of at least some of the war crimes and crimes against humanity with which the defendants are charged in the indictment. Only under such circumstances may he be convicted.
>
> "If any defendant is to be found guilty under count four of the indictment, it must be because the evidence has shown beyond a reasonable doubt that such defendant was a member of an organization or group subsequent to 1 September 1939, declared to be criminal by the International Military Tribunal, as contained in the judgment of said Tribunal."

Thus it was not necessary to repeat in Mummenthey's judgment, as it was not stated in many of the other judgments, that Mummenthey particularly was guilty beyond reasonable doubt. This criterion is a *sine qua non* to the finding of guilt.

Mummenthey admitted that people, held in concentration camps against their will, were compelled to work without remuneration. This, of course, is slavery. But defense counsel argues:

> "Neither was it Mummenthey by any means who first made the DEST an inmate-worked factory, but he found this enterprise an inmate-worked plant when he entered upon his duties."

However, no authority is needed to establish the point that continuing a crime initiated by someone else does not exonerate the perpetuator of the offense.

Defense counsel states:

> "It is a matter of course that a certain connection between the management of the DEST and thereby also Mummenthey's on one hand and the inmates problem on the other hand cannot be denied. This connection, however, was limited to the employment of prisoners in the plants."

Even if Mummenthey's responsibility were limited to the employment of prisoners in the plant, this would be sufficient to convict him of war crimes and crimes against humanity because this is slave labor and nothing else. Defense counsel seems to forget that it is contrary to international law, municipal law, and to humanity and morals to deprive innocent people of their liberty and their well-being and because of these two deprivations, possibly deprive them also of their lives.

Defense counsel says that Mummenthey did not use the words "not improper" in connection with the subject of protective custody in concentration camps. Nor did the judgment charge him with the use of that phrase. It did impute to Mummenthey criminal knowledge of what was taking place under his eyes. Mummenthey seemed to think, and apparently his counsel agrees, that Mummenthey could be excused from responsibility by saying that he believed the Gestapo was a legal body, and that everything which Hitler and Himmler did were legal. Mummenthey's whole attitude on this subject can be gathered from his statement rather nonchalantly uttered:

> "The fact about an internment in the camps as such did not seem something particularly important or something extraordinary to me." *(Tr. p. 5576.)*

Defense counsel says:

> "One would look in vain, in the opinion of the Mummenthey case, for a single exhibit or compelling sentence to show that foreigners or prisoners of war were employed in the DEST plants."

The fact that this is not mentioned in the opinion does not mean that the evidence against Mummenthey on this point was not considered. The finding of guilt is based on the *entire* record,

for it would be manifestly impracticable to quote all the testimony or even refer to all of it in the judgment. The evidence that foreigners and prisoners of war were used in the DEST plants is to be found in Mummenthey's own declarations on the witness stand.

"All I know is that in the Bohemia and in the quarry of Mauthausen, prisoners of war were being employed or were to be employed; and in the last case in order to educate them. *(Tr. p. 5582.)*

"I can only speak from the point of view of where I was at the time. That is the only way I can tell you about my recollection. Among the inmates in the plant at Oranienburg there were also foreigners. *(Tr. pp. 5637–38.)*

"There were factories, for instance, the factory of the Messerschmitt Works, where the whole plant was full of foreign workers. *(Tr. pp. 5638–39.)*

"Q. How many DEST plants were engaged in making war material?

"A. Flossenbuerg, St. Georgen with plane parts, Oranienburg with hand grenades, and Rothau was working with the taking apart of airplane motors. I do not know if you can call that part of armament activities. I believe so.

"Q. And in these plants that you just mentioned, inmates were employed?

"A. Yes.

"Q. And foreign inmates were employed?

"A. Yes, quite so. *(Tr. p. 5657.)*

"I heard about the fact that prisoners of war were to be used; however, to what extent this was actually done, I don't know. *(Tr. p. 5725.)*

"Q. Did you ever request prisoners of war for use in the DEST enterprises?

"A. Negotiations took place on one occasion with a prisoner of war camp about the procurement of prisoners of war. However, as far as I can recall, this plan was never carried out.

"Q. Well, you tried to get them, but you failed, is that it?

"A. Yes. This plan was disapproved.

"Q. And where were you going to use these prisoners of war?

"A. In my opinion, they were to be used at Neurohlau. *(Tr. pp. 5738–39.)*

"These prisoners of war worked for Bohemia, and then later the labor office withdrew them. I didn't consider the employment of these prisoners of war to be incorrect because after all they were manufacturing porcelain goods here." *(Tr. p. 5740.)*

Defense counsel seeks to convey the impression in his petition

to the Military Governor that DEST employees obtained remuneration. He states:

"The DEST paid a voluntary bonus to the inmates, which amounted to approximately one-third of the inmates' wages paid to the Reich."

Commenting on this, it is enough to quote from the defendant himself:

"A. I took the attitude toward Dr. Salpeter and the managers that between DEST and the inmate no contract existed which is the reason DEST was not under obligation to pay wages. It was up to Reich to pay some compensation to the inmates from what DEST paid to the Reich by way of compensation for inmates, and we regarded it as contribution to various expenses borne by the Reich. *(Tr. p. 5596.)*

"Q. Why, you managed the industries that used these men to work, a number of industries, didn't you?

"A. Yes.

"Q. And you mean to say that you have no idea whether these inmates got any money for their labor or not? Now, do not be ridiculous, answer truthfully.

"A. Mr. President, from what I knew at that time I cannot say how the concentration camp gave anything to the inmates. All I can tell is what I saw from my own sphere of work. *(Tr. p. 5603.)*

"Q. I am glad that your eyes have been opened. Now, that they are open, are you convinced that the inmates got nothing but food and shelter for their 11-hours-a-day work? Do you believe that now?

"A. I am convinced of this today. Yes.

"Q. All right. Well, I call that slavery. What do you call it?

"A. Looking backwards, you can call it that, yes, retrospectively. *(Tr. p. 5603.)*

"JUDGE PHILLIPS: Well, looking back from today, speaking as one member of this Tribunal and only for myself, if you had as much to do with the workings and the labor of as many concentration camp inmates as you admit that you did have, you are in grave danger of being guilty of criminal negligence in not finding out more than you did find out. A man can't sit idly by and have things like this happen and say, 'I didn't know', when he could have found it out by reasonable diligence." *(Tr. p. 5604.)*

It would seem that defense counsel sees every wrong in the judgment. Taking up the judgment's reference to Mummenthey's connection with OSTI, defense counsel says:

"First of all the quotation is given incorrectly, in spite of

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having been established repeatedly in the evidence, in as far as in the original communication of 21 June 1944, it does not say: *'by'* Mummenthey but *'via'* Mummenthey *(NO–1271, Pros. Ex. 491)* * * *."

But the judgment actually reads: "Mummenthey had to know of OSTI and its nefarious program. The final audit of OSTI was prepared by one Fischer who said in his statement of the audit: 'I received through SS Obersturmbannfuehrer Mummenthey the order to audit the Ostindustrie.'" *(Tr. p. 8186.)*

The first sentence in Document NO–1271, from which this quotation was taken, reads:

> "In April 1944 I received through SS-Obersturmbannfuehrer Mummenthey the order to audit the Ostindustrie * * *."

As to the Action Reinhardt, it was not asserted in the judgment, nor was it claimed by the prosecution that Mummenthey actively participated in the action proper, but it did say that DEST derived some benefits from the Action Reinhardt. In this connection defense counsel put the following question to his client:

> "In the course of this trial the words 'Action Reinhardt' and 'Reinhardt fund' has been used repeatedly. And in particular the DEST has been connected insofar as the loan from the Gold Discount Bank was granted. And all those loans were to have come from the Reinhardt fund through the knowledge of DEST. What do you know about that?" *(Tr. pp. 5663–64.)*

And Mummenthey replied:

> "Two loans by the German Gold Discount Bank were granted in 1939 and 1941."

The knowledge which Mummenthey possessed of the Action Reinhardt is not one of the major items of proof of criminality against him. Nevertheless, it is not correct to say, as defense counsel says, that because a crime has been completed no further crime may follow from it. Receiving stolen goods is a crime in every civilized jurisdiction and yet the larceny, which forms its basis, has already been completed.

Defense counsel states:

> "Nothing is farther from my mind than to want to palliate the deeds of men who—no matter what their motives may have been—have debased the German reputation in the world."

He thus admits that crimes were committed in the concentration camps and the slave industries associated with them. If there were crimes, then there was responsibility, and who are the responsible ones? Karl Mummenthey is one of them. In the zeal of representing his client, defense counsel ignores the statements made by Karl Mummenthey himself. What kind of a mentality

is it that declares, as Mummenthey did on the witness stand, that these poor beaten, starved wretches in the concentration camps worked "with willingness and love?"(!) To physical injury Mummenthey thus added criminal impertinence. After Mummenthey's extraordinary utterance about love, he was asked by the Tribunal:

"How can you say, Witness, that any man would love to be in prison and to work for months or years for nothing? Do you think any man would be happy to be imprisoned and work every day and get nothing for it?" *(Tr. p. 5634.)*

And he replied:

"Your Honor, I can only tell you what I can remember about those things at the time. Just as I stated before, that's the way it was."

Defense counsel speaks of Mummenthey's "sympathy" which "springs from his deep human feelings." Yet, with all those sympathies he made the following utterances from the witness stand:

"A. I couldn't possibly have a fundamental misgiving against the compulsory labor on the part of the concentration camp inmate in the concentration camps. *(Tr. p. 5579.)*

"Q. Oh, yes, before you leave the subject; you said that you assumed that anything that the Gestapo did was legal?

"A. Yes.

"Q. Well, then, of course you assumed that anything that Hitler or Himmler did was legal?

"A. According to my opinion at the time, yes. *(Tr. pp. 5579–80.)*

"Q. * * *. You didn't see anything illegal in the employment of inmates, is that correct?

"A. Yes. *(Tr. p. 5580.)*

"THE PRESIDENT: If you saw an inmate using a prisoner of war uniform designated as a prisoner of war, and working on munitions, you would have said: 'Well, it must be all right, it is legal.'

"A. At the time I'd have to assume that." *(Tr. pp. 5584–5.)*

In his memorandum filed 12 July defense counsel refers to a statement in the judgment against Volk, taking issue with the utterance therein:

"On 1 July 1943, Mummenthey wrote the commandant of the concentration camp at Flossenbuerg that he and Volk were coming to visit him and specifically asked him to make arrangements so that Volk could visit the camp."

The letter referred to appears in Document NO–1030 and the disputed passage reads:

"As SS Hauptsturmfuehrer Dr. Volk does not yet know Flossenbuerg and would like to get to know it, we will * * *."

In the English translation the pronoun "it" appeared as "camp". Although admitting that this was an incorrect translation, the prosecution insisted that the sense of the entire declaration obviously made it mean camp. Mummenthey said that the letter referred "to the visit of the plant of Flossenbuerg of DEST." Defense counsel argues to the same effect, but there is nothing in the letter to bear out this interpretation. On the other hand, the interpretation given the letter by the prosecution is the more logical one. Flossenbuerg is a village of from 1,000 to 1,500 population. There is no reason why Volk would want to make a special trip to see the village itself. The important thing about Flossenbuerg was its concentration camp. The defendant admitted that if they wanted to make the trip to the village of Flossenbuerg it certainly would not be necessary to get the permission of the concentration camp commander to do so. *(Tr. p. 5699.)*

Mummenthey not only took an active part in the management of DEST but he revealed a lively interest in the concentration camps themselves. The affidavit of Franz Josef Pister, former commander of the Buchenwald concentration camp, contained this item:

"The commander conferences, which took place at intervals of 3 to 4 months, opened on the first day, mostly beginning at 1500 hours, under Pohl's direction, in the WVHA in Berlin: besides the commanders of the main camps, sometimes all the Amtsgruppen chiefs and Amt chiefs, who were concerned with concentration camps were present. To these participants belong: Pohl, Gluecks, Tschentscher, both Loerners, Dr. Volk, the chief physician, Dr. Lolling, Frank—the latter until his assignment as administration chief of the police only—Mummenthey, Opperbeck, Maurer, Sommer and Schmidt-Klevenow.

"The questions which were discussed at these meetings were mostly the following: labor assignment, food rations, clothing, quarters, treatment of the prisoners, nature of punishment and the carrying out of punishments, erection of new outside camps, evacuation of invalids to other camps, questions of troops and guards, particularly—since there was a considerable shortage of guards—training of female wardens and their recruiting. These meetings took place partly in the WVHA in Berlin and partly in the building of Amtsgruppe D in Oranienburg." *(Doc. NO-2327, III/110.)*

Papers filed 27 July 1948

On 12 July 1948 Dr. Froeschmann, counsel for Karl Mummenthey said (p. 9 of his memorandum):

"As counsel for the defendant Mummenthey, I must, there-

fore, decline to avail myself of the authorization of the Military Tribunal and comment in some way or other upon the contents of the prosecution closing brief."

On 27 July 1948 he filed 3 papers entitled respectively, "Statement", "Declaration", and "Comparison." None of these papers contains anything which he had not already stated in his petition and memorandum. Despite his many representations, Dr. Froeschmann cannot in justice ever protest that he was not given the fullest opportunity to present arguments in behalf of his client.

As in his petition and memorandum, Dr. Froeschmann in his statement, declaration, and comparison again devotes much time to showing that the Tribunal considered the closing brief of the prosecution. A reading of the judgment will show that the Tribunal did not neglect Dr. Froeschmann's brief, but quoted literally therefrom.

In making the comparison between the prosecution's closing brief and the Tribunal's judgment, defense counsel should have gone one step further and noted the comparison between the prosecution's closing brief and the evidence in the case. In almost every instance where the Tribunal's judgment parallels the prosecution brief, it will be found also that it corresponds with the evidence as given in Court on the witness stand or from a document. If buildings A and B are to be constructed from material furnished by the C factory, it is inevitable that buildings A and B will in some instances have materials which resemble each other.

Instead of demonstrating reasons why the judgment does not justify condemning Mummenthey, if that be a fact, defense counsel numerously repeated that has been accepted as an unprejudicial misunderstanding between what was said in open Court and what appeared in the Court order. From the statement in open Court the prosecution assumed that it could file closing briefs, and did so; and from the same statement some defense counsel assumed they could not. Two of the defense counsel apparently agreed with the prosecution that briefs could be filed, and did so. Prior to 13 October the prosecution filed several closing briefs; some were considered, others were not.

The prosecution brief filed in the Mummenthey case in no way prejudiced Mummenthey. With the exception of the letter of 2 May 1944, which has now been excluded, and the typographical error of percentages heretofore referred to, Dr. Froeschmann does not dispute the correctness of findings by the Tribunal which corresponded to assertions in the prosecution brief. And it is on this basis that the judgment must be founded; on the fact in

the case and not what either counsel may say about the facts. The briefs of respective counsel are not evidence. If neither prosecution nor defense counsel had filed briefs, or if both sides had filed many briefs, or if one side had filed more briefs than the other, the judgment would still have to be based on the evidence in the record—and that alone.

Whatever disadvantage the defense claim they may have suffered because of the order of 13 October 1947, is now being rectified. The Tribunal has reconvened for the purpose of correcting any error and of making any revision which justice dictates. The fact that Dr. Froeschmann has not added anything to what was contained in his petition of 17 November 1947, in the way of substantive argument in behalf of his client, offers the explanation that he has nothing further to say for Karl Mummenthey.

The Tribunal having reconsidered the entire record in the Mummenthey case in accordance with what has been stated in this supplementary opinion, now concludes that nothing has been presented since the judgment of 3 November 1947, to justify any change or modification of it. Under all the evidence in the case the Tribunal concludes that the sentence is entirely proper and just. The judgment and sentence are accordingly reaffirmed.

HANS BOBERMIN

Dr. Gawlick has submitted an interesting, exhaustive, and able, "further brief," in behalf of his client Hans Bobermin. The brief has been read with great care and the original record has again been examined. The Tribunal is convinced that Hans Bobermin is not a brutal personality. Had it not been for the Nazi regime, there is no reason to disbelieve that his life would have been free of criminality and of direct or indirect violence. One of the most frightful aspects of National Socialism was its corroding influence on people originally of good conscience and of good will. However, these who fell under the evil effects of Hitlerism cannot excuse themselves from blame by pleading coercion. There was a time when they were free to do as they chose. There came a time when the intentions of Hitler and his Nazi Party—unprovoked aggression against other nations, enslavement of innocent peoples, extermination of populations, expropriation of property—became plain to any one with a modicum of intelligence. All this had to be clear to Bobermin as it was clear to those who were convicted at the IMT trial.

Bobermin did not lead an army of bayonets into Poland, nor did he sign any decrees of executions against unoffending peo-

ples. He did, however, take over properties that were seized from innocent proprietors. Naturally he did not do this alone; he did it under the authority of his government, but his government was engaged in an obviously illegal enterprise. His government was taking property from Poles and Jews for reasons of plunder and spoliation alone. Even though it may be argued that the Poles were to be regarded as enemies since their country was at war with Germany, it cannot be said with any semblance of reasoning that the Jews were making war on Germany. The taking of their property was nothing less than organized theft. The seizure of their property was part of a program of oppression and extermination, of which Bobermin could not be ignorant. Max Winkler, chief of Main Trustee Department East, and who testified for Bobermin, stated on the witness stand that towards "the end of 1944, I heard what happened to the Jews." He was asked whether these Jews would get their property back and he replies: "Well, not if they were dead."

Defense counsel says that Bobermin could not have known about this since he went to Hungary in 1944, but it is difficult to assume that, charged as he was with the administration of these seized plants, he would not make some inquiry as to what had happened to the owners of the plants.

It is true, as defense counsel points out in his further brief, that Bobermin apparently had nothing to do directly with the administration and supplying of concentration camps as such, but it cannot be assumed that merely because he was 250 kilometers away from Berlin he could be entirely ignorant of the nature of the main office of which his own office was a component part.

Bobermin cannot be absolved from responsibility because the actual act of seizure of the brick works had been achieved prior to the time he took them over, provided he was aware of the illegal nature of the seizure. Dr. Gawlick makes a point between "expropriation and seizure" but the important thing to consider is the intention of the Reich in taking over the properties. Document NO-1008, which enumerated the classes of persons or organizations which may apply for the properties after the war, described one category as:

> "those who are considered worthy by the Reich Commissioner for Strengthening the German race [for commitment] in the East [Reichskommissar fuer die Festigung deutschen Volkstums fuer den Osteinsatz]."

This naturally would exclude the former Jewish owners and this naturally would make the seizing of their property pure plundering and spoliation.

Dr. Gawlick says in his further brief:

"Seizure of alien property by the occupying power is admissible according to the Hague Convention whenever such steps are requisite for the maintenance of public order and security in the occupied territories."

But the record does not show that "such steps were requisite for the maintenance of public order and security in the occupied territory."

Dr. Gawlick says further:

"The attempt to differentiate between the proprietors was not made by Dr. Bobermin but by the Main Trustee Office East which, being an entirely independent Reich office, had no connection whatever with the WVHA and the office W II.

"Dr. Bobermin can, therefore, not be made responsible for the fact that in connection with the seizure, differential treatment was meted out to the Poles and Jews on the one hand, and ethnic Germans on the other. Legal responsibility in this respect rests with the German Reich, in particular with the Main Trustee Office East."

The time has passed when the executant of an obviously illegal, unconscionable and inhuman program can take refuge behind the assertion that it was not he who issued the order. Any one ordered to perform a patently illegal and inhuman act is charged by law to protest the order to the extent of his ability, short of endangering his own security. If he fails to do so he will be required to answer for the execution of the illegal act. Whether it be an order calling for the killing of innocent people or the taking of property from innocent proprietors, the rule is the same. By the promulgation and enforcement of this rule, some dignity is being restored to the human race.

Hans Bobermin has been convicted for his part in the crime of camp Golleschau. Dr. Gawlick argues that Bobermin had no authority over Golleschau and that only the camp commander had anything to do with the inmates employed there. Bobermin was the administrator of the plants in which these inmates worked and he obtained, in an official sense, the benefits of their work. He knew the workers were concentration camp inmates and he had to know that this was slave labor.

It is argued in Bobermin's behalf that in any event his criminality cannot be so great when, out of from 300 to 400 plants, concentration camp inmates were employed in only one of them. The crimes of the Nazi regime were committed on so vast a scale that it comes easy to plead forgiveness for a man who illegally exploited only several hundred people instead of several hundred thousand.

It is not claimed by the prosecution, nor was it stated by the Tribunal, that Bobermin personally maltreated anyone, but it has been established that he took a consenting part in the commission of war crimes and crimes against humanity. It has been demonstrated beyond a reasonable doubt that he participated in a program of spoliation and plundering and that he authorized the use of concentration camp labor in the plant at Golleschau.

Defense counsel has pleaded that even if it be admitted that Bobermin was somewhat to blame for what transpired under his jurisdiction, the sentence imposed on him was too severe. There is this to be said in this connection. In Nuernberg the offenses of spoliation and slave labor have not been punished uniformly. Tribunals have differed on the measure of punishment meted out to those convicted of these offenses.

While not attempting to adjust the sentence in this case to what may have been imposed in any other cases, the Tribunal is satisfied, after a review of all the evidence, that the term of imprisonment to which Bobermin was sentenced should be reduced.

Order Confirming or Amending Original Judgment and Sentences

UNITED STATES MILITARY TRIBUNALS
SITTING IN THE PALACE OF JUSTICE, NURNBERG, GERMANY
AT A SESSION OF MILITARY TRIBUNAL II
HELD 11 AUGUST 1948, IN CHAMBERS

The United States of America
vs.
Oswald Pohl, et al., defendants.

Case No. 4

Order Confirming or Amending Original Judgment and Sentences

The Tribunal, having this day filed with the Secretary General its written opinion and supplemental judgment in this cause, in conformity therewith:

It is ordered and adjudged that the judgment heretofore entered and the sentence heretofore imposed on 3 November 1947 as to the defendant Oswald Pohl be and they are hereby confirmed in all respects.

It is ordered and adjudged that the judgment heretofore entered and the sentence heretofore imposed on 3 November 1947