

C. General Order on the Individual Motions by Defendants for Correction of Alleged Errors of Fact and Law in the Judgment, 12 December 1949

GENERAL

The defendants von Weizsaecker, Steengracht von Moyland, Keppler, Woermann, Ritter, Veesenmayer, Lammers, Stuckart, Darré, Dietrich, Berger, Schellenberg, Schwerin von Krosigk, Puhl, Koerner, Pleiger, Kehrl, and Rasche have filed individual motions for correction of alleged errors of law and fact contained in the Tribunal's judgment. The defendant Bohle filed but has since abandoned a like motion.

In dealing with these motions, the Tribunal has had constantly in mind the diversity of the charges of criminality included in the indictment, the number of defendants involved, the numerous and intricate questions of law and fact necessarily to be considered and determined, the length of the record to be considered, and the absence of any appellate procedure.

It felt that notwithstanding any diligence which it might exercise, the possibility of error was present. To the end that justice shall be done and errors of fact and law corrected, it entered an order permitting the defendants to file motions calling attention to any alleged errors in its judgment.

The defendants have availed themselves of the right thus accorded them, and it becomes necessary for the Court to consider motions (which in the aggregate cover several hundred pages), which represent most of the contentions which were presented by their original briefs. We have painstakingly considered them and have re-addressed ourselves to the record to determine whether and where the Tribunal may have erred. *In limine* certain general observations should be made. It is not the function or within the power or jurisdiction of these Tribunals to consider political considerations or exercise either pardoning power or executive clemency. Its jurisdiction is to find the facts and apply the law as it conceives it to be. In proper cases where conviction becomes necessary extenuating circumstances may be considered in determining the sentence to be passed. Should it proceed otherwise, the Tribunal would exceed its jurisdiction and invade fields which belong exclusively to the executive branch of the military government.

In considering the defense motions which have been interposed, the Tribunal makes no claim to infallibility, either as to past or

present determinations. Of necessity, it must be content, when after a careful consideration of the questions involved, it arrives at maturely considered conclusions. Many of the errors asserted depend upon the evaluation of disputed testimony and the acceptance or rejection of testimony, either documentary or oral. This, however, is not a novel situation. In all litigation, criminal or civil, the triers of facts, whether juries or judges, do not act *in vacuo*. They do not and should not count witnesses but weigh evidence. Evidence is judged by its inherent probabilities or improbabilities, the bearing, demeanor, frankness of witnesses, contradictory evidence, together with other indicia of truth or falsity.

There are no mathematical, mechanical, or scientific formulas which can be applied in determining where the truth lies. Where the determination of fact affects, as it does here, the liberty or reputation of a defendant, the responsibility of decision is a heavy one, but neither difficulty of determination nor possibility of error relieves the triers of fact of the duty of declaring the truth as they see it. In exercising these functions, we do not, as judges, abandon our experience and knowledge as men, and we apply the same tests which as practical men we would in reaching conclusions upon which we would be willing to base a decision in our own most serious affairs of life. There is not and never has been a formula of precision. Proof of guilt beyond a reasonable doubt does not involve mathematical demonstration nor proof beyond fanciful or factious doubt. It is proof to a moral but not a mathematical certainty.

The judgment of the Tribunal made no pretense of quoting or referring to all evidence regarding a particular point, and the failure to discuss the testimony of any witness or witnesses or particular exhibits does not indicate that such evidence has been disregarded.

In determining these motions we have examined, not only the briefs and arguments offered in support thereof, but the testimony relating to the defendants' participation in the matters involved and the testimony offered in defense. The orders which we have entered represent conclusions and determinations arrived at only after meticulous consideration of the issues. Neither in the orders nor the memoranda is it possible to cite all the evidence relied on for conviction or offered in defense.

We have made specific orders disposing of each of these motions, and what is said in this order is by reference made a

part of the orders and memoranda concerning each of these motions.

Dated this 12th day of December, 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

D. Orders and Memoranda on the Motions of Individual Defendants for the Correction of Alleged Errors of Fact and Law in the Judgment, 12 December 1949

I. VON WEIZSAECKER—ORDER AND MEMORANDUM OF THE TRIBUNAL AND SEPARATE MEMORANDUM OF PRESIDING JUDGE CHRISTIANSON

ORDER

On 10 May 1949 a motion was filed on behalf of the defendant Ernst von Weizsaecker praying that the Tribunal's judgment of 14 April 1949 be amended to revoke its findings of guilt against said defendant on counts one and five of the indictment, and that the defendant be released from custody. On 19 June 1949 the prosecution filed an answering brief to said motion and the defendant later filed a rejoinder to the prosecution's answering brief. It also appears that on 25 April 1949 the defendant joined in a petition for a plenary session of the Tribunal for the expressed purpose of "examining the judgment passed on 14 April 1949 by Military Tribunal IV."

The Tribunal having considered said motion and the briefs filed in relation thereto and being advised in the premises,

IT IS ORDERED that the defendant von Weizsaecker's motion as to count five be and the same is hereby in all respects denied. Von Weizsaecker's motion as to count one is sustained, the judgment modified *pro tanto* and his sentence is modified and reduced from 7 years to 5 years, and shall be deemed to have begun on 25 July, 1947.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge.