

4. WOERMANN—ORDER AND MEMORANDUM OF THE TRIBUNAL AND SEPARATE MEMORANDUM OF PRESIDING JUDGE CHRISTIANSON

ORDER

On 10 May 1949 a motion was filed in behalf of defendant Ernst Woermann 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 on 30 June 1949 the defendant filed a rejoinder to the prosecution's answering brief.

It also appears that on 25 April 1949 the defendant joined in a petition for plenary session of the Tribunals for the therein expressed purpose of examining "the judgment passed on 14 April 1949 by the Military Tribunal IV."

The Tribunal having considered said motion and answering brief of the prosecution and the defendant's rejoinder to said answering brief, and being advised in the premises,

IT IS ORDERED that Woermann's motion as to count five be and the same is hereby in all respects denied.

His 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 15 October 1945.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON

Presiding Judge

I concur in the above as to count five, but not as to count one. See my separate memo.

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE

Judge

[Signed] LEON W. POWERS
LEON W. POWERS

Judge

MEMORANDUM

We have carefully reviewed the evidence against Woermann under count one relating to the aggression against Poland on which he was convicted, together with the motions submitted on his behalf.

This review confirms the findings which we made that he had knowledge that Hitler was about to institute an unlawful invasion of Poland, and that there was no legal excuse therefor. We adhere to these findings notwithstanding the fact that Woermann did not attend any of the Hitler conferences where the latter disclosed these plans to his immediate circle of advisors. The conclusion is inevitable, however, that at least by 1 August, the flow of events and the material which crossed Woermann's desk was of such a character that these plans and intent were made clear, although it may well be that he was not informed of the date of the invasion, or of the tactical and strategic plans of the army. Woermann was not dwelling in a vacuum. It is clear, however, that he was not in a position to have prevented the invasion, even had he been inclined so to do. His guilt or innocence, therefore, depends upon whether or not what he did was a substantial co-operation or implementation of the aggressive plans and acts. To say that any action, no matter how slight, which in any way might further the execution of a plan for aggression, is sufficient to warrant a finding of guilt would be to apply a test too strict for practical purposes and the principal *de minimus* must be considered.

After thorough study and reconsideration of the situation, we are convinced, first, that in some respects we did not properly evaluate some of the testimony, and second, that the remaining testimony does not establish his guilt beyond a reasonable doubt. Most of the documents relating to his connection with the aggression against Poland consisted of passing on information and directives prepared and prescribed by von Ribbentrop, and did not involve any affirmative collaboration on Woermann's part. He is entitled to the benefit of doubt, and should be acquitted under count one.

The conviction of the defendant Woermann under count one regarding the aggression against Poland is therefore set aside and he is declared acquitted thereon.

We have reviewed defendant Woermann's motion to set aside his conviction under count five, in connection with our review of the conviction of the defendant von Weizsaecker on that count, and refer to our findings there without here repeating them. The judgment of imprisonment was based on his conviction under count one and count five. In view of the action here taken this judgment of imprisonment must be modified and reduced. It is hereby reduced from 7 years to 5 years to commence from the date mentioned in the judgment, to wit: 15 October 1945.

Judge Christianson dissents from the Tribunal's action in set-

ting aside the defendant Woermann's conviction under count one and his memorandum setting forth his views follows.

**SEPARATE MEMORANDUM OF JUDGE CHRISTIANSON
WITH RESPECT TO THE ORDER AND RECOMMEN-
DATION THAT THE CONVICTION OF DEFENDANT
WOERMANN UNDER COUNT ONE BE SET
ASIDE AND HIS SENTENCE REDUCED**

I am obliged to differ with my colleagues as to their order and recommendation that the conviction of defendant Woermann under count one, as contained in the original judgment, be set aside and his sentence reduced.

The evidence is such that I am compelled to adhere to the view that prompted me to hold as one of the majority in the original judgment that as to count one, defendant Woermann, because of his activities in the aggression against Poland, was guilty beyond a reasonable doubt. I cannot therefore concur with my colleagues in the recommendation or order that the sentence of Woermann with respect to count one be set aside and his sentence reduced.

[Signed] WILLIAM C. CHRISTIANSON

**5. RITTER—ORDER AND MEMORANDUM
OF THE TRIBUNAL**

ORDER

On 10 May 1949, the defendant Ritter filed a motion praying that his conviction under counts three and five be quashed and that he be acquitted. Briefs were filed both on behalf of the defense and the prosecution.

It appears that the defendant also joined in a petition for plenary session of the Tribunal for the expressed purpose of "examining the judgment rendered by the Tribunal on 14 April 1949."

The Tribunal having considered the defendant's motions, the briefs and the record, and being advised in the premises,

IT IS ORDERED that his motions be and the same hereby are in all respects denied.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON

WILLIAM C. CHRISTIANSON

Presiding Judge

[Signed] ROBERT F. MAGUIRE

ROBERT F. MAGUIRE

Judge