

000416

Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

VOLUME XIV - Pages 2938 - 3140 Incl.

MALMEDY

Case No. 6-24

Prosecutor... LT COL BURTON F ELLIS

~~Interrogation~~ Military Court.

Defence Counsel COL WILLIS M EVERETT JR.

*General

Interpreter

Place DACHAU, GERMANY

Date 0930 hours 9 JULY

Reporter

TO 1200 hours 10 JULY

1946 Incl.

Members of Court:

BRIG GENERAL JOSIAH T DALBEY
COL PAUL H WELAND
COL JAMES G WATKINS
COL WILFRED H STEWARD
COL RAYMOND C CONDER
COL A H ROSENFELD

Accused VALENTIN BERSIN, ET AL

Address Sex Age

	First Charge	Second Charge
Pleas	VALENTIN BERSIN, ET AL	
Findings	<i>Val 14</i> Not Guilty by authority of JAG to file 2 Aug 1950.	
Previous Convictions		

Sentence {

- Imprisonment {
 - Term
 - Beginning 194
- Fine {
 - Amount
 - To be paid before 194
 - or in case of default of payment to serve a *further term of
 - imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

(Signature of member of court.)

REVIEW

Action of Reviewing Authority

(Signature of reviewing authority)

*Strike out words not applicable.
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R E C O R D O F T E S T I M O N Y

in trial of

THE UNITED STATES VERSUS VALENTIN BERSIN, ET AL

By

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANYBEGINNING 16 MAY 19469 JULY 1946 - 0830 HOURSTO10 JULY 1946 - 1200 HOURSVOLUME XIV- PAGES 2938 - 3071, INCL

T E S T I M O N Y

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>COURT</u>
PERL, Lt. WILLIAM R.				2938	
THON, HARRY W.			2939 2950	2943	
SHUMACKER, RAPHAEL			2953	2956	
KOEHLES, HERBERT			2964		
HEINRICHS, GUENTHER			2967	2972	
HOPPE, RUDI			2976	2977	
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CLOSING ARGUMENTS OF DEFENSE	- - - - -				3071 to 3140
LT COL DWINELL	- - - - -				3071
MR. WALTERS	- - - - -				3082
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THE UNITED STATES VERSUS VALENTIN BERSIN, ET AL

EXHIBITS

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Offered</u>
P-129	German Statement of PREUSS	2964	2965
P-129-A	English translation of P-129	2965	2966
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P-131-A	English translation of P-131	2975	2975
P-132	Affidavit of Wolfgang SCHLEIF	2983	2983
P-133	Affidavit of Lothar HARTIG	2988	2988
P-134	Statement of Elwain CRANFORD	2992	2992
P-135	Statement of Charles H. HOLCOMB	2995	2995

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CAMP DACHAU, GERMANY

9 July 1946.

MORNING SESSION

(Whereupon the Court reconvened at 0830 hours.)

PRESIDENT: Take seats. The Court will come to order.

PROSECUTION: If it please the court, let the record show that all members of the court, all members of the Prosecution with the exception of Capt. Byrne, who has been excused by verbal orders of the Commanding General, all members of the Defense, with the exception of Dr. Rau, who is absent on business of the Defense, all of the Defendants, and the reporter are present.

PROSECUTION: The Prosecution recalls Lt. Perl.

LT. WILLIAM R. PERL, recalled as a witness for the Prosecution, having been previously sworn, testified further through an interpreter as follows:

PROSECUTION: The witness is reminded that he is still under oath. You may cross examine.

DEFENSE COUNSEL: Dr. Leer has a question.

CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL (Dr. Leer):

Q Is it correct, Lieutenant, that you said you could not exactly remember what conversation you had with Peiper in Freising?

A I am sorry, I never interrogated Peiper in Freising.

Q I mean in your first testimony. It was in Zuffenhausen, I think.

A I remember the conversation generally, but not word for word.

Q Is it right, though, that you said you did remember all the details of the first interrogation of Kraemer? As far as the dictation and the correction are concerned?

A I remember all the details I mentioned.

DEFENSE COUNSEL: Nothing further on cross examination.

(Perl - cross)

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PROSECUTION (Capt. Shumacker): No redirect.

PRESIDENT: Any questions by the Court? Apparently none; the witness is excused.

(Whereupon the witness was excused and resumed his seat.)

PROSECUTION: The Prosecution recalls Mr. Thon; the witness is reminded that he is still under oath.

A Yes.

HARRY W. THON, recalled as a witness for the Prosecution having been previously sworn, testified further through an interpreter as follows:

PROSECUTION: Are you the same Mr. Thon as previously testified in this case?

A Yes, sir.

Q While you were in Schwaibish Hall did you see or interrogate the accused Feiper the day before he was transferred to Dachau?

A I did not interrogate him, but I am quite sure I talked to him.

Q At that time did the accused Feiper complain to you that he was beaten by Poles, in his sexual parts, just before you saw him.

A Feiper never said a word like that to me.

Q Did you ever hear of this incident before the accused Feiper testified to it here in this courtroom?

A No, I never did hear such a thing.

Q Did he ever at any time make such a complaint to you?

A No, he did not.

Q While you were at Schwaibish Hall did you participate in the interrogation of the accused Christ?

A Yes, I did.

Q Were you present in the Courtroom when the accused

(Thon - redirect)

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Christ testified?

A Yes, I was.

Q Do you remember the substance of his testimony?

A I believe he said that I threatened him that he would be hung.

Q Is that true?

A No, sir.

Q Did you ever threaten to hang Christ?

A No, sir.

Q Did you ever persecute the accused Christ?

A I never did.

Q Did you participate in the interrogation of the accused Tomhardt at Schwaibish Hall?

A Yes, I did.

Q Were you present in court when the accused Tomhardt testified?

Q Yes, I was.

Q Do you remember the substance of his testimony?

A I believe he claimed that I hit him while he was standing in the hall.

Q Did you ever strike the accused Tomhardt in the face or in the stomach?

A No, sir.

Q Did you ever strike him in any part of his body?

A I never touched him, sir.

Q Did anyone ever touch him in your presence?

A No, sir.

Q Did you ever hear of anyone striking or touching Tomhardt?

A I never heard of anything like that.

Q Was the accused Tomhardt confronted with men from his company during his interrogation?

A Yes. With four or five of them.

(Then - redirect)

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Q Did you beat any of these men or cause them to be beaten before they confronted the accused Tomhardt?

A No, sir.

Q Did you ever threaten the accused Tomhardt with hanging?

A No, sir.

Q Did you ever instruct the guards at Schwaibish Hall not to permit the accused Tomhardt to take any rest either day or night?

A No, sir, I had no right to do such a thing.

Q Did you do so?

A No, sir.

Q Did you ever examine the inside of the hoods that were used on the accused when they were moved in Schwaibish Hall?

A I did not exactly examine them, but I always saw them.

Q Did you ever notice any blood in any of them?

A I never saw such a one, sir.

Q Did you participate in the interrogation of the accused Sievers in Schwaibish Hall?

A Yes, sir.

Q Were you present in the court room when the accused Sievers testified?

A Yes, sir, I was.

Q Do you recall the substance of his testimony?

A Yes, I do.

Q Did you ever strike the accused Sievers on any part of his body in Schwaibish Hall?

A No, sir, I did not.

Q Did you ever threaten the accused Sievers in Schwaibish Hall?

A No, sir, I did not.

Q Did you participate in the interrogations of the accused Metzheim in Schwaibish Hall?

A Yes, I did.

(Thon - redirect)

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Q Were you present in the Courtroom when the accused Motzheim testified?

A I was.

Q Do you recall the substance of his testimony?

A I believe he said I beat him; yes, sir.

Q Well, did you ever beat or cause the accused Motzheim to be beaten in Schwaibish Hall?

A No, sir.

Q Did you participate in the interrogation of the accused Boltz in Schwaibish Hall?

A Yes, I did. Together with Capt. Shumacker.

Q Were you present in court when the accused testified?

A Yes, sir, I was.

Q Do you recall the substance of his testimony?

A Yes, I do.

Q Is it true that you promised Boltz that he would be back in France in three months if he made a confession?

A I never made such a statement to Boltz.

Q Did you ever threaten or beat Boltz?

A No, sir, I did not.

Q Do you recall how long the interrogation of Boltz took?

A At the very longest, ten minutes.

Q Did you participate in the interrogation of the witness Agather at Schwaibish Hall?

A Yes. I interrogated Agather.

Q Were you present in the courtroom when the witness Agather testified?

A Yes, I was.

Q Do you recall the substance of his testimony?

A Yes, I think I do.

Q Did you beat the witness Agather or cause him to be

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beaten while he was in Schwaibish Hall?

A I did neither.

Q Did you threaten the witness Agather while he was in Schwaibish Hall?

A No, sir, I did not.

PROSECUTION: You may cross examine.

RECROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL (Col. Dwinne1):

Q Mr. Thon, how long were you at Schwaibish Hall?

A I was there from December 10 until April 19.

Q During that time were you working always on the Malmedy case?

A Yes, I did, sir.

Q What was your assignment to duty before you went to Schwaibish Hall.

A I was interpreter.

Q Whereabouts?

PROSECUTION: If the Court please, we object to this as not proper cross examination. The duties of this witness were not gone into on direct.

DEFENSE COUNSEL (Col. Dwinne1): The purpose of this is to attack the credibility of the witness.

INTERPRETER: I can't hear.

DEFENSE COUNSEL (Col. Dwinne1): The purpose of this is to attack the credibility of the witness.

PRESIDENT: Objection over ruled.

A In Kornwestheim.

Q What kind of work did you do at that place?

A I was assigned as an interpreter for Major Fanton.

Q Did you work on any war crimes cases at that place?

A We did the screening of these people who were sent to Schwaibish Hall.

(Thon - recross)

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Q At that place did you do any screening in connection with the Malmedy case?

A I did not do the screening, I just did the interpreting.

Q What do you mean by screening?

A On the screening I understand is to try and find out the people whom you do want for further interrogation.

Q How do you go about finding that out?

A As I said, sir, I did not do the screening, I just did the interpreting.

Q Now, in Schwaibish Hall, how many interrogations did you participate in?

PROSECUTION: If the court please, we object to the question as not brought out on direct examination. We only covered certain of the accused and one witness.

DEFENSE COUNSEL (Col. Dwinne): I still am making the questions directed along the lines of credibility.

LAW MEMBER: Going pretty far afield, Colonel. We will proceed, but if it continues this way we will have to object to it.

DEFENSE COUNSEL (Col. Dwinne): I will withdraw the question. In Schwaibish Hall I believe you said you conducted some interrogations; is that correct?

A Yes, I did, sir.

Q And they were all in connection with the Malmedy case, is that correct?

A Yes, sir.

Q And those interrogations were of accused that are accused in the dock here in this trial; is that correct?

A Yes, sir.

Q How many of these accused did you interrogate?

PROSECUTION: If the court please, I think he is going upon the ground of attacking the credibility of this witness. On
(Thon-recross)

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direct examination we specifically limited the direct examination to only those accused who took the stand.

DEFENSE COUNSEL (Lt. Col. Dwinne1): I will withdraw the question. With respect to those accused that you interrogated in the Malmedy case, did you always conduct these interrogations by yourself or did you have assistance?

PROSECUTION: If the Court please, he has not limited his question to those accused who took the witness stand.

PRESIDENT: Let him interpret it, please.

INTERPRETER: Will you read the question please?

(Whereupon the question was read by the reporter.)

INTERPRETER: Will you read the objection, please?

(Whereupon the objection was read by the reporter.)

LAW MEMBER. I think, Col. Dwinne1, you ought to limit your questions to those accused who were mentioned in the direct examination; you are going pretty far afield when you ask how many accused.

DEFENSE COUNSEL (Lt. Col. Dwinne1): They testified to certain accused. If the court wishes I will limit it to those accused. What accused in the Malmedy case did you interrogate in Schwaibish Hall?

PROSECUTION: If the Court please, in our direct examination we limited our questions to those who took the stand.

(Objection read by the reporter.)

DEFENSE COUNSEL (Col. Dwinne1): I will state my question again. With respect to the accused in this case who took the witness stand, how many of them did you interrogate at Schwaibish Hall?

A Colonel, if you will read me off the names who all took the witness stand--I don't remember them all.

Q Did you interrogate the accused Christ at Schwaibish Hall?

(Then - recross).

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A I took part in his interrogation for some time.
Not all the time.

Q Well, with respect to the accused Christ, did you
conduct an interrogation of him alone or were you assisted by someone?

A I did not conduct the interrogation alone. In fact,
I was the one who was assisting.

Q Both you and Lt. Perl speak German fluently, do you
not?

A Yes, sir.

Q Are you a stenographer?

A No, sir.

Q Why was it necessary for two people to interrogate
Christ?

A It was just the method being used, sir.

Q Will you describe that method a little more in detail?

A It is a hard thing to do for the simple reason one
has this thought and has that question and while the other one
talks he thinks up another question.

Q Did you interrogate the accused Sievers? I believe he
took the stand.

A Yes, I also assisted Lt. Perl in conducting the in-
terrogation.

Q Was there anyone else present beside you and Lt. Perl
in any of the interrogations of Sievers?

A That I don't remember, sir.

Q Was there a stenographer present?

A I don't know, sir.

Q Did you participate or conduct the interrogation of
the accused Lotzheim?

A I was present for a certain time.

Q Who did you assist in that interrogation?

A I don't remember all the people who were there at
that interrogation.

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(Then - recross)

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Q Did you conduct the interrogation, or participate in the interrogation of the accused Boltz?

A I remember that one definitely; sir.

Q Did you assist anybody in the interrogation of the accused Boltz?

A Capt. Shumacker and I together conducted that interrogation.

Q What assistance did you give Capt. Shumacker in that case?

A I interpreted Capt. Shumacker's questions.

Q Besides interrogating the accused who took the stand, did you interrogate anyone else in Schweibish Hall?

PROSECUTION: If the Court please, we object.

PRESIDENT: Objection sustained.

Q How long did it take you to obtain the written and signed statement from the accused Boltz?

A His oral admission was gotten after about eight to ten minutes, and then he wrote--over the week end by himself he wrote his own statement, which was then written again after Capt. Shumacker had read it.

Q Do you know how long a statement Boltz made?

INTERPRETER: I haven't translated the question yet.

COL. DWINSEL: I am sorry. Do you know how long that statement of Boltz' was?

A You mean the first written one which he wrote over the week end, sir?

A Yes.

A If my memory serves me right, sir, I believe it was three to four pages.

Q Is that the statement that took ten minutes, that you

(Thon - recross)

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have just referred to?

A That is correct, sir.

Q Is that the one that was introduced and read in evidence here?

A No, sir. In his first statement which he wrote he wrote a lot of tactical stuff, how they took off, and what ⁱⁿ; and all that was eliminated and ^{not} was put down in the statement which was introduced in court.

Q How long did it take to obtain the statement that was introduced and received in evidence in this case? Referring to the Accused Boltz?

A That I don't know, sir. You would have to ask Capt. Shumacker.

Q You were present when the statement was written, were you not?

A No, sir, I was not.

Q Mr. Thon, who dictated the statement that Boltz was supposed to have written, and which was introduced in evidence?

A I don't know, sir. I wasn't present.

Q How many times did you interrogate Boltz?

A Once, sir.

Q Do you know how many times he was interrogated by others?

A No, sir, I do not.

Q Do you know how many different statements Boltz made?

A I know of one he wrote by himself over the week end and I know of one that was introduced in evidence here. That is all I know, sir.

Q You say that statement was written over the week end and was four pages long?

A I said I believed it was three or four pages long, but I am not certain.

Q Was that hand written or was it typewritten?

A It was hand written, sir.

(Thon - recross)

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Q And there wasn't anything there of any value to the investigators at all, was there?

A Why, definitely, there was, sir.

Q Didn't you just state that most of it was tactical matter on the line of march?

A No, I did not. I said there was a lot of stuff in there like this.

Q What was in there in regard to the tactical matter?

A I don't recall the statement like that any more, sir.

Q You also testified that these hoods--isn't it a fact that there were hoods in there and used on these men that had blood or red paint in them?

A I never saw one like that, sir.

Q Have you ever heard of one?

A No, sir.

QUESTIONS BY DEFENSE COUNSEL (Dr. Leer):

Q Mr. Thon, how many times did you interrogate Feiper or how many times were you present at interrogations with Feiper?

A I never personally interrogated Feiper. I spoke to him several times.

Q What occasion did you talk to him?

A When I passed by his cell I just stopped in and gave him a cigarette and talked to him.

Q Do you remember when you had your last conversation with Feiper?

A I believe it was the day before he left Schwaibish Hall, but I am not one hundred per cent sure of that.

Q Do you remember the substance of your conversation with Feiper shortly before he was transferred to Dachau?

A No, sir, I do not.

(Thon - recross)

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DEFENSE COUNSEL: Nothing further on recross examina-
tion.

REDIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q Mr. Thon, do you recall any of the substance of the
statement other than tactical matters, that Boltz wrote over the
week end?

DEFENSE COUNSEL (Col. Sutton): May it please the
Court, may I inquire if the Prosecution has that statement here
so that we could use that?

PROSECUTION: If the Court please, during the cross
examination of the accused Boltz we read from that statement in
which it related one fact about the shooting of seven men, which
Altkreuger and Boltz participated in, in Buellingen. We are try-
ing to locate the statement now but it was read to Boltz when he
was on the witness stand.

DEFENSE COUNSEL (Col. Sutton): If the Court please,
it would seem fair, in view of the fact that the witness cannot
testify as to the tactical situation, it logically follows that
it is very likely he cannot testify to anything else that is in
that statement. I believe it would materially help the Court if
the statement would be produced, in view of the fact that the
Prosecution says they have it.

PROSECUTION: If the Court please, we are under no duty
to produce the statement, under no obligation to produce the state-
ment. We did read from it. Boltz identified it as his and he
identified his signature.

DEFENSE COUNSEL (Col. Sutton): It is a well-known
principle of law that if part of a statement is read that the rest
of it should be read too.

PROSECUTION: I don't believe that applies to cross
examination, Counsel.

(Thon redirect)

DEFENSE COUNSEL (Col. Sutton): I realize I should have brought that up on direct examination but now, in fairness to the accused, I think the statement should be produced and let it be read from there, especially as the witness does not seem to be able to testify as to the facts therein.

PROSECUTION: Will you read my question back, please?

(Whereupon the question was read by the reporter, as follows: "Q Mr. Thon, do you recall any of the substance of the statement other than tactical matters, that Boltz wrote over the week end?")

PRESIDENT: Objection over ruled.

A I know that he admitted shooting. The exact incidents I don't remember and when I cannot testify about tactical things and other matters--we were not interested in--well, it was we just were not interested and that is why I can't testify.

Q Do you know whether or not Boltz included in this statement the shootings that he originally confessed to?

A I believe he omitted one; I am not certain now.

Q Did he include any of the shootings?

A Yes, he did.

PROSECUTION: No further redirect examination.

DEFENSE COUNSEL (Col. Sutton): If the court please, may I ask the Prosecution to let me have a copy of that statement?

PROSECUTION: We can't find it. That is what Capt. Shumacker went out to get. We do not have it. I do not know where it is; we can't find it now.

DEFENSE COUNSEL (Col. Sutton): Well evidently the Prosecution had it the other day, because it was just stated a few minutes ago that they read parts of it.

PROSECUTION: We do not deny that we had it the other day, but we do not have it now.

DEFENSE COUNSEL (Col. Sutton): If it please the Court, I move to strike out all the testimony of this witness bearing on

(Thon - redirect)

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matters pertaining to this alleged statement by Boltz.

PROSECUTION: If the Court please, the Defense raised the matter of this other statement on cross examination. Not the prosecution. Now they want to strike out what they raised themselves. I don't believe that would be proper.

DEFENSE COUNSEL: I think the Court will recall merely that was merely a point to test the credibility of the witness as to the tactical matters raised by Boltz. The Defense did not mention anything with respect to that statement. Now we have a witness on the stand who thinks--he does not know. I respectfully submit the testimony should be stricken from the record.

PROSECUTION: If the Court please, if my recollection does not fail me, the Defense questioned this witness as to whether it included the shooting, or words to that effect. They certainly were inquiring as to things other than tactical matters.

DEFENSE COUNSEL (Lt. Col. Sutton): I think the record will show whether anything along that line was referred to.

LAW MEMBER: I am trying to find that in the record now. Suppose we proceed with the testimony now.

DEFENSE COUNSEL: Nothing further on recross.

PROSECUTION: Nothing further on redirect.

PRESIDENT: Any questions by the Court? Apparently not, the witness is excused.

(Whereupon the witness was excused and resumed his seat at the Prosecution table.)

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Tk #342-SR-7/9-1

PROSECUTION: Prosecution recalls as its next witness Captain Shumacker.

CAPTAIN RAPHAEL SHUMACKER, a witness recalled by the Prosecution in rebuttal, having been previously duly sworn, resumed the stand and testified through an interpreter as follows:

(Whereupon the questions, answers and other proceedings were interpreted to the German counsel and accused as follows):

PROSECUTION: The witness is reminded he is still under oath.

THE WITNESS: Yes, sir.

REDIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q Are you the same Captain Shumacker who previously testified in this case?

A Yes, sir.

Q While you were in Schwaebisch Hall, did you participate in the interrogation of the accused Boltz?

A Yes, sir.

Q Were you present in the courtroom when the accused Boltz testified?

A Yes, sir.

Q Do you recall the substance of the accused Boltz' testimony?

A I do, sir.

Q Did you threaten him at any time during his interrogation at Schwaebisch Hall?

A No, sir.

Q Do you recall his interrogation?

(Shumacker-Rédirect)

Tk #342-SR-7/9-2

A Yes, sir.

Q Will you state to the Court what you recall concerning his interrogation?

A I remember that Mr. Thon and I went into the interrogation room to which Boltz had been brought. Mr. Thon asked questions of Boltz on his own behalf and interpreted the questions that I asked Boltz. In less than ten minutes Boltz told us about the shooting of the eight prisoners at Buellingen and about the fact that he fired his machine gun from his SPW into those prisoners who were still alive in the field at the crossroads. I then left the interrogation room, went to Colonel Ellis' office, where Major Schirman, the French War Crimes Liaison Officer was, to see if we could bring Boltz into Colonel Ellis' office so that Major Schirman could hear what Boltz had to say. I found out that the office was available for that purpose and I immediately returned to the interrogation cell and Mr. Thon and Boltz and I walked down the hall and into Colonel Ellis' office. There Boltz repeated in substance what he had told Mr. Thon and myself.

Q Do you know about how long the accused Boltz was in the office of Colonel Ellis?

A Five or ten minutes is my recollection.

Q Did you interrogate the witness Oskar Tratt at Schwaebisch Hall?

A I participated in it with Lieutenant Perl.

Q Were you in the courtroom when the witness Tratt testified?

A I was, sir.

Q Do you recall the substance of his testimony?

(Shumacker-Redirect)

Tk #342-SR-7/9-3

A Yes, sir.

Q Did you ever threaten or hear anyone threaten the witness Tratt with death?

A No, sir.

Q Did you, or did you ever see anyone beat the witness Tratt at Schwaebisch Hall?

A Tratt was not touched in my presence.

Q Do you recall the interrogation room that was used when you participated in the interrogation of the witness Tratt?

A I do, sir.

Q Did you see any bullet holes in the walls of this interrogation room?

A No, sir, there were no bullet holes.

Q Did you see any flesh of any kind hanging to the walls of this room?

A No, sir, there was no flesh hanging on the walls.

Q Are you familiar with all of the interrogation rooms at Schwaebisch Hall?

A Yes, sir.

Q Did you ever see any bullet holes in the walls of any of them?

A No, sir, and there were no bullet holes in the interrogation.

Q Do you know all of the interrogators that worked on the Malmedy case at Schwaebisch Hall?

A I do, sir.

Q Do you know whether or not you or any of the interrogators ever assisted any of the accused in the drawing of their sketches?

(Shumacker-Redirect)

Tk #12- SR-7/9

A As a matter of fact, the interrogators had never been to any of the places in question and therefore didn't know the terrain and couldn't be of assistance in that respect.

Q You state they had never been to any of the scenes of the crime. Are you referring to before the completion of the investigation?

A Yes, sir. I would like to clarify that statement. Captain Byrne did spend some time in Belgium but he did not participate in the interrogation of these accused. Colonel Ellis, Captain Byrne and I later went to Belgium to ride over the route of march of this German column but that was after the investigation was complete for all practical purposes. That was in mid April, if I recall correctly.

Q After your return, did you ever examine any of the sketches of the accused for their accuracy?

A I don't remember examining them for accuracy but I do recall that when I visited the crossroads, when I visited Stoumont and when I visited La Gleize, I was impressed with the fact that the sketches of those places as had been drawn by these accused were remarkable in their accuracy.

PROSECUTION: You may cross examine.

RECROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL (DR. LEER):

Q Captain, did you proceed in your interrogation at the various places where they took place in the same manner as you did with General Engle in this courtroom?

PROSECUTION: If the Court please, we object to that as being irrelevant and immaterial and not being covered

(Shumacker-Recross)

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on direct examination. It is improper.

DR. LEER: The Captain was asked about his interrogation activities and this question is within these limits.

PRESIDENT: The objection is overruled.

DR. LEER: I will repeat the question. In your interrogation of the accused, did you proceed in the same manner as you did in this courtroom against General Engle, or do you no longer remember an unusual situation for the witness which you caused by your behavior?

PROSECUTION: If the Court please, I fail to see any connection between the direct examination of this witness and what he did on cross examination to General Engle. We would like to renew our objection.

LAW MEMBER: Dr. Leer, you have now asked two questions. Will you please reframe your question and ask one question at a time?

DR. LEER: I only asked the second question because the witness did not understand the first one.

LAW MEMBER: Repeat the question.

DR. LEER: Might I ask the record to be read?

(Whereupon the question was read by the reporter as follows:

"Captain, did you proceed in your interrogation at the various places where they took place in the same manner as you did with General Engle in this courtroom?")

THE WITNESS: I don't know what question you wish answered, Dr. Leer.

DR. LEER: Will the reporter repeat the question?

(Whereupon the question was again read by the reporter.)

THE WITNESS: My interrogation of the accused took

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only at one place, Schwaebisch Hall. I am sure that I did not ask the same type of questions nor were they asked in the same manner in all interrogations, so I can't say that my interrogation of all of the accused I interrogated were either the same or different from my cross examination of General Engle.

QUESTIONS BY DEFENSE COUNSEL (DR. LEER):

Q Did you notice in your cross examination of General Engle that you presented a particularly severe manner towards him?

PROSECUTION: If the Court please, I hate to object but I cannot see the relevancy and I believe it is improper cross examination.

PRESIDENT: Objection sustained.

DR. LEER: I have no further questions.

QUESTIONS BY DEFENSE COUNSEL (LT. COL. DWINELL):

Q Captain Shumacker, you said you knew all the interrogators at Schwaebisch Hall, is that correct?

A Yes, sir.

Q You are referring to the Malmedy case?

A Yes, sir, that was the only case that we investigated, sir.

Q You said you knew all the interrogation cells or rooms, is that correct?

A Yes, sir.

Q Do you know the work that was accomplished by the interrogators at Schwaebisch Hall during the period of time that the Malmedy case was being investigated?

A Yes, sir.

Q What were Mr. Thon's duties?

(Schumacker-Recross)

Tk #342-7/9-SR-7

A When Mr. Thon first came to Schwaebisch Hall from Korn Westheim, he was classified as an interpreter and he was first used, I believe, for a week or so in that capacity. He was then changed or reclassified and assigned the duties of an interrogator and from that time on he interrogated suspects.

Q Did he have any other duties at any time than that of interpreter or interrogator?

A I think occasionally he was sent out from Schwaebisch Hall on comparatively short trips to look for suspects that we had leads on that were not then in custody.

Q But it is a fact, is it not, that during the investigation of the Malmedy case at Schwaebisch Hall, Mr. Thon spent most of his time doing what might be called inside work?

A You mean working in the prison itself?

Q I mean as distinguished from going out in the field on investigations.

A Yes, that is right, sir.

Q What were Lieutenant Perl's duties?

A The same, sir, except that he was always classified as an interrogator.

Q Do you know of any instance where Lieutenant Perl and Mr. Thon worked together at the same time on any one interrogation?

A I don't recall any specific instance when I was present when that took place, although there might have been but I am sure that on occasions they did work together.

(Shumacker-Recross)

Tk #342-7/9SR-8

Q In view of the fact that Lieutenant Perl and Mr. Thon both speak German fluently, can you tell the Court why it was necessary for both of them to work at the same time on one interrogation?

A I don't say that it was necessary but I can state one reason why it might be advisable. One well recognized method of interrogation, from what little I know about it, is for two people to interrogate a suspect, one appearing sympathetic and the other appearing antagonistic. Whether or not they worked that way in all instances, I am unable to say.

Q Do you know of any instance where either Lieutenant Perl or Mr. Thon acted antagonistic towards a suspect?

PROSECUTION: If the Court please, we object to this. On direct examination we did not go into the general methods of interrogation. We did not cover the specific duties of the interrogators. We limited specifically to sketches and to general characteristics of the interrogation rooms.

LT. COL. DWINELL: I believe the witness has answered on direct and cross examination to have permitted the cross examiner to go into the surrounding circumstances of the matters he has discussed.

LAW MEMBER: Except for one thing, and that is, the time for all of you to have gone into all the examination was during the presentation of this case by the Prosecution. This is now rebuttal testimony. It occurs to the Court that the matter has already been covered several times, particularly in some of the cross examination of Captain Shumacker during the presentation by the Prosecution.

LT. COL. DWINELL: Since the presentation by the
(Shumacker-Recross)

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Tk #342-7/9-SR-9

Prosecution, however, may it please the Court, some of the accused have taken the stand and testified about their treatment at Schwaebisch Hall.

LAW MEMBER: If there is not too much repetition, suppose you proceed and we will see how it goes along.

THE WITNESS: I remember the last question, Colonel Dwinell. I think you asked whether I remembered any case where either Lieutenant Perl or Mr. Thon appeared antagonistic. The only one I can name specifically was the one that was testified about here in court and I believe that concerned the interrogation of the accused Hennecke, in which either one or the other appeared as the so-called Prosecutor and one as the friend.

End tk #342
SHoltzman fls.

000446

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7/9/46
sh-1

Q Is that the only instance that you know of?

A That is the only one I know of personally, yes.

Q Did you see the photographs that were offered in evidence by the Defense, being pictures of Stoumont and LaGleize?

A No, sir, I didn't look at them.

DEFENSE (LT. COL. DWINELL): No further questions.

QUESTIONS BY DEFENSE (LT. COL. SUTTON):

Q Captain, on direct examination you mentioned the incident at Buellingen and the Cross-Road in connection with Boltz, is that correct?

A Yes, I said that Boltz told us about those two incidents.

Q Referring to Prosecution's Exhibit P-51, which is a statement by Boltz, did you dictate that statement?

A I did, sir.

Q Are you familiar with all of that statement?

A Generally, sir. I certainly couldn't give all the details of it from memory at this time.

Q In that statement, Boltz denied the shooting of the eight prisoners at Buellingen, did he not?

A He didn't deny the shooting of them. He said that he, himself shot to the left of the man standing in front of him.

Q And you testified earlier that you argued with him for a considerable time trying to convince him that he did shoot prisoners at Buellingen, is that correct?

A I did argue with him, because he had told us in his oral interrogation that he did shoot the man standing in front of him. Then he denied it and said that he shot to the left of the man, and that is the way it appears in the statement.

Q I believe you also testified that at the time that Boltz said that he shot them, that Col. Ellis was present, Major Sherman, (Capt. Shumaker - Recross)

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sh-2

yourself, and two translators, is that correct?

A Yes, sir, that is partially correct. Mr. Thon was also present, and there may have been three translators instead of two. There was a long table in Col. Ellis' office at which the translators sat and worked.

Q Do you recall which translator you were using as an interpreter, if you were using such?

A When Boltz was in Col. Ellis' office?

Q Yes.

A Mr. Thon.

Q How long would it take to dictate this statement that has been offered in evidence, P-51?

A According to my recollection, most of one afternoon.

Q Now, how long did it take Boltz to write down this dictated statement and prepare these two exhibits?

A That I don't know, sir, because I was only present two or three times while he was actually writing it in his own hand.

Q Were you present during the interrogation of Boltz, while he was on the stand?

A I was present in court, if that is what you mean.

Q Yes?

A Yes.

Q You heard him deny that he shot prisoners at Buellingen, did you not?

A Yes, sir, I heard him deny that they were shot at all in Buellingen.

Q You also heard him deny that he shot prisoners at Malmedy, didn't you?

A Yes, sir.

DEFENSE (LT. COL. SUTTON): That is all.

(Capt. Shumacker - Recross)

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sh-3

DEFENSE: Nothing further on cross.

PROSECUTION: Nothing further.

PRESIDENT: Any questions by the Court? Apparently not,
the witness is excused.

(Whereupon the excused witness withdrew.)

PROSECUTION: Prosecution recalls as its next witness
Herbert Koehles.

HERBERT KOEHLES, recalled as a witness for the Prosecution,
resumed the stand and testified further through an interpreter as
follows:

PROSECUTION: The witness is reminded that he is still
under oath.

REDIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q Are you the same Herbert Koehles that testified for the
Prosecution on the 29th of May, in connection with the alleged
murder of an American aviator?

A Yes.

PROSECUTION: Prosecution hands the reporter a written
statement to be marked Prosecution Exhibit 129 for identification.

(Whereupon the document referred to was marked Prosecution
Exhibit No. 129 for identification by the reporter.)

QUESTIONS BY PROSECUTION:

Q I hand you Prosecution's Exhibit marked P-129 for identi-
fication, and ask you if you know whose handwriting this is in and
who signed it?

A Yes.

Q Whose handwriting is it in?

A 1st Lt. Preuss.

Q And who signed it?

(Herbert Koehles- Redirect)

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sh-4

A That is Lt. Preuss too.

PROSECUTION: Prosecution offers in evidence Prosecution's Exhibit marked P-129 for identification, to be attached to the record and marked Prosecution Exhibit P-129.

DEFENSE (LT. COL. DWINELL): The Defense objects to the introduction of this evidence, because a proper foundation has not been laid. The time and place when the statement was taken or made has not been testified to.

PROSECUTION: I don't believe that is necessary, but if the Court desires we can certainly develop it.

PRESIDENT: Go ahead.

QUESTIONS BY PROSECUTION:

Q When did you first see this statement, Prosecution's Exhibit marked P-129 for identification?

A It must have been 20 days ago.

Q And who gave it to you?

A 1st Lt. Preuss.

Q Was that at Dachau?

A Yes.

Q Was that after you had testified in this case?

A Yes.

PROSECUTION: We renew our offer.

PRESIDENT: The exhibit offered by the Prosecution is admitted in evidence and will be marked P-129.

(Whereupon the document referred to, having been previously marked and identified, was received in evidence as Prosecution Exhibit No. P-129, is attached hereto and made a part of the record.)

PROSECUTION: Will you please mark this document P-129-A for identification.

(Whereupon the document referred to was marked Prosecution Exhibit No. P-129-A for identification by the reporter.)

(Koehles - Redirect)

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sh-5

PROSECUTION: Prosecution offers in evidence a true and correct English translation of Prosecution Exhibit P-129, to be attached to the record and marked P-129-A.

DEFENSE: The Defense has not had an opportunity to compare it, but we might make a later objection if there are any inaccuracies.

PRESIDENT: That is agreed. The exhibit offered by the Prosecution will be admitted and marked P-129-A.

(Whereupon the document referred to, having been previously marked and identified, was received in evidence as Prosecution Exhibit No. P-129-A and is attached hereto and made a part of the record.)

PROSECUTION: Prosecution requests permission to read the English translation of Exhibit P-129.

PRESIDENT: Granted.

PROSECUTION: (Reading)

"Dear KOEHLER:

Please recall the following:

- 1.) You were under the impression that my words about me needing the ring, should I get married, were just kidding.
- 2.) You once more thought the whole thing over again and a conversation with BERGHAUS occurred to you. You asked BERGHAUS what should be done with the body and BERGHAUS told you, I ordered him to put the papers into his pocket because I wanted to write to the wife and also send the ring.

When and where the conversation took place does not matter, decisive for me is this, your deposition. Should you be asked why the body was not buried, please say, you don't know, however, you think that the ground in the forest was frozen and had too many roots.

The first slip is made void by this one, because it represents a contradiction to your deposition with the Prosecution.

Regards

Georg

Please destroy immediately upon reading and do not tell anybody about it.

Georg"

(Whereupon the statement was read in German by the interpreter.)

(Koebles - Redirect)

QUESTIONS BY PROSECUTION:

Q When the accused Preuss handed you this note, did he have any conversation with you?

A Yes.

Q What did he say?

A For me to think it over one more time whether I wanted to testify to that.

PROSECUTION: You may cross examine.

DEFENSE: No cross examination.

PRESIDENT: Any questions by the Court? Apparently none, the witness is excused.

(Whereupon the excused witness withdrew.)

PROSECUTION: Prosecution recalls its next witness, Guenther Heinrichs.

GUENTHER HEINRICHS, recalled as a witness for the Prosecution, resumed the stand and testified further through an interpreter as follows:

PROSECUTION: The witness is reminded that he is still under oath.

REDIRECT EXAMINATION

QUESTIONS BY PROSECUTION (CAPT. SHUMACKER):

Q What is your name?

A Heinrichs.

Q Are you the same Guenther Heinrichs who previously testified in this case?

A Yes.

Q What Company were you in during the time of the Eifel Offensive?

A The 11th Company.

Q And what was your job or position in the 11th Company?

A I was a medic in the 11th Company.

(Heinrichs - Redirect)

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sh-7

Q Heinrichs, do you know one Benno Agather, formerly in the 11th Panzer Grenadier Company during the time of the Eifel Offensive who appeared as a witness in this case?

A Yes.

Q Did you ever have a conversation with Benno Agather after coming here to Dachau?

A Yes.

Q Do you remember about when you came to Dachau?

A We came to Dachau April 17th.

Q About how long after your arrival here in Dachau did you have this conversation with Agather?

A About eight to ten days later.

Q Did you have a conversation with Agather with reference to the speech of the accused Tomhardt, made on the night of the 15th-16th December 1944?

A Yes.

Q What did Agather tell you with reference to this speech, what he knew about it?

A He said that he hadn't been present at the speech and he knew nothing of it and hadn't even heard of it.

Q Do you know one Siegfried Allbrecht, formerly of your Company, the 11th Panzer Grenadier Company, who appeared as a witness in this case?

A Yes.

Q Did you have a conversation with Allbrecht after your arrival here in Dachau?

A Yes.

Q Did you have a conversation with him with respect to Tomhardt's speech?

A Yes.

(Heinrichs - Redirect)

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Q What did Allbrecht tell you in that connection?

A That he had been under the influence of alcohol, had not heard anything, was lying in the tank and was fairly drunk.

Q Do you remember where that conversation with Allbrecht took place, whether in your barracks, his barracks or where it was?

A I don't know exactly where it was, but I think it was in his barracks, because I was cutting hair there.

PROSECUTION (CAPT. SHUMACKER): Prosecution hands the reporter an instrument and requests that it be marked Prosecution's Exhibit No. 130 for identification.

(Whereupon the document referred to was marked Prosecution Exhibit No. 130 for identification by the reporter.)

QUESTIONS BY PROSECUTION (CAPT. SHUMACKER):

Q Heinrichs, I hand you a written instrument marked Prosecution Exhibit No. 130 for identification, and ask you if you ever saw that paper before?

A Yes.

Q Do you know whose handwriting it is?

A Yes.

Q Whose is it?

A 1st Lt. Tomhardt.

Q Is that the accused Tomhardt in this case?

A Yes.

Q Heinrichs, under what circumstances did this instrument marked Prosecution Exhibit No. 130 come into your hands?

A I received that from a member of the 10th Company and was to pass it on to Sgt. Fischer of the 11th Company.

Q When was that?

A About twenty days it might have been.

Q Twenty days ago, you mean?

A Yes.

(Heinrichs - Redirect)

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sh-0

Q Did it happen here in Dachau?

A Yes.

Q Was it before or after you testified?

A It was after I testified.

Q Now, was this not meant for you personally?

A No, that was the Sgt...for the Sgt. Fischer and members of the 11th Company.

PROSECUTION (CAPT. SHUMACKER): Prosecution offers in evidence its exhibit marked P-130 for identification, requests that it be received in evidence, attached to the record and marked Prosecution Exhibit P-130.

DEFENSE: No objection on behalf of the Defense.

PRESIDENT: There being no objection, the exhibit offered by the Prosecution is admitted in evidence and will be marked P-130.

(Whereupon the document referred to, having been previously marked and identified was received in evidence as Prosecution Exhibit No. P-130, is attached hereto and made a part of the record.)

PROSECUTION (CAPT. SHUMACKER): Will you mark this P-130-A, please.

(Whereupon the document referred to was marked Prosecution Exhibit No. P-130-A by the reporter.)

PROSECUTION (CAPT. SHUMACKER): Prosecution offers in evidence a true and correct English translation of its Exhibit P-130, requests that it be attached to the record and marked Prosecution Exhibit P-130-A.

DEFENSE: No objection on behalf of the Defense, but we request to reserve the right of later objecting on the translation.

PRESIDENT: That is agreed. The exhibit offered by the Prosecution is admitted in evidence and will be marked P-130-A.

(Whereupon the document referred to, having been previously marked, was received in evidence as Prosecution Exhibit No. P-130-A, (Heinrichs - Redirect)

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is attached hereto and made a part of the record.)

PROSECUTION (CAPT. SHUMACKER): Prosecution requests permission to read its Exhibit P-130-A.

PRESIDENT: Granted.

PROSECUTION (CAPT. SHUMACKER): Reading:

"to D

Company Order on the early morning of 16 Dec. 44.
(Reproduction according to the gist)

- A.) We are confronted with the decisive turning point of this war, etc. Full commitment of every man.
- B.) The Panzered group has the mission, with an extremely distant objective, to break through the enemy. That means to us, to drive on, without consideration for man and vehicle, and put to use to our advantage the confusion of the retreating enemy.

As far as infantry is concerned, we are very weak. To confuse the enemy about our strength as soon as we approach villages, we shall concentrate with marching-fire upon such. Therefore, we will not be able to give any consideration to civilians which will be found on the street during combat actions.

We have no time nor men to occupy ourselves with prisoners - they will be taken care of by the infantry which follows up.

Armed civilians are our biggest enemies and will be bumped off without consideration.

Upon deserters, who are waving their steel helmets over the head, will not be fired. The same goes for single driving enemy tanks (for EWK crews) (Meant: Operation SKOROZENY).

- C.) Air force -) Support. "
Artillery ;

(Whereupon the statement was read in German by the interpreter.)

QUESTIONS BY PROSECUTION (CAPT. SHUMACKER):

Q Heinrichs, you say that you were to pass this note to a man named Fischer and other men in the 11th Company? Did you do so?

A Yes, but I did not.

Q Did you hand this note to the Prosecution?

A Yes.

Q Why did you do that?

(Heinrichs - Redirect)

A About two or three days later.

Q I say, why did you not pass the note on to Fischer and the other men of the 11th Company and handed it to the Prosecution instead?

A I did not want them to testify to anything that they did not know, so that they testified to something that was false.

PROSECUTION (CAPT. SHUMACKER): No further examination, you may cross examine.

RECROSS EXAMINATION

QUESTIONS BY DEFENSE (MR. STRONG):

Q Heinrichs, who was present when you had this conversation with Agather and Allbrecht?

A With Agather I talked alone, and with Allbrecht I talked across one fence - we talked about a few very trivial matters and then we came to talk about this.

Q So if I understand you correctly, at both conversations there were no witnesses?

A No.

Q Do you know the handwriting of Tomhardt?

A Yes.

Q Were there any men of the 11th Company to whom you could have given this slip?

A You mean present?

Q I mean in the barracks.

A In the barracks, yes. I was in the other barracks, but I could get together with them.

Q What I am trying to get at, Heinrichs, to whom would you have given this instrument if you would have complied with Tomhardt's request?

A I would have given it to some member, I don't know which.

Q Were there any members of the 11th Company?

(Heinrichs - Recross)

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ah-12

A Yes.

Q Give us the names.

A Sgt. Fischer; Agather, Benno; Allbrecht; Boettger...

Q Do you know whether you received this slip before or after
Agather, Fischer and others testified in this court?

A They hadn't testified then.

DEFENSE (MR. STRONG): No further questions.

PROSECUTION (CAPT. SHUMACKER): No redirect.

PRESIDENT: Any questions by the Court? Apparently none,
the witness is excused.

(Whereupon the excused witness withdrew.)

PRESIDENT: The Court will recess until 1030.

(Whereupon at 1000 hours the Court recessed.)

(Heinrichs - Recross)

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9-T-1

(Whereupon the Court reconvened at 1030 hours.)

PRESIDENT: Take seats. The Court will come to order.

PROSECUTION: If the Court please, let the record show that all members of the Court, all members of the Prosecution, with the exception of Captain Byrne, who has been excused by verbal orders of the Commanding General, all members of the Defense, all of the defendants and the Reporter are present.

Prosecution offers in evidence the statement of Rudolf Sauer, dated 15 May 1946, to be attached to the record and marked Prosecution's exhibit P-131.

LT COL DWINELL: The Defense objects to this because this is a matter that should have been brought out in Prosecution's case and is not in rebuttal of anything brought out by the Defense.

PROSECUTION: If the Court please, I believe that after the statement has been read, if they will reserve their objection to that time, the Court can more intelligently rule on whether this was rebuttal evidence or not.

DEFENSE COUNSEL: That procedure is quite satisfactory.

PRESIDENT: Very well, the exhibit offered by the Prosecution is admitted in evidence and will be marked exhibit P-131, subject to later objection by the Defense.

(Whereupon the document referred to above was received in evidence and marked Exhibit P-131, and the same is attached hereto and made a part of this record.)

PROSECUTION: Prosecution offers in evidence a true and correct English translation of its exhibit P-131 to be attached to the record and marked Prosecution's exhibit P-131-A.

PRESIDENT: Is there objection by the Defense?

DEFENSE COUNSEL: No objection, subject to any corrections later.

000456

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9-T-2

PRESIDENT: The exhibit offered by the Prosecution is admitted in evidence and will be marked Exhibit P-131-A, subject to possible correction later.

(Whereupon the document referred to above was received in evidence and marked Exhibit P-131-A, and the same is attached hereto and made a part of this record.)

PROSECUTION: Prosecution requests permission to read its exhibit marked P-131 and P-131-A.

PRESIDENT: Granted.

(Whereupon Exhibit P-131-A was read in the English language as follows:

"I, Rudolf Sauer, being duly sworn, make the following statement under oath.

"During the Eifel Offensive in December 1944, I was a member of the 3rd Comp., 1st Bn., 12th Pz. Rgt., H.J. Division (Trans. note: Hitler Youth Division). My Comp. Commander was Hstf. Broedel and my Div. Commander Standartenfuhrer Krass. When we were in an assembly area in December 1944 in Himmelsdorf in the vicinity of Steuss we received a visit of our Division Commander Krass. The purpose of his visit was to look over the company at which occasion he also delivered a short address before the assembled 3rd Comp. In this speech Krass said about the following:

"This coming offensive is of great importance and can eventually be decisive for the fate of the German people. Furthermore he said - and I can remember it distinctly 'that in this offensive, he does not want to see any prisoners of war.'"

"This deposition consisting of one page was made by me voluntarily, uninfluenced by duress, harsh treatment or promises of any kind and I am prepared to repeat it under oath before any court of justice.

(Signed) Rudolf Sauer
15.5.1946

Subscribed and sworn to before
me this 15th day of May 1946

ROBERT E. BYRNE
1st Lt. JAGD "

LT COL DWINELL: May I make my motion now before the translation is read?

LAW MEMBER: If you wish, yes.

2915

(Statement - Sauer)

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9-T-3

LT COL DWINELL: The Defense moves to strike this from the record as improper rebuttal.

PROSECUTION: If the Court please, this is in rebuttal of the testimony of Defense's witnesses SS Obersturmbannfuhrer Albert Maier, Chief of Staff of the Hitler Youth Division and SS Obersturmbannfuhrer Herbert Kuhlmann, Regimental Commander of the 12th SS Panzer Division, who testified that these orders were not transmitted to them. This affiant Sauer was a member of the Hitler Youth Division.

LAW MEMBER: In connection with this statement will Prosecution clarify to the Court why this particular SS man is not in Court or is not available?

PROSECUTION: This man has been discharged and we are unable to relocate him.

PRESIDENT: The motion of the Defense is denied.

(Whereupon exhibit P-131 was read in the German language by the Interpreter to the German counsel and to the accused.)

CAPTAIN SHUMACKER: Prosecution recalls as its next witness Rudi Hoppe.

RUDI HOPPE, recalled as a witness for the Prosecution in rebuttal, testified further through an interpreter as follows:

(Whereupon the questions, answers and other proceedings were interpreted to the accused and to the German counsel.)

REDIRECT EXAMINATION

QUESTIONS BY PROSECUTION (Capt. Shumacker):

Q Hoppe, you are reminded that you are still under oath.

A Yes.

Q What company were you in during the Eifel Offensive in December 1944 and in January 1945?

A 9th Panzer Pioneer Company.

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9-T-4

Q Who was your company commander?

A Obersturmfuehrer Rumpf.

Q At any time during the offensive were you in the Town of La Gleize, Belgium?

A Yes.

Q I ask you whether or not you were a member of this execution detail that shot a German soldier in La Gleize before Peiper's Combat Group retreated from that town?

A Yes, I was present there.

Q How big was this detail? How many men did it consist of?

A As far as I can remember it consisted of four or five men.

Q And from what company did those men come?

A All of the men were from the 9th Panzer Pioneer Company

Q Will you name as man of those men as you can?

A Yes. In the first place, I, myself, Pvt. Pupkalis, Sgt. Haas, and Corporal Skorzeny.

Q Do you remember when this execution of this German soldier took place with reference to the withdrawal or retreat from La Gleize?

A To the best of my recollection, one or two days before we moved out of La Gleize.

Q Where were you at the time you were summoned for this detail?

A I was lying in Infantry position when suddenly the messenger of the company showed up and picked out four men.

Q Who was the messenger of the company?

A He was Pvt. Pupkalis.

Q Are you sure you were in an Infantry position and not a cellar with drivers of the 9th Company at the time you were summoned by Pupkalis?

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A I know exactly and I am quite sure that I was lying in Infantry position.

Q Were any members of this shooting detail of which you were a member drivers of the 9th Panzer Pioneer Company?

A As far as I can remember there was no drivers among them.

Q Were you a driver of the 9th Panzer Pioneer Company?

A No, I was not a driver, but a machine gunner.

Q What was Pupkalis' duty in the company?

A Pupkalis was a messenger. He was a messenger of 2nd Lt. Herig.

Q What was Unterscharfuehrer Haas?

A Sergeant Haas was a member of the punishment group which was attached to our company.

Q Was he a driver of the 9th Panzer Pioneer Company?

A No.

Q What about Rottenfuehrer Skorzeny, was he a driver of the 9th Panzer Pioneer Company?

A No, he was not a driver of the 9th Panzer Pioneer Company either.

Q Was Unterscharfuehrer Erich Maute the medic of the 9th Panzer Pioneer Company a member of this particular detail of which you were a member?

MR. WALTERS: I object to that; it is a leading question.

PRESIDENT: Objection sustained.

QUESTIONS BY PROSECUTION (Capt. Shumacker) (Cont'd)

Q Do you know who the medic was of the 9th Panzer Pioneer Company?

A Yes, Unterscharfuehrer Maute.

Q Was any medic of the 9th Panzer Pioneer Company a member of this shooting detail of which you were a member?

A Yes.

(Hoppe - Redirect)

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#344

9-T-6

Q Who was the medic that was a member of this detail?

A There was no medic with this shooting detail.

Q Did you misunderstand my previous question when I asked you if any medic of the 9th Panzer Pioneer Company was a member of the shooting detail?

A I understood you to ask whether or not we had a medic in the 9th Panzer Pioneer Company. Thereupon, I said, "Yes". Sergeant Maute was the medic of the 9th Panzer Pioneer Company.

Q I ask you again if any medic including Sergeant Maute was a member of this shooting detail of which you were a member?

A As far as I can remember no medic was present.

Q After Pupkalis came and got you and the other men from your Infantry position where did you go?

A We went to the CP of the company.

Q Did you ever go to the CP of Hauptsturmfuehrer Diefenthal, Battalion Commander of the 3rd Panzer Grenadier Bn.?

A No, I never went there.

Q Was there any non-commissioned officer from the 1st Panzer Company part of this shooting detail of which you were a member?

A As far as I can remember there was no non-commissioned officer in this detail with the exception of the one who was a part of the detail, Sergeant Haas.

Q What time of the day or night, if you recall, were you summoned from your post, your Infantry position?

A As far as I can remember it must have been shortly before or after midnight.

Q What time did the execution itself take place?

A During the night, but I don't remember the exact time.

Q How could you see to perform an execution at night?

A Because the moon was shining very brightly.

Q Where did you go after the execution had taken place?

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A After the execution had taken place we first buried the man and then went back to our Infantry positions.

Q Did you ever go to Hauptsturmfuehrer Gruhle, the Adjutant of the 1st Panzer Regiment to ascertain the location of Diefenthal's CP?

A No.

Q Did you ever report--strike that. Did this detail of which you were a member ever report to Untersturmfuehrer Hans Hennecke or any other officer of the 1st Panzer Regiment, 1st Panzer Company?

A No.

Q Do you know why--strike. From what unit was this man which your detail executed on this occasion you have been testifying about?

A He was a member of our company.

Q Do you know why he was executed?

A Because he had been absent from the company for two days and because he had taken off his collar insignia and was waiting for a way out to desert, and while he was waiting he had been caught and was executed.

CAPTAIN SHUMACKER: No further questions on redirect.

DEFENSE COUNSEL: Dr. Pfister.

RECROSS EXAMINATION

QUESTIONS BY DEFENSE (Dr. Pfister):

Q Did I understand you correctly when you testified that the man got to be executed because of cowardness in front of the enemy had been a member of the punishment company or group?

CAPTAIN SHUMACKER: If the Court please, the witness did not testify that the man was executed because of cowardness before the enemy.

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QUESTIONS BY DEFENSE (Dr. Pfister):

Q I will reframe my questions and say, because of suspicion of desertion?

A I did not understand the question.

Q Was the man who had been executed a member of the punishment group?

A I have already said I didn't know that.

Q You previously stated that there was a punishment group attached to the 9th Company?

A Yes.

Q Since when did this group exist?

A To the best of my recollection since October or November 1944.

Q Do you know how many members the punishment group consisted of?

A According to my recollection, twenty or twenty-five men.

Q Which were the special duties of the punishment group within the 9th Company?

CAPTAIN SHUMACKER: If the Court please, I don't see what the duties of the straf group of the 9th Company had to do with the issues in the case.

DR. PFISTER: I could see that because it is very important to ascertain whether if those members of the punishment group were people which required special treatment and which were very difficult to be treated.

LAW MEMBER: But it wasn't cross examination of this witness, Dr. Pfister. This is cross examination. However, the question has already been answered--strike that.

DR. PFISTER: Good, thank you.

QUESTIONS BY DEFENSE (Dr. Pfister):

Q Did the company have prisoners in La Gleize?

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A As I can remember, never.

DEFENSE COUNSEL: No further cross.

REDIRECT EXAMINATION

QUESTIONS BY PROSECUTION (Capt. Shumacker):

Q Hoppe were you--strike that question.

CAPTAIN SHUMACKER: No further redirect.

PRESIDENT: Any questions by the Court? Apparently none, the witness is excused.

(Whereupon the witness was excused and withdrew from the court room.)

PROSECUTION: Prosecution offers in evidence an affidavit dated 1 May 1946, made by Wolfgang Schleif, to be attached to the record, marked Prosecution's exhibit P-132. This affidavit was taken in the U.S.

DEFENSE COUNSEL: May it please the Court, we would like to reserve our right to make an objection after its introduction. It is a long statement.

LAW MEMBER: Yes.

DEFENSE COUNSEL: One further comment is, it is a confidential classification which should be determined by the Court prior to its being read in open Court.

PROSECUTION: The Deputy Theater Judge Advocate has promised to give me a letter concerning classification papers which have been withdrawn, but to date I have not received the letter.

LAW MEMBER: Does the Prosecution state at this time that these classification papers have been released?

PROSECUTION: That is my understanding.

LAW MEMBER: Because it is still an open question of the Inspector General's report and we have affidavits which were introduced as part of the Prosecution's case and which the Court has ordered withheld.

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PROSECUTION: I understand it.

PRESIDENT: The exhibit offered by the Prosecution is admitted in evidence and will be marked exhibit P-132, subject to later objection by the Defense.

(Whereupon the document referred to above was received in evidence and marked Prosecution's exhibit P-132, and the same is attached hereto and made a part of this record.)

DEFENSE COUNSEL: As a further comment, the Commanding General of the ETO has no jurisdiction of declassifying this document. It is from the War Department's special staff in the U.S.

PROSECUTION: I have no objection to clearing the court room before it is read, that is of the spectators. It makes no difference to me.

LAW MEMBER: The Law Member would like to read that document and see if there is any matter in it that should not be brought before the Court.

(Whereupon the document was handed to the Law Member of the Court.)

LAW MEMBER: There is nothing in this affidavit which has not already been brought out in the Court, and under that condition the statement will be admitted.

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PROSECUTION: The Prosecution requests permission to read its Exhibit F-132.

PRESIDENT: Granted.

(Whereupon Prosecution's Exhibit F-132 was read as follows:

"In the matter of the alleged killing of approximately 200 American soldiers in or near LaGleize, Belgium on or about 23-24 December 1944."

DEFENSE COUNSEL (Col. Dwinell): May the Defense reserve its right to make a proper motion at the conclusion of the reading?

LAW MEMBER: Yes.

(Continuing) "In the matter of the alleged killing of approximately 200 American soldiers in or near LaGleize, Belgium, on or about 23-24 December 1944. Perpetuation of testimony of German prisoner of War Wolfgang Schleif, Private, ISN 31G-837496. Taken at Ft. George G. Meade, Maryland. Date: 1 May 1946. In the presence of Sidney S. Rubenstein, Lt. Colonel, GSC; Paul a Neuland, Major, QMC; Joseph M. Parvis, Jr., Captain, Infantry (Summary Courts Martial Officer at Ft. George G. Meade); Gerard Droller, 1st Lieutenant, CMP. Reporter: A. C. Hendrix, Court reporter. Witness was interrogated in German by Major Neuland, 1st Lt. Droller. Entire proceedings were translated by: Major Neuland, 1st Lt. Droller. Witness was duly sworn by Captain Parvis.

"Q What is your name, rank, and internment serial number?"

"A Wolfgang Schleif, Private, 31G-837496.

"Q When and where were you captured?"

"A I was captured in LaGleize, Belgium, on 23 December, 1944, having been wounded on 18 December in both legs and right arm. I lay in the cellar of a castle in LaGleize from the 18th until the date of my capture. Fifty or sixty other wounded German soldiers were captured with me on the 23d.

"Q To what unit did you belong?"

"A I was in the 10th Company, 3d Battalion, 2nd Pz. Gren. Regiment, 1st Pz. SS Division.

"Q Tell anything you know about the treatment accorded to any American prisoners of war who were held in or near the town of LaGleize at that time.

"A During the last night before our capture, Feiper gave a talk to us in the cellar. This cellar was being used as a first aid station. Feiper told us that the German Forces were going to retreat, as the situation there was hopeless. He said that all those of us who could move should retreat and that the rest of us who were unable to move should await capture by the Americans, but that we should keep our spirits up because we would be exchanged in return for certain American prisoners of war who were being held nearby. Shortly after Feiper had finished his talk and had left, some additional German wounded came in to join us in the first aid station.

They reported that they had heard that the American prisoners, mentioned by Feiper as being located in or near the town of LaGleize, had been executed. I did not learn of the ones who actually committed this crime but I assume that it must have been done at Feiper's command.

"Q What other officers were in command in that area?

"A In addition to Feiper, there was a Hauptsturmfuehrer Tiefenthal. I do not know whether he was in command around this particular town of LaGleize, but he was subordinate to Feiper.

"Q Did you ever hear anything further about this alleged execution of American prisoners at La Gleize?

"A After capture, I told others about what I had heard as to this event. Some of them had not heard of it but quite a few said that they knew about it already.

"Q Does it strike you that this alleged execution was a well-known event and reflected an actual occurrence, defined both by its time and place?

"A It does.

"Q What was your reaction to Feiper's promise, to arrange for your future exchange as prisoners of war in return for the Americans, when you found out that these Americans had been executed?

"A We were all angry and incensed at Feiper for his obvious lies, and gave up any hope of ever being exchanged.

"Q Is it possible that these Americans, according to the reports you received while in the cellar of the castle, were killed by artillery fire rather than by execution?

"A There is no possibility of that. The reports which we heard while in the cellar were to the effect that the prisoners had been executed by Germans and not killed by any such other means.

"Q Can you name any other Germans who know something about this atrocity on their own authority?

"A Yes. One who knows something about this is Werner Heger. I believe that he is still at Fort Knox, Kentucky. His rank is certainly not higher than unteroffizier, probably lower.

"Q Do you know of any others?

"A Yes. There was one boy whose name is Hans Hammerschmidt. He is also at Fort Knox, Kentucky, I believe. Both Heger and Hammerschmidt were interviewed with me when I was at Fort Knox, Kentucky.

"NOTE: Reports of previous interrogations of Werner Heger

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(31G-783447) and Hans Hammerschmidt (31G-829588) indicate that they claim to have no knowledge of this atrocity, but their interrogators believed that both were withholding information. These reports were transmitted to the European Theatre on 23 March 1946.

"NOTE: Reports of former Interrogations of Wolfgang Schleif are being transmitted herewith.
"WITNESS EXCUSED.

"CERTIFICATE OF OATH

"I, Joseph M. Parvis, Jr., Captain, Infantry, a Summary Courts Martial Officer at Fort George G. Meade, Maryland, hereby certify that German prisoner of war Wolfgang Schleif, ISN 31G-837496 personally appeared before me at Fort George G. Meade, Maryland, on 1 May 1946 and, after being duly sworn on oath by me, gave the foregoing testimony concerning war crimes.

(signed) JOSEPH M. PARVIS, Jr.,
Captain, Infantry
Summary Courts Martial Officer
at Fort George G. Meade, Md.

"CERTIFICATE OF TRANSLATION

"We, Paul A. Neuland, Major, QMC, and Gerard Droller, 1st Lt., CMP, hereby certify that we are fluent in both the German and English languages and that the foregoing is an accurate English translation of the questions stated by us in German and of the answers given in German as testimony under oath before Captain Joseph M. Parvis, Jr., at Fort George G. Meade, Maryland, on 1 May 1946 by German prisoner of war Wolfgang Schleif, ISN 31G-837496.

(signed) PAUL A. NEULAND, Major, QMC
GERARD DROLLER, 1st Lt., CMP."

DEFENSE COUNSEL (Col. Dwinell) The Defense moves to strike the evidence from the record on the following grounds: This is evidently in rebuttal to testimony offered by the Defense concerning incidents in LaGleize. It is not proper rebuttal. Rule 10 of Trial Procedure in the Technical Manual for Legal and Prison Officers, on page 36 thereof, at the top of the page, under subparagraph (e), says the following:

"e. When all the witnesses for the defence have been called and the case for the defence closed, the calling by the prosecution, with leave of the court, or re-calling of any witness for the purpose of rebuttal of any material statement made by any witness for the defence or of giving evidence on any new matter raised by the defence;"

We note that the Rule says "with leave of the court", and we ask

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the Court not to grant leave to permit the introduction of this evidence. It should have been brought out in Prosecution's case. It is a violation of the best evidence rule. The Defense has no opportunity to cross examine the witness. The testimony as offered contains opinions, conclusions, leading statements by the interrogator, and contains much hearsay evidence. We further ask the Court, in any event, to disregard the caption of the statement which is an opinion and conclusion of the interrogator. The witness was interrogated in May 1946. The Defense brought their witnesses on this subject from the United States to testify in person and it seems that in all fairness that the rebuttal should be on the same level.

PROSECUTION: If the Court please, we believe the only point raised by the Defense that is worthy of an answer is the fact that we did not ask your permission. We now ask your permission to introduce this evidence. I might also add that ^{as to} the matter of proper ⁱⁿ⁻rebuttal, that innumerable witnesses of the Defense and the accused Feiper have stated that there were no killings and no bodies in LaGleize and we are certain that this is proper rebuttal.

LAW MEMBER: The affidavit, although it contains quite a bit of material which is opinion and which also contains conclusive material, which facts will be disregarded by the Court, will be admitted in evidence for whatever other probative value it may have. And the Court will disregard such matter in the affidavit as the opinion at the beginning and other conclusive facts.

(Whereupon Prosecution's Exhibit P-132 was read in the German language by the interpreter, for the benefit of the German counsel and the accused).

PROSECUTION: The Prosecution offers in evidence an affidavit of German prisoner of War Lothar Hartig, taken on May 1946 at Fort George G. Meade, Maryland, asks that it be marked

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Prosecution's Exhibit P-133, attached to and made a part of the Record.

(Whereupon the document referred to above was marked Prosecution's Exhibit P-133 for Identification.)

DEFENSE COUNSEL: The Defense makes the same motion in connection with this Exhibit that we made in the previous one, P-132.

LAW MEMBER: You mean with respect to the classification of the instrument?

PROSECUTION: Yes, its classification.

DEFENSE COUNSEL: Classification--that was a suggestion. Classification was a suggestion, but not a motion. But the same objection as to the introduction of this affidavit applies as to the preceding one.

PRESIDENT: The court will make the same ruling as in the admission of the previous Exhibit, P-132, with the right of the Defense to object at another time. The Exhibit offered by the Prosecution is admitted in evidence and will be marked P-133.)

(Whereupon the document referred to above having previously been marked and identified was received in evidence as Prosecution's Exhibit P-133, and the same is attached hereto and made a part of the record.)

PROSECUTION: The Prosecution requests permission to read its Exhibit P-133.

PRESIDENT: Granted.

(Whereupon Prosecution's Exhibit P-133 was read as follows:

"For the WAR CRIMES BRANCH, Civil Affairs Division, War Department Special Staff, United States of America. In the matter of the alleged killing of approximately 200 American soldiers in or near LaGleize, Belgium, on or about 23-24 December 1944.

"Perpetuation of Testimony of German prisoner of

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war Lothar Hartig, Private, ISN 31G-833128. Taken at: Ft. George G. Meade, Maryland. Date: 1 May 1946. In the Presence of: Sidney S. Rubenstein, Lt. Colonel, GEC; Paul A. Neuland, Major, QAC; Joseph M. Farvis, Jr., Captain, Infantry (Summary Courts Martial Officer at Fort George G. Meade); Gerard Droller, 1st Lieutenant, CMP. Reporter: A. C. Hendrix, Court Reporter. Witness was interrogated in Germany by: Major Neuland, 1st Lt. Droller. Entire Proceedings were translated by: Major Neuland, 1st Lt. Droller. Witness was duly sworn by Captain Farvis.

"Q What is your name, rank, and internment serial number?"

"A Lothar Hartig, Private, 31G-833128.

"Q What was your last unit?"

"A I was in the 12th Company, 3rd Battalion, 2nd Pz. Gren. Regiment of the 1st SS Pz. Div.

"Q When and where were you captured?"

"A On 24 December 1944, at La Gleize, Belgium.

"Q Describe briefly your movements during the Ardennes counter-offensive until your capture.

"A We advanced to the west, coming to a fork in the road on 17 December 1944. One road led to Malmedy and the other to St. Vith. Near this fork there was a burning building, and not far from the building there lay the bodies of approximately fifty American soldiers.

"Q Had these American soldiers been shot before or after capture?"

"A I do not personally know whether they were shot before or after capture, but from conversations I had on 19-20 December, after being wounded, I learned from conversations with comrades in the first aid station that these Americans had been shot after capture.

"Q Is it your impression from these conversations that such a war crime actually took place, or do you believe that it might have been merely a wild rumor?"

"A I believe definitely that such a war crime actually took place, because from the way they spoke it was more than just wild rumors that they were repeating.

"Q Did the appearance of these bodies indicate that they had been killed in fight?"

"A The fact that they were lying all over each other in an open place indicates that they were not killed in fight but only after having surrendered and been collected in a group.

"Q Describe briefly what happened after you passed this spot.

"A We proceeded in the general direction of St. Vith, seeing a few bodies of American soldiers who had apparently been shot during combat. We skirted around Malmedy, going through Stavelot to LaGleize. I was wounded between Stavelot and LaGleize on 18 December 1944.

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"Q What happened then?

"A I was brought to the first aid station located in the cellar of a large castle in the town of LaGleize.

"Q How long did you remain in this first aid station?

"A I remained there from 18 December to 24 December. We had no hospital beds, but lay upon straw on the floor.

"Q During your stay, while being treated for your wounds in LaGleize, from the 18th to the 24th of December, did you have any contact with or knowledge of any American prisoners of war in the vicinity?

"A Yes. After a few days I was able to get around town, since I was wounded only in the arm. On 23 December 1944 I personally saw approximately 180 to 200 American prisoners of war kept under guard in a church in the middle of the town.

"Q What happened to them?

"A During the night of 23-24 December, Obersturmbannführer Feiper, the leader of Combat Team Feiper, gave us wounded a harangue in which he said that all who could not retreat to safety would have to be left to be captured by the Americans. He also said not to worry, because he would try to arrange to have us exchanged in return for some Americans who were our prisoners of war. After this talk Feiper left with all those who could walk. We never saw him again. The next morning, after being captured, we were not brought near to the church, so I cannot say from personal observation what happened to the approximately 200 Americans I had seen there. I know that some of them must have been killed or injured by artillery fire because the church was severely damaged. I have the feeling, however, that it is very possible that foul play was worked on such prisoners of war by the retreating German soldiers under Feiper's command.

"Q What reasons can you adduce to support this feeling?

"A Feiper was a very brutal, cruel and ruthless commander. It was quite a common saying among the soldiers that the order for the shooting of the approximately 50 American prisoners of war mentioned at the beginning of this interrogation had been given by Feiper. From this fact I believe it to be quite possible and even likely that Feiper ordered the execution of American prisoners of war in or near LaGleize before he retreated to avoid their liberation by the advancing Americans.

"Q After your capture, did you hear any rumors regarding the fate of the 200 American prisoners in the church?

"A No. Sometimes we wondered why Feiper did not keep his promise about releasing us through exchanges of prisoners of war, but we all agreed that he was a liar and a no-good, because he was one of the worst of the SS crowd. No

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one that was captured seemed to know anything about the fate of the 200 Americans. Sometimes we discussed what might have happened to them, and occasionally I voiced my belief that they had met with foul play. Sometimes others would agree with me and sometimes they would not. I can state with certainty, however, that nobody knew for sure that these 200 Americans were alive and retaken by the Americans.

"Witness excused.

"CERTIFICATE OF OATH

"I, Joseph M. Parvis, Jr., Captain, Infantry, a Summary Courts Martial Officer at Fort George G. Meade, Maryland, hereby certify that German prisoner of war Lothar Hartig, ISN 31G-833128 personally appeared before me at Fort George G. Meade, Maryland, on 1 May 1946, and, after being duly sworn on oath by me, gave the foregoing testimony concerning war crimes.

JOSEPH M. PARVIS, Jr.,
Captain, Infantry
Summary Courts Martial Officer
at Fort George G. Meade, Md.

"CERTIFICATE OF TRANSLATION

"We, Paul A. Neuland, Major, QMC, and Gerard Droller, 1st Lt., CMC, hereby certify that we are fluent in both the German and English languages and that the foregoing is an accurate English translation of the questions stated by us in German and of the answers given in German as testimony under oath before Captain Joseph M. Parvis, Jr., at Fort George G. Meade, Maryland, on 1 May 1946, by German prisoner of War Lothar Hartig, ISN 31G-833128.

PAUL A. NEULAND, Major, QMC
GERARD DROLLER, 1st Lt., CMC"

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Tk #346-SR-7/9-1

LT. COL. DWINELL: The Defense moves to strike the evidence on the grounds previously stated with respect to Prosecution Exhibit P-132.

LAW MEMBER: The statement just read by the Prosecution and admitted in evidence as Exhibit P-133 will be stricken from the evidence upon the renewal of the motion of the Defense and its contents will be disregarded by the Court.

PROSECUTION: Then there is no need to translate that?

LAW MEMBER: No.

PROSECUTION: Prosecution offers in evidence the affidavit of Elwain Cranford, dated 24 May 1946, at Atlanta, Georgia, and requests that it be attached to the Record and marked Prosecution Exhibit P-134.

(Whereupon the document referred to was marked Prosecution Exhibit P-134 by the Reporter.)

DEFENSE COUNSEL: The same suggestion is made by the Defense, even though the classification is "Restricted."

PRESIDENT: The Court will decide in this exhibit as in the previous case for the same reason. The exhibit offered by the Prosecution is admitted in evidence and will be marked Exhibit P-134, subject to later objection by the Defense.

(Whereupon the document referred to, having previously been marked Prosecution Exhibit P-134, was received in evidence, is attached hereto and made a part hereof.)

PROSECUTION: Prosecution requests permission to read its exhibit marked Exhibit P-134.

PRESIDENT: Granted.

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Tk #346-SR-7/9-2

(Whereupon Lt. Col. Ellis, the Trial Judge Advocate,
proceeded to read Prosecution Exhibit P-134 as follows:

"For the WAR CRIMES OFFICE

Judge Advocate General's Department -- War Department
United States of America

In the matter of the finding of the
bodies of approximately 200 American
prisoners of war at La Gleize, Belgium,
who were presumably killed after their
surrender to the Germans, on or about
22 December 1944.

Perpetuation of testimony
of Elwain Cranford,
Civilian - formerly
Sgt., 34195003, 607th
Graves Registration Co.,
Quartermaster Corps.

Taken at: 157 Rumson Road, NE, Atlanta, Georgia.
Date: 24 May 1946
In the presence of: Charles T. McGinnis, Special Agent,
Security and Intelligence Corps.
Reporter: Martha M. Scott, Stenographer.
Questioned by: Charles T. McGinnis.
Q. State your name, former rank, serial number, permanent home
address and telephone number.
A. Elwain Cranford, Sgt., 34195003; 157 Rumson Road, NE, Atlanta,
Georgia; Ch 3523.
Q. What was the place and date of your birth?
A. Palmetto, Georgia, 29 August 1919.
Q. What was the extent of your education, and your civilian
occupation prior to your entry into the Service?
A. I finished the 8th grade, public school, College Park, Georgia,
and prior to my entry into the Service, I was unemployed.
Q. Have you been questioned previously by any military or naval
authority about this incident?
A. No.
Q. Have you recently returned to the United States from overseas?
A. Yes. I returned to the United States in November, 1945, and
received my discharge on 9 November 1945, at Fort McPherson,
Georgia.
Q. What was your organization overseas?
A. 607th Graves Registration Co., Quartermaster Corps.
Q. Are you familiar with the circumstances surrounding the

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finding of the bodies of approximately 200 American prisoners of war at La Gleize, Belgium, who were presumably killed after their surrender to the Germans, on or about 22 December 1944?

A. Yes.

Q. State what you know, of your own knowledge, about this incident.

A. On or about 22 December 1944, a group of about 200 American prisoners of war were brought to Henri-Chapelle, Belgium, an American Cemetery Area, and it was general knowledge among the grave diggers that this group of 200 Americans had been killed after they had surrendered to German forces. I also recall that photographers, whom I believe were Signal Corps men, were assigned to photograph the bodies, which were given identifying numbers before being photographed in various positions, i.e. front, side, and back. I believe that these American prisoners of war were murdered, because the bodies bore evidence of numerous bullet wounds, and many of these bullet wounds indicated that the bullets had entered the back of the bodies and emerged in the front of the bodies, indicating that the men had been fired on from behind. I also observed that many of the bodies were terribly mangled, as if the men had received "bursts" from machine guns. I was in charge of the registering of these bodies and was told by more than one person that these bodies had been brought to the cemetery from La Gleize, Belgium.

(signed) Elwain Cranford
ELWAIN CRANFORD

State of Georgia
County of Fulton

I, Elwain Cranford, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

(signed) Elwain Cranford
ELWAIN CRANFORD

Subscribed and sworn to before me, this 29th day of May 1946.

(signed) Agnes G. Weaver
Notary Public, Georgia, State at Large
My Commission Expires 3-17-47

C E R T I F I C A T E

I, Charles T. McGinnis, Special Agent, S.I.C., Hq. 4th Svc, certify that Elwain Cranford, 157 Rumson Road, N.E., Atlanta, Georgia, personally appeared before me on 24 May 1946, and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

(signed) Charles T. McGinnis
CHARLES T. MCGINNIS,
Special Agent, S.I.C.

Dated 29 May 46"

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Tk #356-SR-7/9-4

LT. COL. DWINELL: The Defense moves to strike the evidence on the grounds previously stated with respect to Prosecution Exhibit P-132.

LAW MEMBER: The document, although it contains a number of conclusions and assumptions which will be disregarded by the Court, will be admitted in evidence for whatever value it may have. The Court will particularly disregard the heading and such other conclusions which it may contain

(Whereupon the document Prosecution Exhibit P-134 was translated into the German language by the interpreter.)

PROSECUTION: If the Court please, we have only one more short statement which will conclude our evidence. Would you care to hear it before you recess?

PRESIDENT: Yes.

PROSECUTION: Prosecution offers in evidence the affidavit of Charles H. Holcomb, taken at Tallapoosa, Georgia on 28 May 1946, to be marked Prosecution Exhibit P-135 and attached to the Record.

(Whereupon the document referred to was marked Prosecution Exhibit P-135.)

DEFENSE COUNSEL: The Defense desires to make the same suggestion as we did in Prosecution Exhibit P-134 and desires further to reserve the right of objection until the reading of Prosecution Exhibit P-135.

PRESIDENT: The Court will accept the document for the reasons previously stated and the exhibit is admitted in evidence and will be marked Exhibit P-135, with the privilege to the Defense to make further objection.

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Rk #356-SR-7/9-5

(Whereupon the document referred to, having previously been marked Prosecution Exhibit P-135, was received in evidence, is attached hereto and made a part hereof.)

PROSECUTION: Prosecution requests permission to read its exhibit marked P-135.

PRESIDENT: Granted.

(Whereupon Lt. Col. Ellis, the Trial Judge Advocate, proceeded to read Exhibit P-135 as follows:

"For the WAR CRIMES OFFICE

Judge Advocate General's Department -- War Department
United States of America

In the matter of the finding of the bodies of approximately 200 American prisoners of war at La Gleize, Belgium, who were presumably killed after their surrender to the Germans, on or about 22 December 1944.

Perpetuation of testimony of Charles H. Holcombe, Civilian - formerly Pvt., 34821525, 970th Service Company.

Taken at: Tallapoosa, Georgia.
Date: 28 May 1946.
In the presence of: Charles T. McGinnis, Special Agent, Security and Intelligence Corps.
Reporter: Martha M. Scott, Stenographer.
Questioned by: Charles T. McGinnis.

- Q. State your name, present address, former rank, and Army Serial Number.
- A. Charles H. Holcombe, Tallapoosa, Georgia. I was formerly a Private in the 970th Service Company.
- Q. What was the place and date of your birth?
- A. I was born in Tallapoosa, Georgia, 25 December 1916.
- Q. What was the extent of your education, and your civilian occupation prior to your entry into the Service?
- A. I attended County School for two years, and prior to my entry into the Army I worked in a Planer mill and a Heading mill, both lumber finishing.

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Tk #356-SR-7/9-6

- Q. Have you been questioned previously by any military or naval authority regarding your knowledge of atrocities and/or mistreatment of American soldiers by the enemy?
- A. No.
- Q. Have you recently returned to the United States from overseas?
- A. Yes. I returned to the United States in December, 1945, and received my discharge on 22 December 1945, at Ft. McClellan, Alabama.
- Q. To what organization were you assigned overseas?
- A. 970th Service Company, attached to 82nd Airborne Division.
- Q. Are you familiar with any of the circumstances pertaining to the finding and burial of approximately 200 bodies of American prisoners of war at or near La Gleize, Belgium, on or about 22 December 1944?
- A. Yes.
- Q. State what you know of your own knowledge, of this incident.
- A. On or about 22 December 1944, I was driving a truck which was being used to move bodies of American soldiers to the cemetery between Liege and Aachen. On this date my truck, along with another soldier, name not recalled, were sent to La Gleize, Belgium, to pick up about 200 bodies of American soldiers. My helper and I arrived in La Gleize and were directed by Belgian civilians to a prison compound. When we arrived at the prison compound I observed that there were approximately 200 bodies of American soldiers lying in lines as if the prisoners had been lined up and shot while in single file or double file formation. The bodies were not lying in one continuous line, but appeared to be in numerous groups. At the time I saw the bodies lying in the compound, there appeared to be no other solution to this crime, other than that these American prisoners had been lined up and shot down. Some of these bodies were clothed, but many of the bodies had no clothing at all on them. There is not the slightest doubt in my mind that these American prisoners were shot down after having been captured by the Germans, as there were no weapons lying near the bodies, some were no clothing, and these approximately 200 bodies were inside a prison compound, or fenced-in enclosure. Some of these bodies were personally loaded onto the truck by me and were taken to the cemetery between Liege, Belgium, and Aachen, Germany, for burial. It was generally conceded by all the soldiers, officers and enlisted men, whom I heard talk of the finding of these approximately 200 bodies, that the American prisoners had been lined up and murdered by their German captors.

(signed) Charles H. Holcombe
CHARLES H. HOLCOMBE

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Ex #346-SR-7/9-7

State of Georgia
County of Haralson

I, Charles H. Holcombe, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

(signed) Charles H. Holcombe
CHARLES H. HOLCOMBE

Subscribed and sworn to before me, this 31 day of May 1946.

(signed) Mittin McLeroy
My commission expires 9-8-46

CERTIFICATE

I, Charles T. McGinnis, Special Agent, S.I.C., Hq, 4th Svc, certify that Charles H. Holcombe, Tallapoosa, Georgia, personally appeared before me on 28 May 1946, and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

(signed) Charles T. McGinnis
CHARLES T. MCGINNIS
Special Agent, S.I.C.

Date: 31 May 46"

LT. COL. DWINELL: The Defense moves to strike the evidence on the grounds previously stated with respect to Prosecution Exhibit P-132. The Defense would like to call the Court's attention to the fact that in giving credence to this statement, apparently the Prosecution is now asserting that on 22 December La Gleize was not in German hands.

PROSECUTION: If the Court please, I believe the statement says "on or about 22 December 1944."

LAW MEMBER: The statement will be admitted in evidence for the same reasons given by the Court in the admission of Exhibit P-134 and the Court will specifically disregard the heading and any other matters in the exhibit which are conclusions or opinions. The motion of the Defense is denied.

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(Whereupon the document Prosecution Exhibit F-135 was translated into the German language by the interpreter.)

PROSECUTION: If the Court please, this concludes the Prosecution's evidence. Do you desire any witnesses to be recalled?

PRESIDENT: The Court does not.

PROSECUTION: If the Court please, the Prosecution is ready to proceed with its final argument. This argument has been translated into German. We understand the Defense has its argument likewise. To save time, it is respectfully suggested that it be read to the accused either in their quarters or at some other convenient and suitable place.

LAW MEMBER: Does the Defense have any objection at this time or does it wish to raise it after the recess?

DEFENSE COUNSEL: After the recess or at your convenience, either way. I think in view of the past rulings of the Court, it would seem -- we would like to cooperate in any way and your directions will be followed -- but it seems that it should be read in open court.

LAW MEMBER: The Court might offer this suggestion to the Defense to take into consideration during the recess, and that is, that final argument is specifically for the benefit of the Court and no one else and as such, the translation of the argument from English to German, or the reading of the argument from English to German in the courtroom itself would mean nothing to the Court and would appear to be just a mere extension of time with the exception of the argument of German counsel, which will obviously have to be translated into English. However, suppose we have your opinion after the recess.

PRESIDENT: Court will recess until 1330 hours.

(Whereupon at 1200 hours Court recessed until 1330 hours.)

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AFTERNOON SESSION

(Whereupon the Court reconvened at 1350 hours, 9 July 1946.)

PRESIDENT: Take seats. The court will come to order.

PROSECUTION: If the Court please, let the record show that all the members of the Court, all members of the Prosecution with the exception of Capt. Byrne who has been excused by verbal orders of the Commanding General, Mr. Elowitz who is sick in his quarters, all members of the Defense with the exception of Dr. Leer, who is absent on business of the Defense, and all of the defendants and the reporter are present.

DEFENSE: The only desire the Defense has in having the opening argument translated is for the benefit of the German counsel, who most certainly are entitled to know the contents of the Prosecution's argument in order to meet the same in their final argument. If several copies of the German translation had been available, it would have met this situation. The Defense will abide by any decision of the Court in this matter.

PROSECUTION: If the Court please, we have one German translation of the closing argument of the Prosecution, which we would be very happy to loan to the German Defense counsels which they can be using, while we present the argument to the Court. That will save the time of having it translated.

DEFENSE: May it please the Court, if the Court would excuse the German counsel, they could take this one copy and be reading it while Col. Ellis delivers the English translation.

PRESIDENT: If that is agreeable to the Defense, we will follow that procedure.

(Whereupon the German counsel withdrew from the court.)

PROSECUTION: If the Court please, the Prosecution is ready to proceed with its final argument.

LAW MEMBER: Before proceeding with the final argument, I

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think it would be well if both the Prosecution and Defense would outline to the Court its method of presenting the final arguments, the time, numbers of persons who are going to present argument, and whether or not the argument will be Prosecution, Defense, Prosecution, Defense, or simply Prosecution, Defense and then, rest.

PROSECUTION: If the Court please, the Prosecution has anticipated that the final argument would be made by Capt. Shumacker and by the Trial Judge Advocate. The time will be approximately two and a half to three hours. It has been written. First comes a discourse of the law, then the facts, and then the final pleading. According to the outline of procedure, it is my understanding and interpretation of the law that the Prosecution opens the argument, the Defense closes it, and we do not have a rebuttal.

LAW MEMBER: That is correct, and of course, in every instance the Defense would have the last argument. The Court would just wish to know whether you were going to proceed with your entire argument in one session or break it into two or three different sessions, of course, the Defense always having the last argument?

PROSECUTION: We understand that, and we tended to give all our argument; that is, it would probably take most of the afternoon, and we would give the Court a copy of our argument now.

LAW MEMBER: How will the Defense proceed?

DEFENSE: On the Defense we will present the argument approximately as follows: Col. Dwinell will make the opening, on behalf of the officers; Mr. Walters will follow on behalf of the non-commissioned officers, and Col. Sutton on behalf of the enlisted men. The anticipated time of these three arguments will be a little less than two hours. Dr. Rau, Dr. Wieland, Dr. Hertkorn, Dr. Pfister, Dr. Leer and Dr. Leiling will follow with short, twenty-minute arguments each, which will amount to approximately two hours. It is my plan to conclude with a short argument of maybe five or ten minutes.

LAW MEMBER: Thank you.

PROSECUTION: We are ready to proceed.

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CAPTAIN SHUMACKER: May it please the Court, approximately 18 months ago the Battle of the Bulge was in its final phases and the Allied world was once again sensing that victory was within its grasp. At about the same time the horrors of warfare against a ruthless enemy were made known to the American people by the release of the news of the Malmedy massacre. They were shocked as only a peace loving people can be shocked. Almost simultaneously came the announcement by the War Department that the perpetrators of that infamous crime would be brought to justice. Today, after seven weeks of trial, the alleged perpetrators of this massacre, together with their comrades, the alleged perpetrators of other murders during the battle, are rapidly approaching that moment when they stand before you at the bar of justice awaiting your findings. At that same instant the War Department will have fulfilled its pledge to the American people. This duty which has been placed upon you, as judges in this case, is not a pleasant one. It is not one to be sought after as the responsibilities that go with what you do here are far reaching and your decision will live long after all of us here today, have passed on. You will be creating new law, new precedents and you will determine to what extent those who conduct military operations in all echelons of command are responsible for the acts of troops whose excesses are unrestrained by orders or the efforts of such commanders. The peace loving people of the world want to be assured that those who have no regard for the laws of war, who wilfully, knowingly and deliberately violate such laws without regard to the consequences cannot do so with impunity. At the conclusion of this case the

(Prosecution Argument)

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people of the world will know what the instigators and perpetrators of unrestrained Ghengis Khan warfare can expect when they are brought before the bar of justice for their acts.

If it please the Court and with the Court's indulgence the Prosecution would like to bring to the attention of the Court a few questions of law that the issues have raised in this case.

Firstly we should like to cite the laws that these accused have violated. The charge alleges "Violation of the Laws and Usages of War." Without touching at this moment on the guilt of each individual accused, we believe there can be no question but what the following rules of war were violated in this offensive:

Article 2 of the Geneva Convention of 1929, reading as follows:

"Prisoners of war are in the power of the hostile power, but not of the individuals or corps who have captured them.

They must at all times be humanely treated and protected, particularly against acts of violence, insults and public curiosity.

Measures of reprisal against them are prohibited."

Article 46 of Section III of the Hague Convention, dealing with "Military Authority over the Territory of the Hostile State". reading as follows:

"Family honour and rights, the lives of persons and private property, as well as religious convictions and practice, must be respected.

Private property cannot be confiscated."

The bodies of unarmed American soldiers piled close together at Honsfeld, Buellingen, the Cross-Roads, Engelsdorf, Stoumont, La Gleize and Petit Thier, and the bodies of civilians in Stavelot, Wenne and Lutre Bois constitute irrefutable if mute evidence that these rules of war were violated between 16 December 1944 and 13 January 1945 all along the route of advance of Peiper's combat group.

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Secondly, may it please the Court, we should like to discuss briefly just what constitutes a violation of these international rules. We charge that the accused did "wilfully, deliberately and wrongfully permit, encourage, aid, abet and participate in the killing, shooting, ill-treatment, abuse and torture of unarmed prisoners of war and unarmed allied civilians." It is apparent, of course, that any person who has shot or killed or otherwise ill-treated a prisoner or an allied civilian has violated the laws just cited. We submit that one who has wrongfully permitted, encouraged, aided or abetted such acts is equally guilty, and that even upon superficial study and consideration, his guilt is just as apparent. The Prosecution has in mind here those officers and non-commissioned officers whose orders and speeches prior to the offensive and whose direct orders in specific instances during the offensive resulted in the violation of these elementary rules of war.

In most instances, as shown by the evidence, those officers and non-commissioned officers were not actually present when the prisoners and unarmed civilians were shot. Under the common law these officers and non-commissioned officers, under the facts of this case, probably would have been called accessories before the fact. In most jurisdictions now, however, distinctions between accessories before the fact and principals have been abolished and such an accessory is indictable and punishable as a principal. We quote from Note 2, page 324 of Volume I, Wharton's Criminal Law:

"Distinction between accessories and principals. --

According to Sir J. F. Stephen, 'there was (by the old law) no distinction between principals and accessories in treason and misdemeanor, and the distinction in felony made little difference, because all alike, principals and accessories, were felons, and as such punishable with death.' 2 History Crim. Law, 231.

The Prosecution submits, however, that a detailed discussion

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of the criminal responsibility of an accessory before the fact is purely academic for the reason that these officers and non-commissioned officers became principals and violated the rules of war when they gave their orders or made their speeches to shoot prisoners of war or to take no prisoners of war. We urge that the wording of the Geneva Convention places an affirmative duty and obligation on such persons to protect prisoners of war and non-combatant civilians. The orders they gave and the speeches they made constituted, to say the very least, a criminal breach of their duty. This view is vigorously supported by the opinion of the Supreme Court of the United States in the Yamashita case and we quote from that opinion:

"It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders or efforts of their commander would almost certainly result in violations which it is the purpose of the law of war to prevent. Its purpose to protect civilian populations and prisoners of war from brutality would largely be defeated if the commander of an invading army could with impunity neglect to take reasonable measures for their protection. Hence the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates.

"These provisions plainly imposed on petitioner, who at the time specified was military governor of the Phillipines, as well as commander of the Japanese forces, an affirmative duty to take such measures as were within his power and appropriate in the circumstances to protect prisoners of war and the civilian population."

The Defense will no doubt urge that these orders to take no prisoners of war did not mean that prisoners were to be shot, but that the Infantry following behind were to take care of the prisoners and move them to the rear. Taking the most charitable view of the defendants' contention, supported by what we consider most untrustworthy and uncreditable evidence, it might be admitted for the sake of argument that orders were issued in some instances that did not expressly direct that prisoners of war must be shot. We refer

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to such expressions as "a wave of fright and panic and terror must precede our advance"; "everything before our guns will be mowed down"; "we will avenge the bombing terror, and you will remember your homes and dear ones who have perished in the bombing terror"; "humane inhibitions will not be shown"; and "prisoners of war will not be taken." These expressions, when coupled with an inciting appeal to troops, trained in ruthless methods of warfare, were certainly capable of the interpretation placed upon them by the soldiers and the subordinate officers who are accused in this case. It is inconceivable that this many men in addition to the approximately one hundred and fifty who shot prisoners and unarmed civilians during this offensive, according to the proof, who are not accused before the Court, could act in direct disobedience to orders that were given them. All the evidence in this case indicates that the soldiers and officers in Peiper's combat group were well disciplined. We submit, therefore, that where specific orders to shoot prisoners of war were not given the other expressions that were used were easily capable of the interpretation placed upon them by the accused before this Court.

The law is well settled that an accessory before the fact is criminally responsible with any misconstruction which lack of clarity or ambiguity may produce. On the subject of accessoryship, the following is found in the Notes on page 359 of Wharton's Criminal Law, Volume I:

"Accessory before the fact is not liable for any malicious excursions made outside of the range of employment, by the perpetrator. It should be remembered, however, that the instigator may often use ambiguous terms: 'Get me this thing anyhow'; or 'Bring me this man alive or dead.' If so the instigator is chargeable with any misconstruction the ambiguity may produce."

The Prosecution strongly urges, therefore, that the criminal culpability of all officers and non-commissioned who were links in this order-chain is overwhelming and that they cannot escape the

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demands of justice by hiding behind the skirts of their well disciplined troops who, according to their theory, indulged in the excesses it was their duty to restrain through either wilful disobedience to orders or a misinterpretation of their true meaning.

Thirdly, the Prosecution desires to make a few observations on those elements of proof which are essential to establish an overt act of shooting or killing a prisoner of war or an unarmed civilian. The same measure of proof that might be required in a murder case in our criminal courts in the United States is not required. The Court need only be satisfied that evidence of probative value has been received that convinces it that the crime alleged was committed. We are not required to name the victim. We are not required to produce his body. Such proof, insofar as war crimes committed in a combat zone, is well nigh incapable of being gathered and presented to any court. The reasons are obvious, we are sure, to this Court composed of Army officers whose experience and knowledge of such matters make a recital of such reasons superfluous. Despite these difficulties, proof has been introduced to show that the bodies described by several of the accused as lying on the left side of the road at the exit of Honsfeld opposite the parked SPW of Ernst Goldschmidt, who stood with pistol in hand, were found and seen by two German soldiers whose affidavits are in the record; many bodies, of course, were found at the crossroads north of Engelsdorf; the bodies of those prisoners shot in the head by the accused Paul Oehmann assisted by Suess of Rumpff's Company in Ligneuville, were seen by the Belgian woman who testified before this Court; there is ample evidence that over a hundred unarmed Belgian civilians, many of them women and children, were

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killed in and near Stavelot; some bodies were found in Stoumont, especially those killed by Sprenger and Billoschetsky at the instance of the accused Schaefer and Sievers and others shot by Altkruenger were seen by Boltz when they were shot. The body of Kuehn's victim in Lutre Bois lies buried in that village and the grave of Wichmann's prisoner shot at Petit Thiers on orders of Sickel and Peiper, was found by a civilian resident of the nearby Chateau at the very spot where Wichmann says he shot him. And finally, there is ample proof of the bodies found in La Gleize and moved from there to the Henri Chapelle Cemetery in Belgium.

There is no accused charged with shooting prisoners of war or unarmed civilians where there is not proof, either from him, his comrades or some other person, that the victims fell after the shooting and from all appearances, was dead.

Fourthly, the Prosecution would like to direct the Court's attention to confessions of the accused, the weight that should be given them, and the manner in which these statements were secured.

In its opening statement and in the presentation of its case in chief, the Prosecution frankly and fully disclosed the methods employed to elicit the information contained in the statements of the accused. These methods included a ceremony remotely akin to a mock trial, the confronting of suspects with bona fide and occasionally false witnesses, confronting a suspect with his comrades who had already confessed, and so forth. Despite an attempt by the accused to show that a few of the statements were obtained by force, we are confident that no convincing evidence of such methods is to be found in the Record. All such claims have been denied and a study of the Record, with particular attention being paid to the dates of the various statements, warrants the inescapable conclusion that once one

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or two men in a company started talking, the picture unfolded rapidly and other men in that company, when confronted by the first comrade who talked, began to talk themselves, admitting not only their own crimes, but revealing those committed by others. It must be further apparent to the Court from the demeanor of those accused who took the stand and from the witnesses who testified for both the Prosecution and the Defense, that there is an unrestrainable urge or tendency on the part of these Germans at least, to talk freely, fully and at great length. This habit or characteristic, or whatever it might be termed, was obviously a tremendous aid to the interrogators.

The use of tricks and subterfuges to obtain confessions is well recognized under the law. We quote from Wharton's Criminal Evidence, Volume II, page 1043 and ff. pages:

"Some of the general subterfuges used in obtaining confessions, in which the courts have admitted the confessions as evidence, are as follows:

- a. Stating to the accused that an accomplice or other person has made a damaging statement against him, implicating him in the crime. (Osborn v. People, 83 Colo., 4; McIntosh v. State, 105 Neb., 328)
- b. Assuring the accused that his confession will not be disclosed. (Com. v. Knapp, 9 Pick. (Mass), 496, White v. State, 70 Ark., 24)
- c. Misinforming accused as to the quantum and character of the state's evidence. (People v. Costello, 194 Cal., 595 Com. v. Spardute, 378 Pa., 31.)
- d. Engineering a conversation before a concealed witness. (Renaher v. Com., 172 Ky., 714)
- e. Placing an agent of the Prosecution, disguised as a fellow prisoner in the cell with the accused. (People v. Lipszinska, 212 Mich., 484)"

We respectfully urge that great weight should be given these confessions. There is ample proof in the Record that these troops and officers were well trained and well disciplined. Combat was not new to them and death itself was commonplace. It is

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inconceivable that such men who knew and understood the subject of the investigation would write with their own hands that they killed prisoners of war and then their comrades did likewise, describing the incidents with great detail, illustrating them with detailed sketches, if they were not true. It must be apparent to the Court that the mass of detail furnished by the accused had to come from them, as only in one or two instances involving the shooting of prisoners were there any survivors to tell the tale. How then can it be seriously contended as was frequently indicated by the Defense, that these killings of unarmed prisoners of war and allied civilians are without basis and are pure figments of imagination on the part of the interrogators?

If the accused were willing to write anything suggested by the interrogator, why, for example, was Peiper unwilling to confess the details of the Hillig shooting in Stoumont when he freely admitted the story of the shooting by Wichmann of the starved and frozen prisoner in Petit Thier? Why did the accused Hammerer, implicated by other accused at Honsfeld and the crossroads, confine his confession to the single prisoner he shot in the town of Stoumont? Why did the accused Willi Schaefer deny having shot or ordered any shooting of PW's at the crossroads, though charged by other accused with so doing and confine his confession to the orders given Sprenger and Billoschetsky in Stoumont?

And if through force or other means, the interrogators with great facility, were able to get confessions that in reality were stories of their own making, rather than admissions of the suspects interrogated, why were not such confessions forthcoming from such men as Oskar Tratt and Gerhard Taut, both of whom testified for the Defense, against whom there is evidence in the record that they were seen in the field at the crossroads? (R. 624, 625 and 1400.) A

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Careful examination of such proof will show that no witness or accused was able or willing to swear that Tratt or Taut actually fired a weapon. Although it was apparent and must be obvious to the Court that no German soldier entered this field, except for the purpose of killing those who remained alive and robbing the dead, these two men did not confess and in the absence of further incriminating evidence other than just mentioned, were not named as an accused before this Court. Further on this subject of the interrogators being able, by force or other means, to get statements from suspects in words of their own instead of dictating the information given by the suspects themselves, we refer the Court to the statement made by the accused Ernst Goldschmidt, implicated by several co-accused in the Honsfeld shooting, the shooting at the crossroads, and two separate shootings in Stoumont, in which he denies all knowledge of any orders directing or permitting such conduct, and all knowledge of any shooting of prisoners of war except those shot at the crossroads north of Engelsdorf which shooting, according to his statement, had already taken place before his arrival on the scene.

For the reasons given and for many more, too obvious and numerous to mention, we respectfully and strongly urge upon the Court that great weight be given these confessions in line with the principles set forth in the Manual for Courts Martial, reading as follows:

"Where, however, a confession is explicit and deliberate as well as voluntary, and if oral, is proved by a witness or witnesses by whom it has not been misunderstood and is not misrepresented, it is indeed one of the strongest forms of proof known to the law."

Lastly, and in anticipation of argument that might be advanced by the Defense, we should like to consider together the proposition of criminal acts executed pursuant to superior orders and criminal acts perpetrated as a matter of so-called "military necessity."

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Despite the fact that no accused has seen fit to take the witness stand, admit his misdeeds and urge superior orders as an excuse or defense, the Prosecution feels that in fairness, this question should be brought to the attention of the Court and the law cited for its consideration and guidance. Law No. 10 of the Allied Control Council dated 20 December 1945 in Berlin, provides in Article II, paragraph 4 (b) as follows:

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

This principal of law has been followed in the Dachau Concentration Camp case, in the so-called Hadamar Case, both of which cases have been reviewed with a confirmation of the findings on this question, and in other cases involving war crimes. Furthermore, there is the case of Dithmar and Boldt, a war crimes case tried by the Germans themselves in 1921 following the first world war, a report of which case is found in 16 American Journal of International Law, page 708. This case is more commonly known as the Llandoverly Castle case. This case involved the sinking of a hospital ship by a torpedo from a German U-boat. Following the sinking of the vessel, life-boats carrying the survivors were purposely sunk, resulting in the death of the occupants. One of the defenses advanced by the accused was that they acted on the orders of a superior officer, the captain of the U-boat, who was not in custody or at least not an accused before the court at the time of the trial. On this issue the German court said:

"Fatzig's order does not free the accused from guilt. It is true that according to paragraph 47 of the Military Penal Code, if the execution of an order in the ordinary course of duty involves such a violation of the law as is punishable, the superior officer issuing such an order is alone responsible. According to No. 2, however, the subordinate obeying such an order is liable to punishment, if it was known to him that the order of the superior involved the infringement of civil or military law. This applies in the case of the accused. It

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is certainly to be urged in favor of the military subordinates, that they are under no obligation to question the order of their superior officer, and they can count upon its legality. But no such confidence can be held to exist, if such an order is universally known to everybody, including also the accused, to be without any doubt whatever against the law. This happens only in rare and exceptional cases. But this case was precisely one of them, for in the present instance, it was perfectly clear to the accused that killing defenseless people in the life-boats could be nothing else but a breach of the law. As naval officers by profession they were well aware, as the naval expert Saalwaechter has strikingly stated, that one is not legally authorized to kill defenseless people. They well knew that this was the case here. They quickly found out the facts by questioning the occupants in the boats when these were stopped. They could only have gathered, from the order given by Patzig, that he wished to make use of his subordinates to carry out a breach of the law. They should, therefore, have refused to obey. As they did not do so, they must be punished..."

The evidence in the Record is scant as to the exact nature of the training received by the troops of the units involved in this case with respect to the treatment and protection to be afforded prisoners of war and civilians of a hostile state. What evidence there is indicates at least that such training was ordered. It is a fair presumption, we believe, irrespective of the proof, that all soldiers and officers of all nations know this fundamental rule of war. It is so basic that it is common knowledge among laymen of all civilized nations. It is a reasonable conclusion and an inescapable one, that each of the accused, upon being ordered, directed, encouraged or permitted to shoot unarmed prisoners of war and civilians of a hostile state, knew that such conduct was not only morally wrong, but was an illegal act in violation of the rules of war. If the cowardly shootings and murders perpetrated by these accused were to go excused or the punishment therefor materially mitigated by virtue of such orders, a mockery will be made of the law itself and the only person receiving full punishment would be the initial instigator himself, - in this case, Hitler already presumed to be dead.

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Pros Arg-SR-13

We recognize the principle of strict obedience to orders in any army; that such obedience is a bulwerk of a well disciplined and efficient military organization. We do not concede, however, that such obedience need be blind to be effective. We do not believe that obedience to orders which contravene and deny all principles of decency, of morality, of ethics and of fair play, even in war, can bring forth admiration or even understanding. Rather, should it precipitate unqualified condemnation from all civilized people, friend and foe alike, especially from the honorable profession of arms.

The Prosecution believes that the Defense cannot seriously argue the so-called defense of "military necessity". It might be argued that in some extreme situations, such conduct might be justified. Certainly, no such situation presented itself to the Germans in this offensive. They knew before the offensive started that they were weak and that the offensive was a desperate one. This was not a case where prisoners were shot at one isolated spot where they could neither be left nor taken along as captives. The shooting started in Honsfeld and continued even after Peiper's Combat Group walked out of the encirclement. We are confident that if such defense is argued the Court can give it no consideration.

The Court has been extremely patient and attentive to all the evidence introduced by both the Prosecution and the Defense. We feel that a complete resume of all the evidence as to each accused and as to each incident is unwarranted and would be a simple repetition for the Court. With the Court's indulgence, therefore, we shall confine our summary in this respect to only some of the accused and some of the incidents covered by the evidence.

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As to the accused Friedrich Christ, Number 7, Christ was the commanding officer of the 2nd Panzer Company of the 1st SS Panzer Regiment. The evidence against him as to the orders he issued prior to the offensive on 15 December 1944 is clear and convincing.

At this point I would like to call the Court's attention to the fact that in reading this argument we will not state the record references by numbers that appear in the copy furnished the Court.

In his own confession dated 17 December 1945, Christ says that his battalion commander Poetschke informed him and the other company commanders that they were to behave towards the enemy in such a way as to create amongst them panic and terror and that the reputation for spreading panic and terror through their behaviour should precede the troops and "In connection with this Poetschke said no prisoners should be taken." Christ was very careful in his confession to state that he added nothing to these orders nor did he take anything away from it when he repeated it to his company. In Christ's supplemental statement he admits, by implication, that he was aware of the seriousness of such an order because he discussed the matter with the commanding officer of the 1st Company and then decided to give the talk to his men.

This is corroborated by the witness Lichtwark, who testified that in substance Christ said no prisoners would be taken. It was further corroborated by the witness Huebler who testified that Christ told his men they were to think of their homes and of the bomb attacks and not to pay any attention to prisoners. When pressed on cross examination for his understanding of such words he replied, "That was a very broad hint" (R. 254). To the same

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general effect was the testimony of Karl Daub, a member of the 2nd Panzer Company during the Bifel Offensive, whose testimony appears on page 257. The men of the 2nd Company were further incited by singing such songs as "Sharpen the Long Knives" (R. 248-258).

Christ took the witness stand in his own behalf and testified that he fully explained to his troops how prisoners of war were to be handled; that they were to be taken care of by the Infantry following behind. His only explanation of the glaring inconsistency between his statements introduced by the Prosecution and his testimony in Court, is that he was surprised and confused by the interrogation relative to the orders he gave on 15 December 1944, despite the fact that he was interrogated at Ebensee in August 1945 (R. 2138) and discussed the matter generally with men of his company at Zuffenhausen in November 1945 (R. 2142). Christ is the man who testified before this Court that the interrogators were encouraging him to commit suicide. (R. 2138).

A careful examination of Christ's testimony on direct and cross examination will convince anyone that he simply does not know how to tell the truth. Had he really issued orders to the men of his company, to the effect that they would not evacuate prisoners because the Infantry following behind would take care of them, how could the witness Huebler have sworn on cross examination by Defense Counsel that Christ's order that no value was to be placed on prisoners of war was a very broad hint?

Christ was seen at the Crossroads south of Malmedy on 17 December 1944 by Hans Joachim Piper, a member of the tank crew of Heinz Rehagel, one of the accused (R. 279,580). Piper also saw Christ speak to Rehagel after which Rehagel entered the turret of his tank and fired 20 to 30 rounds with his machine gun into the prisoners of war (R. 580,582). Rehagel himself states that it was Christ of the 2nd Company who told him to shoot at the Crossroads

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and that "Thereupon I shot with the anti-aircraft M.G. at the prisoners and executed the order therewith." (R. 591).

Christ was the commanding officer of the accused Hans Pletz, Number 43, who shot at prisoners of war in Stoumont on 19 December 1944. Christ was the commanding officer of the accused Heinz Hofmann, Number 25, who fired into a group of 15 to 20 Americans in Stoumont on 19 December 1944 (R. 1316-17) and shot a group of prisoners of war in LaGleize on 22 December (R. 1313). Christ was the commanding officer of the accused Arnold Mikolaschek, Number 37, who shot at prisoners of war on 19 December 1944 in Stoumont on direct orders of Christ (R. 1312). Mikolaschek testified that he, as radio operator, heard accused Christ, immediately prior to the massacre of the prisoners, give the order over the radio to Haupt-scharfuhrer Knappich to shoot the prisoners.

Christ was the commanding officer of the accused Erich Werner, Number 72, who participated in the shooting of 10 to 12 prisoners of war in LaGleize on 21 December 1944 (R. 1350). The accused Werner also swears in his confession (R. 1348) that at that particular place described by Mikolaschek, where the group of 15 to 20 American prisoners were shot at Stoumont on the 19th December 1944, he heard Christ give the order over the radio that the American prisoners were to be shot.

The accused Ritzer participating in the unprovoked shooting of American prisoners, both at the entrance to Stoumont and a few kilometers beyond the western end of Stoumont, stated in his confession that prior to the offensive the accused Christ, in his speech to the Company ordered the men not to take prisoners of war (R. 1305).

The accused Szyperski in his confession (R. 1338) testified

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that he participated in the shooting of two different groups of American prisoners in the late afternoon and evening on the 19th of December in Stoumont. Szyperski also stated in his confession, that prior to the offensive, the accused Christ warned the assembled company that they were not to take prisoners of war.

The accused Heinz Hofmann, also a member of Christ's company testified that on the morning of the 19th of December 1944, at the entrance to Stoumont he participated in the shooting of a group of 15 to 20 American prisoners on the direct orders of Hauptscharfuhrer Knappich, his tank commander.

The facts and circumstances of the murders described and the confessions herein enumerated are corroborated by each of the accused. The Court in its deliberations need but examine the sketches attached to the confessions of the accused just mentioned and will no doubt be struck by the similarity of each of the accused's graphical description of the scene of the murders. Some minor inconsistencies are apparent which would occur if any group of men were to describe the same particular scene after a lapse of a year or more. The main threads of the pattern are definitely woven and are similar in all the sketches.

Christ also commanded the following men who are not in custody and are not accused before this Court, all of whom participated, according to the proof before this Court, in shootings of unarmed American prisoners of war at the places indicated: Hauptscharfuhrer Knappich on 19 December in Stoumont, on the 21st of December in La Gleize and the 22nd of December in La Gleize; Schuetze Herbert Angerer on the 19th December in Stoumont; Unterscharfuhrer Brauschke on 19 December in Stoumont; Untersturmfuhrer Kaufmann on 19 December in the vicinity of Stoumont; Untersturmfuhrer Koch on 19 December in the vicinity of Stoumont; Sturmann Nestler on 19 December in Stoumont; Sturmann Oday on 19 December in the vicinity

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of Stoumont; Oberscharfuhrer Refeter on 19 December in Stoumont.

At the beginning of the Eifel Offensive, Hans Hennecke commanded the 1st Platoon of the 1st Company. On 15 December 1944 Hennecke was present when Kremser, Commanding Officer of the 1st Company assembled his men and made a speech regarding the coming offensive. Hennecke testified in his own behalf and on cross examination admitted that Kremser in substance said the following: "that no prisoners of war will be made; they are to be shot. (R.2207)

In Hennecke's sworn confession he stated that on the same date Kremser made his speech that "we must give no quarter. No prisoners are to be taken" and he repeated this order to several of his tank crews. (R. 241).

The accused Eckmann, in his confession stated that on 15 December 1944 Hennecke gave a "pep talk" to the members of the 1st Platoon and told them, "We will fight ruthlessly. We will show the enemy what the SS is made of. We won't take prisoners of war. We will show the enemy how brutally the SS can fight." (R. 596)

The accused Briesmeister, in his confession, stated that Hennecke during a meeting of the 1st Platoon, stated that "everything that comes before our barrels will be bumped off." (R.787).

On 18 December 1944, at Stavelot, Hennecke assumed command of the 1st Company. On this date Hennecke, in his confession tells about Gelfert, a member of his crew shooting down Belgian civilians, while he, Hennecke, stood in the turret of his, the leading tank. (R. 1004)

The witness Colinet testified that a German soldier standing in the turret of the leading tank fired into a group of Belgians who had passed the tank, killing a man and a woman and wounding two others. Fortunately, the three small children that were a part of the group were uninjured but they might have been. (R. 993-995)

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The accused, Hans Hennecke, as Commanding Officer of the 1st Platoon, 1st Company, is responsible for the acts committed by the accused, who were members of his platoon: Fritz Eckmann, at the Crossroads (R. 597), at La Gleize (R. 1121); Kurt Briese-meister, at the Crossroads (R. 788-794).

As Commanding Officer of the 1st Company after 18 December 1944, he is responsible for the acts committed by the accused who were members of his company: Valentin Bersin, at Wanne (R.1160, 1172,1177,1180-84,1185-1211); Hans Trettin at Wanne (R. 1160,1172, 1177, 1180-1184, 1185-1211); Georg Kotzur at Wanne (R. 1160,1172, 1177,1180-1184,1185-1211).

The accused Hans Hennecke, as Commanding Officer of the 1st Platoon, 1st Company, is responsible for the acts of the following persons who are not defendants: Ernst Rock at the Crossroads (R.782); Werner Pedersen at the Crossroads (R.597); Zackel at the Crossroads (R.597); Skotz at the Crossroads (R.597), at La Gleize (R.599); Joseph Hell at Crossroads (R.788); Storm at the Crossroads (R.788); Willi Gelfert at Stavelot (R.782), Karler at La Gleize (R. 598); Helmut Pidun at La Gleize (R. 782).

As Commanding Officer of the 1st Company after 18 December 1944, Hans Hennecke is responsible for the acts committed by the following persons who are not defendants: Huebeck at Wanne (R.1172, 1177); Pflueger at Wanne (R. 1172,1167); Luhm at La Gleize (R.1350-1311); Treschler at La Gleize (R.1350,1311).

There is little doubt but that the men of the 1st Company knew what Hennecke's attitude was towards the taking of prisoners of war.

Benoni Junker - as to the accused Benoni Junker, Number 29, Junker was the commanding officer of the 6th Panzer Company of the 1st SS Panzer Regiment. Junker states that when he left the Regimental C.F. he was under orders that "where the military situation

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should require it, not to take prisoners." In the talk to his company he gave instructions that "terror methods could also be used", and he applied the use of terror methods in accordance with his instructions for the treatment of prisoners of war. (R.290). There is corroboration of the foregoing admission by Junker himself in the testimony of Theo Grabowy (R. 279). It is furthermore confirmed and given as a reason for the shooting of an American prisoner of war at the crossroads by the accused Hubert Huber, Number 27 (R.799).

Junker was also the commanding officer of the accused Sternebeck, Number 62, who ordered the shooting of all suspicious looking civilians in the town of Wanne, where four or five civilians were killed, and Junker was the commanding officer of August Tonk, Number 68, who looted some fruit from a home on the outskirts of Stavelot and then shot two civilians in cold blood.

As to the accused Oskar Klingelhoef, Number 35, Klingelhoef in his own statement says that he received the following order and passed it on to his platoon leaders, with instructions that they pass it on to the men of his company:

"Ahead of us there shall be terror and horror. We should remember in this fight especially the cities which have suffered tremendously during the bombing attacks and have suffered great misery. Therefore, all scruples and humane feelings shall be thrown overboard. No prisoners of war will be taken." (R. 300)

This is corroborated by the testimony of Piper (R. 313) by the testimony of Giesberger (R. 322), and by Loehmann (R. 325). It is further corroborated by the confession of the accused Muenkemer, Number 39, Platoon leader of the 2nd Platoon (R. 318), by the accused Hans Siptrott, Number 60, Platoon Leader of the 3rd Platoon (R. 561), and by the accused Heinz Rehagel, Number 48, Platoon Leader of the 1st Platoon (R. 590).

Pursuant to these orders issued by the accused Klingelhoef,

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the accused Hans Siptrott ordered the accused Georg Fleps to fire his pistol into American prisoners of war at the crossroads south of Malmedy. It will be remembered that Fleps fired the first shot into this large group of prisoners. Heinz Rehagel, one of Klingelhoef's own platoon leaders, fired his machine gun into this same group of prisoners, and Unterscharfuehrer Dubbert and Sturmman Bock, not accused before this Court and not in custody insofar as is known to the Prosecution, both members of Klingelhoef's 7th Panzer Company, fired into the surrendered American prisoners at the crossroads south of Malmedy on 17 December 1944.

Heinz Rehagel - the evidence as to the accused Heinz Rehagel, Number 48, Platoon Leader of the 1st Platoon of the 7th Panzer Company, which shows he fired the anti-aircraft machine gun of his tank into the prisoners at the Crossroads, some 20 to 30 rounds, has already been mentioned briefly but sufficiently in the discussion of the evidence against the accused Christ. Furthermore he is responsible for the shooting by Koch of his platoon at the Crossroads (R. 2615).

As to the accused Erich Muenkemer, Number 39, Platoon Leader of the 2nd Platoon of the 7th Panzer Company, reference has already been made to the orders he received from Klingelhoef and passed on to his men, including the accused Roman Clotten, Number 6, one of his tank commanders. There is no question but what the accused Erich Muenkemer is clearly responsible for the shooting of American prisoners at the Crossroads perpetrated by two men of his platoon, not in custody and not accused before this Court, Dubbert and Bock (R. 569). Furthermore he was present at the Crossroads when the shooting took place (R. 640). It is certainly a reasonable inference that he either directly ordered or permitted the shooting by Dubbert and Bock of his platoon. To say

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the least he did nothing to prevent this shooting by men he commanded and apparently witnessed the entire massacre if he did not actually participate in it.

The accused Roman Clotten, was a tank commander; one member of his crew being Sturmman Hermann Book. According to Clotten's own admission his tank stopped in front of the field at the Cross-roads where the American prisoners of war were standing. Clotten himself was standing in his position in the turret of his tank. He saw Book, over whom he unquestionably had command and control, take the machine pistol from its place in the turret and after turning and aiming towards the prisoners, saw him shoot into them. A few minutes later he saw him repeat the performance. Only after the second series of shots did Clotten remonstrate with the words: "Stop, this makes no sense, they are dead already anyhow." (R.569). By implication, at least, Clotten says he permitted this shooting of prisoners of war by a member of his crew because such conduct was clearly expected of them from the speeches made by Klingelhoefer and Muenkemer. (R. 570).

As to Clotten's individual responsibility, we respectfully insist that he had the right and the duty and the opportunity to prevent this shooting by a member of his own crew. This is a perfect example of where one command, even though of a small group, permits the perpetration of a crime, which it is his affirmative obligation under the law to prevent.

Unquestionably, Clotten knew, as any soldier knows, that prisoners of war shall be treated humanely and protected from such acts of violence. His failure to do so was a criminal breach of his duty and he cannot escape criminal liability for either of the reasons indicated by him in his statement. One of these reasons was, according to Clotten himself, that such conduct was expected of them by his platoon leader, Muenkemer, and his company commander, Klingelhoefer, and the other reason advanced was because "I was

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mainly interested in the abandoned trucks in which cigarettes and other articles were, and I was trying to figure out whether I should leave my tank and get some of them." (R. 569,570)

Rumpf - as to the accused Erich Rumpf, Number 54, the evidence is so overwhelming that it needs little comment. As to orders about prisoners of war received by Rumpf and passed on to his men, we refer the Court to Rumpf's own words:

"I am sure of it that the order which had to be read did not specifically say it was not allowed to take prisoners of war. However, I am just as certain that by mentioning the bombardments in connection with the appeal, that our reputation had to precede us to terrorize our enemies, conveyed to every man, in effect, that in case he did shoot prisoners of war, this would be in line with what is permitted." (R. 734,735)

Rumpf by his own admission was at the Crossroads south of Malmedy when the massacre took place (R.739). This is confirmed by the accused Willi von Chamier, Number 6 (R.745), by the accused Max Rieder, Number 51 (R. 759), by the accused Hans Hennecke, Number 23, (R.782), by the accused Gustav Sprenger, Number 61 (R.624), and by the accused Joachim Hofmann, Number 26 (R. 650). According to the accused Willi Von Chamier, Number 6, not only did he, von Chamier, shoot into the prisoners at the Crossroads on 17 December 1944 on direct orders of Rumpf, but Rumpf himself fired as did Corzieni, Katcher, Piotta and Haas, all men under Rumpf's command in the 9th Panzer Pioneer Company. The accused Max Rieder, Number 51, also a member of the 9th Panzer Pioneer Company, fired into the prisoners at the Crossroads on orders of Rumpf (R. 759). In addition to these shootings for which Rumpf is unquestionably responsible, we must not forget the bloody shootings by Rieder and Haas in Buellingen on 17 December on non-combatant civilians who did absolutely nothing to provoke the shooting, (R. 755, 757) nor do we want to overlook the shooting of eight prisoners of war in Engelsdorf on the afternoon of 17 December 1944, which shooting was

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perpetrated by the accused Paul Oehmann, Number 41, assisted by Sturmann Suess of Rumpf's company, on orders of Untersturmfuehrer, Herring, one of Rumpf's platoon leaders. Nor should we overlook the detail of men furnished by Rumpf to execute prisoners of war who refused to engage in work of direct aid to their captors in a combat situation in La Gleize, which detail included the accused Erich Maute, Number 36. This incident is more fully discussed elsewhere in the summary. Nor should we overlook the murder by the accused Werner Kuehn, Number 34, of Rumpf's Company, of Marcel Colson in Lutre Bois on 31 December 1944 (R. 1506, 1530).

About the only evidence offered by the Defense in answer to all these shootings by Rumpf and men commanded by him is two affidavits introduced through the witness Rulien (R. 2561, 2563). One of these affidavits, executed by the Registrar of Bullange, is to the effect that one Erna Colias of Honsfeld was found dead in the community of Luchenborn on 28 May 1945 and that a Mrs. Anton Jousten died in Busllingen on December 18th 1944, and that no other case of death with an unknown cause of death is entered in the lists of the Registrar's office. The other affidavit executed by the widower of Mrs. Jousten is to the effect that she was killed by American artillery fire on the 16th or 17 of December 1944.

We believe that this evidence was introduced for no other purpose than to becloud the issue and perhaps confuse the Court. If this was not the purpose, we can see no reason whatever for its introduction. The woman killed in Buellingingen on 17 December 1944 by the accused Max Rieder, Number 51, is not mentioned by name as having been Mrs. Anton Jousten or Katharina Jousten. The name of the victim was doubtless unknown to Max Rieder. She was killed with a rifle shot into the center of her forehead, and the bullet came out the back of her head, making a rather large hole out of

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which the brains flowed freely. We do not believe that by any stretch of the imagination could the name of this woman have been placed in a list of deaths from "cause unknown". Any layman could certainly have looked at her body and determined that she died of a bullet wound through her head.

Franz Sievers - as to the accused Franz Sievers, Number 59 - there is so much incriminating evidence against Sievers that we are certainly likely to overlook some of it in a brief resume of the evidence in this case. Sievers himself, in his statement dated 27 February 1946, says that he was under orders prior to this offensive that if the situation required it, prisoners of war were to be shot and that the resistance of the enemy, if necessary, was to be broken by terror. He further says that he passed these orders on to his platoon leaders Seitz, Kaempfe and Max Beutner (R 387,390). Such orders find corroboration in the statements of the accused Gustav Sprenger, Number 61 (R. 619), in the statement of the accused Boltz, Number 3 (R. 711), in the statement of the accused Heinz Stickel, Number 63, (R. 705), in the statement of the accused Max Hammerer, Number 20 (R. 1412), in the statement of the accused Joachim Hofmann, Number 26 (R. 645), in the statement of the accused Siegfried Jaekel, Number 28, (R. 681), in the statement of the accused Gustav Neve, Number 40 (R. 667), in the statement of the accused Friedel Kies, Number 30 (R. 1416), and in the statement of the accused Johann Wasenberger, Number 70 (R. 727).

Sievers was the commanding officer and is criminally liable and responsible for the shooting of the fourteen American prisoners of war on the outskirts of Honsfeld by the accused Max Hammerer, Number 20, and the accused Ernst Goldschmidt, Number 18. This is admittedly a circumstantial case but the circumstances are strong indeed. The accused Sprenger, Hofmann, Jaekel, Neve and Boltz saw the bodies of these Americans lying close together without arms on

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the left side of the road just as they left Honsfeld. All but Boltz, according to their statements, remembered seeing Beutner's SPW, which was driven by the accused Goldschmidt and in which rode the accused Hammerer parked on the road just opposite these prisoners who had been shot. All of them had heard firing coming from the direction of Beutner's SPW immediately before they saw his vehicle or the dead prisoners. As they passed the SPW, Sprenger saw Goldschmidt and Hammerer standing by their vehicle, Goldschmidt with a machine pistol in his hand, and Hammerer with his pistol in his holster, and a few moments later, Hammerer told Sprenger that they had bumped off these prisoners. (R. 620, 621). This is corroborated by the accused Joachim Hofmann, Number 26, who also saw Goldschmidt standing with machine pistol in hand and likewise, the accused Max Hammerer (R. 647). The accused Neve, according to his statement, remembers seeing Beutner's SPW parked opposite these prisoners, but does not remember seeing Beutner's SPW parked opposite these prisoners, but does not remember seeing any members of his crew other than Diekmann and Henke. (R. 668). The accused Jaekel, in his statement, remembers the prisoners and seeing Goldschmidt with a machine pistol in his hand and Hammerer with a rifle (R. 682). The accused Boltz, in his statement, remembers seeing the American soldiers but does not recall Beutner's SPW. He does recall Hammerer's conversation with Sprenger to the effect that they had bumped off these prisoners. (R. 712, 713).

Sievers was the commanding officer of the accused Friedel Kies, Number 30, who according to Joachim Hofmann and Siegfried Jaekel, fired into the prisoners of war at the Crossroads and according to his own confession shot prisoners in the town of Stoumont.

Sievers was the commanding officer of the accused Johann Wassenberger, Number 70, who, according to the statement of Siegfried

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Jaekel, and his own confession, fired into prisoners of war at the Crossroads.

Sievers was the commanding officer of the accused Ernst Goldschmidt, Number 18, previously mentioned in connection with the shooting at Honsfeld, who, according to the statements of the accused Joachim Hofmann, Gustav Neve, Siegfried Jaekel, Gustav Sprenger, and Will Schaefer, fired into the prisoners of war at the Crossroads; who, according to the accused Joachim Hofmann, killed a wounded prisoner of war in a shed in Stoumont; who, according to the accused Siegfried Jaekel, killed four prisoners of war in Stoumont with Rottenfuehrer Dibbert; who, according to the accused Gustav Sprenger, admitted having shot prisoners of war in a field on the approach to Buellingen on 17 December 1944; and who, according to the statement of the accused Gustav Sprenger (R. 633), shot fifteen American prisoners in La Gleize on the night of 22 December 1944.

Sievers was the commanding officer of the accused Max Hammerer, Number 20, whose implication in the Honsfeld shooting has already been mentioned, and who, according to the statement of the accused Joachim Hofmann, Siegfried Jaekel, Gustav Sprenger and Willi Schaefer, shot prisoners at the Crossroads; who, according to his own confession, killed a prisoner of war in a castle at Stoumont on 20 December 1944; and who, according to the statement of the accused Gustav Sprenger (R. 633), participated in the shooting of fifteen American prisoners in La Gleize on the night of 22 December 1944.

Sievers was the commanding officer of the accused Marcel Boltz, Number 3, whom the Court will no doubt remember as the expert pistol shot, who shot purposely to the left of his target in Buellingen, his target being an American prisoner of war lined up shoulder to shoulder in one rank with seven or eight other prisoners, and who, according to the statements of the accused

Joachim Hofmann, Siegfried Jaekel, Gustav Sprenger and his own confession, fired a machine gun into those prisoners who still turned and twisted on the ground in the field at the Crossroad.

Sievers was the commanding officer of the accused Gustav Sprenger, Number 61, who, according to the statement of the accused Willi Schaefer and his own confession, shot prisoners of war in the field at the Crossroads - Sprenger fixes the number that he shot at five - and who, according to his own confession and that of the accused Willi Schaefer, shot prisoners of war in Stoumont on 19 December 1944 on direct orders of the accused Schaefer and Sievers.

Sievers was the commanding officer of the accused Joachim Hofmann, Number 26, who, according to the statements of the accused Gustav Neve, Siegfried Jaekel, Gustav Sprenger, and his own confession shot prisoners at the crossroads on 17 December and with a comrade by the name of Diehle, killed two more prisoners in Stoumont on 19 December.

Sievers was the commanding officer of the accused Siegfried Jaekel, Number 28, who, according to his own confession, fired into three groups of prisoners between the Buellingen airfield and the village of Buellingen itself, and into another group of six or eight Americans a kilometer or so beyond Buellings; who, according to the statements of the accused Joachim Hofmann, Gustav Neve, Heinz Stickel, Gustav Sprenger and his own confession, shot prisoners of war at the Crossroads on 17 December 1944.

Soevers was the commanding officer of the accused Gustav Neve, who, according to the statements of the accused Joachim Hofmann, Siegfried Jaekel, Gustav Sprenger and his own confession, shot prisoners of war at the Crossroads South of Malmedy. Neve himself fixes the number he killed at eight to ten.

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Sievers was the commanding officer of the accused Heinz Stickel, Number 63, who, according to the statements of Joschim Hofmann, Gustav Neve and Siegfried Jaekel, and his own confession, machine gunned the American prisoners of war at the Crossroads on 17 December 1944.

Sievers was the commanding officer of the accused Friedel Bode, Number 2, who, according to the statements of the accused Joschim Hofmann, Siegfried Jaekel, and Johann Wasenberger, shot prisoners of war at the Crossroads on 17 December 1944, and who, according to his own statement was present when these prisoners were shot. Though Bode does not mention them by name in his statement, the accused Friedel Kies and Johann Wasenberger, who fired on the prisoners at the Crossroads, were members of his group of two SPW's and were under his command at the time the shooting took place.

Sievers was the commanding officer of the accused Willi Schaefer, Number 55, who, according to the statement of Gustav Sprenger, was present at the crossroads massacre, and who later in Stoumont - according to the statements of the accused Joschim Hofmann, Gustav Neve, Gustav Sprenger, and his own confession - gave orders to Sprenger and Billoschetsky to shoot five surrendered and unarmed American prisoners of war, one of whom was badly wounded, and had been brought in on an improvised stretcher; and who, according to the statement of the accused Gustav Sprenger, shot fifteen American prisoners of war in La Gleize on the night of 22 December.

In addition to the above named accused, the proof in this case shows that the following named men of the 3rd Pz. Pioneer Company commanded by the accused Franz Sievers, shot prisoners of war during this offensive at the places indicated: Sepp Pichler in

Stoumont (R. 628); Herbert Losenski at Buellingen (R. 647), at the Crossroads (R. 650); Josef Aistleitner at the Crossroads (R. 650); Bertel Schulte at the Crossroads (R.650); Werner Jirassak at the Crossroads (R.650); Manfred Mueller at the Crossroads (R.686); Georg Deibert at the Crossroads (R.686); in Stoumont (R.689); Willi Hanke at Honsfeld (R.682), near Stavelot (R.689), at the Crossroads (R.686); Gerhardt Schlingmann at the Crossroads (R.688), in Stoumont (R.652); Alfred Gerharz at Buellingen (R.621,622); Unterscharfuehrer Altkrusger at Buellingen (R.684), at the Crossroads (R.688), in Stoumont (R.715); Willi Billonshetzky at the Crossroads (R.670), in Stoumont (R.672,652); Sturmman Kissewitz at Buellingen (R.621,622), at the Crossroads (R.624); Hennes Martens at the Crossroads (R.688); Johannes Oettinger at the Crossroads (R.670), in Stoumont (R.671,653); Sepp Witkowski at Buellingen (R.683), at the Crossroads (R.650), in Stoumont (R.690); Emil Hargeth at Buellingen (R.683), at the Crossroads (R.683); Hubert Storch at Buellingen (R.683), at the Crossroads (R.670), in Stoumont (R.690); Gerhard Walkowiak at Buellingen (R.647), at the Crossroads (R.686); Harry Ende at Buellingen (R.647, 683), at the Crossroads (R.647); Hans Toedter at the Crossroads (R.650), at Buellingen (R.683), at Stoumont (R.690).

On 15 December 1944, the accused Heinz Tomhardt as Commander of the 11th Company, 3rd Battalion, 2nd Panzer Grenadier Regiment, attended a company commanders' meeting held by the accused Diefenthal, commander of the 3rd Battalion. Diefenthal admitted in his statement that he told his company commanders that a wave of fright and terror must precede our troops, that the resistance of the enemy must be broken by terror, and that he said something about prisoners of war. (R.1300)

The accused Tomhardt in his statement said that Diefenthal declared we had to fight recklessly and we were not allowed to take

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any prisoners in this offensive. (R. 347)

The accused Tomhardt admits in his statement that he assembled his company on 16 December 1944 and requested them to fight ruthlessly and told them also that it was not permitted to take prisoners. He also admitted that it was possible that he said to shoot suspicious civilians. (R. 345)

Tomhardt's confession is corroborated by the statements of the accused:

Hecht	(R 1214)
Goedicke	(R 1222)
Richter	(R 1227)
Hendel	(R 356)
Theo Rauh	(R 1429)
Braun	(R 1380)
Gebauer	(R 1233)
Fritz Rau	(R 1237)

The accused Siegmund stated that Tomhardt said at this meeting of the members of the 11th Company, "You are not allowed to take prisoners -- everything is to be shot ruthlessly, also civilians." (R. 1435) The accused Friedrichs stated that Tomhardt told the assembled company, "Civilians and soldiers will be bumped off. If a village should be taken, everyone seen in the streets, soldiers and civilians will be killed." (R. 1391)

The effect of Tomhardt's orders can be seen from the statements of the accused Siegmund (R. 1440, 1436) and Friedrichs (R. 1396), who admit that they shot prisoners of war because they had received the order to do so from Tomhardt.

How well Tomhardt's orders were followed is best determined from the evidence in the Record. The Record shows the following

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are accused from the 11th Company:

Heinz Gosdicke	La Gleize	R. 1211, 1223, 1228
Armin Hecht	La Gleize	R. 1223, 1228
Wolfgang Richter	La Gleize	R. 1211, 1223, 1228
Oswald Siegmund	La Gleize	R. 1248, 1251, 1130, 1137, 1171
Herbert Stock	La Gleize	R. 1248, 1251, 1170
Heinz Hendel	Orders	R. 352, 356, 1135
Willi Braun	Stoumont	R. 1380, 1396
Heinz Friedrichs	Stoumont	R. 1380, 1396
Fritz Gebauer	La Gleize Cheneux	R. 1232, 1239, R. 1240
Fritz Rau	La Gleize Cheneux	R. 1233, 1234, 1239 R. 1240
Theo Rauh	La Gleize	R. 1233, 1251, 1130, 1137, 1169
Edmund Tomczak	Stoumont	R. 1380, 1386, 1396

In addition to these accused, Tomhardt is responsible for the acts of the following members of his command who are not accused before this court and are not in custody:

Heinz Klipp	La Gleize	R. 1211, 1223, 1228, 1252
Boessel	La Gleize	R. 1211, 1223, 1228
Dirnberger	La Gleize	R. 1211, 1223, 1228
Dutschke	La Gleize	R. 1251, 1171, 1137, 1130
Pliester	La Gleize	R. 1211, 1223, 1228, 1238
Ruhland	Cheneux La Gleize	R 1240 R 1239
Schwarz	La Gleize	R 1171, 1137, 1120
Stellner	La Gleize	R 1211, 1223, 1228
Wittwer	La Gleize	R 1248, 1251, 1136, 1168
Gruenwald	La Gleize Cheneux	R 1238 R 1240
Haehnel	La Gleize	R 1250
Jassan	La Gleize	R 1170

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Pros Arg-sr-33	Kumpf	La Gleize	R 1250
	Lassen	La Gleize	R 1250
	Neubauer	La Gleize	R 1248
	Schumacher	La Gleize Stoumont	R 1259 R 1380, 1390
	Sonneborn	La Gleize	R 1250
	Arvid Freimuth	La Gleize Stavelot	R 1251, 1137, 1130, 1239 R 116, 1168, 1237
	Rudi Reiher	La Gleize Cheneux	R 1214, 1223, 1228, 1239 R 1240
	Zaboocky	La Gleize Cheneux	R 1239 R 1240
	Bug	La Gleize Cheneux	R 1239 R 1240
	Groth	La Gleize Cheneux	R 1233, 1239 R 1234, 1240
	Walter	La Gleize Cheneux	R 1250, 1233, 1239 R 1234, 1240
	Wilfer	La Gleize Cheneux Engelsdorf	R 1233, 1239 R 1234, 1240 R 1241
	Weis	Stoumont	R 1396
	Schmidt	La Gleize Cheneux	R 1233, 1239 R 1234, 1240
	Kraus	La Gleize Cheneux	R 1233, 1239 R 1234, 1240
	Loechel	La Gleize Cheneux	R 1233 R 1234
	Konior	Stoumont	R 1380
	Rechel	La Gleize Cheneux	R 1239 R 1240
	Rudolf	Engelsdorf	R 1241

PROSECUTION: During the Eifel Offensive the accused Georg Freuss held the rank of Hauptsturmfuehrer and was commander of the 10th Company, 3rd Battalion, 2nd Panzer Grenadier Regiment I SSAH.

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On 15 December 1944, the accused Josef Diefenthal, commander of the 3rd Battalion, held a meeting of all company commanders. At this meeting, attended by Preuss, Diefenthal made a speech. Preuss in his statement said that Diefenthal told his company commanders that a wave of fear and terror must precede the troops and that the resistance of the enemy had to be broken by terror; also, that "Prisoners of war are not being taken." (R. 941)

The same night Preuss assembled his company and ordered the men of his company that a wave of fear and terror had to precede the troops and ordered them that the resistance of the enemy had to be broken by terror and "no prisoners of war are being taken." (R. 941) The confession of Preuss that he gave orders that no prisoners of war were to be taken is corroborated by the testimony of witness Von Elling (R. 328).

On 17 December 1944, some distance beyond Buellingen, Preuss got lost and hid out in the woods all day. During the day one of his men brought in a captured American Flying officer. Upon Preuss' order (R. 942), which he admits in his confession, this American officer was shot by the company troop leader Berghaus as he lay quietly beside Preuss' vehicle. (R. 931-933). The use of the flyer's wedding ring and his flying suit was involved in this quiet little murder.

Preuss is responsible for the acts of the following members of his command who are not in custody and are not accused before this Court:

Rottenfuehrer Brecht	at Buellingen	R. 946
Troop Leader Berhaus	at Buellingen	R. 931-933

On 19 December 1944, Preuss was put in command of the 11th Company, 2nd Panzer Grenadier Regiment, in addition to being the

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commending officer of the 10th Company.

As commander of the 11th Company, Preuss became responsible for the acts of the following men, committed after the date he assumed command.

Heinz Klipp	at La Gleize	R. 1252
Dutschke	at La Gleize	R. 1251, 1171, 1137, 1130
Schwarz	at La Gleize	R. 1171, 1137, 1139, 1120
Wittwer	at La Gleize	R. 1251
Haehnel	at La Gleize	R. 1250
Schulmacher	at La Gleize	R. 1250
Sonneborn	at La Gleize	R. 1250
Arvid Freimuth	at La Gleize	R. 1250, 1137, 1130

If the Court please, this is a pretty good place to stop for a recess.

PRESIDENT: Court will recess until 1530 hours.

(Whereupon the court recessed until 1530 hours.)

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(Whereupon the Court reconvened at 1530 hours.)

PRESIDENT: Take seats. The Court will come to order.

PROSECUTION: If the Court please, let the record show that all members of the Court, all members of the Prosecution, with the exception of Captain Byrne, who has been excused by verbal order of the Commanding General, and Mr. Ellowitz, who is sick in quarters, all members of the Defense, with the exception of Dr. Pfister, Dr. Hertkorn, Dr. Leer, Dr. Rau, and Dr. Wieland who are absent on business of the Defense, all the defendants and the reporter are present.

By verbal order of the Commanding General USFET through telephone conversation of Col Brees, War Crimes Branch, USFET, to Col Corbin, War Crimes Detachment, this date, the accused Marcel Boltz is removed as one of the defendants.

I will now continue with my remarks.

MR. WALTERS: Pardon me Colonel, I believe you neglected to state that one of the defendants was absent.

PROSECUTION: That has already been taken care of.

MR. WALTERS: Pardon me.

PROSECUTION: The accused Sternebeck has been proved guilty of the murder of at least one Belgian civilian in the village of Wanne on or about the 20 December 1944. Sternebeck transmitted a direct order to Corporal Herrentroy of his tank crew, to search the town for suspicious male civilians and in case they found any to shoot them." (R. 1152 - Sternebeck's confession). Sternebeck received this order from Hauptsturmfuehrer Kalischko, artillery officer of the LSSAH Division, with whom he shared quarters in Wanne. (R.1151). That Herrentroy executed the order is proved by Sternebeck's admission that "Rottenfuehrer Herrentroy reported to me at the CP and told me that he had executed the order, that he had found a suspicious Belgian male civilian in one of the houses and had bumped him off."

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The witness Zimmer corroborates Sternebeck's confession. He saw Sternebeck talking to Herrentroy at the time and place in question and later that afternoon saw four dead civilians in the church. (R.1155)

In addition to Herrentroy, Sternebeck relayed the orders to accused Muenkemer also of the 6th Pz. Co., and possibly to Untersturmfuehrer Heubeck, although he is not positive of the latter. Untersturmfuehrer Heubeck was the officer in charge of the 1st Co. troops in Wanne, among whom were the accused Bersin, Trettin and Kotsur.

Sternebeck cannot relieve himself of criminal responsibility by pointing the finger at Kalischko as the officer from whom he received the order. Certainly, such vague instructions, leaving the discretionary power of life or death to the judgment of a corporal was clearly illegal, even were the original orders from Kalischko lawful. The fact remains, as the record sufficiently shows, civilians were murdered in Wanne, on or about the 21st December 1944, and Sternebeck participated as a principal in the murder. He ordered men under his command to make a general search through a portion of the town and shoot to death anyone who, in their limited judgment, was suspect of Partisan activity. Sternebeck, a responsible officer, knew, or is presumed to have known, that such an order to his men was clearly unlawful and he must bear the responsibility for the crimes committed by men under his command, who acted in pursuance of such orders.

As to the accused Willi Heinz Hendel, Number 22. This accused was platoon leader of the 2nd Platoon of the 11th Panzer Grenadier Company. Following the speech given by his company commander, the accused Heinz Tomhardt, Number 67, Hendel made a speech to the men of his platoon to the effect,

"That is was not allowed to take prisoners and that panic and fright was to be spread by members of my platoon and that the 2nd Platoon had to distinguish itself in the fighting, as well as in the execution of the order in regard to prisoners of war."

On the night of 16-17 December, Hendel repeated the order with the following words:

(Closing Argument - Prosecution)

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"Boys, now we get at the enemy, don't forget you must fight ruthlessly. No prisoners will be taken. Everything that comes in front of our barrels will be mowed down. The second platoon has to distinguish itself." (R.353)

Among those who took these orders from the accused Hendel were the accused Oswald Siegmund, Number 58, and the accused Herbert Stock, Number 64 (R.353).

In another statement made by Hendel (R.356), Hendel admits that he incited the men of his platoon to fight especially ruthlessly and to distinguish itself in spreading fright and terror among the enemy. Both Hendel and the accused Stock say that the men of the Second Platoon were told to make plenty of "rabatz" and that the expression had a definite meaning to SS men, to-wit, that everyone was free to have as much fun as he wished by shooting at everything, property, civilians and prisoners of war. (R.356, 333).

It will be urged, no doubt, by the Defense, that this accused Hendel committed no crime because he was wounded on the 17th of December 1944 in Ligneuville and thereafter could not and did not have command of his platoon, and further, that the shootings by men of his platoon took place after he was wounded and was no longer in command of his platoon. The fact that he was wounded on the 17th of December in Ligneuville was stipulated by the Prosecution and Defense. (R. 2391). We direct the Court's attention, however, to the fact that two members of Hendel's Platoon, Herbert Stock, Number 64, and Oswald Siegmund, Number 58, are accused before this Court.

Shortly after Noon on 18 December 1944, at which time Rottenfuehrer (Corporal) Wittwer had taken over the platoon, Stock participated in the shooting of ten to fifteen American prisoners of war in La Gleize. On the morning of 22 December Stock participated in the shooting of twenty prisoners in La Gleize. Around 1500 hours the same day, 22 December, Rottenfuehrer Wittwer and Stock shot 2 prisoners at a bomb crater on the edge of La Gleize (R. 1248).

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The accused Siegmund participated in the shooting of 10 to 12 American prisoners on 20 December between La Gleize and Stoumont and he did so, according to his own statement, because "I recalled the orders given me by Obersturmfuehrer Tomhardt and by Hauptscharfuehrer Hendel directly before the offensive." On 21 December, Siegmund participated in the shooting of about five prisoners of war in the woods not far from the castle of Stoumont. On the 22nd of December, at the edge of a forest near La Gleize, Siegmund participated in the shooting of six or seven more prisoners of war who had come from Peiper's CP, the shooting taking place behind a house in a field or pasture. (R. 1435-1439).

Other men of Hendel's Platoon who are not accused before this Court but who shot prisoners of war or non-combatant civilians during this offensive, are as follows:

Arvid Freimuth	near Stavelot and in La Gleize (R.1467,1471)
Karl Haehnel	in La Gleize (R. 1250)
Olaf Jassen	in La Gleize (R. 1470)
Sturmann Kumpf	in La Gleize (R. 1250)
Grenadier Sonneborn	in La Gleize (R. 1250)
Sturmann Lassen	in La Gleize (R. 1246)
Sturmann Neubauer	in La Gleize (R. 1250)
Gerhard Schuhmacher	in La Gleize (R. 1250-1251) in Stoumont (R. 1392)

We do not believe that it can be seriously or logically urged that the speech Hendel gave the aforementioned men of his platoon did not encourage, aid and abet their criminal deeds. The mere fact that he was wounded on the 17th of December does not relieve him of his criminal responsibility. The issuance of his order instigated the criminal overt acts perpetrated by such men as Siegmund and Stock and he cannot escape his criminal responsibility and liability therefor by virtue of what he may now feel was a most fortunate wound. Hendel's order prescribed a course of conduct and a method of

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ruthless uncivilized warfare during the course of the offensive. The order was not to become ineffective if Hendel were wounded. No such limitation was placed upon it. It is true that the platoon leader who succeeded him could have revoked Hendel's order but in the absence of such revocation, his order had a definite continuing power and influence. It is commonplace in any army for officers at all levels of command to be transferred to other posts in which case naturally there are successors. All of us know that the orders of the previous commander remain in effect until new orders are issued. If there is trouble as a result of faulty, illegal, wrongful or criminal orders, the initial instigator cannot escape responsibility though that responsibility might be shared jointly by his successor if he knew or should have known of such order. This is a matter of plain common sense and the law has its basis in common sense.

This accused Hendel, who, according to his own statement, voluntarily joined the Allgemein SS in 1934, and from 1935 to 1942, was a member of the Totenkopfverbände as a guard at the concentration camps Sachsenhausen and Oranienburg (R. 355) demanded of the men of his platoon that they distinguish themselves in a game of ruthless murder of helpless surrendered prisoners of war -- a crime that should shock the conscience and turn the stomach of any honorable soldier or officer of any army or any nation. We respectfully urge that the supreme penalty is almost too easy a reward for his misdeeds.

In addition to the responsibility as Commanding Officer of the 3rd Battalion, 2nd Panzer Grenadier Regiment, for the murder of prisoners committed by men under his command which has been discussed heretofore, the accused Diefenthal must bear personal responsibility for the murder committed by the accused Zwigart. This crime was committed by Zwigart on the afternoon of 18 December 1944 in the vicinity of Cheneux (R. 1289). Diefenthal was seated in the SPW

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of the accused Zwigart, his driver, while Zwigart shot an unarmed American prisoner four meters away (R. 1274). Prior to shooting the prisoner Zwigart marched over to the vehicle with the prisoner and asked for a machine pistol (R. 1274). Diefenthal said nothing. Diefenthal, in his confession, states that he remembers the incident of the two Americans in the jeep in the vicinity of Cheneux on 18 December 1944, but he does not recall the Zwigart shooting. But Zwigart remembers the incident and describes it in detail in his confession (R. 1289). Both the accused Zwigart and the witness Assenmacher recall that there were shouts from the comrades to "bump off" the prisoner (R. 1289 and R. 1274). Assenmacher further testified that there was no firing in the vicinity at the time, except the firing by Zwigart when he shot the American (R. 1275).

Can there be any doubt that the accused Diefenthal, by his silence consented to the murder of a prisoner by his driver? In view of the evidence in the record, accused Diefenthal knew, or should have known the intentions of Zwigart. As Commanding Officer of the accused Zwigart, who was personally assigned to him as driver, his duty was clear. Instead of restraining Zwigart from executing the American, which he was obviously preparing to do, he remained mute, and Zwigart had a right to assume, as he stated in his confession (R. 1289) that his intention to commit murder met with the approval of his Commanding Officer, accused Diefenthal.

In the confession of the accused Knittel, which he has not denied, he states that on 14 December 1944 he took command of the 1st SS Panzer Reconnaissance Battalion (Reinforced) and on the same day received the written orders of the 6th Panzer Army signed by Oberstgruppenfuhrer Dietrich that had been transmitted by Division Headquarters. He admits that this order dealt with the conduct towards the civilian population and the shooting of Allied prisoners of war. (R. 403).

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In this confession Knittel also admits that at 2300 on 15 December 1944 he held a company commander's conference at the Battalion CP; that the accused Coblentz, commander of the 2nd Company and Obersturmfuehrer Goltz, commander of the Headquarters Company and a witness for the Defense in this case, were both present. During this conference he orally transmitted the order from the 6th Panzer Army about conduct in battle and that "The going is through enemy territory, think of your relatives suffering under the bomb terror in the treatment of the enemy population. If the military necessity requires it, in especially compelling situations, Allied prisoners of war are to be shot." (R.404)

Concerning this conference the accused Coblentz in his sworn confession, which he also has not denied, stated that "The Kommandeur (Sturmbannfuehrer Knittel) having received orders at Division, gave us the attack order for the offensive." (R.1072). Coblentz further admitted that this order contained the following: a reference to the bitter sorrow brought upon German women and children at home by heavy air attacks and that in compelling emergencies prisoners of war could be shot. (R.1073).

SS 1st Lt. Heinz Goltz, who attended the meeting held by Knittel as commanding officer of the Headquarters Company, 1st SS Recon. Battalion, testified as a witness for the defense and on cross examination admitted that during the conference Knittel made all the statements he, Knittel, admitted making in his written statement Prosecutions Exhibit 26, except the portion "If military necessity requires it in especially compelling situations, allied prisoners of war are to be shot." (R. 2118, 2122)

However, the witness Gartner in his testimony admits that on 16 December 1944, Goltz held a meeting of the Headquarters Company where, after having referred to the importance of the offensive, stated that "We would mow down everything that appears before our

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barrels." (R. 1054). In view of this testimony the interest in this case on the part of the witness Goltz can hardly be denied.

The witness Mahl testified that on the afternoon of 18 December 1944, the Recon. Battalion stopped a short distance before Stavelot. (R. 1048). Here they were subjected to an air raid. Mahl and Gartner members of the Pioneer Platoon, Headquarters Company, commanded by the witness Goltz, testified that they saw 6 to 10 American PW's while they were stopped. Mahl, (R. 1039) stated that these PW's were taken to the woods by a Sgt. Wolf and immediately upon entering the woods firing was heard. Mahl saw Sgt. Wolf about 30 minutes later but did not see the PW's again. (R. 1039-40). Witness Gartner stated he later heard from a comrade that these PW's had been shot. (R. 1055). No wonder Goltz was such an enthusiastic witness for his comrades in the light of this evidence against him.

The evidence further shows that on the night of 18 December 1944, the Recon. Battalion moved through Stavelot and on to the vicinity of La Gleize. On the morning of the 19th they moved to attack Stavelot from the west. The 2nd Company, under the command of Coblenz lead the attack and the Headquarters Company under the command of Goltz followed in the column. The column moved south in the direction of Trois Ponts. Near Trois Ponts, the battalion dismounted from their vehicles and marched as infantry toward Stavelot. (R. 2657). Goltz, on cross examination, testified that the Pioneer Platoon became separated from his company and that he saw them no more but learned later that the Pioneer Platoon had proceeded to attack Stavelot and occupied a part of Stavelot with the 2nd Company, under command of Coblenz. (R.2665)

The witness Mahl and Gartner, members of the Pioneer Platoon, Headquarters Company, testified that Platoon Leader Droege shot two elderly civilians at the viaduct where they dismounted from their vehicles; that before the Pioneer Platoon started along the railroad track towards Stavelot, Droege gave the order to "clean out all the

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houses and shoot everything that's inside." (R. 1041 & 1057); that south of Parfondruy the platoon, left the railroad and entered the village; that members of the 2nd Company as well as Pioneer Platoon were seen in this village and in this vicinity. The witness Gartner testified that in the village they came to after leaving the railroad he saw 8 to 10 dead civilians lying in the street and that they had not been there when he left the village 2 or 3 hours previous. (R.1057). The witness Mahl testified that he saw the accused Coblentz with a group of 15 to 20 Belgian civilians in this same village. Later he saw smoke rising from a shed on the righthand side of the road and heard afterwards that Belgian civilians had been shot in this shed. (R. 1043).

Two Belgian survivors, Henri Delcourt and Achille Andre, testified that during the afternoon of 19 December 1944, German troops wearing SS insignia appeared at Ster, rounded up 10 civilians, including these two witnesses, marched them down the road to Renardmont, collecting more civilians as they went. By the time they reached a shed southwest of Renardmont, they had 21 civilians. These people were forced into the shed and machine-gunned and the shed and bodies set afire. 13 were killed in the shed and 6 wounded. (R. 1016-1036).

Prior to the occupation of the western houses of Stavelot on the night of 19 December, Gartner testified that he saw Knittel coming out of his CP about one-half a kilometer from the first building of Stavelot. That same night the 2nd Company and the Pioneer Platoon of Headquarters Company moved into Stavelot. The 2nd Company was on the righthand side of the street as you enter Stavelot and the Pioneer Platoon on the left-hand side. At the time, the area was under artillery fire but was not under Infantry attack. However, small arms fire, consisting of machine pistol and rifles, were heard on the righthand side of the street, the width of the street away. (R. 1060).

Mrs. Gegoire, a Belgian civilian, testified that German troops entered Stavelot on the night of 19 December 1944. At that time, she

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was in a cellar on the right side of the street on the outskirts of Stavelot in the direction of Trois Ponts, with 25 other people, 2 men, 8 women and the rest children and young girls. At about 2100, two grenades were thrown into the cellar and the civilians brought outside. Of this group of 26 people, Mrs. Gegoire testified she and her two children stood by while the Germans slaughtered the remaining 23 without cause before their very eyes by small arms fire. Later, Mrs. Gegoire talked to a German soldier who said he had thrown hand grenades into the basement and, with reference to the people who had been shot, stated that it had been a pretty heap. Mrs. Gegoire stated that in one of the cellars where the Germans had taken her, she saw one soldier with an Adolf Hitler band on his left arm and SS on his left collar or lapel. Mrs. Gegoire also testified that in the cellar of Mr. Demarteau, Mr. Demarteau asked me to ask the Germans whether any American prisoners had been taken. He said, "We don't take prisoners." I said, "You kill them?" And he did like this (nodding affirmatively). (R. 1082).

Knittel, in his unsworn confession, stated that on 21 December 1944, in the edge of woods near a house close to the bridge across the Ambleve River, 3 kilometers west of Stavelot, he ordered two men of the 4th Company, Reconnaissance Battalion, who had brought a number of American prisoners out of the woods, to "bump them off." (R. 1106). Five minutes later he heard pistol shots from behind the house where the prisoners had been led. Knittel brazenly admits that a subordinate motive for this shooting was revenge and that he had been moved spiritually by the death of his bravest Unterfuehrer.

Witness Elias testified that he saw bodies of 11 American Parachutists who had been shot. The bodies were lying in two groups and four to five meters away 9 mm cartridge cases were lying. These bodies were found 600 meters south and 300 meters west of the bridge across the Ambleve River, 3 kilometers south of Stavelot. (R.1089-93).

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Witness Close, field policeman in Stavelot and vicinity, testified that Ster, Parfondruy and Renardmont are hamlets on the outskirts of Stavelot; that on 18 December 1944, German tanks entered Stavelot from the east; that on the same date he began bringing in bodies of dead civilians; that during the period 18 December 1944 to 14 January 1945 he supervised the burial of 93 Belgian civilians, all of whom had been shot (R.1133); that after 14 January 1945, in his capacity as Field Policeman, he visited most of the homes in and around Stavelot and learned from relatives and survivors that Belgians had been shot by SS troops at Parfondruy, Renardmont, Ster, on the road to Trois Ponts, on the road to Coo on the Stokeu, in the town of Stavelot and on the road to the old castle. (1131 & 1143). The majority of these persons were murdered on December 19 & 20 and it was on these days that Knittel's Recon. Battalion was present in these villages. It is practically conclusive that Knittel's troops are responsible for these murders and it cannot be overlooked that he did not avail himself of his opportunity to take the stand in his own behalf and deny these wanton and ruthless murders of defenseless women and children.

In Coblenz's sworn confession (R. 1073), which he has not denied, he admits that on the night of 15 December 1944 he passed on to his platoon leaders Gilbert, Farny, Siebert and Jakob a digest of the orders received from Knittel, previously referred to in this argument. Coblenz also admits that he told his platoon leaders that prisoners of war would be shot only in a compelling emergency. The next day he passed on a digest of Knittel's orders to his entire company. (R. 1073).

Coblenz further admits in his confessions that on 21 December 1944 in Stavelot, Siebert, Commanding officer of the 3rd Platoon, 2nd Company, reported to him that he had some American PW's shot (R. 1074) and that a Rottenfuehrer of the 3rd Platoon had shot civilians as they fled from a shed. (R. 1069).

In our argument in connection with the accused Knittel, we have

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already referred to the atrocities committed by Coblenz's 2nd Company and the Pioneer Platoon while it was under his command. We do not believe that it is necessary to repeat them here. Nevertheless, Coblenz shares the responsibility with Knittel for the acts of the men under his command and it should not be forgotten that the troops in the western outskirts of Stavelot on the 19th and 20th of December were from Coblenz's units.

The evidence adduced against the accused Tomczak of the 11th Company deserves but a short discussion, only because no confession has been introduced by the Prosecution against the accused. However, Tomczak has been positively identified as one of the perpetrators in the murder of approximately seven American prisoners at the Castle near Stoumont, on the road from Stoumont to La Gleize on the morning of 19 December 1944. These prisoners were shot on orders of Unterscharfuhrer Schumacher, who received them from an unidentified German paratrooper at the place and time previously named. Tomczak was a Rottenfuhrer in the same vehicle with accused Friedrichs and accused Braun. Unterscharfuhrer Schumacher ordered the prisoners to be shot in the field nearby and designated the personnel of Tomczak's vehicle to commit the crime. Accused Friedrichs (R.1395) states that all members of the vehicle, including Tomczak took part in the execution. This is corroborated by the confession of accused Braun (R. 1380).

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The murder of two to three American prisoners by the accused Weis, Rodenberg and Schwambach in La Gleize on the afternoon of 22 December 1944, is proved and corroborated by the confessions of the three accused.

The accused were at the Command Post of the 2nd Platoon of the 12th Company when three American prisoners appeared in view around the corner of a house on the opposite side of the street. They marched in single file towards the entrance of the house with their hands raised and carried no weapons. Accused Rodenberg states in his confession that he fired from the window while accused Schwambach fired from the door and two of the prisoners dropped to the ground. The third prisoner hurried into the house (R. 1455). Rodenberg states he saw no one else fire at these prisoners. However, accused Schwambach, corroborates Rodenberg's description of the murder, but identifies both accused Rodenberg and accused Weis as his accomplices in the shooting. (R. 1482). Rodenberg was at the window to his left and Weis at the corner of the house to his right. Accused Weis in his confession states other soldiers were firing also, but was unable to make a positive identification. (R. 1486). Accused Weis states that the prisoner he shot merely stumbled and did not fall and does not remember the fate of the other two prisoners. There is no denying the plain evidence however, that despite the battle they were engaged in at the time, these three accused, according to their own confessions knew they were shooting at American prisoners being marched to a place of detention and were stimulated by the cries of their comrades to "bump off" the Americans. Whether the man whom Weis thinks he hit was actually killed or not, does not relieve him of his share of the responsibility for the death of the other two prisoners. Accused Schwambach and Rodenberg prove beyond any doubt that at least two of the Americans met their death (R. 1455 and 1486). These three accused suddenly became accomplices,

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perhaps unwittingly for the purpose of exterminating three American prisoners. The appearance of the three Americans was the bond which drew the alliance together and accused Weis stands in the same position with the accused Schwambach and Rodenberg. He cannot now plead that since the prisoner he shot may not have been killed, he divorces himself from the results of the actions of his two comrades. Further, since the three Americans walked so close together it is purely an assumption that each of these accused can definitely state which of their shots was responsible for which death.

Fletz

The Prosecution has proven beyond reasonable doubt that the accused Hans Fletz murdered American PW's without provocation on 19 December 1944 in the center of Stoumont. In the case against Fletz no confession has been offered in evidence by the Prosecution but the circumstantial facts proven by the Prosecution unqualifiedly point to Fletz as the perpetrator in this particular murder. The confession of the accused Eric Werner (R. 1349), driver of Hauptscharfuhrer Knappich's tank, establishes the fact that American PW's were mowed down while standing with their hands raised over their heads about noon on 19 December in the center of Stoumont. Werner estimates the group of prisoners consisted of approximately 30 to 35 people. The machine gun fire that killed them came from the tank behind him and he, Werner, was told by his tank commander, Hauptscharfuhrer Knappich, that this was the tank of Obersturmfuhrer Christ, the company commander. (R 1349). The accused Fletz was the gunner in accused Christ's tank.

Witness Otto Lessau, driver of Christ's tank, testified (R. 1354) that he had seen a group of American prisoners standing at the same approximate location and in the same position described by Werner and that shortly thereafter while his tank was opposite

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this group of prisoners the turret gun of his tank fired a burst of machine gun fire. No fighting was in progress at the time and the only firing was from 'Fletz' machine gun. (R. 1354). Lessau further testified that the accused Fletz was the only man of the Panzer crew who could possibly have aimed the machine gun. At this time the tank in front of him was that of Hauptscharfuhrer Knappich (R. 1358).

The accused Ritzer in his confession (R. 1306) testified that as he proceeded through Stoumont early in the 19th of December, he noticed a group of American prisoners standing to his left and when he retraced his route later on the evening of that day, at the same spot he saw lying approximately the same number of dead Americans. It is admitted that whereas Lessau and Werner placed the group of Americans on the right side of the road, traveling west through Stoumont, Ritzer describes them as lying on the left side of the street. Accused Szyperski stated that he also saw the group of American prisoners alive as he passed the center of Stoumont and that the only combat at that time consisted of a long range artillery duel. (R. 1342). Szyperski and Ritzer were riding at the head of the column in Brauschke's tank.

It is suggested that such a discrepancy is hardly a fatal inconsistency. The fact remains that these tanks proceeded through Stoumont under battle conditions and it is reasonable to expect that after a year's lapse mistakes can readily be made, as to whether certain conditions existed on the left or right side of a street at a particular location. What is clear, however, is that there were a group of Americans variously estimated to consist of from 18 to 40 men, shot in the center of Stoumont. The evidence conclusively shows that these prisoners were shot by the accused Fletz. There was no reason for Fletz to fire his machine gun at that point, except to shoot the prisoners standing a few yards away from

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him. As stated herein, the record proves that at this moment in the center of Stoumont, the fighting had ceased.

On 22 December 1944 in La Gleize, accused Feiper decided to have American prisoners of war shot. In his confession Feiper testified that after taking counsel with Foetschke, accused Diefenthal and von Westernhagen, he decided that if his surrounded forces received no help and "would have to fight to the finish at La Gleize" the American prisoners would be shot (R 1553). This testimony is corroborated by the accused Feiper on direct examination when he appeared as a witness in his own behalf. Feiper testified that he had decided to fight to the last man in La Gleize, until he received a garbled radio message from higher headquarters advising him that the relief team sent to his aid was unable to go forward and he was ordered to evacuate La Gleize and return. He immediately began preparations for the withdrawal.

Feiper's decision is corroborated by the accused Reiser, 1st Battalion Adjutant, who heard Feiper state to Foetschke, Commanding Officer of the 1st Battalion, that he had decided to have a part of the prisoners shot (R. 1447), and accused Rumpf who heard Feiper declare at the 1st Battalion CP in La Gleize "Some American prisoners of war refused to work for us, thereupon I had part of the prisoners shot. This will be the best lesson for the remaining ones." (R741) Feiper also states that he remembers the accused Diefenthal reporting trouble with prisoners in La Gleize and it is possible an example was set by executing some of the prisoners (R. 1554).

In order to carry out the execution Feiper ordered the accused Hannecke to run after the accused Rumpf, who had just left the 1st Battalion C.P. and have him send an execution detail for the shooting of prisoners of war (Hannecke's confession R. 1007). This is supported by accused Rumpf, who received the order from .

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Hennecke (R. 740) and accused Reiser who was present in Foetschke's CP (R. 1448). Hennecke was instructed to have Rumpf's detail report to his (Hennecke's) C.P. Hennecke returned to Feiper to report that he had delivered Feiper's instructions to Rumpf. As Hennecke was leaving the room, he was stopped by accused Reiser sitting at a table near the door and ordered by Reiser to send an execution detail from his own company for the same shooting (R. 1007). There is nothing in the record to show that the accused Reiser received this order from his superiors. Hennecke returned to his own CP, which was in the same building with the 1st Battalion CP and within five minutes, the execution detail arrived from accused Rumpf's company in charge of a non-commissioned officer. Hennecke, in the meantime selected the detail from his own company in charge of Sergeant Drechsler. (R. 1008). Thereupon Hennecke returned to the Battalion CP for further instructions and was told by accused Reiser to send the execution details to Diefenthal. By this time both Feiper and Foetschke had left and Reiser, apparently was in charge at the CP. Since neither Hennecke nor Reiser knew the location of Diefenthal's CP, Reiser suggested they be sent to Feiper's CP as accused Gruhle, Feiper's adjutant, would know where Diefenthal was located.

Since Sergeant Drechsler, in charge of the execution detail from Hennecke's company did not know where Feiper's CP was situated, Hennecke sent Hauptscharfuhrer Fidun along. That the detail reported as ordered is borne out by the statement of the accused Gruhle (R.1452) in which it is stated that Hauptscharfuhrer Fidun of the 1st Company on the afternoon of 22 December 1944 reported to Gruhle at Feiper's CP and inquired as to the location of Diefenthal's CP. This is the same Hauptscharfuhrer Fidun whom Hennecke states

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reported back to him after about 30 to 45 minutes and stated, "We shot a lot of prisoners of war." (R. 1009)

The execution detail from the accused Rumpf's company was in charge of the accused Maute. Rumpf states that after receiving Hennecke's order he went to a cellar where some of his men were located and announced he needed volunteers to shoot some prisoners of war. Unterscharfuhrer Erich Maute and three to four other men stepped forward (R. 740). Rumpf recalls of the other men only that they were SPW drivers. Rumpf then told Maute to go to the 1st Company for his instructions, as prisoners were to be shot at the church. Hennecke, who did not know Maute by name states that the name given by the soldier in charge of that detail when it reported to him is similar to the name "Maute." He described him as of "French features, dark hair, strong eyebrows and a longish face." When confronted at Schwaebisch Hall by a soldier who gave his rank and name as SS Unterscharfuhrer Erich Maute, Hennecke stated with almost complete certainty that this man was the same person who reported to him at La Gleize in charge of the execution detail from Rumpf's company (R. 1008). There is ample corroboration for Hennecke's identification of Maute. The accused Joachim Hofmann (R. 656), Neve (R. 672) and Jaekel (R. 691), all members of the 3rd Panzer Pioneer Company, were in the same cellar with the accused Maute, on the evening of 22 December 1944, when Rumpf arrived and placed the accused Maute in charge of a detail of three to four men for the purpose of shooting prisoners. Hofmann and Jaekel both state that Maute returned in about a half hour and said that they had shot the prisoners at the church.

The accused Reiser's part in the execution clearly places responsibility upon him for the smooth and orderly dispatch of

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the prisoners. Certainly, if Reiser ordered Hannecke to supply an execution detail upon his own volition, his culpability is beyond argument, and it would merely burden the Court to devote time to the contention. However, since the accused Reiser did not choose to clarify the record on this point, it is the contention of the Prosecution that Reiser is equally guilty for the murders committed by the execution details, even if he merely carried out the orders of superiors.

As a responsible officer, acquainted with the laws of war, he was at liberty to make a choice to aid in the execution of a clearly illegal order or refuse to do so. He made the choice which was the easiest at the moment and must bear responsibility for his actions. The law is clear and has been previously cited and the Court will not be burdened with repetitious argument.

In any event, it is quite apparent that Reiser was in charge of the 1st Battalion CF when he ordered Hannecke to send the execution details to Diefenthal and suggested they first report to Feiper's CP as Gruhle would surely know where Diefenthal could be found. Whatever orders Reiser may have originally acted upon, he clearly displayed an enthusiasm for the mission by volunteering such detailed information, all of which contributed to the efficient accomplishment of the execution detail's mission.

The accused Reiser does not recall with certainty the order Hannecke stated he received from Reiser and the Defense has introduced testimony to prove that it was Foetschle who gave Hannecke the order. This contention can readily be disposed of. Certainly the accused Hannecke, who received the order from Reiser, should be able to supply the answer and he does so, without a hint of doubt. (R 1008).

The Defense has introduced further testimony to explain that

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the purpose of these details was to execute a soldier charged with desertion. Is it possible to explain away this obviously well planned mass extermination by the simple excuse that a soldier of the 1st Panzer Regiment was sentenced to death for desertion? There is no denial by the accused concerned that these execution details were ordered to report, as proved by the Prosecution but if their mission was to execute a condemned SS soldier for desertion, then why the necessity of two execution details from two different companies? Why were the execution details ordered to report at the same time the desertion charge was first preferred by Rumpf to Feipert? An examination of the record shows that former SS Captain Bodius, a witness, called by the Defense, testified that only one SS soldier was executed in La Gleize for attempted desertion after a summary court hearing. Nothing in the record will show that at the meeting at Foetschke's CP, where the accused Feipert ordered the execution details, anything resembling a hearing was held for an SS soldier.

The witness Hoppe, who was a member of the execution squad which executed the condemned SS soldier, testified that that squad reported direct to Rumpf's command post and were not called out of the cellar by Rumpf himself. Further the group contained no SPW drivers. This detail did not report to Diefenthal's CP, did not seek out Gruhle to ascertain the location of Diefenthal's CP, and contained no men or non-coms of the 1st Panzer Company. There is no resemblance whatsoever of the known details of this single execution to the mass of evidence introduced proving the planned execution of an unknown number of American prisoners on direct orders of Feipert in La Gleize on 22 December 1944.

Two of the important cogs in the dissemination of the orders to kill American prisoners of war and Allied civilians were the

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accused Gruhle, Feiper's adjutant and the accused Fischer, Adjutant of the 1st SS Panzer Battalion. Both performed certain important acts and neither elected to take the stand as witnesses in their own behalf to deny the confessions they had made. In Gruhle's sworn statement of 16 March 1946 he admits that on 15 December 1944, upon the order of the accused Feiper, he read the 6th Panzer Army Order to the various officers with commands in the Regiment and at the conclusion of the reading Feiper ordered them to pass the contents on to their men. He also stated that receipt of the order had to be acknowledged in writing by the company commanders and that the accused Fischer was present at the meeting. (R. 1667-68). Gruhle admits that this Army order in addition to stating that acts of terror by civilians should be countered with the greatest ruthlessness, also admitted that it contained the statement: "This fight will be conducted stubbornly with no regard for allied prisoners of war who will have to be shot if the situation makes it necessary and compels it." Feiper in his statement of 21 March 1946 admitted that Gruhle prepared the Regimental order from the Army order. (R. 162-66).

The accused Fischer in his sworn statement dated 31 March 1946 admits that on the 15th of December 1944, Gruhle handed him the Regimental order which stated that "a wave of fear and terror was to precede our troops and that the resistance of the enemy was to be broken by terror, - that where the military situation should absolutely necessitate it, to shoot prisoners of war." Fischer further admits that he only had the heading of the Regimental order retyped to show the Battalion and issued the same order to the company commanders of the Battalion, having them acknowledge for its receipt in writing. (R. 174-175). He also admitted that the written order was not given to the companies for fear that if

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they fell into the hands of the enemy it would cause reprisals against German prisoners of war. (R. 175). This act in itself shows a guilty conscience and a knowledge that the order was illegal. If either or both of these accused had not performed their mission to disseminate these illegal orders there is little doubt that the murders attributable to the Regiment would have occurred.

In considering the case of Gruhle it should not be forgotten that in the accused Schumann's sworn statement of 25 February 1946 which he did not take the stand to deny, he states that on 17 December 1944 at the Crossroads north of Engelsdorf he saw Gruhle just before the prisoners were shot. (R. 596). The Defense tried to establish an alibi for him through the witness Landfried who testified that he pushed Gruhle's vehicle out of the mud west of Bueellingen at about three P.M. on the 17th and that Gruhle continued on ahead of him. On cross examination Landfried admitted that when he reached the Crossroads, German soldiers were in the field shooting the wounded. It is reasonable to believe that Gruhle reached the crossroads at least while the shootings were going on, if not before, and there is nothing in the record to show that he ever attempted to put a stop to these murders which he, as Feiper's adjutant, surely could have done if he had so desired. His responsibility to have protected these defenseless prisoners of war is clear.

Let us now consider what evidence the record reveals in connection with the accused Generals. It is with them that the first responsibilities lie for these unrestrained murders. If they had not seen fit to pass on Hitler's orders, such orders would not have reached the troops.

Dietrich did not see fit to take the stand. His sworn statements stand undenied by him and he is the one who knows better than anyone else whether they are true or not.

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Now, what does Dietrich say in them? In his sworn statement of 11 April 1946 (R.144) he states in connection with his Chief of Staff, the accused Kraemer: "All orders which were issued by the 6th Panzer Army either originated from him or were prepared on his orders. All orders which were submitted to me for signature went through the hands of my Chief of Staff, Brigadefuehrer Kraemer."

Dietrich further stated in this same sworn statement (R.144-145) that after returning from the conference with the Fuehrer he discussed the speech and intentions of the Fuehrer with Kraemer. Immediately after this meeting with Kraemer the order which was to be read to the troops before the offensive was drawn up and signed, probably on the 13th December 1944.

In Dietrich's sworn statement of 22 March 1946 (R.126) he stated: "In the order which I issued for the 6th Panzer Army for the Eifel offensive....I ordered that our troops have to be preceded by a wave of terror and fright and that no humane inhibitions should be shown."

The accused Kraemer in his sworn statement of 10 April 1946 (R.139) states that this order of the day was signed by Sepp Dietrich; that it is possible that it stated that the troops should fight in the old SS spirit and that orally he had stated that this order also read "that one should not be concerned about prisoners of war."

In his unsworn testimony Kraemer admitted that he prepared the order of the day (R. 1665) and that it was signed "Sepp Dietrich" (R. 1666,1673). He further testified that "It is the only written document that was ever sent out with the signature Sepp Dietrich as long as I was the subordinate of Dietrich" (R.1666). It is true that on the stand Kraemer denied all the important elements of his sworn statement, but by such lame excuses as "I was taken into this interrogation very suddenly" (R. 1675). It is hardly probable that a Chief of Staff of any Army could be

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rushed into incriminating statements if they were not true, much less a Chief of Staff of an SS Army.

Now, what do others who saw this order have to say about it? The accused Peiper in his sworn statement of 21 March 1946 (R. 163) states that the 6th Army order read: "A wave of fright and terror should precede the troops"; that "The German soldier should, in this offensive, recall the innumerable German victims of the bombing terror" that "enemy resistance had to be broken by terror". Peiper further stated in these words, "Also I am nearly certain that in this order it was expressly stated that prisoners of war must be shot, where the local conditions of combat should so require it." Peiper also states in his sworn statement that this order "was signed by SS Oberstgruppenfuehrer and Generaloberst Sepp Deitrich." (R.164). Peiper, when he was on the witness stand, admitted that he was stupid to have signed this statement (R-1889) but never did deny the truth other than to say that he told Lt. Perl some days after he had written it that he did not agree to its contents.(R. 1890). For a front line SS Colonel, this alibi is about as flimsy a one as could possibly be put forth.

The accused Gruhle also saw the 6th Army's Order of the Day and in his sworn statement dated 18 March 1946 (R.1567), which he did not deny, he stated that the order read as follows: "The people will not welcome our advance in whose territory we will carry the fight. Any redistance from this quarter and against any acts of terror, you will have to counter with the greatest ruthlessness. This fight will be conducted stubbornly and with no regard for allied prisoners of war who will have to be shot if the situation makes it necessary and compels it." Gruhle further stated that this order "was signed by SS Oberstgruppenfuehrer Josef (Sepp) Dietrich" (R.1567).

Many witnesses were called by the defense to establish an alibi on Dietrich's Order of the Day but it should be pointed out that in

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practically every instance the witnesses were SS officers themselves and possible candidates for a second Malmedy trial. Especially if the Prosecution's position, that those who issue, prepare and pass on orders are responsible for the results of their execution, is upheld, then the interest, bias and prejudice of such witnesses cannot be denied.

That the Order of the Day was passed by Army to the 1st SS Panzer Corps commanded by the accused Priess, is not denied, nor the fact that Priess passed it on to the 1st SS Panzer Division (R. 158, 159) and that the Division passed it on to the 1st SS Panzer Regiment (R. 163), commanded by the accused Feiper.

Priess admits in his unsworn statement dated 16 April 1946 that this order contained remarks about ruthlessness and terror, but that he assumed that his commanders understood and interpreted these remarks as he did, namely as propaganda (R. 159). However, there is nothing in the record to show that Priess took any steps to interpret this order for his commanders other than that the accused Feiper, in his sworn statement (R. 166) states that at the Corps meeting on 15 December, the accused Priess said to fight with reckless brutality and further talked about how to treat and fight the enemy. The accused Knittel also attended this meeting and in his statement (R. 404) he states that "Priess requested ruthless combat tactics of us." Incidentally, Knittel did not choose to deny this statement.

The proof establishes beyond all reasonable doubt that an Order of the Day of the 6th Panzer Army was published by the accused Dietrich and that this order, at the very least, contained expressions about the manner in which the enemy and the civilian population were to be treated. These expressions left no doubt in the minds of subordinate commanders but that it was expected that prisoners of war and noncombatant allied civilians would be "bumped

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off." The fact that this was the interpretation placed on this order is best proven by the fact that from the accused Peiper down to the platoon and group commanders of the 1st SS Panzer Regiment, they held meetings instructing the troops to kill prisoners of war and allied civilians. Further, the proof in this case stands unrefuted that almost without exception every company of the regiment has its quota of killers. For such widespread killings of defenseless American soldiers and Belgian civilians there can be put one inescapable conclusion and that is that it was approved, encouraged, aided and ordered from the very top. If this were not so, then why, with all this widespread killing and the admitted general knowledge of the massacre at the Crossroads, was there not one speck of proof by the Defense that any disciplinary action was ever taken against anyone for these murders? By their own admissions many officers and commanders knew of the murders and not a single one took any steps to prevent the recurrence of similar murders. I will tell you the answer, because that was not what was wanted by those who adopted the policy of not showing any humane inhibitions, to fight ruthlessly and in the old SS manner, to avenge the bombing terror and to spread terror and panic before the troops and to "bump off" everything before their guns for this battle. They wanted the enemy to be murdered ruthlessly as that was the method of warfare they advocated.

In concluding the summation of the proof against individuals, the case against the accused Peiper must not be overlooked. In his own confession dated 21 March 1946 (R. 162, 166) he admits having issued orders to his subordinate commanders that prisoners of war must be shot where local conditions of combat should require it. His own adjutant, the accused Gruhle, in his confession dated 18 March 1946, which stands undenied in the record, states that Peiper issued orders to his subordinate commanders as follows: "This fight

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will be conducted stubbornly, with no regard for Allied prisoners of war, who will have to be shot if the situation makes it necessary and compels it." (R. 1567-69). In the accused Diefenthal's statement dated 27 March 1946, which stands undenied in the record, he admits receiving a regimental order that enemy resistance was to be broken by terror and a wave of panic and fright had to precede the troops (R. 1299-1301). The accused Fischer, in his undenied confession, dated 31 March 1946, states that Peiper's adjutant Gruble handed him the orders of the 1st SS Panzer Regiment which stated: "(a) A wave of fright and terror was to precede our troops and that the enemy resistance was to be broken by terror and (b) where the military situation should absolutely necessitate it, to shoot prisoners of war (R. 174-176). Similar quotations in connection with the Regimental Order of Peiper may be found in the confessions of the accused Rumpf, Commanding Officer of the 9th Panzer Pioneer Company (R. 732), the accused Sievers, Commanding Officer of the 3rd Panzer Pioneer Company (R. 387,391), the accused Christ, Commanding Officer of the 2nd Panzer Company (R. 289-291) and the accused Klingelhofer, Commanding Officer of the 7th Panzer Company (R. 298-301). With the exception of the accused Christ and Sievers, none of these defendants took the stand to deny their statements. From this, it must be concluded that Peiper did issue an order in which he stated substantially that Prisoners of War and Allied civilians would be shot.

Further, in Peiper's own confession dated 26 March 1946, he admits that he gave the power to his commanders to kill prisoners of war in La Gleize for refusal to obey orders (R. 1554). In the same confession he admits that he remembers that on the 19th of December 1944, in Stoumont, that he caused an American prisoner of war to be shot by the accused Hans Hillig (R. 1556), and that in the first days of January 1945 at Petit Thiers, Belgium, he followed

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the suggestion of the accused Sickel to have an American prisoner of war shot by the accused Wichmann at Petit Thiers (R. 1555).

The killing by Hellig in Stoumont is confirmed by his confession, which stands undenied by him in the record (R. 1376) and is confirmed by the witnesses Langfried (R. 1364-65), and Ebeling (R. 1367-69). The killing by the accused Wichmann is confirmed by his undenied confessions (R. 1533-39); one dated 28 December 1945, another dated 28 March 1946 (R. 1543), and the third dated 23 January 1946 (R.1574-76). In addition, the accused Sickel admits that he ordered the accused Wichmann to lead this prisoner of war away and "bump him off". This he states in his undenied confession dated 9 April 1946 (R. 1561). This is also further confirmed by the undenied confession of Peiper's own adjutant, the accused Gruhle, wherein he states that he twice tried to intercede on behalf of this prisoner but was prevented by both Peiper and Sickel and that Peiper ordered Sickel to cause the immediate shooting of this prisoner of war (R. 1569). In this same statement by Gruhle he states that Peiper himself told him that he ordered the killing of the American Prisoner of War referred to above as the one killed in Stoumont on the 19 December 1944 (R. 1568-69).

Let us take a look at the record and see what the order so effectively passed on by the accused Dietrich, Kraemer, Priess and Peiper was meant to their own men. Seventy former members of the 1st SS Panzer Regiment are wearing numbers today and awaiting their fate before this Court for the alleged violations of the rules of land warfare. Approximately another 150 would also be with these 70 awaiting their fate too if their whereabouts had been known at the time this trial started. But what about the victims? The record shows that as a result of this order approximately 750 American prisoners of war were murdered in cold blood and at least 150 Belgian civilians from the ages of a few months to over 80 years old, the

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vast majority of whom were women.

At this point it might be well to mention that the Defense will no doubt contend that these Belgian civilians were partisans and therefore could be shot. But in reply to such contention we simply state that even a partisan is entitled to a trial and the proof shows nothing about such trials, if there were any.

If anyone of the four accused, Dietrich, Kraemer, Friess and Peiper declined to take a part in this dishonorable method of warfare which they advocated, the lives of the 900 victims of the 1st SS Panzer Regiment would have been saved and their own and the lives of at least 70 of their men would not be in jeopardy today.

The record discloses that almost without exception the witnesses used by the Defense were prisoners of war and SS troops. Most were from the 6th Panzer Army and the greater number from the 1st SS Panzer Regiment. The accused were their former friends and comrades and as the accused Peiper said on the witness stand, the comradeship which had been formed in blood was broken down at Schwaebisch Hall but was reborn again at Dachau. It is suffice to say that the interest, prejudice and bias of these witnesses for the Defense cannot be doubted. It should also be noted that not one single accused who took the witness stand ever admitted that an accused did a wrongful act. Anyone that was so accused was either dead or missing. It is strange indeed that only dead or missing were ever seen to do anything wrong.

The youth of these accused, with the exception of the officers and a few others, cannot help but have impressed the Court. It is humane and American for a feeling of sorrow and pity to almost completely overwhelm one when it is considered that these accused' formative years were spent under the sinister influence of the Hitler regime which glorified war and expounded the necessity to annihilate the so called inferior races. Their minds, one could

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say, were warped and perverted by this training and we should not be harsh with them. But let not the fact be overlooked that they killed with a lust and abandon seldom excelled even by Ghengis Kahn; that they enjoyed and thrilled at the excitement of their bloody work and that because of these acts they are no longer the beardless, unsophisticated, naive youths they appear to be. They have the blood of the people they murdered on their hands and it is not the blood of an opponent killed in honorable battle but that of defenseless victims of the fortunes of war. Let not the Court forget the youth and in the same instances even the infancy of those they murdered. In their hearts they knew they were doing wrong, they knew that they were murderers and today they are no longer mere lads, as we look at them, but hardened and dangerous criminals.

It is easy to say "They knew not what they did, therefore judge them lightly". To this we reply, if they were innocent of the criminal nature of their acts then why did it take months and months of work to get them to confess? Each in his own heart knew that it was wrong to murder his fellow men. They cannot escape it, they cannot deny it.

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It might be reasonably anticipated that some or all of the accused might urge as a defense or as a matter or mitigation the fact that Germany as a nation was in a desperate situation at the time of this offensive, and that the method of warfare they employed and the crimes perpetrated incident thereto stemmed from their loyalty and devotion to their country. We concede that such feelings are natural and admirable traits, but we most vigorously contend that there are principles which transcend them and to which all peoples of all civilized nations owe an even higher allegiance. Among them is the sanctity of agreements between nations and the moral validity of such plain and long accepted covenants as those that were smeared with the blood of our countrymen and of allied nationals by these accused.

These victims too had a love of country and a devotion to the cause for which they fought. It was certainly not easy for them to lay down their arms in surrender. When they did so they expected and had a right to expect that they would be treated humanely and protected against acts of violence in accordance with the rules of warfare. To forgive or even mitigate the punishment of those who then took their lives on the ground that they acted out of loyalty to country would be a breach of faith with those who fought fairly and honorably, a quasi-approval or endorsement of the principle that any means, no matter how low or barbaric, justify the end, and a shock to the conscience of the civilized peoples of the world.

In considering the question of superior orders in mitigation of the alleged murders the Prosecution believes that distinction could well be made between the execution of a General Order to kill

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prisoners of war and allied civilians and the order of a high ranking superior officer to kill a particular prisoner at a particular time and place. In making this distinction we have reference to the cases of the accused Hillig and Wichmann. In Hillig's case, he was ordered specifically by his regimental commander, the accused Peiper, to kill a certain American prisoner of war and to do so at a certain place, very close to the "Kommandeur" (R. 1376). To have avoided executing this order would have been difficult and perhaps even extremely dangerous for him to have done so. The same, to a lesser degree, is true in the case of the accused Wichmann. He also was ordered to kill a certain prisoner by two of his high ranking officers, the accused Peiper and the accused Sickel (R. 1533-39). In this instance the place was not designated and Wichmann actually took the prisoner several hundred meters down the road to the edge of the woods to shoot him. It is conceivable that Wichmann in this instance, could have told the prisoner to run, fire a couple of shots in the air and report the order executed without serious danger of anyone ever knowing he had not killed the prisoner, if he had so desired. However, he did not choose this course of action.

We do believe that these two cases are distinguishable from the vast majority of cases where the accused were simply carrying out the general policy to kill prisoners of war and allied civilians. Such as in the case of Ochmann, who killed eight prisoners of war in Engelsdorf because he was in a bad mood (R. 959). He was the ranking person present between him and Suess and he could easily have sent the prisoners to the hotel with the others if he had desired to. However, such action he did not choose to take.

In many instances they carried out these executions with a

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zeal and enthusiasm that was not warranted by the circumstances. For example, Zwigart's reference to his killing of the jeep driver, where he referred to the noise and shouting of his comrades as similar to the "Leipzig Fair" (R. 1292). With reference to the Crossroads massacre, the survivor Ford testified that "It sounded as if they were having a good time. It seemed as though they were happy and rejoicing." (R. 528). The survivor Lary testified that "I heard laughter and more machine gun fire" from the passing vehicles. (R. 421-422). With the exception of the two killings previously mentioned the absence was always conspicuous of the compelling force of high ranking officers. Usually some Sergeant was taking the lead and was followed enthusiastically by the soldier. The mitigating circumstance in such instances is hard to find.

It should not be overlooked that with the exception of two of the victims all were killed between the 17th and 23rd of December 1944. In this one short week I am sure that the record of approximately 750 American prisoners of war and 150 Belgian civilians murdered in cold blood would even satisfy the demands of the accused Hendel to excel in the killing as well as in the fighting. It is a bloody record indeed that the 1st SS Panzer Regiment set for itself in this one short week. Let us hope that it has never been surpassed, nor that never again will such a record even be approached.

Today in America the survivors of these massacres, the mothers, father, sweethearts, wives and children of those comrades of ours who so needlessly fell, not on the field of battle, but from the tender mercies of the SS, are awaiting your findings. These comrades all would have been alive today if it had not been for the 1st SS Panzer Regiment and they must not have died in vain. From their deaths let there come a clear understanding to our former

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enemies that they cannot wage warfare in a merciless and ruthless manner. They must learn that the end does not justify the means; that truth, honor and mercy cannot be sacrificed for success and that the honorable soldiers of the world still have mercy on the field of battle for their captured opponents. It must be brought home to the German people that the principle of extermination which guided them in their last battle will not create for them a new and better world but will only bring disaster to their homeland and to themselves. Let their punishment be adequate for their crimes.

That concludes the Prosecution's final argument.

PRESIDENT: The Court will adjourn until 0830 hours tomorrow morning.

(Whereupon at 1642 hours the Court adjourned until 0830 hours Wednesday morning, 10 July 1946.)

End tk 348

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CAMP DACHAU, GERMANY

10 July 1946.

MORNING SESSION

(Whereupon the Court reconvened at 0830 hours.)

PRESIDENT: Take seats. The Court will come to order.

PROSECUTION: If the Court please, let the Record show that all members of the Court, all members of the Prosecution, with the exception of Captain Byrne, who has been excused by verbal orders of the commanding general, and Capt. Shumacker and Mr. Elowitz who are absent on business of the Prosecution, all members of the Defense with the exception of Dr. Hertkorn, Dr. Leer, and Dr. Wislend, who are absent on business of the Defense, all of the defendants and the reporter are present.

DEFENSE COUNSEL: May it please the court, the Defense desires that the closing arguments be entered in the Record and made a part thereof. Lt. Col. Dwinell will render the final argument at this time on behalf of the officers.

DEFENSE COUNSEL (Co. Dwinell): May it please the court, it is respectfully suggested that before deciding this case, that the Court reconsider the arguments made on pages 1580 to 1608 of the Record, which we believe are applicable along with the final argument now presented.

If we condemn either Preuss or Sievers it is only because some other accused has made written statements involving them. Their own statements say very little.

Siever's statement which appears on page 387 of the Record, spoke of the regimental order alleged to have been issued at Blankenheim Forest on the 15th of December, 1944. Many witnesses have said that such an order did not exist on the 15th of December 1944, and that when it was issued early in the morning of the 16th of December it contained no reference to prisoners of war, Belgian

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civilians, or the use of terror methods.

Sievers testified that he left his column on the afternoon of the 16th of December 1944 and did not rejoin it again until midnight 17-18 December, just east of Stavelot. (See p. 2356 of the Record.) He passed by the Malmedy crossroads late in the evening.

The hearsay and indefinite character of the written statements is noticeable. Prosecution's Exhibit P-109, on page 1399 of the Record, is a written statement from one of the accused and says that Sievers was at the Malmedy crossroads, but the time of the day was not stated.

Prosecution's Exhibit P-44, on page 618 of the Record, is a written statement from one of the accused and says that Sievers was in La Gleize at dawn on the morning of the 21st of December, and that Sievers and his men shot PWs by a school house. But it is significant the statement goes on to say that the bodies were not seen. (See p. 632 of the Record).

Prosecution's Exhibit P-44 also says that 100 prisoners of war were shot by Sievers and others in a pasture, but that the bodies had not been seen (see p. 633 of the Record).

Prosecution's Exhibit P-46, on page 645 of the Record, was the statement of one of the accused and says that Sievers was on the main street of Stoumont the morning of 18th December, 1944, and at that place and time he ordered prisoners of war shot. He is supposed to have had a conference of five or six people in the street. (See p. 651 of the Record.)

Combat in Stoumont has been proven to exist on that morning and artillery and mortar fire was continuous and uninterrupted. It is incredible that combat trained soldiers would gather in groups and have conferences on streets of towns that are under heavy artillery fire and mortar fire and that are subjected momentarily to air attack.

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We have proven that in all the places wherein the incidents are alleged to have occurred a great deal of combat and fighting was going on.

We said in our motion to dismiss, made at the end of the Prosecution's case: "Prosecution in this case has built a structure of alleged facts and circumstances upon a foundation which is made of written statements taken from the accused during a long period of interrogation at Schwaibisch Hall. The statements received in evidence contain the principal part of the proof offered against the accused. It is to be noted that this foundation of the Prosecution's case is not only made up of written statements but that the statements themselves are of questionable value."

Now that both sides have rested this case, we find that very little has been added to that structure of written statements to prove convincingly and conclusively that Preuss and Sievers are guilty of the crimes alleged.

Preuss' statement, appearing on page 941 of the Record, refers to the issuance of orders on the 15th to the 16th of December, 1944, and to the shooting by Berghaus of an American flier in the vicinity of Buelingen. Preuss is also accused by statements of the co-accused concerning the shooting of prisoners of war in or near LaGleize. (See Prosecution's Exhibit P-96 and the Record page 1248, and P-112, and the Record page 1429.) Another statement, P-113, says American prisoners of war were led out of the house by a T/Sgt who said prisoners of war were shot at that time by order of Preuss. (See page 1436 of the Record.) The witness Mannitz says that no T/Sgts were in the company on that day and that the company's strength had been reduced from 130 men at the beginning of the campaign to a strength of 30 men (page 2623 of the Record). The witness Husbler testified that Brecht of the 10th Company shot two prisoners of war in Buelingen (p. 246 of the Record). However, the witness Gerwick said that such a shooting did not occur.

The Prosecution's case against Freuss was admittedly insufficient because resort had to be made at the very last minute to a seizure of admissions made in private correspondence, forcing Freuss to testify against himself and using evidence comparable to wire tapping, which our courts have characterized as void evidence.

The Prosecution has not proved that prisoners of war were shot or caused to be shot by either Sievers or Freuss, as an unnecessary or wanton act.

There is a difference between not taking potential prisoners because of the military exigencies of the moment, and actually accepting and shooting them. If the Court believes that prisoners of war were shot on orders of Freuss or Sievers, it must then be shown that they were prisoners and not potential prisoners. What about the giving of quarter? Was it practical in all these cases?

Now that subject is discussed in "Heaton's International Law", 7th English Edition, Volume 2, and we quote from P. 209:

"Generally speaking, a belligerent is obliged to grant quarter to those who offer themselves as prisoners of war. We have already pointed out that claims of "military necessity"--factitious and ubiquitous as they are--cannot justify the destruction of men who have been taken prisoners. But, in the case of those who lay down their arms and appeal to the adversary for mercy, quarter must be given where it is practicable."

"The admitted case in which it is not practicable is that which occurs during the continuance of fighting, when the achievement of victory would be hindered and even endangered by stopping to give quarter instead of cutting down the enemy and rushing on, not to mention that during fighting it is often impracticable so to secure prisoners as to prevent their return to combat."

Has it been proven that the giving of quarter in this case was possible and practical for the accused? That is an element of proof that the Prosecution has not even attempted to offer.

If the Court still believes that American soldiers were illegally shot, has the Court been convinced that they became peaceful when discovered, and submitted themselves to their captors, and by

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that means became prisoners of war?

At the Malmedy crossroads there was a complete surprise. The American soldiers there consisted of four groups: (a) those who surrendered; (b) those who posed as dead; (c) people who tried to escape; (d) and people who had already succeeded in escaping and were still shooting. Those persons mentioned as posing as dead or trying to escape or actually escaping, must risk being shot.

It is to be noted with regard to the over-all picture that the fact that prisoners were well treated in LaGleize is proof of the fundamental attitude of the accused.

Concerning the accused Junker, we cannot determine from the record whether he ever left the Blankenheim Forest during the entire Eifel Offensive. Two witnesses say he made a speech at that place. The Prosecution witness Schlossnikl says that he heard Junker say: "No prisoners will be taken." (See p. 269 of the Record). He did not say Junker ordered prisoners of war shot. Prosecution's witness Budik says, on p. 273, and 274 of the Record, that either Junker or Siegmund directed that prisoners would not be taken, but see page 275 of the Record where he says that it was not to be considered an order, and that the infantry following was to take the prisoners and not them. (Page 275 of the Record.) The prosecution witness Dethlefs said that Junker made a speech at Blankenheim Forest and said that prisoners would not be taken (see p. 279 of the Record) and further said "we were too weak for that and the infantry following was to collect prisoners. (See p. 283 and 284 of the Record).

Junker's statement appears on page 289 of the Record and he says therein: "Where the military situation requires it, not to take prisoners." He did not say prisoners of war were to be shot. Hence all of the Prosecution witnesses spoke only of Blankenheim Forest in connection with the accused Junker. When he said prisoners of war were not to be taken it is reasonable to believe that he meant

potential prisoners would not be taken, and that is a perfectly lawful attitude in combat of this nature.

The Defense presented witnesses Braun and Reinhold, who appeared very reliable and who were not discredited on cross examination. They testified that Junker did not order prisoners of war shot or anyone mistreated. (See p. 2333 to 2340 of the Record.) That is the whole case offered against Junker.

Who was shot or mistreated on his orders? Did he give any orders? Did he perform any illegal act? Where was he during the Offensive? The Record says nothing.

The accused Fischer was an adjutant. Where was he and what did he do? He stated in his written statement, Prosecution's Exhibit F-13 (p. 174 of the Record), that the accused Gruhle handed him a regimental order. He further said that he attended a conference on the 15th of December at which conference Postachke issued the same order to the company commanders. Fischer at that time had changed the heading of the order from regimental order to battalion order. That is the entire case against Fischer. We have proved that the regimental order did not exist at that time. Fischer's statement is therefore incredible. In our "Motion to Dismiss" at the end of the Prosecution's case, we said, and we now repeat, the following: "The accused Fischer was an adjutant and the entire case offered against him is based upon the fact that he was present at a meeting where orders were alleged to have been transmitted containing directions about treatment of prisoners of war. Assuming that, for the purpose of this argument, the orders that were transmitted by Fischer were violations of the laws of war, can this Court find that an adjutant, merely because he holds such an office and is assigned to that duty, will be made to pay for everything that his commander does? We know that the adjutant in the German Army functions exactly the same as an American adjutant. He has no command functions and no powers of discretion. Does this Court say that when an illegal order is issued, that it was the duty of Fischer to refuse to obey? And is

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this Court going to find Fischer responsible for the killing of people because he merely mechanically passed on a piece of paper containing an objectionable order of his commander?

As to the accused Hennecke, we note that he has signed three statements, Exhibits F-14, p. 239; F-58, p. 782; F-78, p. 1004), none of which we believe was voluntarily made or contains the un-abridged truth. Reference is made, in this connection, not only to my previous arguments in connection with the statements of all the accused in Schwabisch Hall and the conditions and atmosphere prevailing there, but more particularly to the testimony of this accused given in open Court on the 25th of June, 1946. (See the Record p. 2188-2206) in which he describes, among other things, the mock trials and the circumstances surrounding same, the dubious role of the so-called "defense attorney" who, under false pretenses, elicited from him confessions which were not true.

Hennecke is first charged with the issuance of orders not to take prisoners of war. He is involved, apart from his own statement, dated the 11th of January, 1946, (Exhibit F-14), merely by the statement of the co-defendant Schmann (Exhibit F-43) (Record p. 595) as to his speech made in Blankenheim Forest, and of the defendant Briesemeister (exhibit F-59, on page 787) as to the speech made at Friesheim. On the other hand, the Defense witnesses Leiber (p. 2211), Zitzelsberger (p. 2214), Haeke (p. 2219), and Schneider (p. 2229), testified that Hennecke did not deliver any speech of an inciting nature at either Blankenheim Forest or Friesheim, and the Prosecution witnesses Koenler and Flohmann testified in favor of Hennecke. (See the Record page 225 and 232.)

Hennecke is further charged with permitting a crew member of his tank to fire on prisoners of war at the Malmedy crossroads. Hennecke is involved here only by his statement of 17 January 1946, (Exhibit F-58) and the statement of the codefendant Schmann (Exhibit F-43, on page 596-597 of the Record), and the testimony of the Prose-

caution witness Flohmann (Record page 795-4). According to Eckmann, Hennecke was at the crossroads between 1:00 and 2:00 P.M.; according to Flohmann he was there between 2:00 and 3:00 p. M. The character of the crossroads incident and the significance of the chronological sequence of marching order and the quickly-moving events makes this divergence in the two versions doubly important. The picture of the crossroads at the time Hennecke, according to Eckmann, is supposed to have been there, was an entirely different one than the picture at the crossroads at the later hour described by Flohmann.

Now, concerning the shooting by Hock, the witness Lieber expressly stated that Hock did not fire (see p. 2502 of the Record).

Hennecke is also accused of permitting his tank on or about 18 December 1944, near Stavelot, to fire on Allied civilians. Here again the accused is involved only by his own statement of the 13th of March 1946 (Exhibit F-78, page 1004-6) and the statement of the codefendant Eckmann (Exhibit F-43, page 597-8 of the Record), which certainly should not suffice for a verdict against him.

The Belgian witnesses (Mme. Tonbeux p. 921, Colinet, p. 991) who stated that they saw four tanks at approximately 9:00 A. M. near the bridge in front of Colonel's cafe, obviously referred to a different incident.

We believe the Defense has submitted ample evidence to this Court of the battle conditions which the German tanks encountered at the time of their entry into Stavelot.

Hennecke denies that he was in Gelfert's tank at the time the alleged incident took place and as said before, no satisfactory evidence has been submitted by the Prosecution that he was.

Hennecke is also charged with the furnishing of a detail to shoot prisoners of war in LaGleize on or about the 22nd of December 1944. Again Hennecke is involved only by his own statement of 13 March 1946 (p. 78, p. 1004 of the Record) and that of

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his co-defendant Reiser (P-115, p. 1447 of the Record) and Rumpf P-55, Record p. 732). On the other hand, the witness Walls and previously the accused Hennecke (p. 2209 of the Record), and Feiper have testified for the Defense that the shooting commando was requested not to shoot prisoners of war but to execute a German soldier who had removed his collar insignia and who was suspected of desertion.

The accused Reiser has been charged with having aided and abetted on or about the 22nd of December, 1944, the shooting of prisoners of war at La Gleize.

He was adjutant to Major Foetschke. It is not disputed that, coming from the Zone of Interior, he did not report to his commander until the 19th of December, 1944, when he was assigned to replace the accused Fischer and the witness Kramm, both of whom had been wounded.

The only evidence against him is his own statement, dated the 20th of March, 1946, (Exhibit P-115, Record P. 1447) and the statement of his co-defendant Hennecke, dated the 13th of March, 1946, (Exhibit P-78, Record p. 1004). His own statement does not contain an admission to have passed on to Hennecke an order from Foetschke to detach a shooting detail from his company to shoot prisoners of war. He stated frankly that: "As these events happened 15 months ago, and as things in this Offensive took place which I naturally attached more importance to, and therefore remained better in my memory, I can only repeat that I cannot remember any longer."

Reiser was an adjutant and had not authority to issue orders of his own; his one and only function was to assist his commanding officer in the transmittal and execution of his orders. There is no evidence in the Record that the position, duties, and functions of an adjutant in the German Army was in any way different from those in the American Army. The witness General Engel (Record p. 1637) however, described the duties of an adjutant and said he had no powers or authority of his own.

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We believe that the statement of the accused Reiser, which does not contain any admission, together with the statement of Hennecke and without any corroborative evidence, is not sufficient to justify a verdict of guilty.

Sternebeck is involved by his own statement dated the 26th of March 1946, (Exhibit F-86, p. 1151 of the Record) and the testimony given in this Court by several Belgian civilians (see pp. 1179-1207) and the witness Hans Zimmer (p. 1154). Reference is made to the testimony of the communal secretary of Wanne, Edmond Engelbert (p. 1198-1207) and the statement of the Reverend Brecht (p. 1191-96) from which it appears that there were five civilians killed in Wanne during the time in question and that four of them died on the 20th between 1600 and 1700 hours, and the fifth on the 21st of December. There is no evidence of any civilians killed after the 21st of December. The Reverend Brecht further stated that at the time these killings were committed there were not more than 30 German soldiers and three or four tanks in Wanne. On the other hand, the witness Zimmer, who originally testified as a Prosecution witness (see pp. 1153 to 56) but was later called as a witness for the Defense, has testified that Sternebeck did not enter Wanne until after 1500 hours on the 20th, never gave any orders to Herentry, Flass, Zimmer, or anybody else, to shoot suspicious civilians, that he merely told Herentry to break enemy civilian resistance if encountered and on the 21st or probably the 22nd told Zimmer and Flass to go to the church to look for the radio station. According to the Belgian witnesses whose memory of these incidents is very detailed and surprisingly fresh, four of the five civilians were already killed in Wanne on the 20th. The fifth one of whom the witness Engelbert speaks (p. 1201) is obviously identical with the men whom the witness Zimmer on the 21st of December saw being led out of the village by a man from the Grenadier Regiment, a unit which did not belong to the Combat Group Paiper.

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A stipulation has been introduced in evidence as Defense Exhibit D-3, (p. 2236 of the Record), according to which the accused Tomhardt was wounded on the 18th of December and was sent to the rear on or about the 22nd. In addition, the witness Fischer (p. 2287-90) has testified that he was with Tomhardt at the wounded-collection-point in Stavelot from the 18th of December at approximately noon until the afternoon of the 19th of December when they went to the regimental field hospital and from there to the main dressing-station in the rear. Obviously Tomhardt has not taken any part in any fighting or given any orders or instructions after he was wounded.

As far as the issuance of orders is concerned, Tomhardt is involved by only his own statement (Exhibit F-20, p. 347 of the Record) and the statement of several members of his company, all of whom, with the exception of the witness Guenther Heinrich, are also accused in this case. He has told this Court under what conditions this statement was born--after approximately four months of solitary confinement during which he was^{not} able to talk to a living soul, after mistreatments, threats and imprisonment in the so-called "death cell" without the possibility of sleep for five consecutive days.

On the other hand, the Defense has produced two witnesses who are not among the accused, Siegfried Albrecht (p. 2259) and Benno Agather (p. 2254 to 2256), that neither in Blankenheim Forest nor previous thereto at Gladbach did Tomhardt make any speech of an inciting nature, or order prisoners of war or civilians to be shot.

Mr. Justice Jackson at Nurnberg said: "We must summon such detachment and intellectual integrity to our task that this trial will commend itself to posterity as fulfilling humanity's aspirations to do justice."

We must hesitate then to apply to the facts of this case laws which are ex post facto and thus not only thwart humanity's aspirations to do justice, but ignore a very fundamental and age-old

principle of law. It was not the law in 1944 that has been written in re Yamashita, or enacted in our present Control Council.

We must hesitate again to use as the principal evidentiary medium confessions obtained under duress from prisoners of war.

We must hesitate again to set a dangerous precedent for the soldier by stigmatizing any unrestrained or injudicious act committed in the heat of combat.

DEFENSE COUNSEL: May it please the Court, Mr. Walters will render the final argument for the noncommissioned officers.

DEFENSE COUNSEL (Mr. Walters): Before proceeding to consider the cases of the individual non-commissioned officers, it may be well to briefly refer to other fundamental legal principles which are controlling in this case and binding upon this Court.

First, prior to 1 November 1944, a plea of superior orders was a valid and complete defense to a charge of violations of the laws of war (Field Manual 27-10, Section 347). On that date the last sentence of the section, dealing with the defense of superior orders, was deleted and in lieu thereof the rule was adopted that superior orders should be considered either as a defense or in mitigation of the penalty. Germany was a party signatory to the original rule as set forth in said section, but there is no evidence that she ever consented to or was advised of the change effected on November 1st, 1944. So, in the German Army, a plea of superior orders was a valid and complete defense when the Sifel Offensive took place.

Second, the corpus delicti cannot be established by the statement of an accused made extrajudicially without corroborative evidence to support the statement. Without such corroborative proof of the corpus delicti the statement is not admissible in evidence and cannot be considered by the Court in determining the guilt or innocence of the accused. (Courts Martial No. 120063 1918. Dig. ops. of JAG 1912-40, p. 207).

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Third, if the extrajudicial statement is not made voluntarily the corroborative proof of guilt must be compelling. That is, where it may not be said with reasonable certainty that conviction would have resulted if the statement were excluded, the admission of the statement in evidence is an error injuriously affecting the rights of the accused and his conviction under such circumstances cannot be sustained. (CM 180986-1924; CM 192609-1930.)

In this regard, the Defense respectfully submits that there is sufficient evidence of duress in this case, both by the admissions on the stand of the members of the prosecution staff who obtained the statements of the accused, and the testimony of several of the accused in open court, to raise a doubt in the mind of a reasonable man that the statement of any accused admitted into evidence was voluntarily made.

Fourth, the accusations by one joint defendant in his statement involving a fellow joint defendant are insufficient to establish the guilt of such fellow joint defendant. They must be supported by other proper and compelling evidence in order to warrant a finding of guilty against the joint defendant so involved.

These fundamental principles will be further referred to in the individual cases of the non-commissioned officers which I now take up.

(1) The accused Heinz Hendel, a master sergeant, is charged with having made a speech to his platoon that no prisoners of war were to be taken and that civilians who showed themselves would be shot, and was responsible for the shootings of prisoners of war and Allied civilians by men of his platoon between 16 December 1944 and 13 January 1945.

By written stipulation (D-4) the Prosecution has conceded that Hendel was wounded in action on 17 December 1944 and evacuated to the rear in the morning of 18 December 1944 in order to be hospitalized in Berlin. The Prosecution has produced no

evidence and, in fact, has not charged any members of Hendel's platoon with having in any way mistreated civilians during the offensive. Hendel commanded his platoon for a period of approximately one day during the Eifel Offensive, during which time none of his men are charged with having committed any violation of the laws of war. Not one charge of violation of the laws of war are charged on that day by members of his platoon. If the Court believes that the accused made a speech to members of his platoon, then the evidence shows that this speech was merely a transmission by Hendel of a similar orientation talk made by his commanding officer. The defense believes that the evidence against Hendel is entirely insufficient to warrant his conviction in this case and respectfully submits that this accused be acquitted.

The attention of the Court is called to the fact that a motion to strike out the particulars relating to the accused Hendel was previously made to the Court and the ruling thereon was deferred until the submission of proof of Hendel's being wounded. Uncontroverted evidence has been admitted which supports the written stipulation and the Defense now urges ^{that} the motion to strike be granted.

In its final argument the Prosecution said that the accused Stock had committed violations of the laws of war in La Gleize twice and that Siegmund had committed them on the 20th, and they would ask the Court to extend the doctrine of the Yamashita case, which in my opinion is a very doubtful law, they would extend that so that when a man is wounded and gets out of combat and then one of his men later commits some offense, that he is responsible. If you are going to go that far in this Court and in any army, then how are you going to maintain any discipline among your soldiers?

(2) The accused Willi von Chamier, a sergeant, is charged with shooting prisoners of war at the crossing. The only evidence against him is contained in his own statement and the statement of

the accused Reider (F-57). In his own statement von Chamier admits firing on PWs immediately upon receipt of the orders from his commanding officer, who was then present. The Defense respectfully submits that where an accused, a soldier, acts upon the superior orders of his commanding officer, then present, all of which is a part of the res gestae, and the refusal of which order would obviously subject the soldier to the danger of execution by his commanding officer, his defense, under the rule above stated, superior orders, must be recognized. Von Chamier's case is also controlled by the fourth rule above stated, that the only evidence supporting him is the accusation of a fellow accused.

(3) The accused Hubert Huber, a staff sergeant, admits in his statement (F-60) that he killed one American PW at the crossroads, but was influenced in committing the action by the previous instructions of and orders received from his commanding officer. The Defense respectfully requests this Court to consider that these instructions or orders of the commanding officer are mitigating circumstances.

(4) Hans Hillig, a sergeant, admits in his statement (F-105) the shooting of an American PW in Stoumont, in obedience to the immediate order of his regimental commander. This is corroborated by the testimony of two witnesses, Landfried and Ebeling. The regimental commander denied the incident. This is another case under rule #1, where disobedience by a soldier of the immediate order of his commanding officer who was then present, would have subjected the soldier to summary execution by the commanding officer. This is a rule of war which obtains in every army, including the American Army.

And we cite another case which has been mentioned by Prosecution and Lt. Col. Dwinell, where the German soldier was executed merely because he was AWOL a couple of days and had no collar on. If that is a basis of execution by the commanding

officer, Hillig would have been subjected to the same treatment.

In Hillig's case, this Court finds itself on one or the other horn of a dilemma. If it believes Hillig, it must acquit him because of the reasons above stated; but if it believes the order of the regimental commander did not happen, then it will have to disbelieve Hillig and there is no evidence against him of the commission of a crime.

(5) The only evidence against Willi Schaefer, a sergeant, is his own statement, which Defense contends was not voluntarily given, and accusations against him in the statements of Sprenger (P-44), Hofmann (P-46), and Jaekel (P-49), all concerning the alleged killing of three American prisoners of war, two of whom were carrying the third on a litter. Schaefer claims that he transmitted the order of his commanding officer, who was then immediately present when the order was given and transmitted.

We call the attention of the court to the following inconsistencies in the statements of Schaefer's fellow accused:

(a) Sprenger claims that Biloschetsky and Graeber marched these three Americans into an alley where Biloschetsky shot the two Americans who were carrying the litter; that the litter was then dropped to the ground and Sprenger then shot the wounded one on the litter.

(b) Hofmann states that Biloschetsky alone marched the three Americans into the alley; that the litter was lowered to the ground in the alley and Biloschetsky then marched the three Americans into the alley; that the litter was lowered to the ground in the alley and Biloschetsky then marched the two Americans "behind the house to a point" and there shot them; and then Sprenger suddenly appeared on the scene and shot the wounded one lying on the litter.

(c) The accused Neve, however, who claims to have been an eye

witness to the incident, says that Sprenger alone was walking behind the three Americans as they were marched into the alley; that Sprenger shot the American carrying the rear end of the litter and this American dropped his end, stepped forward to the right of the litter and fell to the ground. Neve claims the incident happened in the afternoon and that "about a half hour later" Neve, accompanied by Gielehofer, Hofmann, and Schulte went into the alley, saw the two Americans lying dead "but the man on the stretcher was still alive. I could see him breathing."

(d) Boltz, in his statement, says the incident happened between nine and ten o'clock in the morning; that Altkreuger and Boltz marched the three Americans into the alley and Altkreuger shot all three of them. There are four completely divergent and entirely antagonistic and diversified versions of the same incident.

The accused Sprenger in his statement (P-44, Record p. 832) to show the court another inconsistency in that statement of Sprenger, says that he arrived in LaGleize on the 21st and says that between three and four P.M. Lasinski told him that Lasinski had seen Sievers, Schaefer, Beutner, Hammerer and men of the 1st platoon, shoot nine American PWs at the courthouse. Yet the uncontroverted evidence in this case conclusively shows that Beutner was dead, and that he was killed in action the day before, in Stoumont.

These inconsistencies are submitted to the Court with the conviction on the part of the Defense counsel that there can be very little weight, if any, given to the accusations contained in the statements of Schaefer's fellow-accused. As to the statements of Sprenger and Hofmann, Defense submits that no human being, let alone an immature youngster, could possibly report all of the details of this offensive with such exact description of the activities of his fellow-accused, more than a year after the events happened. It is physically and humanly an impossible thing to do; those statements were dictated by the Prosecution and they made the inconsistencies in the picture about the litter case. Further,

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the evidence offered by the Prosecution against the accused Schaefer is either hearsay or accusations contained in the statements of his fellow-accused, which is not sufficient under rule #4 above to warrant his conviction on any charge. While the Defense has produced direct testimony of witnesses Gerhart and Taut, that during the battle of Stoumont Schaefer ordered all captured PWs to be taken to the first-aid station, and Oskar Trott testified that during the short period of time that Schaefer was in LaGleize he was with Trott and no PWs were seen nor mistreated during that period. Incidentally, may I add at this time that the evidence relative to Sievers and Schaefer being accused at the crossroads and shooting there, is uncontroverted that Sievers SPW, or his vehicle, was knocked out at Losheim, that they did not get another one, and did not leave Losheim until nine or 9:30 in the morning; that there was a very heavy terrain for a very long distance, that fog prevailed, that the roads were in a terrible condition, sometimes forcing them to get their vehicles out of the mud, and that there were battle conditions all along the Honsfeld-Buellingen situation at which they would have to jump to cover, and it would have been impossible for Sievers' vehicle to have left Losheim even as late as 9:30 (and that is the latest date in the record) and have gotten to the crossroads prior to five o'clock in the evening when the Americans were all dead in the field, and those who escaped had already gotten away.

(5) The accused Paul Zwigart, a sergeant, admits in his statement that he shot an American soldier whom he had removed from a jeep which had crashed into his vehicle. This accused submits to the Court that he killed this prisoner pursuant to superior orders of his commanding officer during combat and under rule #1 above, these facts should be considered at least as mitigating circumstances in his case.

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(6) The accused Otto Wickmann, a sergeant, admits the killing of an American PW who had surrendered to him when the prisoner was practically dead as a result of extreme freezing and exposure. Wickmann claims that he took this PW to the CP and received an order from his company commander in the presence of the regimental commander and another high-ranking officer, and pursuant thereto took the prisoner out and shot him. Here is another case where the immediate compliance with an order given in combat leaves the soldier no other alternative than to obey the order. If the Court believes that this order was given to Wickmann, and the evidence to the contrary is far from substantial, then this accused should not be held responsible for his act.

The Defense points out to the Court the complete absence of proof of Corpus delicti. A Belgian witness testified that he saw the body of an American soldier at the spot where Wickmann is alleged to have committed the offense, but this witness testified he did not see any bullet wounds on the body.

(7) Defense respectfully requests this Court to acquit the accused Roman Clotten, a sergeant, of the offense for which he is charged. The only evidence against him is the admission in his own statement. The statement of no other accused involves him. No witness on the stand testified against him. The Record is completely devoid of any corroborating evidence whatsoever. In his statements (F-40 and F-41), Clotten alleges that one of his men spontaneously fired on the PWs then lying in the field at the crossroads, with a machine-pistol; that Clotten then stopped him and said: "Stop! this makes no sense; they are already dead anyhow." Under rule #2 above stated, the accused Clotten should be acquitted because of the complete lack of corroborating proof. The Court should not hold a non-com, not a platoon leader, responsible for acts of an enlisted man who acted spontaneously on previous orders of his Company commanding officer.

(8) The only evidence against the accused Paul Herbert Ochmann, a T/Sgt., is his own statement, and the testimony of the witness Francoé (Record, Volume 13, P. 979).

On the other hand, Defense produced a witness Gerhart Walla, who gave direct testimony that he was with Ochmann in the outskirts of Engelsdorf until 5:30 in the afternoon at which time Ochmann turned over to the witness Walla eight PWs who then safely took them to the first-aid station in Engelsdorf; that three-quarters of an hour later he again saw the accused Ochmann at the first aid station; and later in the evening the accused delivered another group of eight PWs to the first-aid station. The witness further stated that on the next day when he and the accused left for Stavelot, the 16 PWs were left "in the aid station in Engelsdorf in the care of a medical officer, a captain and a first sergeant. The testimony of this witness completely negatives the evidence submitted by the Prosecution against this accused. Defense submit that the universally recognized rule that all reasonable doubts must be resolved in the favor of the accused, must be applied in this case and the accused Ochmann should be acquitted.

(9) As to the accused Erich Werner, there is not a shred of evidence in the Record that this accused committed any offense in Stoumont. The only evidence against him is his own statement and that of his fellow-accused Mikolaschek (P-100), relating to La Gleize. The Prosecution has totally failed to prove their prima facie case regarding the LaGleize incident, as no proof has been submitted of the finding of any dead bodies as a consequence of the alleged act, but there is ample proof in the Record of the heavy combat situation in LaGleize and the perilous situation in which the Germans found themselves and how in most part they remained in cellars because of the terrific artillery fire of the Americans. The accused Werner should be acquitted under either rule #2, failure to prove the corpus

delicti, or rule #4, that accusations of joint-defendants are not sufficient corroborative proof.

(10) Against the accused Theo Rauh, a corporal, the only evidence is the accusations in the statements of his fellow accused, Stock (P-96), and Siegmund (P-113) and Rauh's own statement (P-112). On the contrary, Hecht did not shoot at the incidents in which Goedicke shot, ^{that of} ~~and~~ the accused Fritz Rau, that "everyone shot except Theo Rauh". Under rule #4 the accusations by Stock and Siegmund are insufficient corroborative evidence to support a conviction, and on the statement of Fritz Rau alone, above quoted, Theo. Rauh should be acquitted.

(11) Against the accused Oswald Siegmund, a sergeant, the only evidence is his own statement and that of his fellow-accused Rauh (P-112) and the witness Huebler, (Record p. 1320). The Prosecution has failed to establish by proper corroborating evidence that PWs were killed or that bodies of American soldiers were found in the incidents with which this accused is charged. The Defense reiterates that as to the accused being charged with incidents in LaGleize, the Prosecution has failed to produce any proper corroboration that American PWs were shot at LaGleize; it has failed to prove the corpus delicti in the case of Siegmund.

(12) As to the accused Axel Rodenburg, a sergeant, and Rudolf Schwambach, a sergeant, the only evidence is contained in their own statements and the statements of each against the other. Both of these accused admit the killings of American soldiers in close combat in LaGleize. Each admits he shot an American soldier as the American turned around the corner of the house. It all happened in a split second and the evidence is uncontroverted that there was heavy combat in the vicinity at the time. These are definitely cases where no quarter was given to soldiers in combat rather than cases of deliberate killings of PWs after capture. Furthermore, there is no corroboration of the commission of the crime. The Defense submits that these accused are not guilty of

violations of the laws of war.

(13) The only evidence against Heinz Hofmann, a corporal is contained in his own statement (F-101) and the statement of his fellow-accused Mikolaschek (F-100), who said he heard the machine-gun of Hofmann. Hofmann is charged with firing on PWs who were supposed to be standing in front of a house at the entrance of Stoumont as the big battle for Stoumont was going on. Defense produced several witnesses who testified to the intensity of the fire by small arms and artillery in the very vicinity where the house was located before which the PWs were supposed to be standing. Many witnesses who arrived at this scene after the battle testified that they saw no bodies of Americans at this spot. Defense submits that the evidence against Hofmann is entirely insufficient to warrant a conviction.

(14) As to the accused Edmund Tomczak, a corporal, the only evidence which involves him are the statements of his fellow accused Willi Braun (F-106) and Heinz Friedrich (F-108). This accused does not confess to committing any offense and has made no statements against interest. The Court is asked to consider the fierceness of the battle for Stoumont under which conditions any shootings would have been refusal to give quarter rather than killing of PWs. Again there is a complete lack of corroborative evidence of bodies of dead Americans.

(15) The accused Goldschmidt, a corporal, is involved only through the statements of Schaefer (F-109), Jaekl (F-49), Sprenger (F-44), and Hofmann (F-46). This accused has made no admission either oral or written. There is no other corroborative evidence of the commission of any offense by Goldschmidt. Defense counsel knows of no jurisdiction in which the accused could possibly be convicted solely on the uncorroborated statements of his fellow accused.

(16) As to the accused Freidel Bode, a sergeant, he likewise made no admission against interest either oral or written and he is only involved by the uncorroborated statements of his fellow-

accused. Defense again submits that such evidence cannot constitute proper ground for conviction by this Court.

(17) The only evidence against Kurt Briesemeister is his own statement where he admits that when he arrived at the crossroads the PWs were already lying on the ground and he took his machine-gun and fired into the field. This is corroborated by the witness Flohmann (Record p. 1280). There is not evidence, however, that the PWs were still alive or that Briesemeister hit any that were lying on the ground. In his own statement he says "I did not see the shots land in the ground, and therefore assumed that the largest part hit the bodies of the Americans lying on the ground." A witness for the Defense testified that Briesemeister's tank arrived at the crossing after the tank of the witness and when the witness passed the crossing the prisoners were already lying on the ground. Defense submits that there is not sufficient proof of a corpus delicti in the case against Briesemeister and that the act of firing was no more than the firing into dead bodies rather than at live PWs.

(18) Max Hammerer, a corporal, admits in his statement (P-110) that he shot an American soldier who was badly wounded and the lower half of whose body was covered with debris in the castle while the fierce battle was going on in Stoutmont. The evidence shows that a heavy battle situation existed at the whole town of Stoutmont and that half of the castle was occupied by the Americans and the other half by the Germans. Possession of every room was being hotly contested. The Defense submits that this is clearly a case of refusal to give quarter under severe battle conditions rather than the killing of an American PW. Further, the Court might well conclude that this was a mercy killing of a helplessly wounded American soldier under conditions which would not permit his being removed from the debris and taken captive. The evidence clearly indicates that such mercy killings were a practice recognized by German troops and therefore the elements of intent to commit a crime does not exist. Even in these

cases the Court must adhere to the principle that the intent to commit a crime is an essential element before they can convict.

With respect to the other charges against this accused, the evidence is greatly insufficient to warrant a conviction.

(19) Against Hans Fletz, a sergeant, the Prosecution has failed to even make out a prima facie case. Not a single witness testified that he saw the accused fire on PWs. Not a single witness testified from hearsay that he heard or was told that this accused shot PWs. Fletz has not confessed to the commission of any offense or made any admission against interest. He is not involved by any of his fellow accused as to the fact that he was even seen shooting PWs. The only evidence against Fletz is in the statement of the accused Werner (P-103) where Werner says that he was told by Knappisch that Christ's tank fired at the direction of the PWs in Stoumont. There is no evidence as to who did or could have done the firing mentioned. The Defense cannot conceive that this evidence is legally sufficient to warrant a conviction. The Prosecution admitted in their final argument that they relied on circumstantial evidence and hearsay to obtain a confession against Fletz. Lessau stated that a man shot, he did not know in what direction or at whom Fletz fired and he saw no PWs shot at this place.

(20) The only evidence against Brwin Szyperski, a corporal, is in his own statement (P-102). He is not involved by any of his fellow accused, nor has any witness or document been produced to corroborate the charge. The Court is again asked to bear in mind that at the time of the alleged incident with which this accused is charged, with having fired on a PW, an intense battle for Stoumont was raging. Defense has produced many witnesses who have testified, that as to this particular time and place no PWs were seen nor were the bodies of any dead Americans seen, and that an intense battle situation existed. Defense submits that the evidence against this accused is wholly insufficient to warrant a finding of guilty.

(21) The accused Erich Maute was a medical non-commissioned officer. The only evidence against him was in the statements of Hofmann (F-48*, Jaekl (F-49), Rumpf (F-55), and Hennecke (F-78). In none of these statements is there a direct accusation that Maute participated in the shooting of any American PW. The accusations in these statements of his fellow-accused are based either on hearsay or on opinions based on hearsay. Maute made no statements confessing the commission of any crime.

On the other hand, Defense produced by direct evidence the testimony of the witness Paul Butz who said that he was always with Maute in the cellar at all times and at the time that Maute is accused of committing the offense; that Maute was taking care of wounded in the cellar as was his duty as a medic; that the witness saw lieutenant Rumpf come in the cellar and Rumpf never gave an order to Maute to report for an execution detail. The witness stated that Maute never reported for such a detail. Witness Hoppe, in rebuttal, said there were no medics in this detail, and only yesterday morning the witness Hoppe, put on by the Prosecution in rebuttal, said there was no medic in that detail and three times Captain Shumacker tried to break him on that and he said there was no medic in that detail. And that is all that is against Maute.

Defense calls the attention of the court to the fact that before cross examining the witness Butz, the Prosecution announced in open court that it intended to discredit this testimony of the witness and that counsel for Defense then reminded the Court that Butz was originally a witness for the Prosecution. Hence the Defense submits that if the Prosecution in its cross examination did discredit the witness Butz, that is, successfully attacked his credibility, then the witness is discredited as to all of his testimony in this case.

If the testimony of Butz is discredited, then the only

evidence against Maute is the accusations of his fellow accused and under rule #4 above stated, that is insufficient to support a conviction in this case. If, however, the Court believes that Both testified to the truth, then his testimony, together with that of Hoppe, completely refutes the charges against Maute, and Maute must be acquitted.

(22) As to the accused Armin Hecht, a corporal, the only evidence is contained in his own statement (P-91) and in the statement of his fellow accused Richter (P-93). On the other hand, the Defense produced by witness Lott and Albrecht that this accused was never involved in the shootings of PWs in LaGleize and witness Lott said that Hecht was always with him in the woods with the drivers of the SPWs in the 11th Company, and that no PWs were seen there on the date when the accused is charged with having committed the offense. Also, accused Goedecke, (p-92), said that Hecht did not shoot at the incidents in which Goedecke shot. The Record is replete with evidence that PWs were well treated in La Gleize.

Relative to all of the alleged incidents in LaGleize on 21, 22, and 23 December, 1944, the evidence proved that the village was under almost continuous fire and that the German soldiers stayed in cellars or other places for protection and that there is no corroborative evidence that American soldiers were killed in LaGleize after having surrendered. The fact is that by this time the Americans had the upper hand and were fact completely surrounding the village and it is very unlikely that under such circumstances when their army was winning the battle for the village any American soldiers would surrender--there was no occasion for them to surrender.

(23) Against the accused Hans Siptrott, a T/Sgt., is his own statement (P-59), and the statement of the co-accused George

Fleps (P-38), and the witness for the Prosecution Lohmann. Siptrott pleaded Not Guilty to the charge that he ordered PWs to be shot. Fleps claims he fired but one shot with a pistol. The witness Lohmann testified (Record p. 325) that Siptrott came from a conference of platoon leaders, assembled his platoon, and among other things said "There was a new order no PWs were to be made". The incomprehensible element is that if the Court believes that Siptrott ordered Fletz to shoot at the cross roads, why did Fleps shoot but one shot? And why was Fleps the only member of Siptrott's platoon who is charged with firing on PWs, and the only member of the platoon who did fire, according to the evidence, and he fired but one shot? If Siptrott had believed that the order of his commanding officers "that PWs were not to be made" meant that they should be shot, it is only logical that he would have ordered all members of his platoon to shoot at the crossroads and would not have stopped Fleps from firing the second shot.

(23) The only evidence against the accused Valentin Bersin, a sergeant, is contained in his own statement (P-88), and the statements of his fellow-accused, Trettin and Kotzer. In his own statement Bersin claims that he received an order from Huebeck, his commanding officer, to shoot civilians and that he thereupon told Huebeck that he, Bersin, would not accept the responsibility for this order; that Huebeck thereupon told him that he, Huebeck, would assume full responsibility for the order. Bersin is not charged with shooting any civilians nor is there any evidence that he did shoot any. It is submitted by the Defense that Bersin could not have been expected to act in any other manner than that upon receiving orders from his commanding officer he would repeat the orders after first protesting and refusing to accept responsibility. Huebeck accepted the responsibility and he alone should be held liable.

(24) The accused Anton Metzheim, a sergeant, in his statement (P-87), admitted firing upon an American soldier during the

close combat in Honsfeld. The evidence shows that Lotzheim, parking his vehicle, then jumped out to take cover from the heavy artillery fire of the Americans and he describes the situation as follows: "As soon as I was on the ground I noticed an American soldier jumping up from the position marked as #5 on my sketch; the American soldier was facing me, his hands extended to the side but not over his head." This is the only evidence produced by the Prosecution and since it lacks any corroboration under rule #2 above it does not constitute sufficient evidence upon which to base a conviction.

Defense further submits that Lotzheim merely refused to give quarter to an American soldier during close tank combat and that there is absolutely no evidence that he shot an American PW. Defense submits that there was no shooting of a PW nor any intent to commit a crime and Lotzheim should be acquitted.

(25) The accused August Tonk 1/Sgt., is charged with the shooting of Belgian civilians near Stavelot. Tonk made no confession and pleaded Not Guilty to the charge. The only evidence is in the testimony of Hans Zimmer, who has told this Court three inconsistent stories about the fruit incident: (1) That he was standing to the left of the front of the house when Tonk entered the front door, and a few moments later the witness heard shots from inside the house and almost immediately Tonk returned through the front door with a jar of fruit in his hand; (2) that Zimmer was sitting on the porch of the house at the front door and that the front door was never opened while he sat there; (3) that although the front door was never opened he saw Tonk come out of the house with the jar of fruit, after hearing two shots from within the house. It was pitch dark and the Defense suggests this question to the Court: How could two civilians inside that house be shot in the pitch-dark with two shots and the witness claim that he heard no screams coming from inside the house? Zimmer finally admitted that when he stood in the front room of the C.F. after the incident and there were several other people

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in the room with him talking, and heard voices in the adjoining room that the only word he heard distinctly was the word "civilians" and he then made the direct statement which has not been refuted by the Prosecution that the phrase "two civilians had to pay for it" referring to the fruit), was coined by Mr. Kirschbaum, a member of the Prosecution staff/ Defense respectfully submits that the witness Zimmer has been completely discredited and none of his stories should be believed by the Court. And since his is the only evidence against Tonk, who has made no statement himself, he must be acquitted.

Thank you.

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DEFENSE COUNSEL: Lieutenant Colonel Sutton will render the final argument on behalf of the enlisted men.

LT. COL. SUTTON: May it please the Court, the question of whether it is a defense to a charge of the violation of the rules of war when the violation was in pursuance of an order of the belligerent government or of a superior commander is not governed by convention. We must look to the custom and the law of the countries involved.

The decision of the United States and English Courts from the earliest cases until 1941 were that obedience to a superior order was not a defense in a prosecution for a criminal act. In 1941, however, both the United States and England adopted a rule of absolute non-liability. This United States rule is published in paragraph 347, FM 27-10, dated the first of November 1940, as follows:

"The principal offenses of this class are: Making use of poison and otherwise forbidden arms and ammunition; killing of the wounded; refusal of quarter; treacherous request for quarter; maltreatment of dead bodies on the battlefield; ill-treatment of prisoners; firing on undefended localities; abuse of the flag of truce; firing on the flag of truce; misuse of the Red Cross flag and emblem and other violations of the Geneva Convention; use of civilian clothing by troops to conceal their military character during battle; bombardment of hospitals and other privileged buildings; improper use of privileged buildings for military purposes; poisoning of wells and streams; pillage and purposeless destruction; ill-treatment of inhabitants in occupied territory. Individuals of the armed forces will not be punished for these offenses in case they are committed under the orders or sanction of their government or commanders. The commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall."

Thus it will be seen that the rule remained in effect as far as the United States is concerned until a change was published in the field manual referred to above.

The publication of paragraph 347, FM 27-10, was notice to

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the German government what the United States proposed to do in the event of the violation of any of the rules of war as contained in the Geneva conventions. In other words, the American government made a rule concerning the punishment and responsibilities of war criminals and definitely defined and limited the responsibility of an inferior who obeyed the orders of a superior military commander.

Can it now be said that the United States may change its proposals in regard to the criminal liability of a subordinate or subordinates who obey their orders from competent higher authority?

It is further pointed out that paragraph 347 has never been changed. However, paragraph 345 was changed by Change No. 1 FM 27-10, paragraph 345.1, dated 15 November 1944, which is as follows:

"Liability of offending individuals. -- Individuals and organizations who violate the accepted laws and customs of war may be punished therefor. However, the fact that the acts complained of were done pursuant to the order of a superior or government sanction may be taken into consideration in determining culpability, either by way of defense or in mitigation of punishment. The person giving such orders may also be punished."

The Axis powers had no opportunity to know about this change.

Article VI, Ordinance No. 1, contained in the Technical Manual for Legal and Prison Officers, second edition, Military Government, Germany, pages 26 and 27, provides as follows:

"Defenses.

"(1) It shall be a good defense to any charge hereunder that the offense charged was an act of legitimate warfare by a person entitled to the status of a combatant.

"(2) It shall not be a defense to any charge hereunder that the offense charged was committed under orders of any civil or military superior or of any person purporting to act as an official or members of the NSDAP or that the offense was committed under duress."

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This ordinance was issued by order of the U. S. Military government without notice to the Axis powers. There was no United States Military Government in Germany until after the occupation began. The date of occupation was well after the time of publication of Ordinance No. 1. Could this be anything but an "ex post facto" law? Ex post facto laws are prohibited by the Federal Constitution of the United States.

It is believed that the provisions of Ordinance No. 1 was not intended for courts of the character of the one before which this case is being tried.

We have been led to believe that the Technical Manual for Legal and Prison Officers, second edition, Military Government, Germany, is in accordance with the continental practice. It is not believed that the rules prescribed therein follow the continental practice to any large extent. Certainly, the procedure and rules do not follow the Manual for Courts-martial, United States Army, 1928. Furthermore, it does not follow the criminal practice of the Federal courts or state courts of the United States. If we are to follow the German law, the practice of that country should be considered. In that connection the following is quoted from section IV, paragraph 47, Deutsches Militaerstrafgesetzbuch (German Military Code), which is as follows:

"(1) If in the execution of an order relating to service matters a penal law is violated, the commanding officer is solely responsible. Nevertheless, the subordinate obeying the order is subjected to penalty as accomplice: First, if he transgressed the order given, or secondly, if he knows that the order of the commanding officer concerned an action the purpose of which was to commit a general military crime or misdemeanor. If the guilt of the subordinate is minor, his punishment may be suspended."

Section IV, Chapter 6, Wheaton's International Law, War, Seventh Edition, pages 586 and 587, is as follows:

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"Disappearance of the need of reprisals might be helped if there were any means of securing effectively the punishment for war crimes, i.e., offenses against customary or conventional law, by penalizing the State which orders them or permits them, but not effectively punishing crimes without its assent, and the individuals who commit them without government order. There is, however, a divergence of view on the point whether individuals committing war crimes under order of their governments are to be held liable for their actions. It may at least be said that, if they are held responsible, a very considerable measure of reform might conceivably be secured. On the other hand, common sense indicates that it must be very difficult for officers or men to know when they are committing war crimes, and that in any case they act under immediate dread of punishment if they decline to obey orders, so that justice on the whole tends to the view that war crimes must not be charged on individuals.

Hall, in discussing war crimes at page 196, refers to the American and British rule of non-liability when the defense of superior orders is maintained. He says:

".... The matter is one of great difficulty, but the suggestion that the immunity of a member of the armed forces should be limited to cases where orders are so manifestly illegal that he must or ought to have known that they were unlawful has much to commend it..."

Dr. Sheldon Glueck professor of Criminal Law and Criminology, Harvard University, in his book published in September 1944, in discussing the Llandovery Castle case states:

"The Leipzig Court's decision in the Llandovery Castle case is in general conformity with the German Military Penal Law but it does not specify the exact states of mind that must be proved for conviction. To find a soldier guilty in these cases, a German court must evidently find proof of two constituents: (First) That the superior's order was in fact aimed at the commission of a crime; Secondly, that the subordinates actually knew that such was the superior's intention in giving the illegal order. This knowledge is, according to the Llandovery Castle decision, evidently imputable only in the very rare case where 'the rule of international law . . . involved is simple and is universally known.'

"The inadequacy of German law on this question, even in the extreme case of the atrocities mentioned above, is shown by examining the Leipzig Court's decision in the Dover Castle hospital ship case, in the light of the principles of the German Military Penal Law. The court in that case acquitted the defendant on a finding that he knew that the German admiralty had issued memorandum charging the misuse of the British of the hospital ships for military purposes, and that he was therefore of the opinion that the 'measures taken by the German admiralty against enemy hospital ships were not contrary to international law but were legitimate reprisals'.

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"In other words, the accused did not know that/the ordering of the torpedoing of British hospital ships it was the admiralty's intention to commit a crime. The Court pointed out that the defendant's conduct clearly shows that this was their conviction . . . The accused accordingly sank the 'Dover Castle' in obedience to a service order of his highest superior, an order which he considered binding. He cannot, therefore, be punished for this conduct.

"However, under the principles of German military law mentioned above, the defendant would have been acquitted even if (a) he had casually had some doubt about the legality of the German Admiralty's order instead of believing it definitely to be legal, or even if (b) though he had absolute certainty of its illegality, the prosecution could not prove (1) that the high officers of the admiralty actually intended a breach of international law resulting in the crime of murder and (2) that the accused had definite knowledge of such intention on the part of his superiors.

"This shows how extraordinarily difficult it is to convict a subordinate under German law when he sets up the defense of obedience to superior orders especially since the question of the illegality of the order usually depends upon the interpretation of international law, a matter in which the German militarists are notoriously biased. Evidently, therefore, the German rule is little better than the one which completely exempts from responsibility all subordinates acting upon any orders of military superiors."

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Under orders alleged to have been issued by Adolf Hitler any officer or soldier who refused to obey an order was to be summarily shot to death by any officer or soldier who had knowledge of such refusal. There are many of the accused in this case who could have testified to the fact that they would be shot if they failed or refused to carry out certain orders. This is not a myth, but a fact.

Quotations from Winthrop's Military Law and Precedents, second edition, pages 296 and 297, are as follows:

"Obedience to orders. That the act charged as an offense was done in obedience to the order--verbal or written-- of a military superior, is, in general, a good defense at military law....."

"...But for the inferior to assume to determine the question of the lawfulness of an order given by him a superior would of itself, as a general rule, amount to insubordination, and such an assumption carried into practice would subvert military discipline."

A footnote which is connected with the above quotation is as follows:

"It is not for the subordinate officer who receives it to judge of the fitness or legality of such order; for the case must be an extreme one which would justify him in refusing obedience."

"Except in such instances of palpable illegality, which must be of rare occurrence, the inferior should presume that the order was lawful and authorized and obey it accordingly, and in obeying it he can scarcely fail to be held justified in a military court."

"It might be added that an order which might not be regarded as legal in time of peace, may furnish to the inferior obeying it a complete defense in time of war, as being warranted by the laws and usages of war."

The plea of "superior orders" merits recognition as a defense, it would seem, where the order was a direct one that the accused was under duty to execute, failing in which he would be subjected to summary punishment for refusal to obey the order of the superior.

The enlisted man who is given a direct order to commit an act in the course of military operations should not be denied the benefit of this defense when he was helpless to do otherwise than to follow the order. To accept a different rule would be to leave

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him in a dilemma, with either horn carrying a death sentence.

Dr. Glueck suggests that in fixing sentences the court ought to consider the following factors, among others:

"The age and intelligence of the accused; his military rank, the amount of discretion he enjoyed, the nature and extent of the injury caused by his obeying an illegal order, the kind of unlawful act that was involved (whether it was one generally known to be illegal or one as to the illegality of which there was obscurity); the amount of instructions he had received in respect to the laws and customs of warfare and the kind of manual of rules with which he had been supplied; the circumstances under which he obeyed the illegal order (if it occurred during a time of great danger, or hasty retreat, or of occupation of enemy lands behind the lines, when the danger was less and there was more opportunity to check upon the order); whether the order required instant obedience or involved an act that could be done later or postponed for a considerable period, and other like circumstances. This would mean that many ordinary soldiers would receive but a nominal punishment, while officers chargeable with more knowledge of law and greater discretion would be punished more severely."

Many of the statements that have been offered in evidence by the Prosecution involve others than the accused who made them. Some of the statements do not involve the accused who made them but involve others of the accused. It is respectfully submitted that such statements insofar as they involve others than the person making them should not be considered by this court.

Paragraph 111c, A Manual for Courts-Martial, United States Army, provides, in part, as follows:

".....The fact that a confession or admission of one conspirator is inadmissible against the other does not prevent the use of such confession or admission against the one who made it, but any such confession or admission cannot be considered as evidence against the others."

Paragraph 480, volume 20, American Jurisprudence, in part is as follows:

".....Confessions are only admitted in evidence as statements against the interests of persons making them, upon the ground that a rational being will not make admissions prejudicial to his interests and safety unless urged thereto by the promptings of conscience to tell the truth. Since confessions are hearsay testimony, they are to be received with great caution."

Paragraph 482, in part, is as follows:

"It is now universally recognized that a confession of

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a person accused of crime is admissible in evidence against the accused only if it was freely and voluntarily made, without duress, fear, or compulsion in its inducement and with full knowledge of the nature and consequences of the confession. * * * A confession of the accused shown not to have been freely and voluntarily made, but induced by hope or promise of benefit or through fear or personal violence against him, whether true or not, except to the extent that it may in some instances be used to impeach the testimony of the accused."

Paragraph 493, in part, is as follows:

"The voluntary confession of a codefendant or co-conspirator made after the commission of a crime or the termination of the conspiracy cannot be admitted against the other defendants when such confession was not made in their presence and assented to by them, even though the several defendants are being tried jointly. This does not, however, necessarily preclude the use of the confession as evidence against the one who made it. According to the general rule, if the several defendants are tried together, the confession of one such defendant can be admitted against that defendant with instructions by the court to the jury that it is only admitted against that one defendant and is not to be considered as evidence against his codefendants. Such an instruction is supposed to obviate the prejudicial effect which the admission of the confession has in regard to the codefendants who did not make it. The courts have, however, realized the evils of admitting on behalf of one defendant a confession which implicates a codefendant, even though limited by the trial court to the person who made the confession, and have only permitted such a confession to be admitted when two were being tried jointly, because there seems to be no practical way of reaching a right result, under the law, as to the person who makes the confession without admitting it. The view has been expressed that if the part of the confession that pertains to the guilt of a codefendant can be properly left out without in any way weakening the confession as to the one who made it the court should limit the use of the confession to that part that does not implicate the codefendant."

Section 1242, page 1092, of Evidence from American Jurisprudence, Civil and Criminal, in part, provides:

"It is generally held that a mere naked confession, uncorroborated by any circumstances inspiring belief in the truth of the confession, is not sufficient to warrant the conviction of the accused for the crime with which he is charged; in some jurisdictions this rule is provided for by statute.***"

"There are other jurisdictions that draw an arbitrary distinction between the higher grades of crimes and misdemeanors as regards the sufficiency of uncorroborated extrajudicial confessions. The view prevails in such jurisdictions that the general rule holding such confessions insufficient to sustain a conviction, although applicable to felonies and higher crimes, should not be extended to misdemeanors. Great caution, however, should always be exercised in weighing evidence where it consists of confessions alone. In those instances where the corroboration of a confession is required, the corroborative evidence must consist of facts or circumstances appearing in evidence which are independent of the confession and consistent therewith and which tend to conform and strengthen the confession. On the question how much corroboration of an extrajudicial

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confession is necessary to warrant the conviction of the accused in jurisdictions which require some corroboration, the general rule is that independent proof of the corpus delicti must exist in order to convict. Evidence corroborating facts stated in a confession, which is necessary to uphold a conviction on the confession, is that which not merely tends to produce confidence in the truth of the confession, but which refers to the facts which concern the corpus delicti. * * * The view has been taken that without independent proof which satisfies the jury beyond a reasonable doubt that the alleged result was caused by an unlawful or a criminal act, the confession will not be sufficient to warrant a conviction."

PRESIDENT: Court will recess until 1030 hours.

(Whereupon at 1000 hours the Court recessed until 1030 hours.)

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(Whereupon the Court reconvened at 1030 hours.)

PRESIDENT: Take seats. The Court will come to order.

PROSECUTION: If the Court please, let the record show that all members of the Court, all members of the Prosecution, with the exception of Captain Byrne, who has been excused by verbal order of the Commanding General, Captain Shumacker and Mr. Elowitz, who are absent on business of the prosecution, all members of the Defense, with the exception of Lt. Wahler, Dr. Leer and Dr. Hertkorn, who are absent on business of the defense, all of the defendants and the Reporter are present.

DEFENSE COUNSEL: Colonel Sutton will continue.

COL SUTTON: (Reading) May it please the court, Section 1233, page 1085, of Evidence from American Jurisprudence, Civil and Criminal, provides as follows:

"The general rule now is that while the corpus delicti cannot be established by the extra-judicial confession of the defendant unsupported by any other evidence, it may be established by such a confession corroborated by other facts and circumstances. It is not necessary to prove the corpus delicti by evidence entirely independent and exclusive of the confession, but sufficient proof to convict exists when the corpus delicti is established by other evidence and the confession taken together. There are jurisdictions where, by virtue of statute, an extra-judicial confession will not warrant a conviction unless accompanied by other proof that an offense has been committed. The grounds upon which the rule requiring independent proof of the corpus delicti rests are the hasty and unguarded character which confessions often have, the temptation which for one reason or another a person may have to say that which he thinks it most for his interest to say, whether true or false, the liability which there is to misconstrue or report inaccurately what has been said, the danger of a conviction when no crime may have been committed, the difficulty of disproving what may be said, and the feeling that the rule best accords with the humanity of the criminal law and with the great degree of caution applied in receiving and weighing the evidence of confessions in other cases."

Paragraph 36, page 42, Underhill's Criminal Evidence, fourth edition, provides as follows:

"A voluntary confession or admission of the accused is not sufficient to prove the corpus delicti unless there is other evidence tending to support the same, either direct (and a footnote is as follows: The footnote cites Martin vs. United States, 264 Fed. 950, and several state decisions on that point of the law) or circumstantial; or, in other words, a confession or admission

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by the accused to prove the corpus delicti must be "corroborated." Defendant's confession, made outside of court, alone will not establish corpus delicti, even though made under oath in another trial, but confession in open court will establish the corpus delicti and sustain the conviction. The corroboration of a confession or admission which is required in order to prove the corpus delicti refers not merely to facts proving the confession but to facts concerning the corpus delicti, or evidence independent of the confession. The corroboration of a confession does not necessarily prove the corpus delicti."

Paragraph 359, page 467, volume 1, twelfth edition, Wharton's Criminal Law, provides:

"Where a person is charged with the commission of a particular crime, before he can be found guilty thereof, it is essential that the existence of the corpus delicti be established, which cannot be done by mere extrajudicial confession of the accused; (And there is another footnote referring to a Federal decision, United States v. Mulvaney (1859), 4 Park. Crim. Rep. 164, Fed. Case No. 15,833, and several state court decisions.) it must be done by direct and positive proof aliunde, and beyond a reasonable doubt. Facts ascertained by reason of the confession may be used for the purpose of establishing the corpus delicti; but this will not dispose of the rule requiring that the corpus delicti must be proved independently of the confession, and beyond a reasonable doubt, before evidence of the confession is admissible."

Paragraph 361, page 470, volume 1, twelfth edition, Wharton's Criminal Law, provides:

"Regarding the question of the necessity for evidence corroborating the confession of the accused in order that such confession may establish the corpus delicti, the authorities in this country are not harmonious, but the great weight of authority--almost an unbroken line--is to the effect that the uncorroborated confession of the accused is insufficient to establish the corpus delicti, but that, where corroborated, such confession may be admitted in evidence for the purpose of establishing the corpus delicti in a charge of felony. Some of the cases held that full proof of the corpus delicti, independently of the confession, is necessary."

Up to this point we have discussed the question of law on the subject and from here on we will discuss individual cases which should be applied to the law.

Regarding Pfc. GEORGE FLEPS, 3d Platoon, 7th Panzer Company. The company commander assembled the company on the 13th or 14th of December and explained that a big offensive was just ahead and that they would certainly win. He said they must fight recklessly and

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cruelly in order to spread terror and fright among the enemy and therefore they would take no prisoners.

On the 15th of December the same company commander stated before the company that they must advance with terrific speed and take no prisoners.

While at the crossroads a commissioned officer gave fleps' tank a signal to stop with his hand. He said to the tank commander, "We have orders from up ahead to bump off the Americans. Everything must go quickly. Help us with this and make it go fast." The tank commander gave Fleps an order to shoot and simultaneously put his hand on Fleps' shoulder.

Fleps states that he only fired three shots at the crossroads.

The evidence by American witnesses is ample to show that there was a breaking of ranks. This breaking of ranks may have been the reason why the officer ordered Fleps to fire. The evidence is silent on this point. According to the evidence in this case Fleps carried out the orders of his superiors. Can you, as military officers, condemn to death a soldier who obeys in battle the orders of a superior?

This man was 23 years old at this time.

Let me say here that not a single one of the privates or privates first class in the dock at this time have taken the witness stand. These quotations are from their alleged confessions or statements.

Regarding PFC. FRITZ ECKMAN, 1st Platoon, 1st Panzer Pioneer Company.

On the 15th of December Captain Kremser assembled the company and stated that in this battle they would not take any prisoners of war.

During the evening of the same day the platoon commander told a group, including Eckman, they should fight ruthlessly, that they would show the enemy what the SS is made of, how brutally they could

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fight and that they would not take any prisoners of war.

Referring to the crossroads, Eckman says in his statement that as soon as they halted an order came over the radio from Captain Kremser, who was behind them, for all tank leaders to report to him. The tank commanders assembled around Captain Kremser for about five minutes and then returned to their tanks. Hauptscharfuehrer Skotz, the tank commander, told Rottenfuehrer Peterson, the driver, to start the motor, turn the tank half right and stated that the prisoners were going to be bumped off then. Then he ordered Eckman and Zachel to lead the machine gun and to shoot at the prisoners of war.

Referring to Stavelot, Hauptscharfuehrer Skotz, the tank commander, said to Rottenfuehrer Karler, the other machine gunner, "Load the machine gun." Then the tank commander turned to the infantry soldiers and ordered them to bring the prisoners of war in front of the tank. They brought the prisoners two or three meters in front of the tank. Hauptscharfuehrer Skotz yelled at the prisoners of war and motioned to them with his hand to take off and at the same time said to Karler, "Bump them off." The prisoners took one or two steps forward and Rottenfuehrer Karler, the other machine gunner, killed six with the first machine gun burst. The one survivor was apparently wounded in the foot and attempted to get away. As he had gone about seven to ten meters the Rottenfuehrer of the infantry followed him with his machine pistol and fired a burst into his head.

There is nothing in the record indicating that Eckman shot at these prisoners except a statement by Kurt Flohman on page 1418 of the record that Eckman, while in La Gleize, said, "Well, we bumped those fellows off and some of them had not been dead and they were moaning and groaning." This man was 19 years old at the time of the incidents.

Regarding Pfc. Max Reider, 9th Pioneer Panzer Company.

A certificate signed by the burgomaster and registrar, the

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custodian of the vital statistics of the village of Buellingen, was admitted in evidence. This certificate stated that there was one woman from Honsfeld who was found dead on May 28, 1945. He also certified that Mrs. Anton Jonsten died on 18 December 1944. An affidavit by Mr. Anton Jonsten, husband of the deceased woman, certified that his wife was killed while in the line of American artillery. Her body was found beside the road. This is conclusive evidence that Reider did not kill a woman in Buellingen. The official who prepared this statement had charge of vital statistics for that town and he certified for not only that town but for another town nearby.

The testimony of Paul Buth from the witness stand said that Reider was in an SPW near his and that he never saw Reider shoot while at the crossroads. This man was 20 years old at the time of the alleged incidents.

Regarding Pfc Friedel Kies, 2nd Platoon, 3rd Pioneer Panzer Company. Page 2510 of the record shows that a witness testified that Gustav Sprenger and himself were in one SPW, Joachim Hofmann, Siegfried Jaekel, Gustav Neve and Heinz Stickel in another SPW while Friedel Kies and Johann Wasenberger were in still another SPW. The testimony from the witness stand on page 2682 shows that the witness arrived at the crossroads between three and four p.m. All those men were in the second platoon and arrived at the crossroads about the same time which was at least one and one-half hours after Felps fired the first shot at the crossroads.

Company instructions were given by Lt. Seitz, platoon commander, before the Eifel Offensive in which it was stated that prisoners of war would not be made in the offensive.

In connection with Malmedy, the SPW in which Kies was a crew member, stopped on the right side of the road in front of a pasture in which he noticed that there were approximately 50 or 60 apparently dead Americans lying in the pasture. The SPW stood there very shortly

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when Unterscharfuehrer Beutner, the platoon commander, gave the order to the whole SPW crew to shoot at the prisoners. A Pioneer, Jifassek, who was the No. 1 machine gunner, thereupon shot into the prisoners with his rear machine gun. As far as Kies can remember no other men of the crew did any shooting.

There is nothing in evidence from the witness stand or in Kies' statement that Friedel Kies shot at prisoners at Malmedy.

Regarding Stoumont, Kies says he knows of two cases where American prisoners of war were shot and that he participated on order of his platoon commanders, Unterscharfuehrer Beutner and Untersturmfuehrer Seitz. It was on 19 December 1944 around three o'clock in Stoumont.

They were placed on guard when Unterscharfuehrer Buetner, the platoon commander, passed and gave Kies the order to come with him. Buetner ordered Kies to lead a prisoner away by saying, "You know what to do," and thereby gripped his pistol.

In the other case Untersturmfuehrer Seitz, a platoon commander, stopped Kies and gave him and another soldier orders to lead two prisoners away and to shoot them.

Mr. President, if you were in this man's position, what would you have done, sir? The answer is obvious, "carried out orders".

This man was 18 years old at the time of the alleged offense.

Regarding Pfc Johann Wassenberger, 2nd Platoon, 3rd Panzer Pioneer Company.

Shortly before the Eifel campaign Lt. Seitz, the platoon commander, gave a talk in which he said, among other things, to the company, "In this campaign you will not take any prisoners of war."

While at the crossroads southwest of Malmedy, Losenski, the tank commander of Wassenberger's tank, pointed with his hand at one prisoner of war who was still alive and ordered Wasenberger to give him a mercy shot. Wasenberger states that he had to carry out the order.

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There is nothing in the record that indicates that this man shot any other prisoners.

This man was 18 years of age at the time of the alleged offense.

Regarding Pfc Joachim Hofmann, 2nd Platoon, 3rd Panzer Pioneer Company.

The platoon leader, Lt. Seitz, in a talk to the company on 12 December 1944, said the following in addition to other things: "We are on the brink of a big offensive in which we will fight against the murderers of your mothers, fathers and children. I require that every man shall fight as the old LAAR is accustomed to. Everything in front of our guns will be mowed down and we will take no prisoners of war." The company commander was present during a part of the speech.

On the night of 14-15 December, Sgt. Max Beutner of the 2nd Platoon, said to members of the platoon, "I want you men to fight in the way I want you to fight and I don't want to see anybody come back with prisoners."

Regarding the incident at Malmedy, Sgt. Beutner, the platoon commander, told Hofmann's crew to get the machine gun ready and to bump off the prisoners. Sgt. Witkoski, the group leader, ordered the crew to administer mercy shots.

Regarding the incident at Stoumont, a paratroop lieutenant ordered Hofmann and another soldier to shoot two prisoners and reminded them of the order that prisoners would not be taken.

This man was an SPW driver. He was 18 years old at the time of the alleged offense. And again we have orders in Blankenheim, and direct orders immediately preceding the incidents.

Regarding Pfc Siegfried Jaekel, 2nd Platoon, 3rd Panzer Pioneer Company.

Jaekel's comrades told him about a meeting of the company on 12 December 1944 in which Lt. Seitz said, among other things, "No prisoners of war will be taken. Whoever shows himself to be a coward will be shot."

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On the 15th of December, Sgt. Buetner assembled the platoon and stated that no prisoners of war would be taken.

Regarding the incident at Buellingen, Sgt. Sepp Witkowski, the group leader, ordered, "Ready, bump 'em off."

At Malmedy Sgt. Beutner, the platoon commander, told Sgt. Sepp Witkowski, the group leader, that the prisoners were to be shot. Sgt. Beutner gave Jaekel the order to fire.

This young man was 18 years old at the time of the alleged offense.

Regarding Pfc. Gustav Neve, 2nd Platoon, 3rd Panzer Pioneer Platoon.

Lt. Seitz, a platoon commander, gave a talk to the company on the eleventh or twelfth of December in which he stated that no prisoners would be taken. The company commander came in during the latter part of the talk.

Regarding the Malmedy incident Neve says in his statement that Sgt. Max Buetner, commanding the second platoon, gave a hand signal to halt. After they came to a halt Neve heard Beutner tell Sgt. Sepp Witkowski, the group leader, that the weapons should be loaded and made ready to bump off the American prisoners. Beutner gave the order to Neve to fire.

This young man was 18 years of age at the time of the alleged incident. Here again we have three sets of orders, one just before the alleged offense.

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Regarding PFC HEDNZ STICKEL, 2d Platoon, 3d Panzer Pioneer Company.

Lt. Seitz gave a talk to the company shortly before the beginning of the Eifel offensive in which he said, "You will not take any prisoners of war in this offensive."

Stickel received an order from Sgt. Witkowski, the group leader, to shoot the prisoners in the pasture near the crossroads.

This young man was 18 years old at the time of the alleged offense and again we have direct orders immediately preceding the alleged incident.

Regarding PFX GUSTAV A. SPRENGER, 2d Platoon, 3d Panzer Pioneer Company.

In a meeting of the first and second platoons of the 3d Pioneer Panzer Company about 14 December 1944, Lt. Seitz made a talk in which he said that they were to fight as the old IAAH did and that no enemy soldiers would be taken prisoners.

Sprenger was told that Sgt. Max Buetner, the platoon leader, addressed the platoon and said that no prisoners of war would be taken and everything in front of their guns would be mowed down.

Regarding Malmedy, Sprenger's statement indicates that he shot on the orders of Wolfgang Altkrueger, the group leader.

The statement relating to a Stoumont incident indicates that a sergeant of the company headquarters after conferring with the company commander ordered Sprenger to take two prisoners away. He further declared, "Knock 'em off." Sprenger protested that he had never done such a thing before. The sergeant replied, "You are a coward. I gave you the order, go ahead."

The testimony of a witness on pages 2520 and 2523 of the record states that Sgt. Altkrueger shot the three American prisoners in Stoumont and that Sprenger did not participate.

The evidence from the witness stand by Gerhard Taut tends to prove that Sprenger was at a place other than where the other

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alleged killing of two Americans took place.

This young man was 18 years old at the time of the alleged offense and was an SPW driver. It will be noted that the last eight men referred to were all in the same platoon. Consequently they received substantially the same orders from their platoon commander.

HANS TRETTIN at the time of the offense was a lad 18 years of age, one of the Hitler Jugend Youths who was drafted at an early age to serve the call of his country. His co-accused, GEORG KOTZUR, another youth who was called up to serve his country, were members of the 1st Pz. Company. These lads throughout their army career had been trained as soldiers, and as such, obedience to orders. The evidence of the Prosecution indicates that these lads participated in a shooting of three civilians upon the orders of their Superior Officers. The evidence is also clear that at and just prior to the time of this shooting the civilian population in the town of Wanne had been hostile and antagonistic to the occupying powers. Evidence in the record indicates that the civilians of the town of Wanne had taken up arms against the enemy and had actively engaged as partisans against the enemy forces. I would like to quote from JAG text No. 7 entitled "Law of Land Warfare" as published by the Judge Advocate Generals School and which has been recognized as an official publication of the United States Army. "Quoting from page 14 of the text the following is said: "Civilians who participate in the fighting are under the laws of war liable to punishment as war criminals. Fighting is a legitimate profession only for the combatant personnel of a country. Legitimate combat personnel, on surrender or capture are entitled to treatment as prisoners of war and incur no liability beyond detention. Spaight has spoken of this as the principle of combatant in trade unionism which confines the right to participate in hostilities to the combatant

personnel of a country. As a corollary to this rule, a soldier is entitled to know when he sees an enemy citizen and before that citizen attacks him, whether that person is a lawful combatant or not."

Broadly speaking the peaceful inhabitants of the enemy are immune from warlike attack so long as such inhabitants take no part in the fighting. For this reason the law of war separates the population of the enemy into two classes; the combatants and the peaceful inhabitants. This development in the rule of land warfare is not of recent origin but finds its history as far back as 1814 when Wellington told the inhabitants of southern France in 1814 that he would not allow them to play with impunity the part of peaceful citizens and of soldiers, and bade them at that time to join the ranks of the French armies if they wished to fight.

This exact corollary was present in the village of Wanne, if these citizens wished to participate as active combatants they should have joined the ranks of the army and fought as lawful combatants.

The evidence indicates that there was a short wave radio located somewhere in the village, that the inhabitants had taken up arms and had fired from various fortified positions in the town upon the enemy forces, that some days previously there had been shooting of German parachutists in the town by the civilian population.

These two defendants knew what terrorism had existed in the town, therefore when they received the orders from their Superior Officers to fire upon the Belgian civilians they were only acting as every soldier in the ranks has been trained to do; that is, obey. The evidence indicates that

On the morning of the 19th of December 1944, at about 8:00 A.M. the town of Stoumont was in the hands of the American forces. It was necessary that the spear of the attacking German column eradicate the American forces which at this time was impeding the advance of

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the German column, in its drive to the Maas River. The 2d Company, consisting of PZ. V tanks, was given the job to clean out the enemy resistance. The town was laid under attack and after a bloody battle lasting for approximately two hours the resistance of the enemy was broken. The prosecution in its presentation of the evidence has admitted the existence of the combat situation, but has said in the heat of battle while their own witnesses were hiding prostrate on the ground and in a ditch for fear of being hit by overhead fire, a group of several Americans walked out of a house with their hands raised in the air and were fired upon by the defendants MIKOLASCHEK and RITZER, two of the accused in this case.

Gentlemen, in the heat of battle, in the center of the combat area, prisoners of war came out of a house and surrendered while every other soldier was fighting or taking cover.

The prosecution then introduced sketches showing the TRUE physical conditions of the terrain and surrounding physical objects as they existed on the 19th day of December 1944. We now ask you whether after having seen the photographs introduced by the Defense showing the actual terrain features, whether it is reasonable to believe the sketches introduced by the prosecution which show a cross road? There is nowhere at the entrance to Stoumont such a cross road. They have shown the approaching main road to Stoumont as a straight road; instead, the photograph shows that the road is curved. Evidence was also introduced by the defense and not denied by the prosecution that after the battle was over a German medic went into the basement of the house out of which the supposed American PW's were taken and found thirty American soldiers fully armed and that after the battle they were taken as prisoners of war and marched to the rear.

We would like to pose one other question for your consideration

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at this time: Why hasn't the Prosecution introduced evidence by Belgian civilians as to the finding of the dead bodies of American soldiers? They were sure to do so in every situation where the bodies were found. Remember there were civilians in this house with the thirty American soldiers, and those civilians were Dr. Robinson and his family and friends. Why didn't the Prosecution put them on the stand to prove that soldiers were shot, if they are so certain that American personnel had been deliberately shot by the defendants? Why didn't the Prosecution introduce records from the United States Graves Registration section to show the death of American personnel in the town of Stoumont? Gentlemen, you know, and we know, why they have not introduced this evidence, because there were no bodies.

You have heard the testimony of the two witnesses relative to the combat condition existing in the vicinity of the Stoumont Railroad Station. The witnesses testified that the farthest penetration of the spear was at the clearing to the north of the Railroad Station.

At this point American Tank Destroyer and infantry troops advanced in combat formation and during this attack were shot at by the men of the 2d Company. Does this testimony which stands uncontradicted in the record, indicate that American prisoners of war were fired upon? To the contrary, the evidence portrays a typical combat condition and if any Americans were killed, they were killed while in combat.

The defendants STOCK, GOEDICKE, RICHTER, FRITZ RAU, and GEBAUER are accused of having fired upon American prisoners of war in front of the church wall surrounding the church in La Gleize.

All alleged incidents occurred on the 18th day of December 1944.

That of STOCK was supposed to have occurred at 1400 hours, when he is alleged to have fired upon ten to fifteen American prisoners of war.

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That of GOEDICKE is alleged to have occurred about 1500 to 1600 when he is alleged to have fired upon 25 to 30 American prisoners of war in the same location.

That of RICHTER was supposed to have occurred during the afternoon of the same day when he is alleged to have fired at or in the same location.

That of GEBAUER and FRITZ RAU about 1700 when they were alleged to have fired upon 15 American prisoners of war at or in the same location.

Now, you have heard the evidence of the Prosecution; the only evidence of a shooting was the statements of the defendants themselves which you have reason to believe were obtained under force and duress. The evidence of the defense indicates that there were no shootings in the location as alleged by the Prosecution. You have heard the testimony of Lt. Col. McCown, an American officer, whose testimony has remained unimpeached. Being an officer in the Army of the United States, his testimony is entitled to be given the highest degree of value. You have also heard the deposition of the Priest of the church in La Gleize. There was only one church in La Gleize. His testimony has been forward and to the point that there were no bodies ever seen around the road in front of the church or in front of the church wall. Remember that this witness passed in the direction of the church wall approximately 1630 to 1700 hours on the 18th day of December 1944 and he saw no bodies. You have heard the testimony of many German witnesses who have testified to the fact that they traveled and passed along the road adjacent to the church wall and they saw no bodies or shootings on the 18th of December 1944. What has the Prosecution proven? They have only introduced confessions which have been obtained by force, coercion, threats and duress. We can reasonably assume that they will not put much weight on such evidence. The only evidence which the prosecution has introduced at

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this trial outside of the statements of the accused, all of which have been obtained by duress and unlawful means, has been the testimony of only one witness who came back to La Gleize after the Americans retook the town, and discovered that three Belgian civilians had been killed in their home, probably by stray machine gun bullets during the attack on La Gleize. Why has the Prosecution failed to produce Belgian civilians or records from the United States Graves Registration Section to prove the death of American personnel? We feel that there were no deaths and no shootings as alleged by the Prosecution. You have heard the statements of other Belgian civilians who certainly have no love for the Germans and especially the SS, but they in their own statements have admitted that no Americans were shot in the town of La Gleize during the time alleged by the Prosecution.

The defendant Fritz Rau is also accused of having fired upon American prisoners of war in La Gleize on the 21st day of December 1944. The only scintilla of evidence involving Rau on this charge is in an UNSIGNED STATEMENT FROM FREIMUTH of doubtful probative value. The Court will recall this was the man who committed suicide. Admission of such evidence in any court is very highly doubtful of any value whatsoever. This is what Freimuth says: "Rau's SPW I haven't represented any more on this drawing as to my estimation he stopped about five to ten meters behind me. Shooting at the prisoners started also from Rau's SPW, while our SPW was still shooting. Rau's SPW began to shoot shortly after Wittwer had opened fire, at about the same time as I."

That is the only evidence accusing the defendant Rau with this crime. He does not even identify this Rau as Fritz Rau, Joe Rau, Michael Rau, or by any other name than Rau. There are two Rauses in this case and no one knows how many more there were in

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the regiment. And still the Prosecution with a serious face asks that this Court find the defendant Fritz Rau guilty of murder without further proof.

The defendant Stock is accused of shooting American PW's on the 22nd of December 1944, at 10:30 at the church in La Gleize. He is alleged to have fired upon them as they stood with their backs to the wall facing the church. Remember, gentlemen, they had THEIR BACKS TO THE CHURCH WALL, an absolute physical impossibility. This church wall has no inside surface to stand against. It is merely a retaining wall to hold the soil in the cemetery. You saw with your own eyes in the Defense's photographs that the surface of the cemetery and church yard comes up to the top of the retaining wall. The only evidence of this shooting is that of the uncorroborated statement of the accused himself which no doubt was forced from him by the investigators through the use of threats, force and duress. The defendant is also accused of shooting two American prisoners of war 70 to 80 meters up the street at the edge of a bomb crater. The only evidence of this is the uncorroborated statement of the accused. We might say once again "Why hasn't the Prosecution introduced evidence to corroborate their theory of the case? Why haven't they proven the corpus delicti of the crime? If they could?" You know the answer as well as we do, there was no evidence available or else the Prosecution would have produced it because there was no crime committed. These shootings probably are the result of "hope of release" wherein an accused would admit anything to be released from their present intolerable surroundings at Schwaebisch Hall.

The defendant Weiss is accused of having fired upon an American prisoner of war in La Gleize on the 22nd day of December 1944. The only evidence of this is the statement of the accused that he fired upon the prisoners of war. Please remember, if you

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will, the testimony of the defense which showed that during the time this incident is alleged to have occurred, the town of La Gleize was under heavy artillery fire and was subjected to an infantry attack from both sides of the town. In fact, American soldiers had commenced to infiltrate into the town during this attack.

Gentlemen, the Prosecution would like to have you believe that during the heat of battle after all of the Germans had been posted in their positions to repel an attack upon the village of La Gleize, when the artillery was heavily shelling the village, IN THE HEAT OF BATTLE three American soldiers strolled into the town, came view of the accused Weiss, that they were walking with their hands in the air, NOT UNDER GUARD, and that the defendant Weiss shot at one of them. The Prosecution does admit, however, that the soldier was not killed. Gentlemen, the only conclusion that can be drawn from this is that this American, if there was one, was an infantry soldier who had infiltrated into the village and in the heat of the attack was fired upon.

There is no evidence as to the commission of a crime in this instance and it is our sincere belief that this Court will not find the defendant guilty of having perpetrated a crime.

The Prosecution, as part of its rebuttal evidence, introduced three affidavits to support the showing of death of American soldiers in the La Gleize incident. Let us analyze the evidence which they introduced. Both of the affiants, Prosecution's Exhibits P-134 and P-135, admit that the day that they saw prisoners of war was on the 22nd day of December 1944. At this time the town of La Gleize was in the hands of the Germans and it was a physical impossibility to even travel within the near vicinity of the town. Then let us consider further the source of the information. One

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of the affiants, Elwain Cranford, testified that he was in charge of registering the bodies of American soldiers, which he buried. At no time has the Prosecution produced the original records of Grave Registration Section which would show the place of death, as well as further identifying information. Instead, they have produced the affidavit of a witness who has testified to nothing but hearsay. Let us look further at the testimony of the witness Charles H. Holcombe in P-135. This witness states that, on the 22nd day of December 1944, he went to La Gleize and was directed to a prison compound in the village of LA Gleize. This town at no time had a prison compound, and was too small to ever accommodate one. You have heard the testimony of the witness Rulien as to the size of the town. La Gleize is a village with about forty houses in it and one church. How is it conceivably possible to believe the statements in such an incredible statement? The Prosecution has been alleging the shooting of American soldiers in front of the church wall and in the cemetery of the church yard. Now, on rebuttal, they come along and claim that the shooting occurred in a prison compound. Gentlemen, all that I can say is that the Prosecution has miserably failed to prove the shooting of any American soldiers anywhere in the village of La Gleize. I reiterate that the Prosecution has failed to introduce any testimony of Belgian civilians as to the shooting of American soldiers, you are therefore, gentlemen, forced to draw a negative conclusion and that is that there were no shootings of Americans in the village, as alleged by the Prosecution.

The defendants Fritz Rau and Fritz Gebauer are accused of having fired upon 40 American prisoners of war in the vicinity of Cheneux. The only evidence of this is the statements of the accused, uncorroborated by any other evidence. Confessions of this nature, which have admittedly been secured by the Prosecution through trick,

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artifice and cunning, should have no weight as probative value. Why didn't the Prosecution produce corroborative evidence against these two defendants beside their statements as they have done in a few other instances? We come back to the same answer, the crime alleged is merely a figment of the imagination.

Two of the accused, Willi Braun and Heinz Friedrich, are accused of having shot seven American prisoners of war somewhere in the vicinity of Stoumont. The location has never been definitely ascertained with certainty by the Prosecution. The only evidence of the crime has been the unsupported statements of the accused, in all probability obtained through duress and force. The same questions can be asked in this instance that were asked in previous parts of this argument. Why hasn't the Prosecution offered evidence in corroboration? Why haven't they proven the corpus delicti of the crime? The questions answer themselves -- there were no crimes committed. All that can be said in closing is that the investigation and Prosecution staff has failed to prove the corpus delicti for any of these crimes.

This concludes the argument on behalf of the Privates First Class.

DEFENSE COUNSEL: Dr. Max Rau will present the final argument for the accused General Josef Dietrich and the accused General Fritz Kraemer.

(Whereupon Dr. Rau read the argument in the German language.)

DEFENSE COUNSEL: Mr. Rosenstock will translate the final argument of Dr. Rau.

(Whereupon Interpreter Rosenstock read the argument of Dr. Rau in English as follows:

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May it please the Court, you are about to decide a case, the scope of which, as the Prosecution has already stated, exceeds that of common cases by far, in the bearing it has on time, place and law as well. You must find an answer not only to the tragic connection between fate and guilt, to injustices actually committed and only external mazes, but you will also be able to furnish a new stone for the imposing structure of anglo-American jurisprudence in your conscientious determination of the extent of guilt or innocence of each of the accused. Simultaneously, your achievement will represent an important contribution to new, noble relationships between nations and states in the realm of law.

To get down to details, are the accused Dietrich and Kraemer, whom it is my duty to defend, guilty?

What is the accused Dietrich charged with? To have given an order to his army on or about 14 December 1944 to conduct the offensive ruthlessly against civilians and to shoot prisoners of war.

How about the accused Kraemer? To have participated in the transmittal of this order.

Any other charges against both accused? That they are responsible for the shooting of PW's and Allied civilians by members of the combat group Peiper between 16 December 1944 and 13 January 1945. This accusation is based on an order of the day which was allegedly conceived by the accused Kraemer, signed by the accused Dietrich, and issued by both to the troops. An original of this order has unfortunately not been found until today. The war journals of the army, of its corps and of its nine divisions, should contain copies. The whereabouts of these war journals are not exactly known. But the Prosecution attempts to demonstrate the contents of the order of the day which they are so interested in

a fragmentary manner by reconstruction.

The accused Dietrich confirmed certain alleged details of this order of Schwaebisch Hall fifteen months after the offensive. But he was no more the spiritual procreator of these details than he, on the other hand, actually composed the real order of the day himself. The author of the original order of the day was incontrovertibly the accused Kraemer and the spiritual father of the fragments of the reconstructed order of the day was an interrogation officer in Schwaebisch Hall. In both cases, therefore, Dietrich only lent his name to it, with one exception: In Schwaebisch Hall he denied with all determination that he mentioned anything about PW's in his order, much less ordered their being shot.

It is evident from Dietrich's statements in Schwaebisch Hall that because of a speech of the Fuehrer he had ordered that a wave of fright and terror was to precede his troops, that no humane inhibitions were to be shown, and that any resistance of the enemy was to be broken, that the Prosecution concludes that the order for shooting of PW's and civilians existed.

Is it possible to base the comprehensive conclusions of the Prosecution on such general and indefinite phrases according to the laws of logic, of military terminology and issuance of military orders that is more a game of words than reality? Does not a wave of fright and terror precede every machine of war? Are not humane inhibitions lost in all wars? Does not every participant in a war resolve to break the enemy's resistance with terror? Is it possible for a reasonable soldier to believe to derive duties or rights to kill PW's in violation of his constant instructions and of common usage of war from such phrases?

I think the answer must be "no" and again "no". That is the way the accused Dietrich also felt. This is proven by his express remark in Schwaebisch Hall that he did not mention PW's and did not order their being shot. The statements of the accused Dietrich himself cannot prove that he ordered the shooting of PW's or civilians. What, then, are the further proofs of the Prosecution as far as they claim connection with an army order? It is to be noted that all of them contain the additional remark that PW's are to be shot only "when special circumstances require it." The order of the day of the Prosecution appears in more attractive clothes. Does the way it is phrased still permit the soldier who is not specially instructed concerning international law to recognize its illegality, when there are not a few students of international law who claim that in such military emergencies such orders are legally tenable? The substance of this law of military necessity can be condensed into the formula "martial reason before martial manners."

Is it surprising that particularly in view of the extraordinary methods of interrogation in Schwaebisch Hall, to-wit: false witnesses and documents, persons were prepared to make such confessions? Did not the Prosecution itself in that way concede while presenting its case that they could not sustain their charge against the accused Dietrich in its original unlimited form?

The claim that the order of the day had ordered a ruthless execution of the offensive against civilians was not even attempted to be proved and nothing can be found about this matter in the statements presented by the Prosecution.

The accused Kraemer has stated in Schwaebisch Hall that his

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order had stated that one was not to bother with PW's, that the forward battalions were not to bring in any PW's and that the substance of the order had been that the forward battalions were not to delay themselves by evacuating PW's since that task was to be left to the units following behind, and further, that the terror of the civilian population which was to be expected, was to be broken by force. Can one not recognize from this statement that there evidently was a fight as to terminology and substance of this dictation between the interrogator and the interrogated? Can one gather from these statements which, by the way, are again only fragmentary, that the sense and purpose of the order was incriminating? Do not these three sentences themselves imply that PW's were not permitted to be shot? I think that with good will one must answer this question affirmatively.

The accused Kraemer is charged with participating in the transmittal of Dietrich's order providing for the shooting of PW's. Now, is this the order which the Prosecution had certified by Dietrich or is that the one which is mentioned in the written statement of Kraemer? What wording of the order is to be used as a basis for the charges? Dietrich's, or the substantially entirely different one of Kraemer? I think that it is just this incongruity and inconsistency that shows that the reconstructions of the Prosecution are not suitable for the determination of the true facts. If, in addition, one considers that the falsehood of several comprehensive proofs of the Prosecution has already been shown positively, for instance, concerning the incidents in La Gleize and Buellingen, then the general conclusion demanding great care to be exercised with regards to all evidence not supported by objective fact is justified. But all doubts and

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undecided matters should be treated according to the fundamental rule of law: in dubio pro reo, not against the accused, but against the Prosecution. The Prosecution has not presented sufficient proof of guilt with its own evidence.

In addition, the Defense is in a position to clearly demonstrate the incorrectness of the evidence presented by the Prosecution.

The following points appear to demonstrate that the shooting order, be it in the terminology of Dietrich or Kraemer, did not exist:

1. The Prosecution bases the order on a speech of Hitler made on 12 December 1944 in Bad Nauheim. Hitler was supposed to have given instructions to fight vigorously and ruthlessly, to proceed with brutality, to show no humane inhibitions, to have a wave of terror precede the troops, and to break the resistance of the enemy with terror. Before anything else, it should be said quite fundamentally, that the sense and purpose of a speech of three and one-half hours cannot be gathered simply from three fragmentary sentences which obviously are no more than demagogic phrases anyway. The truth of the matter is that all ear witnesses of the speech, particularly the army officers, General Engel and Colonel Warning, who were present, have stated under oath that Hitler did not make these above mentioned statements at all. The following is also a point suggesting that the shooting order did not exist.

2. The starting point of the Prosecution is that the order for shooting was contained in an order of the day of the 6th Army. This demonstrates a thorough misapprehension of the German system of military orders. Such an order, which is a

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violation of international law and as such, very significant, would never have been issued openly, but rather secretly in order not to give the enemy an opportunity for reprisals and counter-propaganda. The order of the day, however, was unclassified from the beginning of the offensive and was even published in the army newspaper. The reason for that lies in its nature. In a military sense it is not an order at all, it is not a binding instruction or authorization for the troops, but appear to be of propagandistic or patriotic nature to encourage the troops and improve their morale. Not only General Dietrich, but also the other high-ranking troop commanders as General Model and von Rundstedt issued orders of the day. Dietrich's order, according to the testimony of the witnesses, was the shortest and mildest of these.

Another point against the existence of the shooting order is:

3. Military experience and reason. It would, as already previously mentioned in part, have become known to the enemy rapidly as an act in violation of international law, and would have been answered by him just as quickly. In a concrete case this can be proved by the fact that the shootings at the crossroads were already announced by the radio station Calais only a few days later. Every soldier, therefore, had to count with prompt reprisals, counter-measures, political representation, counter-propaganda and other things.

Since the army of the accused Dietrich consisted of two-thirds army and air force personnel and only one-third members of the Waffen SS, these counter measures would have been directed not only against the latter, but also against the former. This would have caused objections and resistance of not only the

army and air corps troops, but also of the many army and air corps officers on the staff of the accused Dietrich.

However severe these measures of the enemy could be is demonstrated by an article of the American Lieutenant Theodore Draper, published in the Armed Forces Digest, November 45, Vol. #2, pp. 51 ff., and in the Infantry Journal, Oct. 45, p. 35. I quote from page 55, or page 37, respectively:

"When the word went around that SS men, to show their toughness, never took prisoners, we stopped capturing SS men"

-- mind you, as soon as "word went around".

The wave of fright and terror and all humane inhibitions are therefore entirely useless when confronted with a free and aggressive enemy and successful evidently only against an unfree and defenseless one.

Another point against the existence of the order alleged by the Prosecution:

5. The accused Kraemer testified on the witness stand that purely from the standpoint of time there could not be any connection between Hitler's speech and the order of the day. His testimony is supported by the statement under oath of the witness Georg Maier. According to that, the offensive was scheduled to start as early as 12 December 1944. It kept being postponed by one day on the day before until the 16th. All orders were already completely worked out and signed on 11 December 1944. The particular reason that Kraemer could remember this date so well was that he had his birthday on 12 December 1944. In addition, the moving of the army CP which occurred on the 10th or 11th of December from Quadrat to Muenster/Eifel gave him and the witness Maier a standard to go by. The conference in Bad Nauheim, however, happened on 12 December 1944, that is, after the issuance of the order of the day.

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But, above all, the following points to the non-existence of the order for shooting:

6. As Kraemer convincingly testified, the army captured five to seven thousand prisoners during the offensive. The 1st SS Panzer Corps, which concerns us here, made about twenty-three hundred, according to the statement of Pries; the 1st SS Panzer Division alone made over one thousand, according to the sworn testimony of Ziemssen, that during the period 16 to 22 December, and these were taken to collecting points. Among them, according to the sworn testimony of Ziemssen, some Froehlich and Braun were/from the Combat Group Peiper. That PW's were made and treated decently was also confirmed chivalrously by Lieutenant Colonel McCown of the United States Army. How can you make these facts agree with the allegations of the Prosecution that the army had ordered the shooting of PW's?

Further, against the existence of the shooting order:

7. According to the evidence of the Prosecution, shootings occurred only in parts of three battalions of the army. They did not occur in at least one hundred fifty other battalions of the army. This objective fact also demonstrates strikingly that an army order never could have existed.

But as a further point against the existence of the order:

8. The army, through the accused Kraemer and with the knowledge and approval of the accused Dietrich, made public in several orders before the offensive how PW's were to be treated. As Colonel Warning confirmed under oath, it pointed to the importance of evacuating prisoners of war most rapidly for the purpose of gaining enemy intelligence, if no other. It made it the burden of the corps to institute prisoner and captured enemy material, it fixed the location of PW collecting points,

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regulated the treatment of the wounded PW's and ordered their rapid evacuation in empty vehicles. According to military usage and tactical necessity it was also decided that the forward battalions were not to care about prisoners and captured materials but had to leave this to the infantry following behind, or to special corps details, respectively. The sense of this regulation is clear and unmistakable. The forward troop cannot permit itself to be delayed or to have the force of its advance diminished by anything. Only malevolent interpretation can invent another sense or purpose by tearing words out of their content or quibbling. A further point against the existence of the shooting order:

9. According to the sworn testimony of the witness Maier, all orders of the army were presented to the Army Group B and approved by it. That certainly would not have happened if they had contained anything contrary to international law.

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Finally the following is a point against the existence of the shooting order:

10. When Army heard an enemy radio station report that PW's had been shot near Malmédy it promptly demanded a report by way of corps and division in writing and by telephone. That was confirmed under oath by several witnesses, such as Engel, Maier, and Lehmann. If Army itself had not had a clear conscience then it probably would not have made such an inquiry only upon the basis of an enemy radio report. A courts-martial investigation was not feasible at that time since the scene of the act, as it was very inexactly described, was located within the area of combat and the troops there were engaged in serious fighting. But after 28 December 1944, the 1st SS Division no longer belonged to the Army. Continuing this investigation would have been the task of the Division Judge Advocate anyway.

It has not been alleged and certainly not been proven by the Prosecution that any orders besides the order of the day of the Army had ordered shootings. It has been demonstrated positively through the testimony of George Maier that there was only one order of the day. Nor can the existence of verbal orders be claimed in either a concrete or abstract manner.

As far as the shooting of civilians is concerned, the evidence presented by the Defense has shown that, the enemy situation being what it was, the operational order had to point to the possibility of the involvement of the Belgian resistance movement, that is, armed civilians. That such a resistance movement, the Maquis, existed was admitted by a Belgian witness. But armed civilians cannot demand protection and treatment as unarmed ones. That cannot be found in any order, army or otherwise, nor does it violate International Law.

The accused Dietrich further refused to use the Walloon Volunteer Brigade, as had been ordered by Himmler, because he did not wish to provoke difficulties with the Belgian civilians. This is indicative of his attitude.

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All these reasons which point to the non-existence of any shooting order equally point to the lack of culpability of the accused of any shootings which might have actually happened in violation of the International Laws. According to the sworn testimony of Ziemsen the troops were instructed about the treatment of PW's according to the International Law, time and again. Quite apart from this fact the fundamental regulations concerning this must also have been common knowledge. Furthermore, however, Army issued special orders which have already been discussed in detail under point No. 8.

Therefore, in view of the military duty to obey which had been particularly emphasized and in view of the experience received during invasion battles, the accused could count on the troops obeying the orders issued. Individual excesses cannot be avoided in any army. In my capacity as defense counsel with the International Military Tribunal at Nurnberg, I am in a position to prove such individual excesses for armies other than the German but do not wish to do this since such regrettable sociological symptoms, as previously stated, are, as in my opinion, known to the Court. Such individual cases, even if occurring in many instances, do not automatically prove a system of issuance of comprehensive orders. When the accused Dietrich and Kraemer were informed of the shootings on the 20th or 21st by an enemy radio station, they promptly demanded an official report. Their demand must have reached the troop commands on the 22nd of December, at the earliest, and the troops fighting at the fronts probably later. After 22nd, according to the presentation of the Prosecution, only two shootings of two individual American soldiers occurred. The main incidents, assuming that they took place, occurred before the 22nd of December, within five days and amidst most severe fighting. It, therefore, cannot be assumed that the accused are responsible for these shootings on account of

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derelection of duty. Furthermore, the duty to supervise the troops existed for commanding officers only, and not for general staff officers, as the accused Kraemer was. He is the first German general staff officer of whom it is known that he is being made responsible for excesses of troops who were not under his command at all. The accused could not fail in their supervisory duties in this short time of five days, since as officers in a leading position, their time was taken up entirely by the operation of the offensive.

The Yamashita Case does not apply and cannot be compared with the case at bar. I cannot stress this too often.

There the deeds which General Yamashita was accused of having tolerated were committed within the framework of a regular military occupation which extended over a period of more than 1½ years -- of an occupation which included setting up of Courts, establishment of police forces, etc.

In the case at bar the events occurred during a very few days in the course of and as part of a most desperate and furious battle.

According to the international foundation of law, to wit, that there is no punishment without a law, the question as to whether the accused have made themselves culpable can be answered only according to German and American Law. The principle is of the so-called identical norm, that is the equality of the rights, demands and justifies that local law be used if that is the less severe one, that means, in other words, that in the question as to whether the accused failed in their military duty of supervision, the regulations of para. 147 of the German Military Code should be taken into consideration if they are less severe than the American regulations.

It is my duty to point out to the Court that the accused Dietrich is facing the Court, not as a "Nazi General", as the Prosecution evidently expects him to, but as a commanding general

of an army during an offensive. His culpability as member of the SS and the general staff will be examined in another trial before the International Military Tribunal in Nurnberg and in De-Nazification proceedings.

The reason the accused Dietrich did not take the witness stand was that even the Prosecution holds the opinion, that all orders went through the hands of the accused Kraemer. The examination of the accused Kraemer was, therefore, sufficient. Furthermore, we presented a sufficiently large number of other witnesses who testified about Dietrich's orders.

I request the accused be acquitted.

In conclusion; an army which treats its beaten foe with justice does itself honor. May the American Army add the most noble victory to the many victories which it has won at all times on all battlefields through the world -- the victory of selfless justice, and may it in that manner perpetuate the high tradition of that jurisprudence which seeks its deepest roots in the divine. Upon returning to classical wisdom of human history we find the sentence: "Opus justitia pax, peace is the task of justice." As this case shows, soldiers are becoming the co-founders of a new and, let us sincerely hope, happy area of peace.

General, gentlemen, I thank you for your kind attention.

PRESIDENT: The court will adjourn until 0830 tomorrow morning (Whereupon the court at 1155 hours adjourned).

000677

Mein Lieber!

EX 129
219
JEB
MOSBY

Komm dir bitte an folgenden:

- 1) du sollst den Wein trinken, das meine Worte von King bekommen, wenn es mal feiert, das war es.
- 2) du sollst die ganze Sache von demall noch einmal überdenken, du ist die eine ein Gespräch mit Professor eingeleitet.

du fragst Professor, was mit dem Forum sind, du sagst die Professor, ich habe ihn befohlen die Karten einzubringen, dann ich will von die Frau schreiben und mich den King schreiben.

Wenn auch es das Gespräch nicht mehr ist, das ist nicht genügend für mich ist diese Deine Aufgabe.

125- Sollst du gefragt werden, was soll die Frau mich befragen würde, sage bitte, du wirst es nicht glauben aber, weil der Weltboden für die Wurzeln ist und reform ist.

P
EX
129

000678

Die erste Kette ist das erste
zu Wasser gehen in einem Aufzuge.
Wohlwollen und gut.

Frage, Frage.

Bitte sofort nach dem Anruf
und im Moment, das ist das erste.

Frage.

Kohler

000676

TRANSLATOR'S AFFIDAVIT

I, PAUL REITZER assigned to War Crimes Branch, United States Army, APO 633, as an interpreter, having been duly sworn, depose and state that the attached English translation is a true and accurate rendering of the German original of the ~~report~~ message of Georg PREUSS

~~written~~ written at Dachau at ~~Subcamp Hitz~~ Dachau Germany.

~~before~~

consisting of 2 pages, into English.

I, the deponent, further state that I speak German and English fluently and am fully qualified as an expert German-English interpreter by reason of the following qualifications:

1. My native tongue is German.
2. I have spoken English for seven years.
3. I studied English for four years at school in VIENNA, Austria.
4. I lived in England from 1939 - 1940.
5. I lived in the United States from 1940 until I left the United States with the American Army in May 1944.
6. Since the 4th of February 1946, I served as interpreter with the War Crimes Branch in WIESBADEN, Germany.

Paul Ritzer

PAUL REITZER

Sworn and subscribed to before me this 17th day of June 1946 at ~~Subcamp Hitz~~ Dachau, Germany.

Dachau.

Raphael J. ...
War Crimes Branch, USFET
Capt BMP

000680

Dear KOHLES:

Please recall the following:

- 1.) You were under the impression that my words about me needing the rings, should I get married, were just kidding.
- 2.) You once more thought the whole thing over again and a conversation with BERGHAUS occurred to you. You asked BERGHAUS what should be done with the body and BERGHAUS told you, I ordered him to put the papers into his pocket because I wanted to write to the wife and also send the rings.

When and where the conversation took place does not matter, decisive for me is this, your deposition. Should you be asked why the body was not buried, please say, you don't know, however, you think that the ground in the forest was frozen and had too many roots.

The first slip is made void by this one, because it represents a contradiction to your deposition with the Prosecution.

Regards

Georg

Please destroy immediately upon reading and do not tell anybody about it.

Georg

129A

EX-129-A
SA 7/9/46
J.E.B.
MEMPHIS

000681

27. D
Kompa Stoffel am 16.12.40 font
(Finanzmaß. Währungsab.) x B. 20



P
EX
130

A.) Wie sehr du die selbständige
Wunde dieses Königs n. f. w.
erfolgreich sein sollt muss jeder...

B.) die gep. Gänge hat die Aufklärung
mit einem sehr schwierigen
Angriffsziel in dem Grund zu hoffen
für uns heißt das, ohne Rückzug
auf Mann und Leistung, zu helfen
und die Wiederherstellung des Wesens
den Feindes abzuwehren.

Wies sind inhalts. Wes Wesens.
Aber die Gegens über Wesens Wesens
zu kämpfen, Wies - Wesens Wesens
Wesens Wesens - mit Wesens Wesens
für Wesens Wesens. Wesens Wesens
Wesens Wesens Wesens, die Wesens Wesens

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des Luftwaffen befinden, keine Rückfrage mehr.

Dieses haben wir uns Zeit nach heute, und mit Sparungen zu befaßigen. Die übernimmt die nachfolgende Infanterie.

Luftwaffen Zivilisten sind unsere größten Feinde und werden sehr Rückfrage eingeholt.

Auf Wahlkäufe, die mit dem Kopfe über dem Kopf sind, sind nicht zu lassen. Ebenso nicht auf einzelne separate Feindgruppen (für WK Befestigungen) [genau: Mitglieder Skoczny]

C) Luftwaffen } Wahlkäufe
Artillerie }

000683

to D

Company Order on the early morning of 16 Dec. 44.
(Reproduction according to the gist)

- A.) We are confronted with the decisive turning point of this war, etc.
Full commitment of every man.
- B.) The Panzered group has the mission, with an extremely distant objective, to break through the enemy. That means to us, to drive on, without consideration for man and vehicle, and put to use to our advantage the confusion of the retreating enemy.

As far as infantry is concerned, we are very weak. To confuse the enemy about our strength as soon as we approach villages, we shall concentrate with marching-fire upon such. Therefore we will not be able to give any consideration to civilians which will be found on the street during combat actions.

We have no time nor men to occupy ourselves with prisoners - they will be taken care of by the infantry which follows up.

Armed civilians are our biggest enemies and will be bumped off without consideration.

Upon deserters, who are waving their steel helmets over the head, will not be fired. The same goes for single driving enemy tanks (for KWK crews) (Meant: Operation SKORCZENY).

- C.) Air force-)
Artillery) Support.



000685

TRANSLATOR'S AFFIDAVIT

I, PAUL REITZER assigned to War Crimes Branch, United States Army, APO 633, as an interpreter, having been duly sworn, depose and state that the attached English translation is a true and accurate rendering of the German original of the statement of

Rudolf SAUER

taken on 15 May 1946 at Dachau ~~Stadelbergstr.~~ Germany.

before ROBERT E. BYRNE, 1st Lt., JAGD

consisting of 1 pages, into English.

I, the deponent, further state that I speak German and English fluently and am fully qualified as an expert German-English interpreter by reason of the following qualifications:

1. My native tongue is **GERMAN**.
2. I have spoken **ENGLISH** for 7 years.
3. I studied **ENGLISH** for 4 years at school in **VIENNA, Austria**.
4. I lived in **ENGLAND** from 1939-1943.
5. I lived in the **UNITED STATES** from 1943 until I left the **UNITED STATES** with the **AMERICAN ARMY** in May 1944.
6. Since the 4th of February 1946 I served as an interpreter with the War Crimes Branch in **WIESBADEN, Germany**.

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Paul Ritzer

PAUL REITZER

July 1946
R.E.B.
1946

Sworn and subscribed to before me this 1 day of July at ~~Stadelbergstr.~~ Dachau Germany.

Robert E. Byrne

War Crimes Branch, USFET

Cash CMT

EX-131
J.E.B.
REPORTER

133

000686

I, Rudolf SAUER, being duly sworn, make the following statement under oath.

During the EIFEL Offensive in December 1944, I was a member of the 3rd Comp., 1st Bn., 12th Pz. Rgt., H.J. Division (Trans. note: HITLER YOUTH DIVISION). My Comp. Commander was Hstf. BROEDEL and my Div. Commander Standartenfuehrer KRAAS. When we were in an assembly area in December 1944 in HIMMELSDORF in the vicinity of STEUSS we received a visit of our Division Commander KRAAS. The purpose of his visit was to look over the company at which occasion he also delivered a short address before the assembled 3rd Comp. In this speech KRAAS said about the following:

"This coming offensive is of great importance and can eventually be decisive for the fate of the German people." Furthermore he said - and I can remember it distinctly "that in this offensive, he does not want to see any prisoners of war."

This deposition consisting of one page was made by me voluntarily, uninfluenced by duress, harsh treatment or promises of any kind and I am prepared to repeat it under oath before any court of justice.

(Signed) Rudolf SAUER
15.5.1946

Subscribed and sworn to before
me this 15th day of May 1946.

ROBERT E. BYRNE
1st Lt. JAGD



000687

CONFIDENTIAL

For the WAR CRIMES BRANCH

Civil Affairs Division - War Department Special Staff

United States of America

In the matter of the alleged killing of approximately 200 American soldiers in or near La Gleize, Belgium on or about 23-24 December 1944.

* Perpetuation of Testimony of German
* prisoner of war Wolfgang Schleif,
* Private, ISN 31G-837496
*

Taken at:

Ft. George G. Meade, Maryland.

Date:

1 May 1946

In the Presence of:

Sidney S. Rubenstein, Lt. Colonel, GSC;
Paul A. Neuland, Major, QMC;
Joseph M. Farvis, Jr., Captain, Infantry
(Summary Courts Martial Officer at Fort
George G. Meade);
Gerard Droller, 1st Lieutenant, CMP.

Reporter:

A. C. Hendrix, Court Reporter

Witness was Interrogated in German by:

Major Neuland
1st Lt. Droller

Entire Proceedings were Translated by:

Major Neuland
1st Lt. Droller

Witness was duly sworn by Captain Farvis.

Q. What is your name, rank, and internment serial number?

A. Wolfgang Schleif, Private, 31G-837496.

Q. When and where were you captured?

A. I was captured in La Gleize, Belgium, on 23 December 1944, having been wounded on 18 December in both legs and right arm. I lay in the cellar of a castle in La Gleize from the 18th until the date of my capture. Fifty or sixty other wounded German soldiers were captured with me on the 23rd.

Q. To what unit did you belong?

A. I was in the 10th Company, 3rd Battalion, 2nd Pz. Gren. Regiment, 1st Pz. SS Division.

Q. Tell anything you know about the treatment accorded to any American prisoners of war who were held in or near the town of La Gleize at that time.

A. During the last night before our capture, Peiper gave a talk to us in the cellar. This cellar was being used as a first aid station. Peiper told us that the German forces were going to retreat, as the situation there was hopeless. He said that all those of us who could move should retreat and that the rest of us who were unable to move should await capture by the Americans, but that we should keep our spirits up because we would be exchanged in return for certain American prisoners of war who were being held nearby. Shortly after Peiper had finished his talk and had left, some additional German wounded came in to join us in the first aid station. They reported that they had heard that the American prisoners, mentioned by Peiper as being located in or near the town of La Gleize, had been executed. I did not learn of the ones who actually committed this crime but I assume that it must have been done at Peiper's command.

EX P. 132
J. E. B.
REPORTER

CLASSIFICATION CANCELLED

by authority of Ltr. HQ. U.S.A.F.F.
HQ. AFMAG (S) - NCO, 15 Jul 1946

CONFIDENTIAL

WAR CRIMES OFFICE

Washington 25, D. C.

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CONFIDENTIAL

- Q. What other officers were in command in that area?
- A. In addition to Peiper, there was a Hauptsturmfuehrer Tiefenthal. I do not know whether he was in command around this particular town of La Gleize, but he was subordinate to Peiper.
- Q. Did you ever hear anything further about this alleged execution of American prisoners at La Gleize?
- A. After capture, I told others about what I had heard as to this event. Some of them had not heard of it but quite a few said that they knew about it already.
- Q. Does it strike you that this alleged execution was a well-known event and reflected an actual occurrence, defined both by its time and place?
- A. It does.
- Q. What was your reaction to Peiper's promise, to arrange for your future exchange as prisoners of war in return for the Americans, when you found out that these Americans had been executed?
- A. We were all angry and incensed at Peiper for his obvious lies, and gave up any hope of ever being exchanged.
- Q. Is it possible that these Americans, according to the reports you received while in the cellar of the castle, were killed by artillery fire rather than by execution?
- A. There is no possibility of that. The reports which we heard while in the cellar were to the effect that the prisoners had been executed by Germans and not killed by any such other means.
- Q. Can you name any other Germans who know something about this atrocity on their own authority?
- A. Yes. One who knows something about this is Werner Heger. I believe that he is still at Fort Knox, Kentucky. His rank is certainly not higher than unteroffizier, probably lower.
- Q. Do you know of any others?
- A. Yes. There was one boy whose name is Hans Hammerschmidt. He is also at Fort Knox, Kentucky, I believe. Both Heger and Hammerschmidt were interviewed with me when I was at Fort Knox, Kentucky.

NOTE: Reports of previous interrogations of Werner Heger (31G-783447) and Hans Hammerschmidt (31G-829588) indicate that they claim to have no knowledge of this atrocity, but their interrogators believed that both were withholding information. These reports were transmitted to the European Theatre on 23 March 1946.

NOTE: Reports of former Interrogations of Wolfgang Schleif are being transmitted herewith.
WITNESS EXCUSED.

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J.E.B.
REPORTER

CLASSIFICATION CANCELLED
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file AG 000.5 GIB-AGO
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CONFIDENTIAL

For the WAR CRIMES BRANCH

NG

Civil Affairs Division - War Department Special Staff

United States of America

In the matter of the alleged killing of * Perpetuation of Testimony of German
approximately 200 American soldiers in * prisoner of war Lothar Hartig,
or near La Gleize, Belgium on or about * Private, ISN 31G-833128
23-24 December 1944. *

Taken at: Ft. George G. Meade, Maryland.

Date: 1 May 1946

In the Presence of: Sidney S. Rubenstein, Lt. Colonel, GSC;
Paul A. Neuland, Major, QMC;
Joseph M. Parvis, Jr., Captain, Infantry
(Summary Courts Martial Officer at Fort
George G. Meade);
Gerard Droller, 1st Lieutenant, CMP.

Reporter: A. C. Hendrix, Court Reporter

Witness was Interrogated
in German by: Major Neuland
1st Lt. Droller

Entire Proceedings were Translated
by: Major Neuland
1st Lt. Droller

EX-103
MST
J.E.B.
RECORDER

Witness was duly sworn by Captain Parvis.

- Q. What is your name, rank, and internment serial number?
- A. Lothar Hartig, Private, 31G-833128.
- Q. What was your last unit?
- A. I was in the 12th Company, 3rd Battalion, 2nd Pz. Gren. Regiment of the 1st SS Pz. Div.
- Q. When and where were you captured?
- A. On 24 December 1944, at La Gleize, Belgium.
- Q. Describe briefly your movements during the Ardennes counter-offensive until your capture.
- A. We advanced to the west, coming to a fork in the road on 17 December 1944. One road led to Malmedy and the other to St. Vith. Near this fork there was a burning building, and not far from the building there lay the bodies of approximately fifty American soldiers.
- Q. Had these American soldiers been shot before or after capture?
- A. I do not personally know whether they were shot before or after capture, but from conversations I had on 19-20 December, after being wounded, I learned from conversations with comrades in the first aid station that these Americans had been shot after capture.
- Q. Is it your impression from these conversations that such a war crime actually took place, or do you believe that it might have been merely a wild rumor?

WAR CRIMES OFFICE

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- A. No. Sometimes we wondered why Feiper did not keep his promise about releasing us through exchanges of prisoners of war, but we all agreed that he was a liar and a no-good, because he was one of the worst of the SS crowd. No one that was captured seemed to know anything about the fate of the 200 Americans. Sometimes we discussed what might have happened to them, and occasionally I voiced my belief that they had met with foul play. Sometimes others would agree with me and sometimes they would not. I can state with certainty, however, that nobody knew for sure that these 200 Americans were alive and retaken by the Americans.

Witness excused.

C E R T I F I C A T E O F O A T H

I, Joseph M. Parvis, Jr., Captain, Infantry, a Summary Courts Martial Officer at Fort George G. Meade, Maryland, hereby certify that German prisoner of war Lothar Hartig, ISN 31G-833128 personally appeared before me at Fort George G. Meade, Maryland, on 1 May 1946 and, after being duly sworn on oath by me, gave the foregoing testimony concerning war crimes.

Joseph M. Parvis, Jr.
 JOSEPH M. PARVIS, Jr.,
 Captain, Infantry
 Summary Courts Martial Officer
 at Fort George G. Meade, Md.

C E R T I F I C A T E O F T R A N S L A T I O N

We, Paul A. Neuland, Major, QMC, and Gerard Droller, 1st Lt., CMP, hereby certify that we are fluent in both the German and English languages and that the foregoing is an accurate English translation of the questions stated by us in German and of the answers given in German as testimony under oath before Captain Joseph M. Parvis, Jr., at Fort George G. Meade, Maryland, on 1 May 1946 by German prisoner of war Lothar Hartig, ISN 31G-833128.

Paul A. Neuland
 PAUL A. NEULAND, Major, QMC

Gerard Droller
 GERARD DROLLER, 1st Lt., CMP

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 file **CONFIDENTIAL**

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For The WAR CRIMES OFFICE

Judge Advocate General's Department -- War Department

United States of America

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In the matter of the finding of the
bodies of approximately 200 American
prisoners of war at Le Gleize, Belgium,
who were presumably killed after their
surrender to the Germans, on or about
22 December 1944.

Perpetuation of testimony of
Elwain Cranford, Civilian, - formerly
Sgt., 34195003, 607th Graves Regis-
tration Co., Quartermaster Corps.

Taken at:

157 Rumson Road, NE, Atlanta, Georgia.

Date:

24 May 1946

In the presence of:

Charles T. McGinnis, Special Agent,
Security and Intelligence Corps.

Reporter:

Martha M. Scott, Stenographer.

Questioned by:

Charles T. McGinnis.

- Q. State your name, former rank, serial number, permanent home address and telephone number.
- A. Elwain Cranford, Sgt., 34195003; 157 Rumson Road, NE, Atlanta, Georgia; CH 3523.
- Q. What was the place and date of your birth?
- A. Palmetto, Georgia, 29 August 1919.
- Q. What was the extent of your education, and your civilian occupation prior to your entry into the Service?
- A. I finished the 8th grade, public school, College Park, Georgia, and prior to my entry into the Service, I was unemployed.
- Q. Have you been questioned previously by any military or naval authority about this incident?
- A. No.
- Q. Have you recently returned to the United States from overseas?
- A. Yes. I returned to the United States in November, 1945, and received my discharge on 9 November 1945, at Fort McPherson, Georgia.
- Q. What was your organization overseas?
- A. 607th Graves Registration Co., Quartermaster Corps.

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EX
134

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by authority of the War Relocation Authority
file AG 0-108520-759, 27 June 1946
me

WAR CRIMES BRANCH CAD
Washington 25, D. C.

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- Q. Are you familiar with the circumstances surrounding the finding of the bodies of approximately 200 American prisoners of war at Le Gleize, Belgium, who were presumably killed after their surrender to the Germans, on or about 22 December 1944?
- A. Yes.
- Q. State what you know, of your own knowledge, about this incident.
- A. On or about 22 December 1944, a group of about 200 American prisoners of war were brought to Henri-Chapelle, Belgium, an American Cemetery Area, and it was general knowledge among the grave diggers that this group of 200 Americans had been killed after they had surrendered to German forces. I also recall that photographers, whom I believe were Signal Corps men, were assigned to photograph the bodies, which were given identifying numbers before being photographed in various positions, i.e. front, side, and back. I believe that these American prisoners of war were murdered, because the bodies bore evidence of numerous bullet wounds, and many of these bullet wounds indicated that the bullets had entered the back of the bodies and emerged in the front of the bodies, indicating that the men had been fired on from behind. I also observed that many of the bodies were terribly mangled, as if the men had received "bursts" from machine guns. I was in charge of the registering of these bodies and was told by more than one person that these bodies had been brought to the cemetery from Le Gleize, Belgium.

Elwain Cranford
ELWAIN CRANFORD

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WAR CRIMES BRANCH CAD
Washington 25, D. C.

CLASSIFICATION CANCELLED
by authority of Mr. Hq. U.S.F.E. ff
RESTRICTED
file AG CPSS GBT-AGO, 27 June 1946
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000695

RESTRICTED

State of Georgia)
County of Fulton)

I, Elwain Cranford, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

Elwain Cranford
ELWAIN CRANFORD

Subscribed and sworn to before me, this 29 day of May 1946.

Agnes B. Weems
Notary Public, Georgia, State at Large,
My Commission Expires 3-17-47

C E R T I F I C A T E

I, Charles T. McGinnis, Special Agent, S. I. C., Hq, 4th SvC, certify that Elwain Cranford, 157 Rumson Road, N.E., Atlanta, Georgia, personally appeared before me on 24 May 1946, and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

Charles T. McGinnis
CHARLES T. MCGINNIS,
Special Agent, S. I. C.

Date: 29 May 46

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WAR CRIMES BRANCH CAD
Washington 25, D. C.

CLASSIFICATION CANCELLED
by authority of Lt. Hq. U.S.F.E.T.
file AG 000-1-1-1 AGO 27 June 1948

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For The WAR CRIMES OFFICE
Judge Advocate General's Department -- War Department
United States of America

***** * *****
In the matter of the finding of the * * Perpetuation of testimony of
bodies of approximately 200 American * * Charles H. Holcombe, Civilian - former
prisoners of war at Le Gleize, Belgium, * * ly Pvt., 34821526, 970th Service
who were presumably killed after their * * Company.
surrender to the Germans, on or about * *
22 December 1944. * *
***** * *****

Taken at: Tallapoosa, Georgia.
Date: 28 May 1946.
In the presence of: Charles T. McGinnis, Special Agent,
Security and Intelligence Corps.
Reporter: Martha M. Scott, Stenographer.
Questioned by: Charles T. McGinnis.

- Q. State your name, present address, former rank, and Army Serial Number.
- A. Charles H. Holcombe, Tallapoosa, Georgia. I was formerly a Private in the 970th Service Company.
- Q. What was the place and date of your birth?
- A. I was born in Tallapoosa, Georgia, 25 December 1918.
- Q. What was the extent of your education, and your civilian occupation prior to your entry into the Service?
- A. I attended County School for two years, and prior to my entry into the Service worked in a Planer mill and a Heading mill, both lumber finishing.
- Q. Have you been questioned previously by any military or naval authority regarding your knowledge of atrocities and/or mistreatment of American soldiers by the enemy?
- A. No.
- Q. Have you recently returned to the United States from overseas?
- A. Yes. I returned to the United States in December, 1945, and received discharge on 22 December 1945, at Ft. McClellan, Alabama.
- Q. To what organization were you assigned overseas?
- A. 970th Service Company, attached to 82nd Airborne Division.

CLASSIFICATION CANCELLED
by authority of AGO, USFE
file AG 00 RESTRICTED
AGO, 22 June 1964
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Q. Are you familiar with any of the circumstances pertaining to the finding and burial of approximately 200 bodies of American prisoners of war at or near Le Gleize, Belgium, on or about 22 December 1944?

A. Yes.

Q. State what you know of your own knowledge, of this incident.

A. On or about 22 December 1944, I was driving a truck which was being used to move bodies of American soldiers to the cemetery between Liege and Aachen. On this date my truck, along with another soldier, name not recalled, were sent to Le Gleize, Belgium, to pick up about 200 bodies of American soldiers. My helper and I arrived in Le Gleize and were directed by Belgian civilians to a prison compound. When we arrived at the prison compound I observed that there were approximately 200 bodies of American soldiers lying in lines as if the prisoners had been lined up and shot while in single file or double file formation. The bodies were not lying in one continuous line, but appeared to be in numerous groups. At the time I saw the bodies lying in the compound, there appeared to be no other solution to this crime, other than that these American prisoners had been lined up and shot down. Some of these bodies were clothed, but many of the bodies had no clothing at all on them. There is not the slightest doubt in my mind that these American prisoners were shot down after having been captured by the Germans, as there were no weapons lying near the bodies, some wore no clothing, and these approximately 200 bodies were inside a prison compound, or fenced-in enclosure. Some of these bodies were personally loaded onto the truck by me and were taken to the cemetery between Liege, Belgium, and Aachen, Germany, for burial. It was generally conceded by all the soldiers, officers and enlisted men, whom I heard talk of the finding of these approximately 200 bodies, that the American prisoners had been lined up and murdered by their German captors.

Charles H. Holcomb
CHARLES H. HOLCOMB

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by authority of Ltr. Hq. U.S.F.E.F. *Jus*
file AG 000586-27 June 1946
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~~RESTRICTED~~

State of Georgia)
County of Haralson)

I, Charles H. Holcombe, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

Charles H. Holcombe
CHARLES H. HOLCOMBE

Subscribed and sworn to before me, this 31 day of May 1946.

Matthew M. Gray
my comm exp 9-9-46

C E R T I F I C A T E

I, Charles T. McGinnis, Special Agent, S. I. C., Hq, 4th SvC, certify that Charles H. Holcombe, Tallapoosa, Georgia, personally appeared before me on 28 May 1946, and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

Charles T. McGinnis
CHARLES T. MCGINNIS,
Special Agent, S. I. C.

31 May 46