

DEF

000471

Legal Form No. 8

### MILITARY GOVERNMENT COURT

#### CASE RECORD.

VOLUME VIII - Pages 1580 - 1782 Incl.

MALMEDY

Case No. 6-24

Prosecutor LT COL BURTON F. ELLIS

[Redacted] Military Court.

Defence Counsel COL WILLIS M. EVERETT, JR

\*General

Place DACHAU, GERMANY

Interpreter .....

Date 0830 hours 17 JUNE

Reporter 1946

TO 1200 hours 19 JUNE

1946 Incl.

Members of Court:

- BRIG GENERAL JOSIAH T DALBEY
- COL PAUL H WETLAND
- COL JAMES G WALKINS
- COL WILFRED H STEWARD
- COL RAYMOND C CONDER
- COL A H ROSENFELD (LAW MEMBER)

Accused VALENTIN BERSIN, ET AL

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas <u>VALENTIN BERSIN, ET AL</u>	<u>Not Guilty</u>	
Findings <u>Val 8</u>		
Previous Convictions		

**CLASSIFICATION CANCELLED**

By authority of JAG to  
dated 4 Aug 1950.

Sentence {

- Imprisonment {
  - Term 194 *MB*
  - Beginning .....
- 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.  
756 G.M.G.B. Pritschkop

RECORD OF TESTIMONY

in trial of

THE UNITED STATES versus VALENTIN BERSIN, ET AL

By

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 16 MAY 1946

VOLUME VIII - PAGES 1580 - 1782, INCL.

17 JUNE 1946 - 0830 hours TO 19 JUNE 1946 - 1200 hours

TESTIMONY

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<u>WITNESSES:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>	<u>Court</u>
ENGEL, Gen. GERHARDT MICHAEL	1631	1637	1642 1645	1643 1648	
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ZIEMSEN, Lt. DIETRICH	1775				

EXHIBITS

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Offered</u>
D-1	Internal Route Slip from J.A. War Crimes Branch to G-1 German Affairs Group, SUBJECT: Discharge of German Prisoners of War	1629	1630

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CAMP DACHAU, GERMANY

17 June 1946.

MORNING SESSION

(Whereupon the Court reconvened at 0830 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: If it please the Court, let the record show that all the members of the Court, all the members of the Prosecution with the exception of Lt. Col. Crawford, who is absent on business of the Prosecution and Captain Byrne, who has been excused by verbal orders of the Commanding General, all the Defense counsel, all the Defendants and the reporter are present.

PRESIDENT: It is announced, at this time, that pursuant to verbal orders of the Commanding General, 3rd US Army, Colonel Berry is excused from sitting as a member of this Court.

DEFENSE COUNSEL: May it please the Court, the Defense desires to interpose a motion on behalf of the defendants touching upon the failure of the Prosecution to adequately prove the charges. Colonel Dwinell will open the motion, covering the subject as a whole and also as to various members. He will be followed by Captain Narvid who will interpose for certain non-commissioned officers and in turn Lt. Wahler who will specify grounds for certain enlisted men.

LT. COL. DWINELL: The accused in this case, by their duly appointed Defense Counsels, respectfully move this Court to dismiss the charges and request the Court find the accused not guilty of the charges on the grounds that the Prosecution has failed to prove a prima facie case, has not sustained the burden of proof, and has not produced evidence of sufficient probative value to warrant a finding by this Court that the accused are guilty of the charges and are criminally implicated and are responsible for the alleged shootings of prisoners of war and civilians.

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The following reasons are assigned and are addressed to the Prosecution's proof in general:

The 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 interrogations of the accused at Schwaebisch Hall. The statements received in evidence constitute 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 principally of written statements, but that the statements themselves are of questionable value. The opening statement of the Prosecution in this case says, "It is practically an impossibility to present to the Court the evidence on this mass of murders in a chronological sequence and in an understandable manner." This appears on page 97 of the record.

When the Prosecution says that the case cannot be presented by them in an understandable manner, the Defense joins with them unanimously. The Prosecution further says, referring to the statements that were offered in evidence, and I quote again:

"From the 1st of December, until they were moved to Dachau, in late April, an additional 200 to 300 suspects were interrogated along with the original 500. Despite the youth of these suspects, it took months of continuous interrogation in which all the legitimate tricks, ruses and stratagems known to the investigators were employed. Among other artifices used were stool-pigeons, witnesses who were not bona fide and ceremonies. Some tricks that were the most simple were the most effective. It must be remembered that in the beginning all living witnesses amongst the Regiment who could identify perpetrators were themselves suspects and no one volunteered to bear witness against his former comrades-in-arms." See page

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99 of the Record.

Many times during the testimony given by members of the Prosecution staff, evidence was given that the interrogations of many of the witnesses took place in a special interrogation cell. See page 147 of the Record. There is evidence given about the accused Fischer, for example, on page 173 of the record. There is evidence that the accused Sprenger was subjected to what has been referred to in this case as the "schnell procedure" which appears to be some form of mock trial, and that he was interrogated many times prior to the taking of this statement. This evidence comes from the lips of the Prosecution themselves. We refer to the evidence on page 642.

The Prosecution describes the use of "stool-pigeons" at Schwaebisch Hall on page 698 of the Record, and that it was a practice to confront suspects with their accusers, as appears on page 699, and that the so-called "schnell procedure" was often used, as appears on page 700 of the Record. In fact, the Prosecution gives us a detailed description of this procedure and how it was employed. That appears on pages 700 to 702 of the Record.

It was a practice to confront suspects with their accusers and thus to create the impression that everyone had confessed, making it futile for the suspect to hold out any longer in refusing to comply with the request of the investigating team to sign statements that were dictated to the suspect. That appears on page 699 of the Record.

The Prosecution introduced in evidence the written statement of Jaekel, one of the accused, which comprises eleven single-spaced typewritten pages, as testimony in the Record, beginning on page 681 and continuing through and including page 692. It offers

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this as competent and probative evidence in a case in which a man's life is at stake, and says to this Court that the accused Jaekel, a year and a half after the incidents took place can precisely describe with remarkable memory, to the minutest detail, matters of time, space, and conversation.

The statement of the accused Rumpf comprises nine single-spaced, typewritten pages in the Record, pages 732 to and including 741. The Prosecution says that this witness has remembered with remarkable accuracy all the events that happened a year and a half ago, to the very smallest detail.

Let us look at the accused Hennecke's statement. It comprises seven single-spaced, typewritten pages in the Record, pages 1004 to 1010 inclusive, and gives accurate details of event that happened many months ago, with remarkable accuracy. On the evidence of the Prosecution witness, he also was submitted to the so-called "schnell-procedure." In fact, the ceremony was described at that point by the Prosecution on pages 1011 to 1014.

The accused Eckmann's statement is very long and involved, comprising five pages of single-spaced typewritten matter in the Record. It begins on page 595 and continues through 599. There is evidence in the Record of duress used to obtain his statement, on pages 601 through 609, and by reason of that duress and the long involved nature of the confession, detailing as it does many facts that occurred a year and a half ago, the Court should treat that statement, at least, with great caution.

Now we come to the statement of Sprenger which comprises sixteen single-spaced typewritten pages of the Record, beginning on page 618 through 634, wherein he mentions details precisely as to space, time, persons, and conversation with such incredible exactness that it should be given no probative value whatever.

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The statement of Hofmann comprises twelve single-spaced typewritten pages in the Record, 645 through 657, and is a recital of facts in such minute detail that we ask the Court to consider that no human being a year and a half after the events have occurred can of his own knowledge recollect the facts and tell the story in such detail and with such clarity.

The statement of Neve was obtained, according to the Prosecution, after he was required to submit to the so-called "schnell procedure" and that again comes from the lips of the Prosecution, on pages 675 through 677.

Now we find the statement of Jaekel comprises eleven single-spaced, typewritten pages in the Record, page 681 through 692. In that case, the Prosecution state that stool-pigeons and trickery were used to obtain the statement. The Prosecution staff are the people who tell that on page 698.

The statement of Stock comprises seven single-spaced, typewritten pages of the Record, page 1246 through page 1253. It contains so much precise and detailed information about events occurring a year and a half ago, I am sure the Court will receive it with great caution. The same is true of the statement of Zwigart, which appears on page 1288 and contains five typewritten, single-spaced pages in the Record, to include page 1293. The same is true of the statement of the accused Siegmund, which appears on page 1435 and comprises five single-spaced pages in the Record, to include page 1440. The same is true of the statement of Freimuth, which appears on page 1467 of the Record and comprises four single-spaced, typewritten pages in the Record, to include page 1471. The same is true of the statement of the accused Wichmann, which appears on page 1533 and comprises six single-spaced

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typewritten pages in the Record, to include 1539.

It is also to be noted from the testimony of the Prosecution's witnesses that all of the statements offered in evidence were dictated by members of the staff of the Prosecution and in many cases they were dictated in the presence of other people who acted as a persuasive force. The Record clearly indicates that each one of the defendants was interrogated many times prior to the taking of his statement.

It has been charged by the Prosecution that at the very inception of the Ardennes Offensive there was launched a great program directed to the end that prisoners of war were not to be taken during the Offensive and they would be shot. Now we find when we examine the Record, that the accused Sievers said in his statement, "If it is necessary and the situation necessitates it, take no prisoners of war." And then the statements went on further to develop this question. It is to be noted that he did not say they were to be shot. See page 170 of the Record.

The witness Assenmacher said, "There was no need to take prisoners, that was not on the order of the day." See page 185 of the Record. He further stated, "Did Lieutenant Flacke specifically say that prisoners would be shot?" And he gave the answer on page 185 of the Record, "No."

The witness Kramm, when he was asked about Peiper's remarks concerning the treatment accorded prisoners of war said, "The term prisoner of war was not actually used." See top of page 189.

The witness Koehler said that the accused Hennecke did not at any time specifically say that prisoners of war would be shot and that Kremser never gave such an order. See page 228 of the Record.

Now, do all of the remarks alleged to have been made by the

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various commanders of Peiper's regiment indicate that prisoners were to be shot. Is it not a reasonable conclusion that the orders given meant that the prisoners were not to be taken and were to be the responsibility of others who were playing a part in the offensive?

The witness Budik refers to a speech made prior to the Offensive and says: "Prisoners will not be taken." Page 273 and 274. He further says that he did not consider the sentence, "No prisoners will be taken" as an order applying to him, that it was not to be considered an order, and that "it was to be considered that the infantry following us was to take the PW and not we." See page 275. The witness Grabow said that Junker made a speech prior to the offensive and said that "No prisoners will be taken in this action." Page 279. Further Dethleff said that Junker said, "No prisoners would be taken" and "WE were too weak for that and the infantry following us was to collect the prisoners." That evidence appears on pages 283 and 284 of the Record; and "there were some parachutists with us" on page 284 of the Record; and it was the generally accepted conclusion among the troops that the infantry was to take the prisoners and that this was talked about in the company. See page 286.

The accused Klingelhoefer's statement appears on page 300, wherein he says that "Prisoners are not to be taken by this unit" and further "situations can arise in which no pw's can be made."

The accused Muenkemer's statement appears on page 317 wherein he refers to orders issued by Klingelhoefer. He says, "Prisoners of war will be turned over to the troops following and evacuated by them." He says further, "An evacuation being impossible, then the prisoners will be shot." See top of page 318.

The witness von Blling said that Preuss said at a meeting, "No prisoners were to be taken." And further that as he understood it, the only thing he remembered about the entire speech was a statement made by Preuss concerning prisoners of war. See bottom of page 329.

The witness Rineck says that what was said at the meeting conducted by Flacke, which incidentally was a very long meeting, the only thing he remembered, and that was remembered exactly, was, "There was no need that prisoners of war are being taken." See page 337 of the Record.

The witness Conrad said that Preuss made a speech prior to the offensive and said "Prisoners of war are not going to be taken." See page 341 of the record. He further said that the only matter taken up at the meeting was the matter concerning PW'S. See page 342 of the Record. An examination of the evidence of witness appearing on pages 341 and 342 indicates clearly that to the contrary, a great many other matters were discussed at the meeting.

The witness Heinrich said that Tomhardt's speech lasted 20 minutes. See page 371.

The witness Pluschke said that Thiele had a meeting and said, "We would surely know what to do when we captured Americans." See page 376. He further said this was a very long meeting, probably about 20 minutes, and many things were said, but he only remembers what was said about prisoners. See the testimony on page 377 and the top of page 378.

Siever's statement appears on page 387, wherein he said "A secret regimental order was shown to me in which it said that if the situation requires it prisoners of war are to be shot and that the resistance of the enemy, if necessary, is to be broken by terror."

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And Sievers says further in that part of his statement appearing on page 389, "Therefore, I said to my platoon leaders that the enemy resistance had to be broken if necessary by terror and if the situation requires it, to shoot prisoners of war."

The witness Lattenmayer, when he was questioned on the matter, says that Seitz had a meeting and said "no prisoners would be taken." See page 396. Further, "according to Lieutenant Seitz, we wouldn't shoot prisoners in this manner." That statement appears on page 398.

Knittel made a statement appearing on page 402 and he said on page 403, "When a military necessity is at hand, allied prisoners of war should be shot"; and he refers in his statement to Skorzeny being "introduced at a meeting." See top of page 404.

Throughout the evidence there is repeated reference to statements made by the various commanders at their meetings and conferences prior to the offensive concerning a wave of fright and terror to precede the offensive. It is significant that all of these quoted remarks use the word "precede." The accused Dietrich, for example, in his second statement received in evidence which appears on page 126 of the Record, says: "A wave of fright and terror should precede us." The accused Fischer in his statement in evidence, which appears on page 174 of the Record, says: "A wave of fear and terror was to precede our troops." And that "the resistance of the enemy was to be broken by terror." And then the accused Klingelhofer in his statement appearing on page 300, says: "Skorzeny and the Unit Greif will spread panic and terror." Tomhardt says in his statement, on page 348, that Diefenthal informed him about the Skorzeny group and said, "The participation of Skorzeny's group I kept a secret from my men." Giving to that

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evidence the greatest weight to which it is entitled leads to the irresistible conclusion that a special unit known by the code name "Greif" and commanded by one Skorzeny was constituted at the beginning of the offensive to precede the spearhead and cause confusion and panic in the American lines in anticipation of the advance of the bold thrust that was to be made by Peiper's regiment. The Prosecution, on the one hand, says that the wave of terror will precede the spearhead," and then, on the other hand, says that the wave of terror was to be the work of the spearhead itself.

It is conceded by the Defense that at one of the incidents portrayed by the Prosecution as the scene of an alleged unwarranted shooting of American prisoners of war and commonly referred to as the Malmedy crossroads incident, that there appears to be evidence of the shooting of American prisoners by the accused Fleps. A careful analysis, however, of the evidence by the American survivors, and we believe those witnesses -- in connection with that incident, leaves one with the conviction that many things happened at the Malmedy crossroads that have not been clearly explained. Assuming, for the purpose of this argument that the accused Fleps actually fired at prisoners of war at the Malmedy crossroads, where, in the record, is there any evidence that he was directed to do that by any one person, or, assuming further for the purposes of this argument, that he was ordered to shoot at prisoners of war in the field near the crossroads, the great mass of testimony and many conflicting statements of what happened at that time does not answer the question: Were those prisoners shot when they broke ranks? Did they indicate that they were attempting to escape? That question was never definitely settled by the evidence and at this point in the case all of the Defense and, I am sure, the

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Court are wondering just exactly what did happen. The evidence certainly says that at the time of the Malmedy incident there were many tanks and vehicles on the road, that combat had existed immediately preceding the incident and was imminent again at any moment. We will concede only one thing about the Malmedy incident and we say that was proven to have taken place at Malmedy and that is that the accused Briesemeister fired at a building belonging to a Belgian civilian. Of course, he is not being tried for that uncalled for action on his part.

Outside of the accused Fleps, who fired at Malmedy? Who was there? What units were there? We have exhausted the evidence in the record and are frank to admit to this Court that we cannot come to any conclusion on the subject with any definiteness.

Many witnesses testified for the Prosecution in this case and told this Court stories that cannot stand the test of analysis. For example, the witness Weinfurtner does not know any names of people who might have been involved in the murdering of soldiers or civilians. See page 880 of the Record. His testimony is based entirely on opinion and there is no identification of any of the accused or any of the incidents alleged in the charges. The witness Hutloe whose testimony appears on page 892, refers to the shooting of prisoners at a place somewhere 12 miles northeast of St. Vith on 17 December. He does not identify any of the accused but merely says that the soldiers who went into the house were also one of the 1st SS division. The witness Dluski, whose testimony appears on page 897, speaks of an incident somewhere ten miles east of Honsfeld on the 17th of December the shooting took place and he makes no identification of a German soldier or unit, merely saying he saw an SS man standing in the turret of the tank, shoot one by the name of Stagle with a revolver. See page 898 of the

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Record. The witness Wilson, whose statement was received in evidence and appears on page 903, says that at Honsfeld on the 17th of December prisoners of war were shot, but he was unable to say who did the shooting. He merely describes uniforms of Germans involved, but does not even know their insignia. There was no identification of any German soldier or unit or any connection with the accused or even with the SS. That appears on page 905 of the Record.

The statement of the witness Morris, which was received in evidence, refers to an incident at Honsfeld on 17 December. This testimony appears on page 907. He says there were German tanks present. He did not identify any soldiers or unit or make any connection with the accused in any way. The witness White testified to an incident at Honsfeld on the 17th of December. He refers to a German tank being present but makes no identification. See page 909. The witness Schröder says he saw troops of the LSSAH and says, however, that he saw parachutists in Honsfeld on 17 December. See page 912. He saw bodies of American soldiers and that an SS man told him that he, the SS man, was present when the prisoners were killed. He did not identify the SS troops of the spearhead. He did not indicate how or why they were killed. There are many questions left to be answered. Were these escaping prisoners of war? Who shot them? The witness Tombeaux says she was in (P914-916) Stavelot on the 18th, saw four German tanks and that her husband was killed by them; that she saw four German tanks but she could not see who fired. She saw German tanks but recognized no units or regiment to which they belonged. See pages 921 to 925 inclusive. At Buellingen the witness Kohler said that Burghouse shot a flier and that Preuss sent for the flyer's suit. See pages 929 to 934 inclusive. Throughout that testimony there was no evidence that

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Preuss ordered the shooting or that he condoned the offense. Suppose Preuss had no other alternative? Suppose that combat was immediately imminent and shooting of prisoners was a matter of pure military necessity? Did he try to escape? We do not know the answer to these questions. Would the prisoner have betrayed the German unit if he had been left alone and not guarded? The witness Koehler said that Kremser's vehicles on the 16th or 17th of December opened fire on prisoners of war. See page 952. Who was involved besides Kremser, who incidentally, is not a defendant in this case? Oehmann says he shot four or five prisoners on the 17th of December at the entrance of Engelsdorf. See page 960. But on page 962 he denies that he shot prisoners of war. The witness Loonen says she saw SS men in Engelsdorf on 17 December and saw prisoners of war shot by the SS. See pages 967 to 975. She could not recognize the Germans who did the shooting, but saw one man shoot while another one appeared to be in charge. The question is unanswered. Suppose there was a shooting. What was the reason for the shooting? Was there any armed resistance?

An analysis of each of the statements and the testimony of witnesses referring to these incidents would take much time in argument and take too much time of the Court, but we have carefully analyzed it and we are unable to find any incidents of testimony identifying any one of the accused or any units of Peiper's regiment as the perpetrators of these actions. There is evidence in the record, on the other hand, that during all these incidents there were present in the towns parachute troops working with the spearhead. The evidence is replete with hearsay and with hearsay upon hearsay. And the evidence is replete with conclusions and opinions of the witnesses and the accused. Who shot prisoners of war and who shot civilians? Where in the record has any unit been identified by any of the

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witnesses who took the witness stand. We believe that there was armed resistance by Belgian civilians but we are not assuming that but we base that upon information in the case itself. The witness Elias says that on the 18th of December at Trois Pontois there was shootings of civilians at a viaduct, that he was with the American Army and was wearing an American uniform obtained from the Maquis.

Referring particularly to the testimony against the accused Kraemer, there is nothing in the record but his statement, wherein he speaks about the order of the Army given to the Corps. His statement on page 139 says, "I then stated that it read in this order that the leading units must not delay themselves with the evacuation of prisoners of war, because this was a task left to the units following up." And then again, referring to the unit Peiper of the Army, he says, "For the commitment of this combat unit Peiper the army is not responsible." See page 139. There is no other evidence in this case but those statements. Quoting from the Yamashita case in the majority opinion, the Court said,

"Hence the law of war presupposes that its violation is to be avoided through the control of operations of war by commanders who are, to some extent responsible for their subordinates."

Can an officer be found guilty for failure to prevent the violations of the laws of war unless it appears clearly that he had the power to prevent it? Kraemer was Chief of Staff and the Chief of Staff as we know is a staff officer. Many of his decisions can be overruled by his commander and his commander alone bears the burden of proof and carries the responsibility for any acts that may be proven to be violations of the laws of war. Dietrich did not violate the laws of war. The record is barren on that subject. But, for the purposes of this argument alone, assuming that he did, then can we say that Kraemer, his Chief of Staff, is equally

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responsible?

With respect to the accused Priess, again we find nothing in the record but a statement, and that statement says, referring to the speech made by Hitler, that he considered that speech as propaganda, and did not conclude that the fighting methods on the western front should be changed. See page 158. Priess is the corps commander, but what did he do? Was he charged with knowledge before the offensive that his men were about to engage upon a series of alleged atrocities? We do not see that in the record but we do see that all of these shootings alleged to have taken place may well have been based upon reasons justified during combat.

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 the treatment of prisoners of war. Assuming for the purposes of this argument that the orders that were transmitted by Fischer were violations of 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 the penalty for everything that his commander does? We know the adjutant in the German army functions exactly as an adjutant does in the American army. He has no command functions and has 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 this Court going to find the accused Fischer guilty of the crime of being responsible for the killings of people merely because he mechanically passed on a written piece of paper containing an objectionable order of his commander?

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Does mere membership in Peiper's regiment alone constitute responsibility for what is alleged to have happened in the Ardennes offensive? The accused Reiser reported to his battalion commander on the 19th of December 1944 during the offensive. His statement appears on page 1447. He heard Peiper talking to Poetschke about prisoners of war. Peiper or Poetschke is alleged to have ordered Hennecke to tell Rumpf to send a shooting detail. Was that shooting detail for prisoners or could it have been for the shooting of Peiper's own men for cowardice? We do not know. But what other evidence is there in the record against Reiser? We cannot find any. Reiser was also an adjutant. His mere presence at the conversations is apparently making him responsible for the actions of his commanders.

The same is true of the accused Gruhle, Peiper's adjutant, whose statement appears on page 1452. Gruhle functioned in the Ardennes offensive in the same role as Fischer and Reiser, as the adjutant and administrative assistant of the commander.

If this case is to be decided upon the evidence by way of written statements of the accused, the Defense knows and feels sincerely and definitely that the Court will insist upon corroboration.

Coming back, in conclusion, to the opening statement of the Prosecution, we repeat again, "It is practically an impossibility to present to the Court the evidence in an understandable manner."

(Whereupon the argument of counsel was translated into the German language.)

No take #180

# 181

17 June 46  
Su fls Sal

DEFENSE: (Capt MARVID). The Defendant, Hans Fletz, by his duly appointed Defense counsel respectfully moves this court for a finding of 'not guilty' of the particulars and charge on the ground that the evidence before this court with respect to this accused is legally insufficient to support a finding of guilty.

The accused is charged with violation of the rules and usages of war. The particulars of the charge alleged that the prosecution expects to prove this accused on or about the 19th of December, 1944, at Stoumont, Belgium, fired on prisoners of war. The accused pleaded 'not guilty' to the charge and particulars.

There is no evidence of the accused having made any written or oral confession, or any admission against interest. The record is devoid of any proof to substantiate the particulars of the charge against him.

The only evidence against the accused are remote inferences based on hearsay. The accused Erich Werner, in his statement (See Exhibit P-103-A, page 1350) mentions that he was told by Knappisch that Christ's tank fired on prisoners of war. No mention is made as to who could have done the firing.

The witness for Prosecution Otto Lessau, testified (Record p. 1353-1358), particularly the first line on page 1358, that he was the driver of Lt Christ's tank; that Lt Christ was also the tank commander; that the accused Fletz was turret machine gunner of this tank. That on the 19th December at Stoumont he saw prisoners of war standing in front of a grocery store. That his tank was near the prisoners of war and he heard machine gun fire. That he didn't see the direction of the fire of the machine gun, and that he didn't see the prisoners of war shot.

Thus there isn't a single witness who testified that he saw the accused firing on prisoners of war. There isn't a single witness who testified from hearsay that he heard or that he was told this accused shot prisoners of war.

(Motion-Fletz)

# 181

17. S. 2

WHEREFORE, the Defense respectfully requests this Court that this motion for a finding of 'not guilty' of this accused be granted.

DEFENSE: (Capt NARVID). The Defendant, Roman Clotten, by his duly appointed defense counsel respectfully moves this Court for a finding of 'not guilty' of the Particulars and the Charge on the ground that the evidence before this Court will respect to this accused is legally insufficient to support a finding of 'guilty'.

The accused is charged with violation of the laws and usages of war. The particulars allege the Prosecution expects to prove that this accused, on or about 17 December, 1944, at the cross-roads south of Malmedy was responsible for a member of his crew firing on prisoners of war. The accused pleaded 'not guilty' to the Charge and the Particulars.

Except for the statement of the accused (Exhibit P-40-A, volume 7, page 567 of the record), there is not a shred of evidence in the record to support those Particulars and the Charge against him.

Pertinent extracts from his statement are, and I quote:

"About twenty meters from the spot where the last prisoners were lying, I stopped with my tank, since the tank in front of me, in which Oberscharfuehrer Siptrott was standing in the tank had also stopped. And I stayed there for about two minutes. Immediately after my tank stopped in the position indicated on Sketch 1, Sturmman Bock reached for the machine pistol which lay in the turret near my left hand. Bock fired the first shots within a half a minute after our halt. I saw him rise and turn half right with the machine pistol, then he aimed towards the prisoners already lying on the ground and fired one burst of about five or seven shots into the prisoners. I did not observe at this time whether he hit the prisoners or whether as a result of these shots, still some others were hit anew and moved. Whether he made a hit was the more difficult to determine since Oberscharfuehrer Dubert, standing in the turret of his tank was firing with his machine pistol into the Americans at the same time.

As we then started slowly, after about two minutes I again saw Sturmman Bock aim with a machine pistol at the Americans. He aimed briefly and fired an additional five to seven shots into the Americans. I saw that he was shooting in that direction. However, I also do not know if or how many Americans he hit with this second burst. I said to him at the moment he had finished the second burst, "Stop, this makes no sense; they are dead already now."

The Defense respectfully points out to this court that

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the entire incident involving Clotten lasted about two minutes and the evidence shows that Bock fired almost immediately after the tank halted. It is reasonable to conclude that it would have been impossible for Clotten to stop Bock in his spontaneous act. The accused is not being charged with giving an order to shoot. The accused was not asked by Bock for permission to shoot, but spontaneously fired in the direction of the prisoners of war who were already lying in the field. Bock was not firing on visible men standing in the field, but in the direction thereof. There is further evidence that after the second burst Clotten ordered Bock to cease.

The Defense respectfully submits to this Court that in and of itself the statement of the accused does not conclusively prove the commission of any crime against the Laws and Usages of War and that in the absence of any other evidence showing wherein the accused, a sergeant was responsible for the actions of one of his enlisted men, the finding of 'not guilty' should be made because of the absence of legally sufficient evidence to support a finding of 'guilty'.

DEFENSE: (Capt NARVID): The Defendant, Erwin Szyperski, by his duly appointed defense counsel respectfully moves this court for a finding of 'not guilty' of the Particulars and the Charge, on the ground that the evidence before this court with respect to this accused is legally insufficient to support a finding of 'guilty'.

The accused is charged with violation of the Laws and Usages of War. The Particulars allege that the accused, on or about December 19, 1944, in Stoumont, Belgium, aiding in the firing on prisoners of war and that on or about 19 December 1944, in Stoumont, Belgium, fired on prisoners of war.

The accused pleaded 'not guilty' to the Particulars and the Charge.

Independent of a statement of the accused submitted in evidence (Prosecution's Exhibit P-102,) the Prosecution has offered no evidence which in any way connects the accused with the commission of (Motion- Szyperski)

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any offense. Even if this statement is to be regarded as a confession, the rule is well established that without further corroboration, a finding of 'guilty' cannot be made. The law is well settled that a confession unsupported by any other evidence, that a crime has been committed, and that the accused committed the crime is insufficient to warrant a conviction.

WHEREFORE, the Defense respectfully moves this Court for a finding of 'not guilty'.

DEFENSE: (Capt. NARVID). The Defendant, Anton Motzheim, by his duly appointed defense counsel, respectfully moves this court for a finding of 'not guilty' of the Particulars and Charge on the ground that the evidence before this court with respect to this accused is legally insufficient to support a finding of 'guilty'.

The accused is charged with violation of the Laws and Usages of War. The Particulars allege that the accused, on or about 17 December 1944, at Honsfeld, Belgium, fired on prisoners of war.

The accused pleaded 'not guilty' to the Particulars or the Charge.

Independent of a statement of the accused submitted in evidence (Prosecution's Exhibit P-67, Volume 11, page 883) the Prosecution has offered no evidence which in any way connects the accused with the commission of the offense charged. The only evidence offered is the testimony of the witness Wilhelm Fluschke (Record Volume 11, page 886). On direct examination in answer to the question "Did Motzheim ever mention anything about the village of Honsfeld?" - the witness replied, "I don't know anything about that." Even if the statement of the accused is regarded as a confession, the rule is well-established that without further corroboration, a finding of 'guilty' cannot be made. The only witness called by the Prosecution, Wilhelm Fluschke, does not in his testimony in any way corroborate the charge. The law is well settled that a confession unsupported by any further evidence that a crime has been committed and that the accused committed the (motion- Motzheim)

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crime is insufficient to warrant a conviction.

WHEREFORE, the Defense respectfully moves this Court for a finding of 'not guilty'.

DEFENSE:(Capt NARVID). The Defendant, Heinz Hendel, by his duly appointed Defense Counsel moves this court to strike so much of the Particulars of the Charge which charges that this defendant 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.

The accused has pleaded 'not guilty' to the Charges and Particulars.

By written stipulation, the Prosecution concedes that this accused was wounded in action on 17 December 1944 at Ligneville, and that the said accused was evacuated to the rear on 18 December 1944 at about 1000 hours, from Stavelot and sent to Berlin to be hospitalized. It is obvious, therefore, that the accused cannot be held responsible for the action of the men of his platoon after the 17th December 1944.

The Defense concedes that the accused Sergeant Hendel was Commanding Officer of the platoon between 16th and 17th December 1944. In view of the fact that no member of the platoon in question is charged with any crime during this period, the Particulars must be stricken.

DEFENSE:(Capt NARVID). The Defendant, Erich Werner by his duly appointed Defense counsel respectfully moves this court to strike so much of the particulars of the Charge which charges that this Defendant on or about 19 December 1944 in Stoumont, fired on prisoners of war.

The accused Erich Werner pleaded 'not guilty' to the Particulars of the Charge. There is nothing in the record which in any way involves the accused in any crime committed in Stoumont.

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WHEREFORE it is respectfully requested that the Particulars in question be stricken.

DEFENSE: (Capt Narvid). The Defendant Freidl Bode, by his duly appointed Defense Counsel, respectfully moves this court strike so much of the Particulars of the Charge which charges that this Defendant did, on or about, 17 December 1944 at Buellingen, Belgium fire on prisoners of war.

The accused Freidl Bode has pleaded 'not guilty' to the Charges and Particulars.

There is nothing in the record which in any way involves the accused in any crime committed in Buellingen, Belgium.

WHEREFORE, it is respectfully requested that the Particulars in question be stricken.

PRESIDENT: The Court will recess until 1035 hours (Whereupon the court recessed at 1005 hours).

(Bode-motion)

(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 Lt. Col. Crawford, who is absent on business of the Prosecution, Captain Byrne, who has been excused by verbal order of the Commanding General, all members of the Defense and the reporter is present.

PRESIDENT: The next thing is the translation.

(Whereupon the German translations of motions in favor of Hans PLETZ, Roman CLOTTEN, Erwin SZYPERSKI, Hans HENDEL, Anton MOTZHEIM, and Friedl BODE were read to the Court in the German language.)

DEFENSE COUNSEL: Lt. Wahler.

LT. WAHLER: May it please the court, I at this time am presenting a motion relative to certain enlisted men and noncommissioned officers. I will attempt to present the motion in the order in which the events occurred. I would like to refresh the Court's recollection--draw the Court's attention, to the testimony that has been introduced in the La Gleize incident; the Charges indicate that there were a series of events that occurred between the period 18 December to the 23d of December 1944. According to the Charges, there were a number of shootings involving American prisoners of war. The only evidence introduced in the record relative to any shootings outside of confessions of defendants themselves, is the testimony of one witness, Marcelain Renard. His testimony appears on page 1256 of the record and his testimony merely concerns the shooting of three Belgian civilians.

PRESIDENT: The first part of that sentence was not translated; you have got to translate everything that is said. "his testimony appears on page 1257."

LT. WAHLER: 1256. And, as the Court will recall, he returned to La Gleize on the 26 December and found the bodies of three victims in his brother-in-law's house. The method of death was not developed. That is, the incident itself merely showed the position of the bodies in the house and the cause of death was not developed in the record. The only other evidence in the record concerning La Gleize is the I.G., Inspector General's, report, which was based upon the testimony of Lt. Col. McCown--

PROSECUTION: If the Court please, I don't believe anything I introduced in the I. G. record said anything about Col. McCown's statement.

LT. WAHLER: There was a report admitted in evidence where Lt. McCown testified, or made a report, to the Inspector General concerning his capture. That is in the evidence.

PRESIDENT: Just a minute; let's get this translated as we go on.

LT. WAHLER: We are going to check, if the Court please.

PROSECUTION: I have it right here.

LT. WAHLER: I request that my testimony be stricken concerning the testimony of Lieutenant Colonel McGowan.

PROSECUTION: If the Court please, I request that Counsel for the Defense be instructed to be a little more careful about what they quote from the record.

LAW MEMBER: The Court will take notice of those things.

LT. WAHLER: In the La Gleize incident, the defendant Fritz Rau is accused of two incidents, one on the 18th and one on the 21st of December. The accused, Fritz Gebauer in his confession has named Fritz Rau. That appears on page 1233 of the record. That however, that testimony only concerns one incident, that is on the 18th of December. The incident on the 21st of December is only mentioned in a statement by Freimuth on page 1469 of the record. In the statement of Freimuth, the statement only says the vehicle of Rau, and the Rau is spelled R-A-U in Freimuth's statement; however, there are two defendants by the name of Rau in this case. In this statement of Freimuth, there is no evidence as to whether Fritz Rau was meant or Theo Rauh. There is no identification by the officer who identified the statement as to what defendant is meant, Theo Rauh or Fritz Rau.

The next defendant, Fritz Gebauer in his confession has stated that the incidents on the 18th of December in La Gleize were committed by him. The defendant Rau, that is, Fritz Rau also in his confession implicates Fritz Gebauer. That appears on page 1237 of the record. The defendant Wolfgang Richter in his confession admitted participation as to an incident that occurred on the 18th of December. The accused Godicke in his statement implicates the same defendant; that appears on page 1222 of the record. The only evidence in the record concerning the implication of the defendant Heinz Godicke is an incident that occurred on the 18th of December in LaGleize and the confession of the defendant himself.

The defendant Herbert Stock who is charged with two incidents one occurring the 18th of December and the other the 22nd -- appears in his confession on page 1246 of the record which is not corroborated.

There is the defendant Hecht who has made a confession as to an incident that occurred on the 18th of December, and is also implicated in the statement of the defendant Richter.

The defendant Theo Rau is charged with an incident which occurred in La Gleize on December 23rd. The only evidence is his own confession together with statements in the statement of Stock and Siegmund who are both defendants in this case.

The defendant Siegmund is accused of two incidents in the town of La Gleize on the 22nd and 23rd and two incidents in the vicinity of La Gleize which occurred on the 20th and 21st of December. The only evidence in the record is his confession and the statements of Rau, Freimuth and Huebler.

There is the defendant Maute who is charged with an incident on the 21st of December. There is no confession of the defendant, admitting this incident. He is accused, however, in the statement of Hofman, Jakel, Rumpf and Hennecke.

There is the defendant Werner who is accused of an incident on the 22nd of December, wherein the defendant Mikolaschek stated that he did not see him shoot but had heard that he had shot.

There is the defendant Schaefer who is accused of two incidents on the 21st and 22nd of December. There is no confession. He is accused only in the statement of Sprenger and Sprenger in his statement makes the statement that he heard it from someone else, which is pure hearsay.

We have that same situation relative to the defendant Hammerer. There is no confession and he is involved by the statement of Sprenger, which is related testimony or hearsay. There are three other incidents, or one other incident in La Gleize involving three defendants. They are: Gunther Weiss, the defendant Rodenburg and Schwambach, who are accused of firing at three American soldiers on the 22nd of December in the town of La Gleize. The only evidence against Gunther Weiss is his statement which appears on page 1486, as well as the statement of the accused, Schwambach which appears on page 1482. The defendant Rodenburg has made a statement and is also implicated by the statement of Schwambach.

Schwabach has made a statement and is implicated by the defendant Rodenburg. Those are the incidents that occurred directly within Ia Gleize.

Now, there are two other defendants, Fritz Rau and Fritz Gebauer who were implicated in an incident which occurred in Cheneux on the 18th of December. The only evidence that has been introduced in the record against the defendant Fritz Rau as to that incident is his statement and the statement of the other defendant, Fritz Gebauer. In the statement the defendant Fritz Gebauer has made an admission in his statement, and is also accused in the statement of Fritz Rau. The statement of Gebauer appears on page 1233 of the record and that of Rau on page 1237 of the record. The next incident is that involving the supposed killing of seven or eight American soldiers just outside the vicinity of Stoumont. The two defendants involved in this particular incident are Heinz Friedrichs and Willi Braun. The only evidence in the record against Heinz Friedrich is his statement together with the statements of Willi Braun that appears in the record, pages 1390 and 1379 respectively. Willi Braun has made a statement on page 1379 and is accused by the defendant Friedrich, pages 1390 to 1396. The record is entirely silent concerning the Ia Gleize, the Cheneux and Stoumont incidents. As heretofore described concerning the finding of bodies of American soldiers, the record of entirely silent as to any outside witnesses who are not defendants having seen American soldiers lined up in the various places. It is the contention of Defense Counsel that in these particular instances the Prosecution has failed to prove a corpus delicti. It is true that the Court is governed by the rules of procedure as laid down in the Military Government Manual. The rules, however, merely prescribe rules of procedure. They do not set forth the amount of evidence that is necessary to secure a conviction. Therefore, we are, of necessity, forced to go back to the authorities as they have been established in our own courts.

I would like to cite some of the authorities that are given by the writer Underhill that appear in Underhill's Criminal Evidence,

4th Edition, section 35, page 42. The following is noted: 'Proof of the corpus delicti is essential to a conviction must be proved beyond a reasonable doubt, and must exclude every hypothesis other than that a crime was committed in order to convict.'

In section 36 Underhill makes the following comment: '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 or circumstantial or, in other words a confession or admission by the accused to prove the corpus delicti must be corroborated. Defendant's confession made outside of court alone will not establish the corpus delicti, even though made under oath in another trial. 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 main argument of Defense Counsel has been that to use or to secure a confession merely on the confession of the defendants themselves is not sufficient, but it is necessary that the Prosecution introduce evidence corroborating the corpus delicti. I would like to quote a statement from the Supreme Court of Florida in the case of *Gantling v. State*, 40 Fla., 237, 23 So. 857:

'It is a rule of law that the confessions of parties charged with crimes should be acted upon by courts and juries with great caution.-- The wisdom of this rule cannot be questioned, for the reason that notwithstanding the confessions of persons accused of crime have been held to be evidence of the very highest character, upon the theory that no man would acknowledge that he had committed a grave crime unless he was actually guilty, but experience teaches that this theory is a fallacy, for it is a fact that numbers of persons have confessed that they were guilty of the most heinous crimes, for which they suffered the most horrible punishments and yet they were innocent. In the sixteenth and seventeenth centuries, in enlightened England, men and

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women confession that they were guilty of witchcraft - communion with evil spirits and suffered at the stake therefore, and at this day men through fear of personal punishment, or through hope of averting such punishment, confess that they are guilty of crime, without the slightest foundation in truth for such confession, and for these reasons we say, that the theory that men will not confess to the commission of crimes of which they are innocent is a fallacy.'

There are two more defendants for whom I have a short motion to present, that is, on behalf of the defendant Kies and Fritz Eckmann. The first specification of the charge against Friedel Kies is as follows: On or about 17 December 1944 at the crossroads south of Malmedy he fired on prisoners of war. The second specification against Fritz Eckmann is as follows: On or about 19 December 1944 at Stavelot or La Gleize, Belgium, fired upon prisoners of war. The record is entirely silent. There is nothing in the alleged confession by the defendants indicating that these men shot at prisoners of war at the places indicated. There is no evidence in any other form that involves these men at or near the places in which they are alleged to have committed the crimes.

PROSECUTION: If the Court please, may we have that last sentence reread?

(Whereupon the last sentence was read by the reporter.)

PROSECUTION: If the Court please, in answer to that, in the case of Kies and Hofman and Jakel, their statements say that they fired at the crossroads.

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LT. COL. SUTTON: I take issue with your statement, counsel. If the Court please, no reference was made to the Cross-roads. Both of these cases involve -- in the first case, in regard to Friedel Kies, the incident does involve a cross-road south of Malmedy, and in the second case involving Fritz Eckmann, the incident mentioned is at LaGleize or is at LaGleize or Stavelot.

PROSECUTION: We will cover it in our reply. If the Court please, if you have finished with the motion...

DEFENSE: Yes, that is all on the motion.

LAW MEMBER: For the members of the Court, there were several indicated motions made by Lt. Wahler. Will you just repeat them or are you just making one motion now?

LT. WAHLER: Well, my motion was all inclusive as far as those defendants, relative to presenting the motion for a finding of not guilty based on a lack of evidence and failure to prove the corpus delicti. It is the contention of the Defense counsel that the mere confession of the defendant himself, together with any statement by another defendant, is not sufficient to prove the corpus delicti.

LAW MEMBER: In other words, you are presenting your entire argument as one motion to dismiss?

LT. WAHLER: That is correct, sir.

PROSECUTION: If the Court please, the Prosecution has not been furnished a copy of the motion or motions of the Defense, and of course we will have to make an extemporaneous reply. If the Court reporter will bear with me, I will make it as short and as intelligible as possible.

First, counsel for the Defense made several allusions to the authenticity of the confessions because of their length. It is the first time, to my knowledge, that that was a legal

ground for an objection to a confession. I might say, in reply, that I am not familiar with the German mentality, and just why the accused decided to make such long statements I am in no position to state, however, I am told that a once famous leader of the German nation, Herr Schickelgruber, was reputed to have a very concise memory and wrote a work called, "Mein Kampf". If such young men like Gustav Sprenger, Herbert Stock, Erich Rumpf and Gustav Neve, and others decided to copy their elders, I suppose they have that right to do so.

As to an interpretation upon a wave of fright and terror to proceed the troops, the Prosecution is not -- does not attempt to explain how that was accomplished. We will let the record of eight hundred dead American prisoners of war speak for themselves.

LT. COL. DWINELL: I don't believe the record at any place indicates that there were eight hundred dead prisoners of war, or anything that even approximates that.

PROSECUTION: If the Court please, if you care to tabulate the numbers killed I think you will find in excess of eight hundred. I went to great pains to make a tabulation.

LT. COL. DWINELL: If I may interrupt one moment, when I made that remark I was referring to the proof.

PROSECUTION: That is what I am referring to too. If the Court please, there was some allusion to a statement that an Adjutant in the German army is the same as in the American army. We attempted by one or more witnesses to show that there was a difference between an Adjutant in the German army and in the American army; that an Adjutant in the German army is more like an Executive Officer in the American army, and I do not believe that it would be correct to infer that they were the same.

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To be more specific as to some of the motions to dismiss, I think there was some quotation from Clotten's statement as to firing, I believe, at the Crossroads and Bock fired twice. I am unable to refer to the page in the record, but this statement was introduced and I read from the statement, it says: -- Clotten was speaking to Bock -- "Stop, this makes no sense; they are dead already anyhow". And in his confession he goes on and says, "We had little ammunition for our machine pistol at that time for it was an Italian machine pistol, and of the three magazines which they had in the tanks only thirty-two rounds fitted." I believe the Court is competent to draw any inference that might be logical from that statement.

Now the motion about Hendel -- I think there was something said about a stipulation, but to my recollection there was no stipulation introduced about Hendel and until it is introduced I don't think it can be properly considered by the Court. Be that as it may, I call the Court's attention to the fact that in Hendel's platoon there are two of his platoon members who are accused, Siegmund and Stock, and Siegmund says in his confession that he killed prisoners of war because he remembered what Hendel told him. I would also like to direct the Court's attention to one other significant fact, and if Defense cares to make an analysis of the record they will find that there were eight or ten others, who are not as accused, from Hendel's platoon who killed American prisoners of war during the period covered by this charge.

DEFENSE (CAPT. NARVID): I object, if the Court please. There is nothing in the record about that.

LAW MEMBER: Just a minute, gentlemen. The Court is becoming a little annoyed by these objections. The time to

bring that up is at the time of rebuttal. That applies to Prosecution as well as Defense. The court will proceed in an orderly manner.

PROSECUTION: There has been quite a lot said about confessions and a little about hearsay, and I think the Court on numerous occasions has indicated its position in those matters. I think the Court is fully cognizant that it is not bound by any rules of evidence in British and American courts and Courts Martial. In fact, it so states in the Technical Manual for Legal and Prison Officers, over here on page 43, under "Guide to Procedure and Military Government Courts". In speaking about evidence, it says: "Rule 12 does not incorporate the rules of evidence of British or American courts or of Courts Martial".

Now, about the authenticity and the weight to be given confessions, if this Court was bound by the rules of British and American courts and Courts Martial, the weight that it could give confessions is set forth on page 114 of the Manual for Courts Martial, United States Army: "A confession is an acknowledgement of guilt. In view of the peculiar conditions in which accused persons are often placed when making confessions, evidence of confessions is in general to be received with caution. 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."

Prosecution does not contend that the Court is bound by this rule of law. It can put such weight on the confessions of the accused that has been introduced as it sees fit. It is

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the sole judge. No one else has any right to say anything about the weight to be given such confessions.

If the Court please, I believe that about covers everything that should be answered in the Defense motions.

DEFENSE: Nothing further from the Defense.

PRESIDENT: The Court will recess until 1330 hours.

(Whereupon at 1155 hours the Court recessed.)

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AFTERNOON SESSION

(Whereupon the Court reconvened at 1330 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all the members of the Court, all the members of the Prosecution with the exception of Lt. Col. Crawford, who is absent on business of the Prosecution and Captain Byrne who has been excused by verbal orders of the Commanding General, all the members of the Defense, with the exception of Dr. Pfister, who is absent on business of the accused, all the defendants and the reporter are present.

CAPT. NARVID: May it please the Court, in order to clarify the record and in support of the motion heretofore made, the Defense offers a written stipulation into evidence - - -

PROSECUTION: If the Court pleases, I believe that it is improper to offer anything by way of a stipulation at this time. The Prosecution has rested and they can put in their motion when they put in their case in chief. That is the time to put in any stipulation.

CAPT. NARVID: It may save the time of the Court and narrow the issues of the trial if we enter into a stipulation on facts that are not disputed or submit facts that are not disputed. This is also in support of the motion and the motion cannot be readily determined without this stipulation.

PROSECUTION: If it pleases the Court, the motion is supposed to be decided on the proof that has been presented by the Prosecution and not upon the evidence that the Defense will produce at a later date.

LAW MEMBER: In order to avoid further argument, if that is the stipulation with respect to one of the accused having been wounded after a certain date, the Court will make a ruling in a few minutes on that and there is no reason to introduce it at this time.

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LAW MEMBER: By the Court, with respect to the motion to dismiss on the ground that the Prosecution has failed to prove a prima facie case, that motion is denied.

With respect to the motion to dismiss on behalf of the accused Fleps on the ground of insufficient evidence, that motion is denied.

With respect to the motion to dismiss on behalf of the accused Clotten on the ground of insufficient evidence that motion is denied.

With respect to the motion to dismiss on behalf of the accused Szyperski on the ground of insufficient evidence that motion is denied.

With respect to the motion to dismiss on behalf of the accused Motzheim on the ground of insufficient evidence that motion is denied.

With respect to the motion to dismiss on behalf of the accused Henkel the motion, at the present time, is denied. The Court will consider the facts concerning the date of Henkel's wounds at the time such evidence is produced.

With respect to the motion to dismiss on behalf of the accused Werner on the ground of insufficient evidence with respect to the allegations of the crimes in Stoumont, that motion is denied.

With respect to the motion to dismiss on behalf of the accused Bode as to firing on prisoners of war at Buellingen that motion is denied.

With respect to the motion to dismiss raised by Lt. Wahler on behalf of the accused Rau, Gebauer, Richter, et al, with respect to the La Gleize, Stoumont and other incidents, the entire motion is denied.

With respect to the motion to dismiss on behalf of the accused Kies and Bekmann, such motion is denied.

You may proceed with the Defense.

DEFENSE COUNSEL: If the Court please, the Defense desires to make a motion, at this time, to withdraw the confessions or statements of the accused.

1. Now come the defendants or accused and move to withdraw all their statements or confessions and expunge all reference thereto from the record.

(A) (1). All of the above defendants were prisoners of war until 11 April 1946, which date was the day of the service of charges against each defendant. On and after 11 April 1946, each of the defendants were removed from the status of prisoner of war and became accused war criminals.

(2) The only law controlling this point is the Yamashita case in the Supreme Court of the United States of America which is quoted as follows:

"The day of final reckoning for the enemy arrived in August 1945. On September 3rd, the petitioner surrendered to the United States Army at Baguio, Luzon. He immediately became a prisoner of war and was interned in prison in conformity with the rules of international law. On September 25, approximately three weeks after surrendering, he was served with the charge in issue in this case. Upon service of the charge he was removed from the status of a prisoner of war and placed in confinement as an accused war criminal."

Although this opinion is in Justice Murphy's minority opinion, it is in no sense a dissent from the majority opinion, as the issue was not raised in the petition. The majority opinion is therefore silent on this subject and the Court was not asked to decide this point. No other law or decision touches on this "change of status" and this expression of fact is the controlling law.

B. (1) Under the Geneva Convention, they, as prisoners of war must be humanely treated and protected, particularly against

acts of violence and insults. They should be equally treated. No coercion may be used on them to secure information, and under no circumstances will they be threatened, insulted or exposed to unpleasant or disadvantageous treatment of any kind whatever. They are entitled to have their honor and person respected. They must have sanitation, open air and exercise. Under all circumstances, prisoners of war are subject to the laws in force of the detaining power. Does solitary confinement for months or black hoods or mock trials, or stool pigeons meet the dignified provisions of the Geneva Convention?

(2) Chapter 6, Prisoners of War of Geneva Convention of July 1929:

(a) Under Article 2 the following applicable paragraph is quoted:

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

(b) Under Article 3 the following applicable paragraphs are quoted:

"Prisoners of war have the right to have their person and their honor respected .... Difference in treatment among prisoners is lawful only when it is based on the military rank, state of physical or mental health, professional qualifications or sex of those who profit thereby."

(c) Under Article 5 the following applicable paragraph is quoted:

"No coercion may be used on prisoners to secure information relative to the condition of their army or country. Prisoners who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind whatever."

(d) Under Article 9 the following applicable parts of paragraphs are quoted:

"They also may be interned in enclosed camps; they may not be confined or imprisoned except as an indispensable measure of safety or sanitation and only while the circumstances which necessitate the measure continue to exist."

(e) Under Article 10 the following applicable paragraph is quoted:

"Prisoners of war shall be lodged in buildings or in barracks affording all possible guarantees of hygiene and healthfulness."

(f) Under Article 13 the following applicable paragraph is quoted:

"It shall be possible for them to take physical exercise and enjoy open air."

(g) Under Article 21 the following applicable paragraph is quoted:

"Officers and persons of equivalent status who are prisoners of war shall be treated with the regard due to their rank and age."

(h) Under Article 45 the following paragraph is quoted:

"Prisoners of war shall be subject to the laws, regulations and orders in force in the armies of the detaining power."

(i) Under Article 46 the following applicable paragraph is quoted:

"Any corporal punishment, any imprisonment in quarters without daylight and in general, any form of cruelty, is forbidden."

(j) Under Article 56 the following applicable paragraphs are quoted:

"In no case may prisoners of war be transferred to penitentiary establishments (prison, penitentiaries, convict prisons, etc.) there to undergo disciplinary punishment ... These prisoners shall every day be allowed to exercise or to stay in the open air at least two hours."

(c) (1) As prisoners of war under the Geneva Convention all confessions were extracted by using varying degrees of force, duress, trickery, deception, mock trials, ceremonies, including the passing of judgment on these accused. In every situation

involving a stress on the physical well-being, the natural impulses dominate the reasoning faculties. Any alternative that promises relief from a present intolerable situation is accepted without regard to consequences. When the primary feelings are stirred, the reasoning faculties are practically suspended. Under a promise or inference of relief, a person will choose to make a false confession as the speediest way to make his freedom certain. The question arises: Was the situation such that there is a reasonable probability that the accused made a false statement under duress? If so, the confession must be excluded.

(2) Attention is drawn to the opening statement of the Prosecution in which the following language was used: "Despite the youth of these suspects, it took months of continuous interrogation in which all the legitimate tricks, ruses and stratagem known to investigators were employed. Among other artifices used were stool pigeons, witnesses who were not bona fide and ceremonies."

The Prosecution's own witnesses testified on direct examination as follows:

- "Q. Did you use any ceremony of any kind in the interrogation of News?  
A. I guess you would call it a ceremony. We used sort of a mock trial I guess you would call it. We had whoever wasn't busy sitting in the chairs behind the table, posing as officers hearing the testimony... First the witnesses that we had against him were brought in, and if they were bona fide witnesses, they were sworn. And the interrogator sat down at a table with him and took notes, or maybe he started writing the statement right then.  
Q. Do you know whether or not the accused (sic) were confronted with witnesses who were not bona fide?  
A. I know that they were.  
Q. Do you know whether or not the interrogators ever raised their voices during interrogation?  
A. I am sure they did.  
Q. Do you know whether or not suspects ever broke down and cried after they had confessed?"

- "A. I saw a few, yes, sir.
- Q. Did they cry silently or did they sob out loud?
- A. I think out loud, sir.
- Q. Do you recall any other methods used for eliciting information other than you have already described?
- A. No special methods. Each interrogator had his own bag of psychological tricks, you might call it."

D. (1) The laws of military courts martial certainly control insofar as these accused are concerned up to the moment they were served with charges, alleging war crimes, at which time the Supreme Court has ruled that their status changes to a suspected war criminal. Under our Court Martial Laws no confession could be used and admitted against another jointly accused. In view of the position of authority of the Prosecution staff, it will go without contraversion that all the accused were in an inferior position and confessions to superiors should be regarded as clearly incompetent. It is not believed that by the widest stretch of imagination could these confessions or statements be used in a trial by courts martial due to the varying degrees of force and duress employed by the Prosecution. On the other hand, it is readily conceded that if these statements had been subsequently re-executed after the accused became suspected war criminals, no grounds for this motion would exist.

(2) On page 329 of Winthrop's Military Law and Precedents, we find the following language with appropriate substantiating cases:

"In military cases, in view of the authority and influence of superior rank, confessions made by inferiors, especially when ignorant or inexperienced, and held in confinement or close arrest, should be regarded as incompetent unless very clearly shown not to have been unduly influenced. Statements, by way of confessions, made by an inferior under charges to a commanding officer, judge advocate or other superior whom the accused could reasonably believe capable of making good his words, upon even a slight assurance of relief or benefit by such superior, should not in general be admitted. And it has been similarly ruled in cases of confessions made by soldiers, upon assurances held out or intimidation resorted to, by noncommissioned officers."

On Page 427, Sec. 493, of Evidence from American Jurisprudence, the following is quoted as a clear statement of the Law on confession implicating several persons:

"The voluntary confession of a co-defendant 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 principle is briefly confirmed on Page 327 of Winthrop's Military Law and Precedents, as follows:

"A judge advocate upon a military trial may desire to keep out of sight a portion of confessions because it implicates parties other than the accused; but this is a reason not recognized as sufficient at law, since a confession is not evidence against any person (not an accomplice) other than the one who makes it."

E. The alleged confessions or statements of these accused are absolutely void and not admissible in evidence in this case. The laws of our nation provide that a man should have only one wife at a time, and any subsequent marriage without appropriate divorce decrees render the second marriage void. The contracts of minors are void unless subsequent ratification after they reach their majority. The contracting of a party to commit a crime is void. Certain prerequisites are necessary to make a note negotiable, such as date due, a sum certain to be paid, etc., and without these elements they are void. So in criminal laws certain safeguards surround confessions or statements, in order to be admissible and not void. As previously outlined, International law laid down certain safeguards for treatment of prisoners of war and any confession or statement extracted in violation thereof is not admissible in a court martial or any subsequent trial under a code set up by Military Government. If a confession from a prisoner of war is born in a surrounding of hope of release or benefit, or fear

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of punishment or injury, inspired by one in authority, it is void in its inception and not admissible in any tribunal of justice. Could anyone, by any artifice, conjure up the theory that the Military Government Rules and Ordinances are superior to the solemn agreements of International Law as stated in the Geneva Convention of 1929? Is this Court willing to assume the responsibility of admitting these void confessions? Is this Court willing to condemn these accused on written statements that are stained with illegality, due to their being obtained in the first instance in violation of the Geneva Convention to which our Nation is a signatory and which has been championed from its inception?

F. That the so-called confessions or statements of these accused must be excluded from the record is apparent. It is not believed that the Court will put itself in the anomalous position of accepting statements into evidence which were elicited from prisoners of war in contravention of the Geneva Convention and therefore a violation of the Rules of Land Warfare on the one hand and turn squarely around and mete out punishment for other acts which they deem violations of the same laws. To do so would be highly inconsistent and subject the Court and all American Military Tribunals to just criticism.

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PROSECUTION: If the Court please, at best, the quotation referred to by the Defense is only a statement of fact as to the treatment accorded to the accused Yamashita, and not a statement of law. Prosecution cannot accept this so-called minority opinion of the Yamashita Case as being the law on "change of status" from "prisoner of war" to "war criminal." We contend that the change took place long before any formal legal act such as the serving of the charge. In fact, such change took place the instant the laws of war were violated, not before and certainly not later. When the violation was committed is controlling as to "change of status." Therefore, when the accused committed the alleged acts in violation of the laws of war they became war criminals and thereafter they could not legally acquire the honorable status of prisoners of war.

The Allied Control Council in its Law No. 10, dated 20 December 1945 in Article II, Par. 1, b, defines war crimes as

"Atrocities or offenses against persons or property constituting violations of the laws or customs of war, including but not limited to, murder, ill treatment \*\*\*\* of civilian population from occupied territory, murder or ill treatment of prisoners of war \*\*\*\*."

Paragraph 2 of this same Article states that

"Any person without regard to nationality or the capacity in which he acted is deemed to have committed a crime as defined in paragraph 1 of this Article, if he was (a) a principal or (b) was an accessory to the commission of any such crime or ordered the same or (c) took a consenting part therein or (d) was connected with plans or enterprises involving its commission or (e) was a member of any organization or group connected with the commission of any such crime \*\*\*\*."

Further paragraph 4, b, of this same Article states:

"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, \*\*\*\*."

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SR-X

It is clear to the Prosecution that when the Allied Control Council promulgated its Law No. 10 last December that it did not contemplate any judicial act on the part of any of its member Governments or their Zone Commanders to brand a person a war criminal. The commission of the criminal act itself by the person affects this change of status, nothing else.

It is without controversy that this Court is subject to the laws of the Allied Control Council.

Never having acquired this honorable status of prisoners of war the provisions of the Geneva Convention could not apply to the accused in this case.

This being the position of the Prosecution, we believe it is a complete and full answer to the contention of the Defense. However, two subordinate matters connected therewith were raised once again by the Defense which the Prosecution desires to comment on:

Although covered before in arguments in this case, the Prosecution respectfully directs the Court's attention to the "Outline of Procedure for Trial of Certain War Criminals by General and Intermediate Military Government Courts, Part I, paragraph 7, Rules of Evidence."

"(e) To admit a confession of the accused, it need not be shown such confession was voluntarily made and the Court may exclude it as worthless or admit it and give it such weight as in its opinion it may deserve after considering the facts and circumstances of its execution."

Prosecution has taken great pains in the presentation of its case to show the Court the manner in which each individual confession and statement of the accused was obtained. In no instance can the voluntary nature of these confessions and statements be doubted but even if they had been obtained involuntarily they are still admissible at the discretion of the Court. In each instance the Court has correctly admitted all

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the confessions and statements of the accused. Their weight is a matter for the Court to determine.

In answer to the many authorities cited by the Defense with reference to confessions, the Prosecution directs the Court's attention once again to the simple statement in the "Technical Manual for Legal and Prison Officers, 2nd Edition" sub-title "Guide to Procedure in Military Government Courts," Paragraph 9, where it states with reference to evidence:

"Rule 12 does not incorporate the rules of evidence of British or American Courts or of courts-martial,\*\*\*".

The Prosecution requests that the "MOTION TO WITHDRAW CONFESSIONS OR STATEMENTS OF ACCUSED" be denied.

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17. S. 1

PRESIDENT: Has the Defense anything further ?

DEFENSE: The Defense has nothing further.

PRESIDENT: The Court will be closed.

(Whereupon the Court was closed at 1440 hours)

(Whereupon the Court reconvened at 1505 hours)

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

PROSECUTION: Let the record show that all members of the Court are present: all members of the Prosecution with the exception of Lt Col Crawford who is absent on business of the Prosecution and Captain Byrne who is excused VOGG. All members of the Defense and all Defendants are present as well as the Court Reporter.

LAW MEMBER: With respect to the Motion to withdraw confessions or statement of the accused, the Motion is denied.

DEFENSE: The Defense desires to make a short opening statement:

" It must be remembered that this case which we are now dispassionately judging a year after the cessation of the European War, transpired when the Allies were rapidly forging their way to Berlin. It was then Total War.

Here are seventy-four accused and it must be emphasized that before the Prosecution is entitled to a verdict of 'guilty' they must show a premeditated plan or malice aforethought for these men to be called murderers. We believe the evidence will show, that in the absence of any preconceived murderous plan, the maximum penalty that could be imposed by this justice tribunal would be that for manslaughter which does not carry any death penalty in our courts. Again and again, it must be emphasized that these accused are members of a Spearhead fighting desperately under the worst battle conditions. Each of you must bear in mind that this was an armored unit advancing rapidly into enemy territory and

(opening Defense Statement)

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17. S. 2

and being totally cut off from supplies and reinforcements. The practical difficulty of armored units taking prisoners is well recognized, as they are tightly organized and have absolutely no men to spare for evacuation of prisoners of war. The Prosecution has developed their case without taking these factors into consideration and have very deftly emphasized "No prisoners of War will be taken". We believe the evidence will show why no prisoners could be taken in this rapidly advancing column and we believe the Court has already recognized that "motioning of prisoners of war to the rear" was necessary.

We believe the evidence will further show under these difficult and trying battle conditions that a vast distinction exists between an armored spearhead movement in combat and a quiet sector on a battlefield. Prisoners can be taken in these slower and comparatively quiet sectors, but not so under the conditions of warfare we are here considering. There will develop ample proof that once this swift moving armored column was stopped, that every consideration was shown all captives.

No greater injustice could possibly be done than to compare this case with the concentration camp murder cases.

We believe the evidence has shown and will further show that the breaking of ranks and dispersing of prisoners of war was the primary factor of most of the deaths at Malmedy.

We believe the evidence will show that violations of land warfare are rare in this case and when the true combat situation has been shown to this Court, two words can accurately describe the over-all picture "intense combat". Then the bloody dictated statements or confessions, where duress and promises were the motivating factors, will be quite understandable. The extreme youth and susceptibility to such tactics by the Prosecution will be a matter for your serious consideration.

(opening Defense Statement)

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17. S. 3.

The Defense contemplates placing its evidence before the Court in a chronological manner by incidents so that each of you may evaluate the Charge against the various accused. The battle conditions will be shown. This will necessitate the placing of an accused on the stand more than once, but our purpose is to present a clear concept of each incident and to restore order from the jumbled mass of the Prosecution's evidence. "

(Whereupon the translation of the foregoing statement was read to the Court in the German language by the interpreter.)

PRESIDENT: The Court will recess until 1535 hours.

(Whereupon the Court recessed at 1505 hours.)

(Opening Defense statement)

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(Whereupon the Court reconvened at 1530 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: If the Court please, let the record show that all the members of the Court are present, all the members of the Prosecution are present with the exception of Lieutenant Colonel Crawford, absent on business of the Prosecution and Captain Byrne, excused by verbal order of the Commanding General, all the members of the Defense, all the defendants and reporter are present.

DEFENSE: May it please the Court, I hand the reporter a document and ask that it be marked Defense Exhibit Number 1 for identification.

(Whereupon the document referred to was marked Defense Exhibit Number 1 for identification by the reporter.)

DEFENSE: The Defense offers in evidence Defense Exhibit Number 1 for identification, the original request from the Deputy Theater Judge Advocate of Headquarters, United States Forces European Theater, War Crimes Branch to G-1, German Affairs Group of the same Headquarters, dated 26 April 1946, subject: Discharge of German Prisoners of War, and request that the same be attached to the record and made a part thereof. It is requested that the original be withdrawn after it has been read and a photostatic copy be included in the record, in accordance with the specific request of the originating office. It is further requested that permission be granted to read the exhibit marked 1 for identification.

PROSECUTION: If the Court please, is this statement offered in evidence or just marked for identification?

DEFENSE: Both. It has been marked for identification.

PROSECUTION: Has it been admitted yet?

DEFENSE: No.

PROSECUTION: I do not understand why it is being read.

LAW MEMBER: That is not the document that is being read.

PROSECUTION: I am sorry.

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PRESIDENT: Is there any objection by the Prosecution?

PROSECUTION: No objection.

PRESIDENT: There being no objection, the exhibit offered by the Defense is admitted in evidence and will be marked Exhibit D-1.

(Whereupon the document referred to, having been previously marked and identified was received in evidence as Defense Exhibit D-1 and is attached hereto and made a part of the record.)

PRESIDENT: It may be read.

DEFENSE: (Reading) 'Internal Route Slip, Headquarters, U.S. Forces, European Theater, File No., Subject: Discharge of German Prisoners of War, Date 26 April 1946.

Number 1, from Judge Advocate, War Crimes Branch, Pass to G-1, German Affairs Group, Date 26 April 1946.

1. The Malmedy War Crimes Case involving seventy-four (74) members of the German military establishment is scheduled to go to trial at Dachau, Germany, on or about 2 May 1946.

2. In order to preclude the possibility of legal complications arising with respect to the trial of the case, it is desirable that the provisions of 'Disbandment Directive No. 8,' Headquarters, United States Forces, European Theater, dated 16 February 1946, be carried out at once. It is therefore requested that the perpetrators in this case named in the attached list, now in custody at Dachau, be immediately discharged as prisoners of war and documented as civilian internees.

3. It is requested that this office be advised when documentation as civilian internees has been accomplished.

/s/ C. B. Mickelwait  
/t/ C. B. MICKELWAIT  
Colonel, JAGD,  
Deputy Theater Judge Advocate

1 Incl, as stated

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2 From G-1, German Affairs Branch, to Theater Provost Marshal, dated 26 April 1946 - Forwarded for your immediate action.

For the Assistant Chief of Staff, G-1:

J. M. COLEMAN  
Lt Colonel, GSC  
Chief, German Affairs Branch  
-----

3

From: Theater Provost Marshal, United States Forces,  
European Theater, Pass to G-1, German Affairs, Judge  
Advocate War Crimes Branch (In Turn), 31 May 1946.  
Documentation as civilian internees as requested in  
c/n 1 above was completed on 9 May 1946.

For and in the Absence of the Theater Provost Marshal:

/s/ Frederick R. Lafferty  
/t/ FREDERICK R. LAFFERTY  
Colonel Cavalry  
Deputy Theater Provost Marshal

4

G-1 German Affairs Branch, Pass to Judge Advocate War  
Crimes Branch, 4 June 1946. Request contained in  
Minute #1 has been complied with.

For the Acting Chief of Staff, G-1.

/s/ A.F.S. Mackenzie  
/t/ A.F.S. MACKENZIE  
Lt. Colonel, GSC  
Actg Chief, German Affairs Branch!

Attached thereto are two separate lists, the defendants of the  
Malmedy case who have not been discharged as of 26 April 1946 of which  
there are sixty-five of the defendants herein named and a second list of  
defendants in the Malmedy case who have been discharged as of 26 April 1946  
containing the remaining nine. Unless the Court desires, the names of  
these defendants and their organizations will not be read.

PRESIDENT: There is no need for that.

DEFENSE: If the Court please, may we request that Mr. Strong  
read this in order to speed up the proceedings.

(Whereupon Defense Exhibit D-1 was read in the German language.)

DEFENSE: Is permission granted to withdraw the original paper  
and substitute a photostatic copy of this?

PRESIDENT: That is granted.

PRESIDENT: The Defense calls as its first witness, General  
Gerhardt Engel. Mr. Strong on behalf of the Defense will conduct the  
direct examination. The Defense does not contemplate recalling this witness.

General GERHARDT MICHAEL ENGEL, a witness for the Defense was  
sworn and testified through an interpreter as follows:

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

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DIRECT EXAMINATION

QUESTIONS BY DEFENSE (Mr. Strong):

Q General Engel, will you please state your full name.

A Gerhardt Michael Engel.

Q Please give us the date of your birth.

A 13 April 1906.

Q Are you presently a prisoner of war?

A Yes, I am a prisoner of war.

Q Where are you presently held in custody?

A Here in PW-29.

Q Will you please describe to the Court shortly your army career until you became a member of the 6th Panzer Army.

A I entered in 1925 the Reichswehr. I became an officer in 1930, was then in the army as an adjutant, first as a platoon leader, company leader, battalion and regimental adjutant until 1938 company leader, was then transferred into the high command of the army, became a liaison officer thereafter as adjutant of the army in the headquarters of the Fuehrer, went into battle in 1942, was in the East as regimental commander, became a divisional commander in 1944 and was that until the capitulation of the 12th Infantry Division. That division was renamed in December 1944 as a Volksgrenadier Division.

Q If I understand you correctly, General, you were liaison officer from the army to Hitler's headquarters from June 1938 to 1942, is that true?

A Yes.

Q And you were during your entire military career a member of the Wehrmacht?

A Yes.

Q Were you ever a member of the SS?

A No, I never was a member.

Q Were you ever a member of the Party?

A No.

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Q Now, will you tell us, General Engel, where you were on the 12th of December 1944?

A In December 1944, I travelled in the neighborhood of Bad Nauheim, to the headquarters of the Commanding Officer of the sector west.

Q What was the purpose of your journey to Bad Nauheim?

A As I arrived at Bad Nauheim, we heard that there was going to be a meeting with the Fuehrer.

Q Did this conference take place?

A Yes, that conference took place.

Q Will you please give us some of the names of the people who participated in this conference?

A There were approximately 25 persons, under which was Hitler; Martin Bormann, representative of the Foreign Office, and the remainder was composed of Commanding Generals and Division Commanders.

Q Was Field Marshal von Rundstedt present?

A Yes, Field Marshal von Rundstedt was present.

Q Will you give us some of the names of the other general officers who were present at that meeting?

A Field Marshal Model, the Generals Dietrich and Friess, General of the Panzer Troops, Krueger, Field Marshal Keitel, Colonel General Jodl. I still remember the Generals Kraas and Mohnke, and other Divisional Commanders of the Army.

Q So if I understand you correctly, from the 6th Panzer Army the following officers were present, Kraas....

PROSECUTION (CAPT. SHUMACKER): If the Court please, I object to this leading question about to be asked. If he wants the witness to recapitulate, let the witness recapitulate.

(Engel - Direct)

PRESIDENT: Just a minute. Let's get this interpreted as we go along.

DEFENSE (MR. STRONG): I will rephrase my question.

QUESTIONS BY DEFENSE (MR. STRONG):

Q General Engel, will you please enumerate to us the members of the 6th Panzer Army who were present at Bad Nauheim?

A They were the Generals Dietrich, Friess, Kraas and Mohnke.

Q How long did Hitler's speech approximately last?

A Hitler's speech lasted approximately two and a half to three hours.

Q Will you tell us briefly, as far as you are able to remember, what Hitler said?

A Hitler started in the well-known demagogical manner about the situation of the war. He pictured the situation as serious and announced to regain the leadership once more through an offensive, that for that reason he had prepared two Panzer armies. He emphasized that this would be the last chance to bring upon the turning point of the war; that out of that reason he had retained his best troops, that they were SS troops which were devoted to him as far as education and political viewpoints are concerned. He spoke of the forward spirit which should be shown by the troops; that the attack would have to be led harshly and recklessly. He said that the troops would have to be rendered fanatical, and for that particular reason the words, "rendered fanatical" was mentioned there. He furthermore gave the objective of the offensive.

Q Did he, in his speech, say anything about prisoners of war?

A No, in the speech nothing was mentioned about prisoners (Engel - Direct)

of war.

Q Did he say anything about enemy civilians whom you might encounter in your offensive?

A No, it wasn't mentioned either in the speech.

Q Did he say that new methods of war would be used?

A No, that wasn't mentioned either.

Q Did he say that a method of war which was in force up to now in the Western Front would have to be abandoned?

PROSECUTION (CAPT. SHUMACKER): If the Court please, we object again to this line of questioning. It puts the words in the witness' mouth and all he has to answer, of course, is "no". The questions are leading. We object and suggest that the witness be allowed to say what Hitler told at this meeting.

PRESIDENT: Just a minute. Will the interpreter interpret that.

(Whereupon the interpreter interpreted the statement, as directed.)

DEFENSE (MR. STRONG): If the Court please, the accused Dietrich has said several things about Hitler's speech in his confession. We are trying to prove that these things have not been said. This is direct examination, and we see no way of eliciting a negative answer unless we ask the witness whether certain things were said.

LAW MEMBER: The proper way to do that, Mr. Strong, is to take the exhibit referred to, use the very words in the exhibit and say, "Did Hitler say this"?

PRESIDENT: The objection is sustained.

QUESTIONS BY DEFENSE (MR. STRONG):

Q General Engel, I read to you from a statement signed by General Dietrich and dated 22 March 1946, which is Prosecution Exhibit P-6. In this confession, General Dietrich says: "The Fuehrer said furthermore that we would have to act with

brutality and show no human inhibitions". Did Hitler make any remark like this?

A No, I do not remember that.

Q General Dietrich further said in his statement: "The Fushrer also said that a wave of fright and terror should precede us, and that the enemy's resistance is to be broken by terror". Did Hitler make any remark like this, General Engel?

A No, I do not remember that.

Q Now, if Hitler would have said anything at that conference which would have been unusual, as far as method of fighting is concerned, you believe you would still remember it?

A I am sure I would remember that. As a professional officer, I am sure that I would remember anything which would have brought change in method of combat.

Q General Engel, based upon the experience which you were able to collect in the four years you were Adjutant to Hitler, what was your impression of his speech? What do you think he wanted to convey by it?

PROSECUTION (CAPT. SHUMACKER): We object, if the Court please, to what the witness' impression was or what he thinks Hitler was trying to convey. He is calling for a conclusion of the witness.

PRESIDENT: The objection is sustained.

QUESTIONS BY DEFENSE (MR. STRONG):

Q When Hitler spoke about harshness and ruthlessness, did he speak about harshness and ruthlessness against yourselves or harshness and ruthlessness against your enemies?

A I understood the words of Hitler to mean that everything would have to be taken out of the troops, whatever could be taken out of them. That anything else would have been meant (Engel - Direct).

or could have been meant I never had that thought.

Q Do you remember to have seen or read the Order of the Day issued by General Dietrich?

A No, we never received that.

Q Did your Division take any prisoners of war during the offensive?

A Yes, quite a few.

Q How many, approximately?

A I remember that I made approximately a hundred prisoners of war on the first day.

Q General Engel, you stated before that you had yourself held for some time the post of Battalion and Regimental adjutant, is that correct?

A Yes.

Q Will you describe to us shortly the duties of an adjutant?

A The adjutant is that what the word means already, the helper of the Commander. He has to write up the orders of the Commander, put them before him for his signature and take care of their distribution.

Q Is he entitled to issue any orders of his own?

A No. That is not allowed in the German army.

DEFENSE (MR. STRONG): Your witness.

CROSS EXAMINATION

QUESTIONS BY PROSECUTION (CAPT. SHUMACKER):

Q Your division, the 12th Volks-Grenadier Division was a part of the 6th SS Panzer Army?

A Starting from the day of attack.

Q Your Division was not an SS Division?

A No, it was an Army Division.

(Engel - Cross)

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Q No SS officers and no SS troops?

A No, none.

Q Your tactical mission in this offensive was what?

A The break-through, through the main American defense line, at Losheim gap.

Q Where did your Division assemble, prior to the offensive?

A Within the Siegfried line, in the sector of Hallschlag.

Q And on what date and at what hour did your Division move forward?

A As far as I remember, the Division attacked on the 16th December, at around 0535.

Q That was on the morning of the 16th?

A In the morning.

Q How was your Division tied in with Combat Group Peiper?

A Not at all.

Q Was there any coordination of tactical missions as concerned Combat Group Peiper and your Division?

A No.

Q Did you know exactly what the mission of Combat Group Peiper was?

DEFENSE (MR. STRONG): If it pleases the Court, I object to that question. This witness has been called by Defense to testify to the speech Hitler made on the 12th of December 1944, in Bad Nauheim, and the question propounded by Prosecution has, in the opinion of Defense, nothing whatsoever to do with this topic which has been brought out in direct, and I therefore feel that this is improper Cross.

PROSECUTION (CAPT. SHUMACKER): If the Court please,  
(Engel - Cross)

I am laying a foundation for evidence that I am sure would be competent, or questions that I am sure will be competent. The Defense has announced that they did not expect to recall this witness, and I think that he has information that the Court will be interested in.

DEFENSE (MR. STRONG): May I say that the Prosecution has at any time the opportunity to recall this witness as a Prosecution witness.

PRESIDENT: The objection of the Defense is sustained.

QUESTIONS BY PROSECUTION (CAPT. SHUMACKER):

Q You say that Hitler said in his speech that the troops had to be "rendered fanatical", is that correct?

A Yes.

Q Since being a prisoner here at PWE 29, at Dachau, were you not interrogated some week or so ago by Mr. Thon, sitting here at the table?

A Yes.

Q I will ask you if you did not write this statement: "Adolf Hitler also stressed as to its meaning that consideration and mercy were not to be shown"?

A Yes. That was mentioned in connection with the words, "harshness and ruthlessness". The exact wording I do not recall any more.

Q In other words, Hitler advocated in the conduct of battle that the troops should fight ruthlessly and that no mercy or consideration would be shown by them?

A Nothing was mentioned about mercy, and I am unable to recall single words since it has been already quite some time ago.

PROSECUTION (CAPT. SHUMACKER): I think there has been  
(Engel - Cross)

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an erroneous translation by the interpreter. (To Reporter)  
Will you read the last question please?

(Whereupon the reporter read the last question by the  
Prosecution, which was translated by the interpreter.)

A I do not recall the word "mercy". That the fight  
should be especially reckless was mentioned several times dur-  
ing his speech. But Hitler avoided to give detailed explana-  
tion on the words and to state what he actually meant by it.

Q You used the German word "schonung" in your statement,  
did you not? I am just asking you if you used the word in your  
sworn statement?

A In the statement I said, according to the sense of it,  
mercy was not in place.

Q Well, have you changed your mind about it?

A No, I haven't changed it.

Q And that is still your recollection as to the sense  
of his remarks?

A Yes.

DEFENSE: May it please....

PROSECUTION (CAPT. SHUMACKER): You don't mind if I finish  
with my Cross, do you?

DEFENSE: I certainly don't. May it please the Court...

PROSECUTION: Will you please speak a little louder, I can't  
hear a word you say here.

DEFENSE: May it please the Court, the Prosecution is extreme-  
ly argumentative with the witness, and it doesn't seem that it  
is necessary to conduct the cross examination in this manner.

PRESIDENT: Proceed.

QUESTIONS BY PROSECUTION (CAPT. SHUMACKER):

Q Now, General, I believe you said that Hitler announced  
(Engel - Cross)

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that he had chosen two SS armies for this offensive. Is that correct or am I mistaken?

A Yes, that is right.

Q And they were chosen because of their education and indoctrination?

A Yes.

Q Are you personally familiar with the education and indoctrination of SS troops as distinguished from other components of the German army?

A No, I can't say much about that. All I know is that the SS was educated on a Party political viewpoint. In what form that education took place, we do not know.

(Engel - Cross)

Q General, is it not true that certain inciting remarks by Hitler could have had a special significance and meaning to SS officers present there that would not have meant anything in particular to you?

DEFENSE COUNSEL (MR. STRONG): I object for two reasons. First, I believe there is no evidence so far that any inciting remarks were made; and, second, I think this is--

(Whereupon the above remarks were interpreted to the German counsel and accused.)

DEFENSE COUNSEL: (Mr. Strong) If it please the Court, off the record, I would have to correct every sentence of the interpreter, to make it correct.

(Whereupon another interpreter was called.)

DEFENSE COUNSEL (Mr. Strong): The second reason for the objection of the Defense is that this is again, not, cross examination, and does not refer to anything which was brought out in direct. Certainly it calls for an opinion.

PRESIDENT: For the third reason announced, the objection will be sustained.

QUESTIONS BY PROSECUTION (Capt. Shumacker): I believe you said, General, that you did not get the Order of the Day from the 6th SS Panzer Army?

A Yes; I did not receive it.

Q You don't know from any source the contents of that order?

A No, I do not.

#### REDIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL (Mr. Strong):

Q General, by whom were you interrogated first, by the representative of the Prosecution or by the representative of the Defense?

A I wasn't told that. I was interrogated the second day I arrived there.

MR. STRONG: I will rephrase my question. By whom were you interrogated first, by Mr. Thon or myself?

A Now I was first interrogated by Mr. Thon.

MR. STRONG: I have no further questions

CAPT. SHUMACKER: I do. One more.

RECROSS EXAMINATION.

QUESTIONS BY PROSECUTION, (CAPT. SHUMACKER): Did you tell the truth when you talked to Mr. Thon?

A Yes.

CAPT. SHUMACKER: That is all.

MR. LEILING: I would like to make a short statement to the Court. I think in this case the translations were very important and I don't think they were always adequate and I would suggest that it be cleared as to the above on the record before all, as respects the meaning of the word "Rueckinchnahme" and "Shhonung" and all the similar German words which were some times translated as "mercy" and in other instances as "consideration", and so on,-- what they actually mean.

LAW MEMBER: In view of the fact that most of the doubt exists with respect to questions which were asked on cross examination, the court will ask the stenographer to read again all the questions as propounded by the Prosecution.

PRESIDENT: Let us endeavor at this time, if there is any objection to the translation, to make it immediately.

MR. LEILING: May I make another suggestion? Couldn't we clarify the evidence when the record is completed? I suggest we hand in our objections and then it can be corrected in the record. Of course, after hearing the Prosecution, too.

LAW MEMBER: There is only one way to correct testimony and get it in the record properly, and that is to present it properly. If there has been in incorrect translation, we might go over the entire testimony and find out where it is. On the one hand, if it is only a couple of words, only the proper translation of a couple of words, we might stipulate what those words mean and then put them into the record. Is that what the objection is?

DR. LEILING: That is the main thing. Can we not stipulate?

CAPT. SHUMACKER: Perfectly agreeable to the Prosecution to let Dr. Leiling properly interpret any words that are in question.

DR. LEILING: Can I have the proper wording of the statement of the witness Mr. Thon took down?

CAPT. SHUMACKER: May I suggest that that one sentence, which I think has caused the trouble and which contains the word, be referred to the interpreter for proper translation?

DR. LEILING: May we be allowed to read the German version, and then put it into English?

PRESIDENT: Yes.

DR. LEILING: For the purposes of the record may it please Court, the interpreter is reading a sentence from a statement of the witness which he acknowledged having executed and concerning which sentence he was cross examined by the Prosecution.

INTERPRETER ROSENSTOCK: The sense of it appears to be, according to the answer, "It was expressed by Adolf Hitler that consideration and mercy would not be appropriate." I might add that this is not a translation which gives the exact meaning of every word, but that is the best that can be done. I don't think there are any exact equivalents of the words contained in the German statement.

PRESIDENT: Is that translation acceptable to the Defense?

DEFENSE COUNSEL (Mr. Strong): It is.

DR. LEILING: Will you repeat that, Interpreter?

(Whereupon the translation was given in the German language.)

DR. LEILING: The Defense still holds that the word "schonung" in German is not the equivalent to the word "mercy", because mercy means, in German, "gnade", and not "schonung".

CAPT. SHUMACKER: If the Court please, I believe it was agreed between the Prosecution and the Defense that the Interpreter would translate this sentence and after he translated it it would be acceptable.

DR. LEILING: We claim that is not true.

CAPT. SHUMACKER: If the Court please, I don't speak German but two members of the Prosecution staff say that that is as accurate a translation of the sentence as can be made. Perhaps Defense Counsel who speaks both German and English can give a better translation.

DR. LEILING: Well, here I have a dictionary at hand and it says "schonung", and it says: "sparing" and "forbearance."

CAPT. SHUMACKER: I didn't hear!

DR. LEILING: "Sparing" and "forbearing", but not "mercy".  
"Sparing and forbearing; nursery for young plants".

LAW MEMBER: I believe at this stage we are splitting too many hairs and wasting too much time of the Court. The Court will personally take judicial notice of whatever the words may mean.

CAPT. SHUMACKER: No further questions.

MR. STRONG: I have one question. May I have your statement?

RE-REDIRECT EXAMINATION:

QUESTIONS BY DEFENSE COUNSEL (Mr. STRONG):

Q Did Hitler say at the meeting in Nauheim that consideration and mercy were not to be shown? Did he say so directly, or indirectly?

A The meeting happened more than a year and a half ago. For that reason I set down according to the sense. I do believe I am

able to remember that the words were mentioned, but I cannot vouch for every word which was spoken in the meeting. Furthermore, the meeting lasted for three hours, approximately.

DEFENSE COUNSEL: Dr. Rau would like to ask a question.

DEFENSE COUNSEL (Dr. RAU) Just what is the meaning of your phrase that "troops are to fight without mercy", in military terminology?

A The meaning is a rough spirit of attack. Motion towards the front. It is very hard to give a more close definition. These are common military terms which, to my knowledge, would be used in any army.

Q If I remember properly, you answered affirmatively one question recently, that question being whether the Fuehrer had detailed for the attack two SS armies.

A The answer--I answered the question with "yes", but that was not entirely proper, because there were really two Panzer armies, one of them from the SS and one of them from the Army. However, the SS units were contained in both outfits.

Q You stated that you did not receive the order of the day of Dietrich. By that do you mean to say that your division did not receive that order or that you, personally, did not receive it?

A I know very well that the Division did not receive it.

Q Is an order of the day a military order or is it more or less of a propagandistic appeal?

A I In the last war it was an appeal of propaganda, mainly.

Q It does not, then, have the application of a military order? Applicability of a military order?

CAPT. SHUMACKER: I object to this; I don't know whether counsel for the Defense is cross examining, or has a right to cross examine, but if this is redirect it is certainly a leading question and we object to it.

DR. RAU: I can simplify matters by rephrasing the question.

Engel wredirect)

LAW MEMBER: That is better.

DR. RAU: Is an order of the day, as you stated, militarily binding, or is it not?

A It contains directives of a general nature, but does not express anything concrete, only something abstract.

Q That is how it differs from a tactical order? Did you receive the order of the day of Model?

A Yes, but too late.

Q How many days too late?

CAPT. SHUMACKER: If the Court please, if this is redirect, we object. It was not brought out on direct and was not brought out on cross. I think it is incompetent.

DR. RAU: This is direct examination.

LAW MEMBER: For the benefit of the record, for the benefit of the Court, will the Defense please announce how it is going to conduct its examination? Because it is rather difficult to follow it.

DEFENSE COUNSEL: May it please the Court, the Defense contemplates in some instances two people handling the direct examination. That is necessitated on account of American and German counsel; having a dual representation. It is contemplated, however, to reduce this to the absolute minimum. An appropriate announcement will be made at the beginning of each direct examination of the witness as to who will make the interrogation.

CAPT. SHUMACKER: In this case, if the Court please, the Defense announced that we might cross examine, so I concluded that the direct examination had been completed.

DEFENSE COUNSEL: That is correct.

CAPT. SHUMACKER: Well, we submit again, that this line of questioning, under the circumstances is incompetent.

LAW MEMBER: As long as there has been some confusion with respect to this first witness, we will permit the examination to

continue and you may cross examine again.

QUESTIONS BY DEFENSE (Dr. RAU):

Q The question was, how many days later you received the order of the day from Army Group B from Model?

A One day later, as far as I can remember.

Q Did you also receive the order of the day from the Commander in Chief in the west?

A Yes. This all arrived in the same manner.

Q One more. Were you or the interrogating officer the first one to use the word "mercy"?

A I am quite sure that I used it first myself.

CAPT. SHUMACKER: Is the Defense now through with its direct or redirect, or whatever it might properly be called?

DEFENSE COUNSEL: It is through with the direct examination.

CAPT. SHUMACKER: Thanks.

RE-RECROSS EXAMINATION

QUESTIONS BY CAPT. SHUMACKER:

Q General, did I understand you to say that instructions to troops to show no consideration or mercy means the same thing as to move swiftly towards the front?

A That's what it used to mean; anyway.

Q What do you mean by "that is what it used to mean"?

A That was common terminology within the German Army and old regular army officers did not have any other ideas.

Q You testified on direct examination about some prisoners taken by your division?

A Yes.

Q Were those prisoners captured by your division in the first instance?

A Yes.

CAPT. SHUMACKER: That is all.

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**DEFENSE COUNSEL:** Nothing further from the defense.

**PRESIDENT:** Any questions by the court, Apparently not.

The witness is excused.

(Whereupon the witness was excused and returned to his seat.)

**PRESIDENT:** The Court will adjourn until 0830 hours tomorrow morning.

(Whereupon the Court adjourned at 1700 hours.)

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MORNING SESSION

(Whereupon the Court reconvened at 0830 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: If it please the Court, let the record show that all the members of the Court, all the members of the Prosecution with the exception of Lt. Col. Crawford who is absent on business of the Prosecution, Captain Byrne who has been excused by verbal orders of the Commanding General, all the members of the Defense, all the defendants and the reporter are present.

DEFENSE COUNSEL: May it please the Court, the Defense calls as its next witness the accused General Fritz Kraemer. The questions of the American and German counsel have been consolidated and Dr. Rau will conduct the direct examination on behalf of the Defense. The Defense does not contemplate recalling this accused.

FRITZ KRAEMER, an accused, called as a witness for the Defense, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE (DR. RAU)

Q What is your name?

A Fritz Ludwig Karl Kraemer.

Q When and where were you born?

A 12th December 1900 at Stettin, Pommern.

Q Do you want to make any statements about your parents, your education at school and your professional careers?

A My father was a working man. I went to the elementary school. After I had been a soldier in 1918 in the first world war, I entered the Prussian police in 1921. Up until the time I joined the Army in 1918 I was office assistant in an industrial firm in Stettin. In 1926, by taking courses at night and by going to the

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professional school of the police I finished my "abitur", maturity examination.

Q Did you become a police officer?

A After having finished attendance at the higher police school at Eiche, I became a police lieutenant.

Q What were your tasks as an officer of the police?

A It is the job of the police to maintain public order and discipline. In addition to that it is the job of the police officer to train police sergeants.

Q Were you ever punished?

A No.

Q Did you join the Army?

A When the General draft began I was transferred, as a captain into the Army.

Q What was your further military career?

A Already in 1934 I was ordered to attend the war academy when I was still a police officer.

Q Continue.

A I attended the war academy in the years 1934, 1935 and 1936. I was Company Commander in 1937 and was first ordered and then transferred into the German Staff of the Army in 1938-- the General Staff of the Army in 1938.

Q The question as to when the accused was transferred into the Army was not translated correctly and I therefore I repeat the question, when did you transfer to the Army?

A After the General draft began I was transferred into the Army in 1935.

Q What was your position as general staff officer in the Army?

A On the first of April 1938 I was transferred, as a second general staff officer to the 13th motorized infantry division. In this position I participated in the Polish campaign. At the (Kraemer-direct)

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beginning of the French campaign or war against the French I became the first general staff officer of the first motorized infantry division and as first general staff officer of this motorized division I participated in the French campaign. After the end of the French campaign this division was transferred to Rumania in the capacity of an instruction division, at which time, I also was the first General Staff Officer. At the time of the Russian campaign or rather after the French campaign was over, the 13th motorized infantry division became the 13th tank division. At the beginning of the Russian campaign I became a Lt. Colonel in the General Staff and remained with this division in the Russian campaign until December 1942. In January 1943 I was promoted to the Chief General Staff. From December 1942 until June 1943 I was Chief Quartermaster officer of the General Staff of the Army -- Chief Quartermaster of the First Panzer Army -- I became Chief Quartermaster officer of the First Panzer Army of the Army.

Q When did you join the Waffen SS?

A I was ordered into the Waffen SS in July 1943 and transferred into the Waffen SS on August 1, 1944.

Q Will you shortly explain the difference as far as the German Army terminology is concerned, between ordered to and being transferred to a unit?

A When you are ordered you wear the uniform of your former unit and are paid by the finance office of the Army; if you are transferred you wear the uniform of the new unit and are paid by and are under the jurisdiction of the new unit. It makes no difference whether this is a transfer to the Waffen SS or to the Air Force.

Q Do you know for what reasons you were transferred to the Waffen SS?

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A Yes.

Q Will you explain, please?

A The Waffen SS was increased in size in '43 and general commands were activated for those troops for which experienced general staff officers were not available. Together with me, eight experienced staff officers were transferred and fifty troop officers. We were ordered to the Waffen SS by order of the Commander of the General Staff, Colonel General Zeitzler. A certificate to this effect is among my papers which were taken from me at Schwaebisch Hall.

Q Were you ordered, that is to say, transferred on your request or against your request?

A I was not transferred by my own request. When I reported to the Chief of Staff I was told that my transfer was necessitated by the situation.

Q What was the opinion in the Wehrmacht, at that time, of the waffen SS?

CAPTAIN SHUMACKER: We object to that question. I don't believe this witness is in a position to state the opinion of the entire Wehrmacht at most he should only be permitted to state his own opinion.

DR. RAU: I shall limit this question to "In your circles".

PRESIDENT: The objection is overruled.

QUESTIONS BY DEFENSE: (DR. RAU)

Q What was, at that time, the opinion of the Wehrmacht as regards the Waffen SS?

PROSECUTION: He has changed the question. Let us have the reporter read the question back.

DR. RAU: I am sorry, in your circles?

THE WITNESS: We, as officers in the tank division

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considered the tank divisions of the Waffen SS to be just as much Elite troops as the tank divisions of the Army.

QUESTIONS BY DEFENSE: (DR. RAU)

Q Were you ever a member of the General SS?

A I never was a member of the General SS?

Q Were you a member of the party?

A I was not a member of the Party.

Q Were you a member of any other organ of the Party?

A No.

Q Were you ever requested to join the Party?

A As a police officer in 1933, I was repeatedly requested to join the Party which I rejected, however.

Q Are there any people among your close relatives who are close to the Party?

A There is no one either among my closer relatives or distant relatives that belong to the Party.

Q To what SS unit were you transferred first?

A I was ordered to be the commanding officer of the First SS Panzer Corps which in June of 1943 was being activated.

Q Did you ever get any special decorations as General Staff officer in the Army?

A I got the Knights Cross in November '42 as General Staff officer of the Army. My division was, at that time, fighting in the Caucasus.

Q In what respect was that something special?

A That was something special because, as far as the orders were concerned that pertained to giving out these decorations General Staff officers were only able to receive them under very special circumstances.

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Q What special achievement or accomplishment was being recognized by that?

A In the Caucasus I took the place of the wounded divisional commander.

Q I has just been called to my attention that an incorrect translation was made sometime ago and I therefore repeat the question, what was your first job in the Waffen SS or position in the Waffen SS?

A I was the Chief of Staff of the First SS Panzer Corps which was being re-activated in June 1943.

Q What were your tasks as Chief of Staff?

A The tasks of the Chief of the General Staff have been laid down in the Manual for the General Staff Officer. He is the tactical advisor of the unit commander and he is responsible for administrative matters. The Battalion commanders of the staff are his subordinates, as well as the staff officers. He is entitled to give orders during the temporary absence of the unit commanders and he is allowed to get permission for this later on.

Q Is he the second in command?

A No. The second in command of the commanding general, is that unit commander who has the longest time in service. In the Army the oldest commanding general in a corps is the oldest divisional commander.

Q Who was, at that time, your Commander in Chief?

A My Commanding General was, at that time, General of the Waffen SS, Dietrich.

Q Did you know the accused Dietrich prior to this time personally?

A I saw him once before in Russia.

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Q What was the opinion in your circles about Dietrich?

A At that time I talked to the chief of my general staff about my new commanding general. I was told --

CAPTAIN SHUMACKER (Interrupting): If the Court please, we object to this question. He is asking this witness what the opinion was of Dietrich at this time and this witness is about to answer what his commanding general told him about Dietrich. It is not responsive to the question.

DR. RAU: I think we should permit this witness to finish because on the basis of this concrete example he was about to give, he will give us the opinion of the general staff officers.

THE WITNESS: I could answer this question differently. I shall answer the question in the following manner: Dietrich was considered in the circles of the officer corps as a good soldier and a popular one.

QUESTIONS BY DEFENSE COUNSEL (DR. RAU):

Q Do you know whether Dietrich was trained to be an officer?

A I don't know.

Q Did you then work under a different commanding general?

A The 1st SS Panzer Corps was committed during the invasion at Caen. In August 1944 Dietrich took over the command of the 5th Panzer Army of the Army. His successor was General of the Waffen SS Keppler. This man commanded the 1st SS Panzer Corps from August until November '44. Lieutenant General Priess of the Waffen SS became his successor.

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Q There is quite a bit of talk about the 6th SS Panzer Army. Is this correct?

A No, it is not.

Q Why?

A This army was in the general setup of the army given the name of the 6th Panzer Army and also after it had been fully activated and organized it was never an SS army.

Q Consequently, what would be the correct name for the army?

A According to existing orders, the correct name is 6th Panzer Army.

Q When was this army activated?

A Either in September or October '44. Those Panzer Divisions of the army which had been badly beaten were pulled together to the east of the Rhine. The divisions in question were severely mauled divisions of the army and divisions of the SS. These Panzer divisions were reinforced. Two stations were formed for the purpose of this reinforcement. The name of one of the stations was Auffrischungstab 16 and was under the command of Dietrich. Another reinforcement staff, the name of which I forget, was formed under General of the Panzer troops Strumpf.

CAPTAIN SHUMACKER: If the Court please, I know the Court wants to give the accused great latitude in direct examination but we object to this line of questioning. I do not believe it is material in this case to go into the entire makeup of the entire German army on the Western front during 1944. We object to the line of questioning as being absolutely immaterial and irrelevant to the issues in the case.

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DR. RAU: It is the point of departure of the Prosecution that at the occasion of the beginning of the offensive a special order was issued in the leaders' headquarters. It must be determined to which units this order was allegedly given. Consequently, it must also be determined what units participated in the offensive.

CAPTAIN SHUMACKER: If the Court please, it seems to me that a direct question as to what units participated would be a more simple way to get at the issue, if that is important.

PRESIDENT: The objection is overruled.

THE WITNESS: I had not finished answering the question. The 6th Panzer Army was formed out of the previously mentioned Auffrischungsstab 16.

QUESTIONS BY DEFENSE COUNSEL (DR. RAU):

Q Where was the headquarters of the reinforcement staff?

A I was transferred to the Auffrischungsstab (6th Panzer Army) on the 16th of November. The headquarters were near Cologne in a village called Quadrath.

Q How long did it stay there?

A We changed our CP on the 10th or 11th of December and went to Muenster Eifel.

Q What did the reinforcement staff do at this time?

A The 1st and 2nd SS Panzer Corps were part of the reinforcement staff. The divisions were transported from the area of Munden by rail, a movement which began on the 13th of November. The last parts of these units arrived in the area of Cologne around the 10th of December.

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Q Was the staff composed exclusively of members of the SS?

A At that time the official name of the reinforcement station already was the 6th Panzer Army but the cover name Auffrischungsstab 16 continued to be used. It was not allowed that the name 6th Panzer Army was given any publicity or became publicly apparent. The staff of the army was composed of members of the army, the air force and the Waffen SS, where two-thirds of the members were members of the air force and the army and one-third were members of the Waffen SS. The officers of the staff were similarly composed. The section officers of the staff were either Wehrmacht officers, airforce officers or Waffen SS officers. If the chief of section was an army officer, his second in command was an officer of the Waffen SS or vice versa. The general staff officers were composed of members of all the three parts of the Wehrmacht.

Q What corps other than the two SS corps were part of this army?

A In the night of the 13th to the 14th of December, the following units were part of the army: The 67th general command of the army, 1st SS Panzer Corps, 2nd Panzer Corps, 4 Peoples Grenadier Division of the army, a parachute division, four SS Panzer Divisions, 3 Peoples Artillery corps of the army, 2 Peoples Mortar brigades of the army, and five or seven Assault Gun Battalions of the army. The designations of the individual units can be found in a brief which I prepared from September to December '45 at the Historical Section of the American Army. A copy of this brief was among my papers which I surrendered at Schwaebisch Hall, also a certificate of the American commanding

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officer of this section, Colonel Marshall.

Q How many divisions were in this army all along?

A At the time of the beginning of the offensive the army had nine divisions.

Q With the exception of brigades?

A With the exception of the artillery which I mentioned and the assault gun battalions.

Q How many regiments did that mean?

A There were approximately 120,000 men in the army. I can't say about the regiments, but there were 153 battalions.

Q How many members of this army were members of the SS and how many members of this army were members of the German army?

A Out of these 153 battalions, 52 battalions belonged to the Waffen SS and 105 battalions belonged to the army or the air force, as the case may be.

Q Can you divide that up into numbers of individuals?

A As I said before, the number of men in the army was 120,000, approximately 45,000 Waffen SS and the rest army and air force.

Q When did you for the first time find out about the intended Ardennes Offensive?

A I reported to the chief of the general staff of army group B, Commanding General Krebs, on the 18th of November.

Q Was this a command that was immediately superior to you?

A That was the immediate superior army command. General Krebs was my superior chief of the general staff.

Q Who had the command of Army Group B?

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A The Army Group B was commanded by Field Marshal Model. He also had caused my transfer to the 6th Panzer Army.

Q What was the command directly above Model?

A Commander-in-chief on the Western Front Field Marshal Von Rundstedt.

Q What orders were you first given relative to the coming offensive?

A On the 18th of November I was given the first oral instructions as regards plans for the coming offensive.

Q What were you to do?

A I was to consult with my commander-in-chief as to the manner in which the army was going to be committed.

Q Had you already prepared any special orders, and if so, what orders?

A The planned offensive was not to become publicly known. Only the commander-in-chief and I, up until the 25th of November, had any instructions. Up until this time I had studied the maps and thought about the offensive. Beginning on the 25th of November I made the first preliminary sketches for the operations order with my chief general staff officer, for which conference I had gotten permission.

Q In order to refresh your memory, did you at that time issue any orders pertaining prisoners of war?

A The reinforcement station 16 issued a series of orders for the newly arrived troops about training and about fighting in backlying areas, about action to be taken in case of enemy parachutists' action. In all these orders we were not permitted to talk about the coming offensive and although to a

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certain extent these orders had a definite bearing on the coming offensive, this was done in such a manner so as not to be noticeable to the troops. In order to give an example, an order was given by the reinforcement staff 16 around the beginning of December pertaining to prisoners of war and about conduct if one were taken a prisoner of war. In this order, among other things, it was stated that as many prisoners as possible should be taken. We needed these prisoners of war in order to get information about enemy disposition at the front. It was further stated that these prisoners of war were to be rapidly conveyed to collecting points and it was my intention by this order to call the attention of the commanding officers to the manner in which prisoners of war were to be transported. It was further stated that prisoners of war were not allowed to be mistreated even if they only gave their name and rank or grade. I knew through my experience in combat around the Western Front that American soldiers had these instructions and generally abided by them. I can remember this particularly well because I cited this conduct as an example to the German soldiers. A further order was issued by the Army Surgeon. It was said in this order that vehicles were to be more clearly marked with red crosses than had been customary heretofore. It was also stated in this order that enemy wounded were to be treated in the same manner as our own wounded. It was for this purpose ordered that captured enemy medics were not to be taken backward but were to be held in readiness at first aid stations. The orders about which I have just been talking were issued between the 20th of November and the 8th of December. It was my intention to have these orders reach the units by the 8th of December so that they might not be

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overburdened by too many orders from that day on. A further order was issued by Administration in which the regulations pertaining to rations of prisoners of war were again made public to divisional and corps quartermasters. Another order was issued to the effect that the units should make true and rapid reports. This had been necessitated by the fact that units which had been engaged in fighting in the West had become somewhat careless as far as making of reports was concerned. Beyond these orders issued by Reinforcement Station 16, orders were issued under the cover name as originating from a unit which had the cover name of Army 25. The 6th Panzer Army therefore succeeded in making the English believe that the 25th Army was going to go into action around Muenchen-Gladbach. This was a deception worked by radio in which a mass of radio stations of the army took part. This was also a preparation for the offensive, of which the troops were totally unaware. Beyond those orders mentioned by me, orders for the offensive were worked out.

Q Did anybody participate in the working out of these orders other than you?

A In order to prevent any leak of information as far as this offensive was concerned all officers who participated in the planning were forbidden by punishment of death to talk about it. Certain instructions for individuals were laid down by the supreme command of the army. Only my commanding general, G-3, my chief liaison officer and a clerk and I knew anything about the offensive. The plans were worked over by G-3 and by myself. They were based on the order of the army group Bertha.

End tk #192

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Q Who signed the orders so far mentioned ?

A I would like to mention in what manner the instructions, times and dates finally reached the troops. On approximately 4th or 5th December, the Commanding General and the General Chief of Staff of the Corps were given their instructions in Bad Neuenheim. On 12th to 13th December, The first General staff groups of the Divisions received their instructions on that day by the Commanding Generals of the Corps. It was permissible to notify the Regimental Commanders of the coming offensive on 14 December. Only on the very day of attack, that is to say, on 16th were the troops permitted to receive any information about the offensive.

Q What orders do you now have reference to ?

A This refers to all orders which pertained to the offensive. The so-called tactical order and the Army order of the day that is.

Q Is this also true of the orders which pertained to the treatment of prisoners of war ?

A No, these orders had been specifically issued previously under the Reinforcement Staff 16. The order gave the opportunity to Unit Commander to get the information at the earliest time--

INTERPRETER: No, I'm sorry - it should be :-

"In order to give the Unit Commanders the opportunity to give instructions to that effect prior to the beginning of the offensive. "

Q Were those open or secret orders ?

A The order of the Reinforcement Staff had the usual designations either open or secret. The order pertaining to the treatment of prisoners of war was open . When I issued the order for a certain Division to be used at a certain Sector, such an order was naturally secret. The orders for the coming offensive which I should like to designate as tactical orders, and Army orders of the day were 'top secret' and were orders that could only be worked (Kraemer- direct)

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18. S. 2

on by the Commander in Chief. The Army order of the day was an open order and only the addressee was 'top secret'. This secret designation had as its only purpose, the prevention of the secret of the beginning of the offensive leaking out. I should like to emphasize and point out emphatically that this designation was not made secret because infringements of international law were contained in the order.

Q Was the Army order of the day published ?

A I would like to say that as far as I know the Army order of the day was published in the Army newspaper after the offensive had begun.

Q Who signed those orders ?

A The tactical order was signed by Dietrich either on 6th or 8th December. It consisted of approximately 30 typewritten pages and had beyond tactical instructions, instructions pertaining to communications, use of Engineer troops, commitments of Artillery, traffic regulations, and as further instructions, the so-called special order pertaining to supplies. I signed this special order pertinent to supplies; that was customary or rather prescribed in the German Army. The Army order of the day was sketched out by me personally on the 8th or 10th of December. On this day it was signed by the Commander in Chief Dietrich.

Q Where ?

A In the C.P. at Quadrath. I had finished all the orders with the exception of the supplementary order pertaining to the billeting of troops and separation of the sector boundaries by the 11th December because at that time our C.P. was moved to Muenstereifel and on the 13th we had to take over a Sector of the front which was approximately 70 kilometers wide, besides, all these orders had to be finished on that day because it was first intended to begin the offensive on 12th or 13th December. The Army order of the day was signed by Sepp Dietrich and that is the only written document that (Kraemer-direct)

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was ever sent out with the signature of Sepp Dietrich on it. The tactical order which I mentioned was only sent to the three Corps, and the wording for each Corps was the same with the exception of the tactical mission which was a different one for each Corps.

Q To avoid any misunderstanding - do I understand you correctly that the Army order of the day was sent out with the first and second name of Sepp Dietrich, while the tactical order was only signed by his last name, Dietrich ?

A If I may repeat. The tactical order had the signature of Dietrich, Commander in Chief of the 6th Panzer Army. The Army order of the day had the signature of Sepp Dietrich, Commander in Chief of the 6th Panzer Army. 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.

Q Whose responsibility was the correctness of the orders ?

A According to German military custom, the responsibility for orders was with the Unit commander.

Q Is the Chief of Staff considered a Unit Commander ?

A The Chief of the General Staff is not a Unit Commander nor are general staff officers considered as unit commanders.

Q Did the Chief of General Staff have any direct power of command or was his power of command derived ?

A As I previously mentioned, as it has been laid down in the Manual for Chief of Staff Officers, the Chief of General Staff can issue orders during the temporary absence of the Unit Commander, but he must get permission for this later - he must subsequently get permission for this. The Chief of the General Staff does not have the power to inflict disciplinary punishment with the exception of disciplinary power over members of the direct Army Staff.

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Q What was the designation of the Army commander in his  
18. S. 4 capacity as plenipotentiary in disciplinary matters ?

A A Commanding Officer in contrast to the Chief of General Staff is the judge. The Unit Commander is always the judge and consequently he has the influence of matters of law - I mean jurisdiction; for example death sentences which are showed him for confirmation. In those cases in which he himself in his capacity as judge, he does not make them.

Q What attitude did the accused Dietrich in his capacity as judge, take toward mistreatment of prisoners of war and civilians ?

PROSECUTION(Capt SHUMACKER). If it please the court, at this time I want to know from the Defense if - whether or not the reputation or character of Dietrich is being put at issue in this case. If, not , I want to object to that question.

PRESIDENT: Objection sustained.

Q Do you know what attitude SS Courts-martial is towards the mistreatment or shooting of prisoners of war ?

A I know of no case in which members of the SS were being held responsible for the killing of prisoners of war, nor do I know of any case ever being tried. I do know, however, of persons in the Divisions who were tried because of looting of civilian property in occupied territory, or because of mistreatment of occupied civilians or because of theft in occupied territory and condemned to high penalty sometimes including the death penalty. These judgements or sentences of Division Commanders of which I know of about four or five were confirmed by Dietrich.

Q Did you have to put your orders before a higher commander for purposes of examination ?

A The tactical order which I have already mentioned was put before Army Group "B" before being sent out. It came back with the comment "O.K." or "Agreed to" or something but I cannot  
(Kraemer-direct)

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remember the exact words.

Q Did this order contain any instructions about advance detachments ?

A I request now permission to read the wording of the orders which I have reconstructed.

PROSECUTION:(Capt SHUMACKER) We object to this if the witness does not have the original order. If he wants to state the substance of it as well as he can remember it , I believe possibly he has the right to do so but not to read something he had written in the meantime.

LAW MEMBER: The witness may use whatever notes he has to refresh his memory and he certainly may even read it to refresh his memory, but he cannot testify that that is an exact copy of the order which he issued.

A (cont'd) No, that is the substance and approximate wording of the order which I wrote down at the time - -

LAW MEMBER: The court will take notice of that.

Q Continues.

A The tactical order contained a cypher about the advance detachments and this is approximately what it said:"As leaders of advance detachments, especially brave officers should be chosen and officers who are fully conscious of their responsibility. It is possible to keep these detachments small in size, but they must have at their disposal all weapons they may need. It is their primary job to first accost Hohen Venn under full exploitation of vehicles; without looking right or left and without paying any attention to flanking movements; immediate penetration of the Maas, and to take possession of crossings in the sector Luettich-Huy.The Corps will take care that sufficient effective combat personnel will follow the detachments. Larger localities should be by-passed. I request that Commanding Officers and Divisional Commanders pay (Kraemer-direct)

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special attention to the selection, composition, and instruction of these advance detachments. We have to reach the Maas in two days." I should like to point out of that map (indicating map on court-room wall) the approximate location of Hohen-Venn.

PRESIDENT\* The court will recess until 1030 hours.  
(Whereupon the Court recessed at 1000 hours)

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(Whereupon the Court reconvened at 1030 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the Court, let the record show that all the members of the Court are present, all the members of the Prosecution with the exception of Lieutenant Colonel Crawford and Captain Byrne, excused by verbal order of the Commanding General, are present, all the members of the Defense are present, all the defendants and the reporter are present.

DEFENSE: General Kraemer will resume the stand.

FRITZ KRAEMER, one of the accused, a witness in his own behalf resumed the stand and testified as follows through an interpreter.

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

DIRECT EXAMINATION

QUESTIONS BY DEFENSE (Dr. Rau)(cont'd)

Q Was there a paragraph about prisoners of war and loot put in your tactical order or any of its appendices?

A There was a paragraph about loot and prisoners in the tactical order. The wording of this paragraph was about as follows: There is special importance attached to the rapid collecting of booty and prisoners. For that purpose, corps will attach special units to fighting troops to follow them closely and all empty convoys will be used for this purpose. No booty is to be wasted and any booty which is to be collected is to be reported promptly and as to collecting points for prisoners, your attention is called to the special supply directive. This paragraph might also have contained the following:

CAPTAIN SHUMACKER: If it please the Court, we object to what the paragraph might have contained. It might have contained anything.

PRESIDENT: Objection sustained.

Q The General should state what he knows was the substance of the paragraph if he doesn't know the exact wording, but not what the order might have contained.

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CAPTAIN SHUMACKER: If the Court please, we object again to this answer. I think it begins: 'It is possible that the order contained so and so.'

PRESIDENT: The objection is sustained.

Q I will phrase my question like this: Are you quite sure or not quite sure about the phrase which you are about to quote?

A My memory is not quite sure.

CAPTAIN SHUMACKER: There is the same objection, if the Court please. I am sure the witness is again repeating 'It is possible that the order contained certain statements.'

DR. RAU: May it please the Court, I think the witness is merely trying to draw your attention to the fact that his memory is not quite complete in that matter.

CAPTAIN SHUMACKER: If the Court please, if the witness does not remember the facts about which he is trying to testify, I think it is improper for him to relate such facts.

LAW MEMBER: In order to cause no further delay the witness will testify what he remembers to the best of his ability and the Court will place such probative value upon it as it deems fit.

A If I tried to transpose myself back to this time then I consider it possible in this paragraph a phrase was worded concerning the relationship of armored units to same is as follows: 'The collecting of booty and collecting of prisoners is not one of the tasks of forward units.

Q Can you amplify the words 'collecting of prisoners'?

A Collecting of prisoners is regulated by the regulations of the German field army. In a sense it is the same as what a farmer considers bringing in his crops. The prisoners are directed back to so-called prisoner collecting points by the troops. These prisoner collecting points are located at the routes of advance. From there the prisoners are brought back to the prisoner collecting stations of the division or corps either by foot marches or means of vehicles. Interpreters and interrogating officers are to be found in these division and corps collecting stations. All the prisoners are transferred to the prisoner (Kraemer - Direct)

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collecting stations of Army. These were very well settled institutions; in our situation, in December 1944, so called 'dulogs', transient camps.

Q Did Army in turn receive any orders of the day?

A Army received orders of the day from Army Group and from the Commander in Chief of the western front.

Q Can you tell the Court briefly what the contents of these orders of the day were?

A In the order of the day from Army Group, a very strong reference was made to the bombing terror. The battle near Leuthen was mentioned and a saying from Frederick the Great was quoted. I can no longer remember the details of the order of the day of the Commanding General of the western front. Also, a large number of leaflets for the population and for the troops were dropped from airplanes, but I don't remember their contents.

Q Did your Army issue its order of the day upon orders from higher headquarters?

A No, it is common usage that division and Army and higher headquarters issue orders of the day prior to such action.

Q What was the purpose and the sense of that so-called order of the day?

A The order of the day was an appeal to the troops in which they were asked to work for the purpose without sparing themselves.

Q Did it contain any instructions or directions which were militarily binding?

A An order of the day does not contain any such thing and nothing of the sort was mentioned in this order of the day, either.

Q Can you tell us what the approximate contents of this appeal or order of the day was?

A The order of the day was comparatively short and its wording was approximately as follows: 'Soldiers of the Sixth Panzer Army, we are confronted with a big decision. The Fuehrer has placed us in an important position, supported by important artillery. We shall break through the enemy front and we will move forward across the Maas with air support.'

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Surprise is half of the fight. The armored divisions must proceed without regard being paid to threats from the flanks and must reach the Maas quickly. The enemy will then leave German territory and will be annihilated east of the Maas. The home front has supplied us with tanks, ammunition and more weapons, in spite of the bombing terror. They are looking out for us. We shall not disappoint them. I expect from each soldier that he will go to work without sparing himself. Our first goal is the Maas. Sepp Dietrich, General, Commander in Chief, Sixth Panzer Army." ✓

Q Where were these orders sent, General?

A These orders were distributed and cut for units as low as division by Army. It is possible that the outfit which prepared maps for the Army also made sufficient copies to supply the regiments, but I don't know that for sure.

Q Were these orders sent to any central points in the division?

A Not to my knowledge.

Q Were they sent to the Reich's war archives in Potsdam?

A All orders of the Army including the orders which were issued in preparation and those which were issued during the offensive were collected and kept in the journal of the Army. This journal was turned over to the Reich's archives in Potsdam. The keeper of that journal, Captain Wenz and another copy was sent to the Historical Research Department of the Waffen SS. I have heard that the Reich's archives with its whole library was transferred to America and I think it must be possible to find all orders there.

Q Can you repeat one more time just where and when you planned this order of the day?

A I am sure that this order of the day was completed by December 11th. It probably was only printed later due to the moving of the last manufacturing station from Quadrath to Munster-Eifel sometime after December 11th and it was sent down to the troops either on December 13th or 14th. The order was not secret, only the address was secret because that was only to be published in the beginning of the attack.

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Q Where did the accused Dietrich sign this order?

A Dietrich signed the order in the CoP. Quadrath.

Q That is, before December 11th or before December 12th?

A Certainly before December 12th.

Q When was the accused Dietrich in Bad Nauheim?

A The accused Dietrich was in Bad Nauheim on December 12th.

That is my birthday and I remember the date quite well.

Q What did the accused Dietrich tell you about Bad Nauheim?

A I talked to Dietrich about Bad Nauheim in the morning of the 11th. He told me quite briefly about the meeting. I was not interested, only to a very small extent in that meeting. I was only interested in finding out whether he had succeeded in postponing the start of the attack for a few more days. I knew that the troops could not possibly get through with their preparation for the attack before December 16th. From what Dietrich told me in Munster-Eifel on the 11th about this meeting and from what was said at the meeting at Bad Nauheim, nothing hardly was included in the order of the day, I am one hundred per cent sure of that.

Q Did Sepp Dietrich not tell you and order as he claimed at Schwabisch Hall what the contents of the order of the day were to be?

A Nothing was ordered and nothing was written because it was a finished plan. I might repeat the words which I used at Hall, 'Either Dietrich has turned insane or I should go into an asylum.' I used those words in Hall when I first found out that Dietrich had written something like that.

Q How can you explain the fact that the Twelfth Volksgrenadier Division of General Engel's did not receive this order?

A That was undoubtedly a tactical failure of the message center of the Twelfth Panzer Corps. From my own activities as a chief general staff officer in the panzer division I can imagine that the corps staff had a lot of work to do and that some headquarters did not receive some of these orders on time or not at all. Furthermore, in contrast to the tactical order, the order of the day was quite immaterial.

Q Did you state at Schwabisch Hall that it was said in that order (Kraemer - Direct)

of the day that no attention was to be paid to prisoners of war?

A I stated in Schwabisch Hall that which I stated previously might have been contained in the order of the day, namely that securing of booty and prisoners is not one of the tasks of the forward detachments. I did write that too, in spite of the dictation of the first lieutenant interrogator. The fourth and fifth page of my interrogation was changed as my interrogation which had been performed by a lieutenant colonel and was then rewritten. The Court will note that the page on which the words 'prisoners of war' appears is written much more closely than the other pages are.

Q Did that change occur after your being sworn?

A The change took place after my being sworn by the lieutenant colonel. On that particular page I was again sworn by the first lieutenant.

Q Did you also state in Schwabisch Hall that the terror which was to be expected within the civilian population was to be broken by force?

A I had a battle of words with the interrogating first lieutenant and I said that the word 'terror' could have been used in an Army order only in connection with bombing terror. We then agreed that under the word 'terror' of civilian population the general fighting attitude of a civilian population was to be understood.

Q Did you also say that fighting was at the present time according to the old SS spirit?

A I was taken into this interrogation very suddenly at that time and I admitted the possibility that it might have said that fighting was at the present time according to the old SS spirit, but now that I said them, to reconsider all these things, I am sure that that was not contained within the order. I also made that statement at Hall.

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Q Why were you unable to appeal to the "old SS spirit" in your Army?

A The Army did not consist only of SS men, but primarily of members of the army, and it would have looked peculiar if he would have said something about the "SS spirit".

Q Why did you permit yourself to write a statement which is evidently partially incorrect or at least inaccurate?

PROSECUTION (CAPT. SHUMACKER): If the Court please, we object to that question. I don't think the witness said his statement is inaccurate or incorrect. He only said that he put a sentence in his statement to the effect that something might have been said in the "Order of the Day", relative to fighting in the old SS spirit. Now he says that since, on more reflection, he should not have put that in his statement at the time. The implication of the question, however, asked by counsel is that he has made a completely inaccurate and incorrect statement.

DEFENSE (DR. RAU): May it please the Court, my reference to any partially inaccurate or wrong statements, as I put it, concerns only the testimony which the witness himself has made already.

PRESIDENT: The objection is overruled.

A I was supposed to write that no prisoners of war were to be taken. I did not do that, but rather I used the previously mentioned sentence. I was to continue to write, according to the dictation, that fighting was to be done ruthlessly. Instead, I wrote the truth, which was that every soldier was not to spare himself in action, and that sentence remained there too; it is to be found in the last page of my record.

Q Why did you rewrite page 4 and page 5?  
(Fritz Kraemer - Direct)

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sh-2

A I wrote this again because I concluded from this word, at first, that several more statements or dictated statements would follow this one. Furthermore, there was a clerk present who introduced himself to me as a German officer, so that I had to assume that I had a good witness for all conversations between me and the 1st Lieutenant.

Q What was the name of that officer?

A That was Untersturmfuehrer Kramm. I didn't know him, he just introduced himself to me.

Q Were you a prisoner of war in Schwaebisch Hall?

A I was a prisoner of war in Schwaebisch Hall.

Q When did you first find out about your being discharged from your status as a prisoner of war?

A On the first day of the court here.

Q Were you treated with consideration appropriate to your rank and age as a prisoner of war in Schwaebisch Hall?

PROSECUTION (CAPT. SHUMACKER): If the Court please, we object to that question. The witness may state how he was treated and let the Court conclude as to whether or not he was properly treated, as far as the conclusion of the witness.

DEFENSE (DR. RAU): I withdraw the question as it was expressed and will ask the witness how he was treated.

A I was interned into Schwaebisch Hall, shackled; I had to remain in one cell with handcuffs for about three hours. I also had to spend some time, between 20 to 24 hours in another so-called "punishment cell". I had to stand at attention for about two hours during my first interrogation. All my personal belongings were taken away from me in Schwaebisch Hall. Food was placed before me in the cell on the floor. I had to call "attention" when the door opened, had to pick up the food from (Kraemer - Direct)

the floor and call attention again.

Q Did you make any protest against this treatment?  
How did you do that and what was your success?

A I objected several times as to the handcuffing. I was told that it had been a mistake. I requested that I would not be forced to stand at attention because I had an injured knee. I was told, "You'll be standing at attention as long as we want you to". I objected to being locked up in the punishment cell; I was told that that would be changed later. I objected to my personal belongings being taken away from me; I was told, "This is different from a prisoner camp; you can consider, your Dietrich brought three suitcases along and these aren't here any more either".

In the course of my first interrogation, which I cannot really term an interrogation since it was conducted in a very unilateral manner by a 1st Lieutenant and by a civilian employee who appeared as a major, I was told, "You are a war criminal and will be treated as such. We won't put on a show of a trial for every German. We have enough ways and means to get rid of you in a quiet manner. If you are in the same boat with the Nazi, General Dietrich, then you will have to pay the consequences".

I emphasize that after the 10th I was treated very well, and that the interrogating 1st Lieutenant took care of me very well.

Q Did you receive any orders from Himmler during the offensive or after?

A The headquarters -- the Army received orders from Himmler's Headquarters, the Leadership Main Office orders of a personnel nature. With the exception of one order, no orders (Kraemer - Direct)

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were received by the Army from Himmler's offices. We received one tactical order on about the 20th. The leader of the Walloon SS Brigade, Lt. Col. Degrelle reported to us. He brought an order along and said he was coming from Himmler straight. The order was that this Walloon SS Brigade was to be used in the occupied Belgian territory. We did not put this order into effect. I prevented Degrelle from using his Brigade by telling him that we didn't have any vehicle fuel, and I then changed things by talking to the Army Group in such a manner that this Brigade was used in a quiet sector as reserves.

Q What was the reason for that?

A The Commanding Chief did not desire these Walloon SS men to come in contact with the Belgian population, because from our stay in Brussels we knew that the political antagonisms with Belgians were particularly strong.

Q Which Commanding Chief was that?

A Dietrich.

Q What was the accused Dietrich's general attitude to any of Himmler's orders?

PROSECUTION (CAPT. SHUMACKER): If the Court please, I believe that question is objectionable. How this witness is to know Dietrich's attitude with regard to Himmler's orders is not clear to the Prosecution. I believe he has to express an opinion in reply to that question.

DEFENSE (DR. RAU): This is a matter concerning the issuance of orders.

PROSECUTION (CAPT. SHUMACKER): If it concerns the issuance of orders, we withdraw the objection.

QUESTIONS BY DEFENSE (DR. RAU):

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A It happened frequently that the accused Dietrich did not put orders of Himmler into effect. Himmler often required reports as to the tactical situation and other things. Dietrich always refused to obey such orders, explaining as follows: "We are under the Army and not under Himmler".

Q Do you know what Dietrich's attitude was towards the occurrences on July 20, 1944?

PROSECUTION (CAPT. SHUMACKER): If the Court please, I don't know that any occurrence on July 20, 1944 is material in this case -- we object.

PRESIDENT: Objection sustained.

QUESTIONS BY DEFENSE (DR. RAU):

Q What can you tell us about the Army Group Skorzeny?

PROSECUTION (CAPT. SHUMACKER): If the Court please, unless the testimony of this witness as to operation of the Group Skorzeny has to do with the issues in this case, which is the killing of prisoners of war and allied civilians, and that is the only issue in this case, we object to this question as being immaterial and irrelevant.

PRESIDENT: Objection sustained.

QUESTIONS BY DEFENSE (DR. RAU):

Q What troops of the air corps participated in this offensive?

A There was one parachute division which was used with the 1st SS Panzer Corps, and there was furthermore one action of parachutists which was started under the command of Lt. Commander von der Heide, of the Air Corps. About three hundred parachutists were committed on the morning of the 13th, in the area Northeast of Eupen. They were under orders to cut off the (Kraemer - Direct)

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sh-6

road going towards Monschau and Malmedy.

Q Did you see any of these persons in action?

A I did not see any of them in action, but I had six or eight bodies buried which were found outside of Honsfeld on the 22nd.

Q In what condition did you find these bodies?

PROSECUTION (CAPT. SHUMACKER): If the Court please, we object to that line of questioning. I don't know what bodies the witness is talking about, and it is absolutely immaterial, unless he is talking about bodies that were brought out in the Prosecution's case in chief.

DEFENSE (DR. RAU): May it please the Court, I think it shows what the combat situation was and it will be explained later by further questions.

PROSECUTION (CAPT. SHUMACKER): If the Court please, the witness could talk about innumerable allied or German casualties, I guess, that he has seen in the course of his military career. Unless it is material in this case, we think that the question is objectionable.

DEFENSE (DR. RAU): It is material because these bodies had particular insignia, which permits conclusions to be drawn concerning the combat actions.

PROSECUTION (CAPT. SHUMACKER): If it please the Court, if the answer anticipated from this witness is competent, it is up to his counsel to lay the proper predicate for it. On this point, we respectfully insist that there is no relevancy insofar as the issues in this case whatsoever.

DEFENSE (DR. RAU): It is important, may it please the Court, to find out which troops were in Honsfeld, and it is with this determination that my questions are concerned.

(Kraemer - Direct)

LAW MEMBER: In that case, why not ask the question, "What insignia did they have", not, "What was the condition of the bodies", which is certainly irrelevant.

DEFENSE (DR. RAU): I apologize. I was distracted a minute ago, that is what started this.

QUESTIONS BY DEFENSE (DR. RAU):

Q What insignia did these troops wear?

A They still wore the uniform of the German parachute troops. This uniform is similar to the uniform of American airborne outfits.

Q What else did you notice?

A I concluded from the condition of the bodies that they had been dropped near Honsfeld by mistake.

PROSECUTION (CAPT. SHUMACKER): We object to that as calling for a conclusion of the witness. The only thing he knows is that he saw some bodies of some German airborne soldiers there on the 22nd of December.

PRESIDENT: The objection is sustained.

QUESTIONS BY DEFENSE (DR. RAU):

Q How long did the 6th Panzer Army remain in that sector?

A The 6th Panzer Army participated in the Ardenne offensive from the 16th of December until approximately the 20th of January.

Q Where were they sent then?

A The headquarters were, together with the 1st and 2nd Panzer Corps, moved by train beginning on the 18th of January. They were committed into action again in Hungary early in March.

Q How long was the 1st SS Corps in this sector?

A Corps and Divisions were changed very frequently during the action. The 1st SS Panzer Corps together with the 1st SS (Kraemer - Direct)

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Panzer Division and the 12th SS Panzer Division was relieved on the 28th of December, and they were sent to the 5th Panzer Army in the time between the 27th and 30th of December. Then the accused Dietrich and also General Model found out that the Ordnance Company of the 1st SS Panzer Division had remained behind near in the forest -- in other words, St. Vith. That was not known to the Army, and that occurred upon the instigation of the Division.

Q How many men were included there?

PRESIDENT: The Court, at this time, would like to know the purpose of this line of questioning.

DEFENSE (DR. RAU): To find out whether these persons might be participants to the acts alleged in the charges.

PRESIDENT: Proceed.

DR. RAU: (To Reporter) Will you please read the last question.

(Whereupon the last question by Defense was read by the reporter.)

QUESTIONS BY DEFENSE (DR. RAU):

A I don't know the number of men, I only know that 10 or 12 tanks were repaired there.

Q Did the 1st Panzer Division leave together with the 1st Panzer Corps as early as the 28th?

A With the exception of these units, the 1st Panzer Division was shipped out to the 5th Panzer Army on the 28th.

Q Had the 1st SS Division arrived in Russia, and if so, when?

A The 1st SS Panzer Division arrived from Russia in February 1944.

(Kraemer - Direct

Q Then?

A They were transferred to the area Northwest of Brussels for retraining.

CAPT. SHUMACKER: If the Court please, we object to that line of questioning. The charges concern alleged crimes between December 16, 1944 and January 13, 1945, and any activities beyond that period of time we claim is clearly irrelevant and immaterial to the issues in this case.

DR. RAU: If the Prosecution and the Court will decide that the combat in the Eastern Front is irrelevant to the combat in the Western Front, I will withdraw my question, but since the Prosecution has brought up the question of combat in the Eastern Front themselves, I feel necessitated to consider the subject.

CAPT. SCHUMACKER: The Court previously ruled that such evidence was immaterial and incompetent in this case, and as I understood it excluded it from the record.

LAW MEMBER: A few minutes ago the Court asked a question and wanted to know what the purpose of this line of questioning was, and the answer was to establish a basis and to determine what troops were present at the time in question. Now, so far, a time has not been fixed. It is clearly irrelevant to bring in any testimony with respect to the presence of the 1st Panzer Regiment or Division on the Russian Front. When the Prosecution raised that issue, the Court specifically determined that such testimony would be disregarded and would not be included in the deliberations of the Court. The time must be fixed as between the dates specified in the allegation.

DR. RAU: I will respectfully take note of this, and apologize to have taken up the time of the Court with this question.

(Kraemer - Direct)

Q Did you, in the course of your experience in the western front ever find that the first division ever committed any acts in violation of International Law?

A No. The Division was used, after the start of the invasion, near Caen and Abranches.

CAPT. SHUMACKER: If the Court please, we object again. We are interested in this case only in alleged atrocities between the 16th of December and the 13th of January. The witness' answer might not be responsive to the question--he might not have understood it, but certainly this Court is not interested in any crimes by this Division in the Normandy campaign. Objection is withdrawn, if the Court please.

Q What was your experience in the other front as to the treatment accorded PWs by the first SS Division.

LAW MEMBER: Now will you fix a time on that, again?

DR. RAU: The year of 1944.

LAW MEMBER: Between what dates?

DR. RAU: From the beginning of the invasion to the Ardennes offensive.

CAPT. SHUMACKER: We object to that.

DR. RAU: I might perhaps explain that this appears important to me because, as in the Yamashita case the question might come up whether the companies concerned properly performed their duties.

LAW MEMBER: So far as the Court is concerned, all the testimony with respect to the Prosecution in this case has been put into evidence. The Court is only concerned with the conduct of that division between the dates specified. Now if you wish to introduce it as a matter of general reputation of the division, you then open up yourself, of course, to cross examination with respect to all crimes ever committed by the division. The Court is making this statement primarily because we think you are not familiar with the Rules of Evidence and we want to make sure that you do know, so that you will

not penalize yourself in that respect.

DR. RAU: I thank you for your points. I withdraw the question.

QUESTIONS BY DEFENSE COUNSEL (Dr. RAU):

Q What did the Commander in Chief do just prior to the offensive?

A The Commander in Chief had meetings with the commanding generals and, as far as it was possible, also with the division commanders.

Q Did he also inspect the troops?

A He drove down to some headquarters daily in order to get in contact with the troops.

Q What did he do during the offensive?

A During the offensive the commander in Chief was always on the move to the various corps and if the air situation and road situation permitted it, also down to divisions.

Q When during this offensive did you first hear about shooting the prisoners of war?

A One of my staff officers heard the following from the radio Calais on the 20th or 21st. "American prisoners of war were shot by German troops near Malmedy during the offensive."

Q Did you hear anything about shooting civilians too? And, if so, what?

A I didn't hear anything.

Q What did you cause to be done at the hearing about the shooting of prisoners of war?

A The G-2 reported this radio report to me during one night. I talked to G-3, our Chief of Staff of the 67th Corps and the 1st SS Panzer Corps, after that transmitted this enemy radio report to them and ordered an investigation. I further sent the message through by radio that the Commander in Chief prohibits any actions contrary to International Law.

Q Did you require your subordinate units to report?

A A proper report was demanded by us. The 67th Corps reported down to the 24th, that no prisoners of war had been shot in the corps' sector. I remember the date, because on the 24th we changed our location of our C.P. from Monnagen to Mayerode. On about the 26th the 1st Panzer Division reported that no prisoners of war had been shot in their sector either. In the meantime I had talked to the Chief of the Armed Commander of the Army group about this radio report too and I had transmitted this report of the 64th corps and the 1st Panzer Division to him. On the 27th the Lt. Col. Skorzeny reported to me, because his unit was to be moved. Since Skorzeny was not under the 1st SS Panzer Corps for this particular action and since I did not know whether he had received this order for an investigation, I asked him personally whether any prisoners of war had been shot in his sector. He reported to me, "No".

Q Did you yourself observe any bodies of soldiers which permitted you to conclude that they were shot in violation of International Law? That is, as prisoners of war?

A I did not have time to visit the front, but I asked officers of Dietrich's and my staff who were left as liaison officers whether they had seen any such bodies. They always answered with a "no".

Q Didn't you see these parachutists?

A That was an exception. I had driven down there on that day because I wanted to have a look at the road conditions which were available for the shipping out of the 12th SS Panzer Division. Honsfeld was near my C.P.

Q What was the nationality of these soldiers?

A German soldiers.

Q How many prisoners did this army take during the offensive?

A I don't remember the number exactly any more, but there were between five and seven thousand.

Q What were the losses of the army during the offensive?

(Kraemer - direct)

A Combat was very severe; the army lost about fifty per cent of their men, killed, wounded or missing.

Q One more question. What is the position of adjutant in the German military system?

A The adjutant is the aid to the commanding officer. His duties are set down in the regulations for leadership of troops. He is responsible for administration and has no power of command, whatever. If, in the absence of a commanding officer, he does issue an order, then he has to sign it "By order of \_\_\_\_\_", and he has to talk the matter over with the commanding officer prior to issuing the order. The position of an adjutant in the troops was always described as follows during my training: He is responsible for the flags. That is, for the parade. He is responsible for the horses; that is, parties. And he is responsible for spiritual matters. That is, he is to be informed about family matters concerning the officer corps. He has no disciplinary authority, with the exception of the few persons who are directly attached to the headquarters staff.

Q Were you asked by the historical department of the American Army to continue your military research?

CAPT. SHUMACKER: If the court please, we object to that as being immaterial, what he was asked to do by the historical department hasn't anything to do with this case.

DR. RAU: Withdraw the question.

A I beg your pardon. There was one question I wasn't asked about. That is, what was contained in the tactical order, and I should like to explain this. And that is the matter concerning civilian prisoners of war. In the tactical order there was one paragraph the subject of which was the behaviour of the civilian population. I should like to mention this. The wording of this paragraph was approximately as follows: It is to be expected, particularly after the river Maas is crossed, that the so-called

Belgian resistance movement will again spring into action. Be particularly cautious toward road blocks, blown bridges and attacks on command posts. Many German evacuees who remain behind are left in the vicinity of Eupen and Malmedy, and these should be able to give valuable aids concerning road conditions to the troops. Active resistance of the civilian population is to be broken by all means. Special orders will be issued concerning the administration of captured territory.

Q Were similar orders issued by the opposing sides, and did you hear any such?

CAPT. SHUMACKER: If it please the court, the orders issued by the opposing sides are not in issue in this case. We object to it as incompetent and irrelevant.

PRESIDENT: Objection sustained.

DR. RAU: May it please the court, in order to establish the professional reputation of the witness, again I request the court to be permitted to reask the question as to whether he was asked by the historical department to continue his historical research.

CAPT. SHUMACKER: If the court please, do I understand defense counsel to indicate that his defense in this case is that this accused is wanted by the Historical Section, and that that should influence the judgment of this court? It is certainly immaterial as to who he is wanted by.

DR. RAU: But it is of a certain importance to the credibility of the witness.

LAW MEMBER: By the question, do you wish to open up the good character of the witness?

DR. RAU: Yes.

LAW MEMBER: Objection over ruled.

DR. RAU: Would you please answer the question?

A The Chief Defense Counsel on this case informed me in the first few days of this trial that the Historical Section of the Army

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would like me to continue my work.

CAPT. SHUMACKER: If the court please, we object to this. What Chief Defense Counsel informed his client is of no importance in this case, and is not competent testimony. If the accused wants to call Chief Defense Counsel as his witness, I presume he has a right to do so.

PRESIDENT: Objection sustained. Any other questions by the defense?

DEFENSE COUNSEL: Nothing further.

PRESIDENT: The court will recess until 1330 hours.

(Whereupon the court at 1300 hours took a recess.)

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AFTERNOON SESSION

(Whereupon the Court reconvened at 1330 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: If the Court please, let the record show that all the members of the Court, all the members of the Prosecution with the exception of Lieutenant Colonel Crawford, who is absent on business of the Prosecution, Captain Byrne, who has been excused by verbal orders of the Commanding General, all the members of the Defense, with the exception of Lieutenant Colonel Dwinell, Captain Narvid, Dr. Leer and Dr. Hertkorn, who are absent on business of the accused, all the defendants and the reporter are present.

(Whereupon Inge Chlosta, a German civilian, was duly sworn as interpreter.)

DEFENSE COUNSEL: The Defense recalls the accused General Kraemer.

CAPTAIN SHUMACKER: You mean the former General Kraemer. He has been discharged, as I understand.

DEFENSE COUNSEL: That is correct.

FRITZ KRAEMER, a witness called for the Defense, resumed the stand and testified further through an interpreter as follows:

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

DEFENSE COUNSEL: You may cross examine.

CROSS EXAMINATION

QUESTIONS BY PROSECUTION (CAPTAIN SHUMACKER):

Q You arrived at Schwaebisch Hall from a War Crimes enclosure at Zuffenhausen, did you not?

(Kraemer-Cross)

A In the beginning of March I came from Camp Altendorf to the Camp of Zuffenhausen.

Q That is not responsive to my question. I asked if you did not go to Schwaebisch Hall from a War Crimes enclosure at Zuffenhausen?

A Yes, from Zuffenhausen to Schwaebisch Hall on the 5th of April.

Q And the lager at Zuffenhausen was a War Crimes enclosure, was it not?

A I don't know that.

Q Were you impressed with the fact while you were there that it was a regular PW enclosure?

A I had the impression that it was a political camp.

Q You did not have the impression, however, that it was a regular prisoner of war enclosure, did you?

A No, it was no regular prisoner of war camp.

Q You testified on direct examination that you were shackled when you were brought to Schwaebisch Hall. Were you not handcuffed and not shackled?

A Yes, I had handcuffs. That is shackling.

Q You arrived at Schwaebisch Hall about noontime, did you not?

A At about twelve o'clock, yes.

Q And shortly after one o'clock you were seen and first interrogated by Lieutenant Perl?

A I didn't carry a watch on me but from the strokes of the clock outside I concluded that it was shortly after one-thirty.

Q And when Lieutenant Perl saw you with the handcuffs

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on, the handcuffs were immediately removed, were they not?

A Lieutenant Perl had the key in his pocket and he removed the handcuffs.

Q You were brought to Schwaebisch Hall from Zuffenhausen by a corporal, were you not?

A I was taken there by a corporal and an American 1st Lieutenant was present too.

MR. STRONG: Correction. He said a former 1st Lieutenant.

INTERPRETER CHLOSTA: I am sorry. A former American 1st Lieutenant.

QUESTIONS BY PROSECUTION (Captain Shumacker):

Q The former 1st Lieutenant that you mentioned is one of the survivors who previously testified in this case, Mr. Lary, is that not correct?

A Yes.

Q Do you remember the date you were first interrogated?

A I was first interrogated on the 5th of April.

Q And you wrote your statement on the 10th of April?

A Yes, I wrote that statement on the 10th. On the 9th I was interrogated again.

Q When you were first interrogated you were unable to remember that the 6th Panzer Army even issued an order of the day, is that not true?

A I remembered immediately that the army had issued an order of the day.

Q But you were unable to remember any of the contents. Is that correct?

(Kraemer-Cross)

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A I remembered immediately and said that the words which are contained in the interrogation reports of Dietrich, Peiper and Gruhle was never in the order of the day nor in any other order.

Q But you still do not know what was in the order of the day?

A I knew the meaning, or better, the substance of the order of the day.

Q You had from the 5th of April until the 10th of April to recall what was in the order of the day, prior to writing your statement, did you not?

A I had time to remember the facts but I neither had a piece of paper nor a pencil to write the notes.

Q And you could not recall the contents of that order until you got here to Dachau and were represented by counsel?

A I did not need counsel to remember the facts. When I had the first chance I immediately put down the contents on a piece of paper so that I might remember it during the course of further interrogation.

Q This statement that you wrote was dictated by Lieutenant Perl to this German officer Kramm, was it not?

A That is correct.

Q And then Kramm dictated it to you?

A He tried to dictate it to me but I did not write what he dictated.

Q In other words, you wrote what you wanted to write?

A No, that does not mean that.

(Kraemer-Cross)

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Q Why did you not?

A I wrote two sentences in a different way -- the meaning of the two sentences -- and I had told the interrogating 1st Lieutenant before that it was not contained in the order that way.

Q What two sentences in your statement are incorrect?

A I don't understand the question.

Q I understood you to say that you made two statements that were incorrect, that you told the interrogation Lieutenant about?

A Yes.

Q I want to know what two statements they were.

A The circumstances of one was the following. I do not remember the exact words. The substance of it was that no prisoners of war were to be taken during this offensive, particularly not by the forward detachment. I did not write this sentence in this manner but put down what I said this morning, the following: The taking of prisoners of war and the saving of material does not belong to the duties of the advance detachments.

Q You did not put in your statement that prisoners of war were not to be taken, did you?

A I wrote in my statement what I just said before. This page was changed afterwards.

Q You remember why the page was changed, do you not? Exactly why?

A Yes.

Q You will recall that in your oral interrogation you told Lieutenant Perl bluntly that prisoners of war were not to be taken by the advance units?

(Kraemer-Gross)

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A I never said this; just the opposite, I told him how many prisoners of war we took.

Q And you will recall that you later, when you went to write the statement, said that that meant that they were to be taken by the units following behind?

A I had to rewrite this page and at that time I had the impression -- the same impression that an outsider must have today when he reads this page now -- the impression that I was very uncertain in my statements. That was not correct but I put down what I believed to be correct.

Q I hand you Prosecution's exhibit in this case marked P-8. I ask you if you did not make this written statement in your own handwriting?

A Yes, it is in my own handwriting.

Q I am referring to a particular part of the statement reading as follows:

"In an oral interrogation afterwards I then stated that it read in this order that the leading elements would not bring in any prisoners of war. However, I state hereto in writing that it was the meaning of this paragraph of this order that the leading units must not delay themselves with the evacuation of prisoners of war because this was the task left to the units following up."

A That is correct.

Q When you first wrote that statement, you did not say anything about the prisoners being evacuated or taken to the rear by the units following up and that is the reason it was omitted from the first page number 5 that you wrote?

(Kraemer-Cross)

A The reason I changed afterwards was that I wanted to express myself clearly and I wanted to use the words of the order.

Q Are the words of the order contained on that page?

A No, they are not.

Q Well, I thought that was the reason you just stated you wanted to rewrite the page.

A I didn't want to rewrite it. I was asked to do so. The interrogating 1st Lieutenant came back and told me, "I have a very good memory and I know what I dictated to you. You wrote something different." Then it was dictated again, and then I was told, "You can put it down that way because if you don't do so I have to do it as a supplement to the statement." First of all, contrary to the dictation, I put down on page number 6, beginning from line number 9, the substance of what I was dictated, that the troops had to fight without sparing themselves. I did not write it that way but I wrote what was contained in our order as it reads on page number 6 now.

Q This morning on direct examination you gave what you now say were the contents of the 6th Army order of the day for this offensive in question.

A Yes.

Q On what date was your memory refreshed to such an extent that you remembered the contents of that order?

A My memory was refreshed to that extent already during my first interrogation, --

Q Just a minute, that is all I asked you. Was not the Lieutenant who interrogated you interested in the contents of that order of the day?

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A He had some interest in the contents of the order of the day or other orders but he only was interested in four or five points.

Q In your written statement you refer to some order that was issued by the 6th Army with reference to the treatment of civilians?

A I already stated that during the interrogations that in the army order, that is, a tactical order, there was also a paragraph about the treatment of civilians.

Q In your statement you said that the terror that was expected from the civilian population had to be broken by force.

A It was dictated to me that way.

Q Is it correct or incorrect?

A It is correct insofar as I said that there terror alone was never in any order of myself. The word was only used in connection with bombs, that is, bombing terror, and I made an agreement with the 1st Lieutenant, or better, he made an agreement with me to the effect that by terror of civilian population, the complete fighting attitude of the civilian population is to be understood.

Q When you wrote this statement Lieutenant Perl was not in the room except intermittently, was he?

A No.

Q Why did you not change that word "terror" to something else, like the other things that you did not like?

A Because I had some conversation with the interrogating 1st Lieutenant about the definition of this word and because I assumed that in the American language the word "terror" has such a meaning.

Q You knew what it meant in German. That is what you wrote your statement in, is it not?

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Q And you swore to this statement, did you not?

A Yes.

Q You had plenty of paper and a pen with which to write your statement, did you not?

A I had enough paper but I didn't have enough time. The 1st Lieutenant told me that he was in a big hurry and that I had to finish the statement. I would rather have written this statement myself since I already made many statements in the course of my life.

Q You wanted to write a statement comparable in length to your testimony this morning?

INTERPRETER CHLOSTA: I beg your pardon?

CAPTAIN SHUMACKER: I asked him if he preferred to write his statement comparable in length to his testimony this morning.

DEFENSE COUNSEL: I object to that type of cross examination.

PRESIDENT: Objection sustained. Are you objecting to that particular question?

DEFENSE COUNSEL: Yes, sir.

PRESIDENT: The objection is sustained.

QUESTIONS BY PROSECUTION (CAPTAIN SHUMACKER):

Q You say, Kraemer, that prior to the offensive, between the latter part of November and the 8th of December, many orders were issued to the troops?

A Yes, that is correct.

Q Among those orders, was one that prisoners of war were not to be mistreated even though they only gave their name, rank and serial number?

A Yes.

(Kraemer-Cross)

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Q Is that not elementary in the Germany army, that a prisoner of war is not to be mistreated even though he only gives his name, rank and serial number?

A That is elementary.

Q But still you had to issue an order to that effect?

A We didn't have to issue an order to that effect.

Q But you did anyway?

A Yes, an order was issued.

Q Was the situation so --

THE WITNESS: (Interrupting) I ask to be allowed to answer the first question. I did not have a chance to answer it.

CAPTAIN SHUMACKER: Go ahead, answer it.

THE WITNESS: I would like to have the question put again.

CAPTAIN SHUMACKER: Will the witness state what question it is that he wants to answer or which answer he wishes to explain?

THE WITNESS: I want to answer the question which was propounded to me before the question, "But you did anyway."

CAPTAIN SHUMACKER: To speed the proceedings, I believe you are referring to the question, "Why did you have to issue this order?"

THE WITNESS: I was just about to answer that.

CAPTAIN SHUMACKER: Make your answer.

THE WITNESS: Prior to every action, orders of that kind are issued. There was an order of the O.B. West which concerned itself with the method of fighting on the Western Front and therefore, we issued an order again about the treatment of prisoners of war. In this order it was pointed (Kraemer-Cross)

out that all the orders existed according to which the German soldier was to be instructed about the prisoners of war every four weeks.

QUESTIONS BY PROSECUTION (CAPTAIN SHUMACKER):

Q Do you mean to tell this Court, Kraemer, that all these accused sitting here before you got instructions every four weeks as to the treatment of prisoners of war as provided by the Geneva Convention?

A I don't want to tell the Court anything, but I should like to explain the existing regulations in the German Army concerning the treatment of prisoners of war.

CAPTAIN SHUMACKER: If the Court please, that is not responsive to my question. The other answer indicates that these troops got instructions every four weeks about prisoners of war. I want to know if this witness insists that these accused got instructions about prisoners of war every four weeks.

THE WITNESS: I don't know whether or not the accused were instructed in this manner. They were put under the command of the 1st SS Panzer Division. This division is responsible for the issuance of orders.

QUESTIONS BY PROSECUTION (CAPTAIN SHUMACKER):

Q This division that you mentioned was under the 6th Army, of which you were chief of staff at the time of this offensive?

A Yes, that's correct.

Q You say that your tactical, your field order issued by the 6th Army and signed by Dietrich was a secret order?

A Yes, it was a top secret order, top secret because the offensive which was to be expected should not be known.

(Kraemer-Cross)

CAPTAIN SHUMACKER: If the Court please, will the Court instruct the witness just to answer the questions? I did not ask the witness why it was so classified. If he will just answer the questions I can shorten the cross examination considerably. Of course, he has a right to explain his answer if the answer necessitates an explanation. I asked the witness if it was a top secret order.

PRESIDENT: Instruct the witness that he will confine his replies to a brief answer to the question unless explanation is necessary.

THE WITNESS: Yes.

QUESTIONS BY PROSECUTION (CAPTAIN SHUMACKER):

Q And the order of the day was secret or top secret insofar as the distribution was concerned, that is, units to which it was directed?

A No.

Q That is not correct?

A No, it is not correct.

Q Will you please explain what is correct with regard to the order of the day?

A The order of the day was in an envelope which had the words "top secret" until the hour when the offensive was started.

Q So that nothing inside of the envelope was secret at all?

A It was secret until the beginning of the offensive. When the offensive was started it was a public order.

Q In other words, the contents of the order of the day were not to be published to the troops until immediately before the offensive began?

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A Yes.

Q So that there was no reason for the troops to be instructed not to say anything about the contents of the order of the day in the event of capture?

A No.

Q Your investigation about the American prisoners of war who are alleged to have been shot at the crossroads south of Malmedy -- was that investigation made as the result of someone hearing about it on the radio or as the result of instructions of the high command in Berlin?

A On the basis of a radio report of the broadcasting station Calais I reported this matter to my superior officer -- that was Dietrich -- and at the same time started the investigation. On the next day the superior authority, the Army Group B submitted to us the same radio report and issued the same orders as we did before.

Q What kind of investigation was made, if you know?

A The division was ordered to start the investigation.

Q I did not ask you what the division was ordered to do. I asked you what type of investigation was made, if you know?

A I don't know that because the investigation was performed by the division.

Q Did the Army appoint any inspector generals or officers in the German army comparable to that department in the United States Army to make an independent investigation?

A Not that I knew of.

Q So that the only reports the army got were reports from those units that would be normally responsible for those

(Kraemer-Cross)

things committed if they had been committed?

A We had a report in writing of the division commander to the effect that no prisoners of war had been shot.

Q You had no reports from any unit or from any investigating officers other than from units or components of those units under your command --

A (Interrupting) Yes.

Q -- which themselves were participating in the offensive?

A Yes.

Q You say this order of the day from the army group referred to the bombing terror, is that correct?

A I did not understand that.

Q In your direct examination, did you not say that the 6th Army received an order of the day from army group referring to the bombing terror?

A (Answering in German language) --

Q (Interrupting) Just a minute. I just asked whether you testified about that on direct examination. I think you can answer that question Yes or No.

A Yes, I did.

Q Thank you. But you say that nothing with reference to the bombing terror was in the order of the day issued by the 6th Army?

A Yes.

Q Do you know how that subject was brought to the attention of the troops that it did not come from the 6th Panzer Army?

A Yes.

(Kraemer-Cross)

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Q How was it?

A The government of the Reich and the Reich's Propaganda Ministry made considerable announcements in newspapers and over the radio about the bombing terror.

Q And you conclude from that that the company officers in the 1st SS Panzer Regiment, with remarkable consistency, picked up that line and passed it on to their troops?

DR. RAU: I object to that question. The witness was asked for his opinion. That is not proper.

PRESIDENT: The objection is sustained.

QUESTIONS BY PROSECUTION (CAPTAIN SHUMACKER):

Q You testified that in the tactical order of the 6th Army there was a paragraph about prisoners of war?

A About the material that was taken and prisoners.

Q In substance, that paragraph stated that the advance units were not to evacuate prisoners of war to the rear?

A It might have been in there.

Q What do you mean, "it might have been"? Is that not what you testified to on direct examination?

A I said on direct examination that there was a possibility that the sentence, "The saving of material and the taking of prisoners of war does not belong to the duties of advance units" was contained in this order.

LAW MEMBER: Mr. Strong, if you don't mind, please do not correct the interpreter. If you have an objection to the translation, make it through the Chief Defense Counsel.

MR. STRONG: Yes, sir.

QUESTIONS BY PROSECUTION (CAPTAIN SHUMACKER):

Q Kraemer, I understand you and I am sure the Court

(Kraemer-Cross)

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wants to understand. Do you know whether or not there was anything in the field order about prisoners of war?

A If this sentence was contained in that paragraph, I am not sure of that. It supplements the special regulations for the supply of the troops. It said something about the collection points for prisoners of war.

THE WITNESS: Furthermore, I know with certainty that it said that the prisoners of war were to be shipped back with empty supply or truck convoys.

QUESTIONS BY PROSECUTION (CAPTAIN SHUMACKER):

Q You are sure that was in the tactical order?

A Yes.

Q If that order was being passed on to troops of a Panzer Company, do you know how they could possibly misconstrue those plain instructions?

A I don't know the exact words of the order which was issued by the 1st Panzer Regiment to its units. I don't know the words of the order which was given by the 1st Panzer Division to its units.

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Q Did not you and Dietrich, Chief of Staff and  
Commanding General of the 6th SS Panzer Army know of Feiper and his  
capabilities ?

Mr STRONG: That is not a correct translation.

(Whereupon the answer was read back to the court by the reporter)

A I saw Feiper twice prior to this offensive.

Q I did not ask you how many times you had seen him,  
I asked you if you knew him and knew his capabilities ?

A I knew him from the two times that I met him, and  
knew that he was a particularly able officer, and I read from his  
testimonies - his records.

Q Is there not quite a bit of difference between instr-  
uctions for advance elements, not to evacuate prisoners of war, and  
instructions not to take prisoners of war ?

A That is the same.

Q You cannot evacuate prisoners of war until you capture  
them can you ?

A No, that is right too.

Q You still say evacuating them means the same thing as  
'taking' them ?

A To take prisoners of war and evacuate prisoners of  
war - that is one thing in which both actions are included.

Q You testified on direct examination about the component  
elements of the 6th Panzer Army ?

A Yes.

Q Was either the 112th or the 12th Volksgrenadier Divis-  
ion part of the 6th Panzer Army at any time during the Eifel offensive ?

A Yes.

Q Both of them ?

A No, the 12th Volksgrenadier Division.

Q During what period of the offensive ?

(Kraemer- cross)

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A It was put under command on 13 December 1944.

Q You said on direct examination that the 1st Panzer Regiment was withdrawn from the offensive about 28 December 1944 if I recall correctly?

A That is not correct, I did not say it this way.

Q What did you say then?

A I stated that the 1st SS Panzer Division was transferred to the 5th SS Panzer Army on the 27th or 28th December in the beginning of January then I found out that the damaged 1st SS Panzer Regiment did not go to the 5th SS Panzer Army, but the Panzers had to remain behind in the woods east of St Vith. I further told you that the 1st SS Panzer Army were transferred to Hungary on 20 January 1945.

Q Therefore the 1st SS Panzer Regiment was still in Belgium up to and including 13th January 1945 is that not correct?

A Yes that is correct.

DEFENSE: Dr RAU will now interrogate the witness on behalf of the Defense.

DEFENSE(Mr STRONG). With the permission of the Court, might I ask one question in re-direct in spite of the fact that it should be conducted by Dr Rau. There seems to be a question of translation in the previous cross-examination.

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE:(Mr STRONG)

Q Captain Shumacker asked you the following question in cross examination - "Is there any difference between evacuating prisoners of war to the rear or, not to take any prisoners?" and you answered that you considered both things to be the same because not to take prisoners included both these things.

DEFENSE:(Mr STRONG) I would like to rephrase this question.

Q I want to ask you whether there is any difference (Kraemer- redirect)

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between evacuating prisoners to the rear and not to bring in any prisoners ?

A No, there is no difference.

RECROSS EXAMINATION

QUESTIONS BY PROSECUTION:(Capt SHUMACKER)

Q You stated, Kraemer, on direct examination that the 6th Army took 5000 to 7000 prisoners during this offensive ---

A Yes.

Q Now do you know how many prisoners of war were killed by units in the 6th Panzer Army during the offensive ?

A No.

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE:(Dr RAU)

Q When you received the official reports of the units under your command upon inquiring whether or not prisoners of war had been shot, did you have to believe those official reports or was it investigated ?

PROSECUTION:(Capt SHUMACKER) We object to that if the court please.

PRESIDENT: Objection sustained.

Q In the offensive did you have any possibility of performing a further investigation after the one you did ?

A We had to believe the reports of our subordinate authorities as well as tactical reports. If a Division reports that it is occupying a certain locality, it is not further investigated. We were involved in the most severe fight - the exact location was not known to us . This radio report given by the enemy Broadcasting Station Calais could have been propaganda. The Superior authority from Group "B" was of this opinion too.

Q From the Regiment of Peiper did only the ordnance Company or the whole regiment remain behind ?

A No, the entire regiment was arranged in the forest -  
(Kraemer-redirect)

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remained in the forest east of St Vith. This regiment - this division had sent along from the 5th Panzer Pioneer Army one Panzer Battalion, Regimental units for instruction, an Armored Pioneer Company, and probably also parts of the single Company. East of St Vith were parts of the Regimental staff, parts of the Stabs Company, and those parts of one Panzer Battalion that could not be committed any more. Furthermore, this Ordnance Company which had been in this forest - - -

DEFENSE: (Mr STRONG). The witness stated before that all the units listed were sent to the 5th Panzer Army.

PROSECUTION: That is correct.

PROSECUTION: No further questions.

DEFENSE: No further questions.

PRESIDENT: There appear to be no further questions. The witness is excused.

(Whereupon the witness was excused and resumed his seat in the dock in the court-room.)

DEFENSE: The Defense calls as its next witness Walter Staudinger.

General WALTER STAUDINGER, a witness for the Defense was duly sworn, took the stand and testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE: (Mr STRONG)

Q Will you please be good enough to give us your full name ?

A Walter Staudinger.

Q What is your present rank in the German army ?

A Lieutenant General.

Q Are you a prisoner of war ?

A Yes

Q Where are you presently held in custody ?

A Here.

(Staudinger-direct)

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Q You mean in Dachau ?

A Yes in Dachau.

Q When were you promoted to your present rank of Lieutenant General ?

A In November 1944.

Q When did you join the 6th Panzer Army and in what capacity ?

A On 16th to 17th December 1944 I came to the 6th Panzer Army as high artillery commander.

Q When you say as high artillery commander, you mean as advisor to the Commander in chief - - ?

PROSECUTION: We object to that question - it is leading.

PRESIDENT: Objection sustained.

Q Will you explain in detail your position with the 6th SS Panzer Army ?

A I had the same position as any other high artillery commander in any other army. Each officer in charge and each army has an artillery commander whose task it is to talk over with the chief in charge about all those things which concern commitment of artillery and bombardment.

PROSECUTION: There is a correction there isn't there in the translation - it should be commanding general and chief of staff.

DEFENSE: Right.

QUESTIONS BY DEFENSE: (Mr STRONG)

Q How long have you known the accused Kraemer ?

A Since August 1943

Q Will you please tell the court how you happen to know him and how your association with him was ?

A Kraemer was in August 1944 Chief of Staff of the 1st SS Panzer Corps. At this time it was my task to train units of the 1st Panzer Corps in artillery, and to activate it.

Q Where did you meet Kraemer and how did you meet him ?

A I first met Kraemer in Berlin. We were at a conference and (Staudinger-direct)

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and then again in October 1943 in Meran and there I had matters to discuss with him because he was Chief of Staff and I was commander of Artillery. I was in Belgium with him and also in the Ardennes and in Hungary.

Q And you say that you knew General Kraemer pretty well ?

A Yes

Q Have you ever seen, prior to the so-called Eifel offensive, any orders which were issued by Kraemer ?

A Before the Eifel offensive, Yes, in Normandy.

Q How many orders ?

PROSECUTION:(Capt SHUMACKER) We object to this line of questioning regarding any orders issued in the Normandy campaign. It is immaterial to the issues in this case.

DEFENSE:(Mr STRONG) If it please the court, we should have mentioned that this witness is called as a character witness for the accused Kraemer and in this connection believe that the questions are bringing out the previous attitude and soldierly behavior of the General Kraemer which would be relevant.

PROSECUTION(Capt SHUMACKER). If the court please, this is not the way of proving character.

PRESIDENT: Objection sustained.

QUESTIONS BY DEFENSE:(Mr STRONG)

Q Will you tell us what the reputation of Kraemer was in military circles ?

PROSECUTION:(Capt SHUMACKER). If the court please we object because it is not stated in the first place if he knew what the reputation was.

DEFENSE:(Mr STRONG) If the court please, the witness stated that he knew Kraemer well.

LAW MEMBER: Mr Strong, the proper way of asking a witness with respect to the character of a witness is firstly "does he know (Staudinger-direct)

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the reputation " - and what it is - just two questions that is all that is necessary.

QUESTIONS BY DEFENSE:(Mr STRONG) Cont'd.

Q I now ask you, do you know Kraemer's reputation ?

A Yes.

Q I now ask you what is his reputation ?

A A very good one.

Q Are you able to give us any explanation for this last statement which you made ?

A Kraemer had an excellent reputation as chief of staff officer. He was very diligent, very able, very correct and very severe with his staff. He had also a good reputation with the troops and had a very good manner to the requests and requirements which he had from his men.

Q Do you know of any instance of your own knowledge in which Kraemer issued orders which were not correct and objectionable ?

A No.

CROSSEXAMINATION

QUESTIONS BY PROSECUTION(Capt SHUMACKER)

Q Your artillery position in this offensive would be a very important mission wouldn't it ?

A I was Artillery Adviser but I had no power of command over any troops.

Q Then you don't know what orders were issued insofar as the morale of the troops was concerned, or the methods of fighting ?

DEFENSE:(Mr STRONG). We object to that, if it please the court. We stated that we called this witness merely as a character witness as to the character of Kraemer.

PROSECUTION:(Capt SHUMACKER) All the witness was asked was about orders issued through or by General Kraemer.

DEFENSE:(Mr STRONG). The witness was only asked about orders prior to the offensive.

PROSECUTION:(Capt SHUMACKER). That is what I am talking (Staudinger-cross)

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about - orders issued prior to the offensive.

PRESIDENT: Objection over-ruled

A From his headquarters I only arrived after the beginning of the offensive and I did not read those orders because they were not there.

Q Weren't you in the SS ?

A I was in the SS, I was ordered and later transferred. I was formerly a police official.

Q And when did you first go to the SS ?

A In September until December 1939 I was ordered to the Artillery School in Jutobach near Berlin as Police official and I was there a quarter of a year with the Artillery training regiment and from there of course there was a shortage of artillerymen and then I was ordered to the Waffen SS and later transferred in 1941 at a time when all Police officials who were also troop officers were called.

Q You were in the regular German army during the world war ?

A I was with the regular German army throughout the whole war.

Q Were you ever in the Alledemaine SS ?

A No.

Q You were in the Waffen SS in 1939 weren't you ?

A I was ordered in from 1929 until 1941 .

Q Was the Waffen SS officially recognized on January 1st 1940?

A I was ordered first to the artillery regiment and then came to the troops and those troops were called the Waffen SS .

Q I did not ask you what you called them, or when you were ordered, I asked you this question -- Was the Waffen SS officially recognized January 1st 1940 as such - as a component element to the German armed forces ?

A I cannot tell you that exactly because I am not very well informed about the activation of the Waffen SS.

Q You have never been in any other component of the German army since the first world war, have you ?

(Staudinger-cross)

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A Since the last World War, No.

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Q You were in the Waffen SS you say from 1939 until the capitulation in 1945, but still you are not well informed about it ?

A Yes

Q You say that Kraemer had a good reputation with his troops ?

A Yes.

Q What troops did he ever command ?

A Who Kraemer ?

Q Yes, Kraemer.'

A Kraemer was in Russia - I A - that is G-3 I believe with the 13th Panzer Division.

Q He was always a Staff Officer wasn't he ?

A I found out then, and also heard later that he was G-3 that is General Staff Officer.

Q What command did he ever have - what troops did he ever command that gave him this good reputation that you speak of ?

A He got that good reputation firstly as General Staff Officer and when I tried to find out why Kraemer was to be made a Chief of Staff of the 1st Panzer Korps, I was told because he had such a good reputation as a G-3 of the 13th Panzer Regiment in Russia.

Q General Kraemer did you ever talk with a single soldier in the German army - a single german soldier who had ever been commanded by General Kraemer ?

A With soldiers of the Waffen SS or soldiers of the Army ?

Q I mean with any soldier commanded by Kraemer ?

A With the General Staff Officer or Chief of Staff whom I had met in Allendorf.

DEFENSE:(Mr STRONG) He said "with Staff Officer or Company Commander whom he had met in Allendorf."

Q With whom else did you speak ?

A I most certainly talked about it with officers of the neighboring divisions. Without my asking the reputation of Kraemer, the officers themselves told me that they were under Kraemer and belonged (Staudinger-cross)

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to the Division. And then I remember about General McKenson in Russia that he was together with Kraemer as General Staff Officer and he was leader of some troops but I don't remember though where that was.

DEFENSE: (Mr STRONG). Error in translation- he said 'combat' troops.

A (continuing) and I listened to everything at that time and the General said that he was very satisfied with Kraemer.

Q Perhaps I did not make myself quite clear. Did you ever talk to an enlisted man in the German army or Waffen SS, who was commanded by General Kraemer and who gave him a good reputation?

A I never asked an enlisted man what reputation Kraemer had.

Q So you don't know what reputation he had among the troops do you ?

A If he had had a bad reputation it would certainly have become known.

Q I am talking about what you know, from people you have talked to ?

A I spoke to several officers and soldiers. I spoke to several people from soldiers- of soldiers from the Waffen SS as well as from the army if they thought well of Kraemer and I never had any reason to ask anyone about it.

PROSECUTION (Captain SHUMACHER). Nothing further.

PRESIDENT: I would like the Chief Defense Counsel, and the Chief of Prosecution as well as the interpreter to remain behind in the court room.

(Whereupon the Court reconvened at 1340 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 Lt. Col. Crawford and Mr. Elowitz, who are absent on business of the Prosecution, and Capt. Byrnes, who has been excused by the Commanding General, all members of the Defense with the exception of Col. Dwinel, Captain Narvid, Mr. Walters, Dr. Leer, Dr. Hertzorn, and Dr. Leiling, who are absent on business of the Defense, all of the defendants and the reporter are present.

DEFENSE COUNSEL: The defense recalls General Staudinger. You are reminded you are still under oath.

REDIRECT EXAMINATION:

QUESTIONS BY DEFENSE COUNSEL (Mr. Strong):

Q General Staudinger, you testified before that General Kraemer was connected with the 13th Panzer Division in Russia?

A Yes.

Q Will you tell us whether this was SS or Wehrmacht?

A That was a Wehrmacht. An army division.

Q Did you ever see any orders issued by Gen. Kraemer in connection with the so-called Eifel offensive?

A No.

Q You testified on Direct examination that you did see orders issued by Gen. Kraemer. To what orders do you refer?

A I am talking about the orders before the Eifel offensive, the ones issued in Normandy and after the Eifel offensive in Hungary and Austria.

Q General Staudinger, is it usual in the German army to discuss reputation of a general with privates?

CAPT. SHUMACKER: If the court please, we object to that

(Staudinger - redirect.)

as being immaterial, whether it is customary to discuss the reputation.

DEFENSE COUNSEL (Mr. Strong): If it please the Court, the Prosecution asked twice of this witness whether he ever talked with enlisted men about the reputation of the accused. For this reason I think the question is relevant.

CAPT. SHUMACKER: Withdraw the objection.

DEFENSE COUNSEL (Mr. Strong) Will you read the question back again, please?

(Whereupon the question was read by the reporter.)

A No.

DEFENSE COUNSEL (Mr. Strong): No further questions.

CAPT. SHUMACHER: No further questions.

PRESIDENT: Any questions by the Court? Apparently not.

The witness is excused.

(Whereupon the witness was excused and returned to his seat.)

DEFENSE COUNSEL: The Defense calls as its next witness Col. Elmer Warning. Mr. Strong, on behalf of the Defense, will conduct the direct examination. The Defense does not contemplate recalling this witness.

COL. ELMER WARNING, called as a witness for the Defense, was sworn and testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL (Mr. Strong):

Q Col. Warning, will you please give us your full name?

A Elmer Warning.

Q What is your military rank?

A Colonel.

Q Are you presently a prisoner of war?

A Yes.

(Col. Warning - direct)

Q Where are you held in custody?

A Here in Dachau.

Q Will you tell us very shortly your military career, please?

A Entered 1933 into the infantry regiment No. 5. I was officer in this regiment until 1940, the last period company chief. Then I went to a course of General Staff. Then I was in the 36th Division "Mot" motorized as I-B, G-4 in Russia. Then in Africa as the youngest general staff officer, the army first command of the German-Italian Panzer Army, later on in France as G-4. First with the 348th Division and then the 17th air corps ground division. Then chief of the 67th corps.

Q Were you ever a member of the Party, Col. Warning?

A From 1931 to 1933.

Q Why did you resign your party membership?

A Because I had different views in basic methods.

Q What position, Col. Warning, did you hold during the so-called Eifel offensive in the months of December 1944 and January 1945?

A I was chief of staff of the 67th corps.

Q Who was your commanding general?

A General Hitsfeld.

Q To which army did the 67th corps belong?

A In the first days of the offensive, to the 6th SS Panzer Army.

Q Col. Warning, do you mean 6th Panzer Army or 6th SS Panzer Army?

A 6th Panzer Army.

Q Who was commanding chief of the 6th Panzer Army?

A General Dietrich.

Q Did you ever discuss with the accused General Kraemer, orally or in writing, the Eifel offensive?

A Yes.

Q When and where?

(Col. Warning - direct]

A First between the 6th and 10th of December in a castle in the vicinity of Cologne, the name of which I do not remember. Later on in the C.P. of the Corps and also by means of orders, that is written.

Q What was discussed during the conversation with General Kraemer in this castle near Cologne?

A In this castle near Cologne at first I received General instructions and then we talked about the tactical commitments of the corps.

Q Was, at that time, anything said about prisoners of war or methods of fighting?

A No.

Q You remember, Col. Warning there were received certain, before the offensive started, orders of the army which had to do with prisoners of war.

A I remember twice receiving orders about prisoners of war and their treatment.

Q Will you tell us approximately when you received these orders, from whom they were, and what was in them?

A I received the orders from the army. This first order in question somewhere between the 6th and 10th of December. However I do not remember the date of the order. Since we were later on assigned to this army we received all orders later on, so it is possible that this order was dated at some time ahead of time-- some time before.

Q Do you remember what was in that order?

A In this order it said that the task of bringing in of prisoners of war was of great importance so that the army would get a first knowledge of what was opposing them. The lower echelon troops were not supposed to take up much time with that, they were not supposed to waste much time interrogating them, they were supposed to be brought to the collecting points of PWs very fast.

(Warning - direct)

The prisoners were only supposed to give their name, rank and serial number, according to the Geneva Convention. Mistreatment or holding back of PWs was prohibited. That is all I can remember from this order.

Q By whom were these orders signed?

A General Kraemer.

Q You remember having received an operational order subsequently thereto from the army?

A On the night from the 9th to 10th of December I got a hold of that operation order from the army.

Q Did this operation order which you have just mentioned say anything about prisoners or civilians?

A There was nothing about prisoners of war in this order. About civilians, it contained that, under certain circumstances, we would have to figure on an armed resistance of the civilian population, especially on the other side of the Maas. We would have to figure on bridges being blown up and roads being blocked, and if armed civilians were to take part in this fight such resistance was to be broken up energetically.

Q Did this order contain anything about using unusual methods of war which had not been used before?

A No.

Q You remember to have received the so-called supply order, the German I-B order, from army headquarters?

A Yes. At the same time; either it was attached to the operational order or we received it a short time later.

Q Will you tell us, as far as you can remember, what this order said about either prisoners of war or civilians?

A There was nothing in this order about civilians. In respect to prisoners of war, the PW collecting points were mentioned again and it referred again to this previous order about prisoners (Warning - direct)

of war, the date of which I do not remember, and it furthermore was ordered that the German advance units were not supposed to take up much time with the bringing in of prisoners of war or the collecting of booty. It was important to get—to secure prisoners of war first, and also booty, and for this purpose the corps were supposed to set up certain details with just this task.

Q By whom was this order signed?

A The operational order by Gen. Dietrich and the supply order General Kraemer.

Q You stated that you received these orders in the night from December 9 to December 10?

A Yes.

Q Did you have any opportunity, during the following days, to talk again with either Dietrich or Kraemer?

A Yes. We had continued telephone connections. Furthermore, General Dietrich, as well as General Kraemer, were at our C.P. frequently.

Q Did you at any time during this time receive any instructions about prisoners of war or civilians, or unusual methods of war which were not contained in the previously mentioned orders?

A No, not a single word.

Q Did you receive, in addition to the orders which we just discussed, any additional orders after December 10, 1944?

A Yes, a large number.

Q Was in any of these orders anything contained about prisoners or civilians, or unusual methods of war to be followed?

A No, nothing. It contained orders about tank destroyers and anti-aircraft, or combat engineers, or some similar unit. Artillery orders or signal orders.

(Warning - direct).

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Q Did you or your corps issue at any time any orders on the basis of the orders you received from the Army?

PROSECUTION: We object to that question. The issuance of orders by this corps has no bearing on the first division, first corps.

LAW MEMBER: Fix the time, Mr. Strong. Fix the time within a certain time. In other words, I think your question is proper if you fix the time.

MR. STRONG: Repeat the question, reporter.

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

Q Between December 6th and January 13th?

A We transmitted an order to the division from the corps based upon the orders of the Army, however, it went out between the 13th and 15th of December.

Q Did you repeat in this order the instructions about prisoners of war which were obtained in the supply and operational order?

A We ordered a corps collecting point — prisoner collecting point and we mentioned that the prisoners were supposed to be sent back without any long interrogations as far as possible.

Q Did you ever transmit to your divisions the above mentioned order of General Kraemer in which he spoke about the treatment of prisoners of war?

A Are you now talking about the order, the date of which I don't know, the one that was issued before the operational order?

Q Yes.

A Yes, it was transmitted not immediately but it was recut by the corps.

Q Do you remember a conference which took place at General Hitsfeld's command post on the 15th of December?

A On the 15th of December the chief of the Army Group Bertha was with us. That was General Krebs.

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Q Did you at any time discuss in any way the question of prisoners, civilians and methods of war to be used?

A I merely listened in on this conference. I was there from beginning to end and nothing was said about prisoners of war or civilians. General Krebs again emphasized that all the strength was to be combined in order to reach the ordered goals and otherwise only details were talked about.

Q Was there anything said about prisoners or civilians or unusual methods of war?

A No, not a word.

LAW MEMBER: You must wait until the question is translated even though you understand English.

Q Colonel Warning, do you remember receiving any orders in connection with this offensive?

A Yes, sir.

Q What was the character of these orders of the day? Were they binding military orders or were they proclamations of a propagandastic nature?

PROSECUTION: If the Court please, that is a leading question. It calls for a conclusion.

MR. STRONG: I will rephrase my question.

Q Did an order of the day contain binding military orders?

PROSECUTION: If the Court please, that is still leading and I still object.

PRESIDENT: The objection is sustained.

Q What is the character of an order of the day?

A The character of an order of the day is the military form of an appeal, of a proclamation if you so wish.

Q What is the military value of an order of the day?

A Nothing. Nothing at all.

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Q One last question, Colonel Warning. Do you know the expression 'rabatz,' r-a-b-a-t-z?

A Yes, I know it.

Q Would you explain to the Court what this word means?

A Under rabatz, you would generally understand the attentive misbehavior of soldiers, anything, for instance if some music is played in the evening in quarters, or anything that goes beyond the regular way.

Q Does rabatz mean having fun by killing people?

A I never heard that, no.

MR. STRONG: Your witness.

CROSS EXAMINATION

QUESTIONS BY PROSECUTION:

Q Colonel Warning, the 67th corps you were with, was that an Army corps or SS corps?

A An Army corps.

Q What were the elements, the units in this corps?

A On the day for the offensive we had two divisions and then on the day of the defensive only one division. That was the 326th division of General Kaschner.

Q Was that an Army division or an SS division?

A An Army division.

Q Now, as an Army corps, you didn't receive all the orders which the SS corps and divisions received from Army, did you?

MR. STRONG: I object to that question on the ground there is no evidence so far to show that any particular orders have been issued by the Army only to the SS units.

PROSECUTION: If the Court please, there is plenty of evidence to show there were orders issued and I am trying to find out who received these orders.

PRESIDENT: The objection is overruled.

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PROSECUTION: Will you repeat the question, reporter, please.

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

A I do not know of any order which would not have gone to us and also the SS corps.

Q Now, what was your mission on this particular offensive?

A I had to support my commanding general as chief of staff in the carrying out of the offensive at hand. The task of the corps at first was to take the small town of Mondschau on the German-Belgium border in order to later on advance on the road Eupen Mondschau.

Q You testified, I believe under direct examination that you were a Party member from 1931 to 1933?

A Yes.

Q That you became a member of the SS I believe in 1935?

A No, I never was.

Q You never have been a member of the SS?

A No.

Q Well, now, isn't it a fact that you couldn't be a Party member as long as you were in the Wehrmacht as an officer?

A Active officers could not be Party members, however, I got out before I became an officer.

Q You were an active officer, weren't you?

A Yes.

Q Since 1933?

A Since 1933, yes.

PROSECUTION: We have no further questions.

DEFENSE: Nothing further.

PRESIDENT: Any questions by the Court?

EXAMINATION BY COURT

QUESTIONS BY COLONEL WEYLAND:

Q On or about the 15th of December was there a conference held of subordinate commanders?

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A On the 15th of December the division commanders who were taking part in this offensive were at our C.P. as far as they were under us.

Q In connection with the conference that you attended, that you testified about a while ago?

A No, the conference with General Kraemer was before noon and the conference with the division commanders was toward evening.

QUESTIONS BY LAW MEMBER:

Q Did General Kraemer attend the Hitler conference at Bad Nauheim?

A I don't know.

PRESIDENT: Any other questions by the Court. There appear to be none. The witness is excused.

(Whereupon the witness was excused and withdrew.)

DEFENSE: The Defense calls as its next witness, Lieutenant Colonel George Maier. Mr. Strong will conduct the direct examination on behalf of the Defense and it is not contemplated recalling the witness.

Lieutenant Colonel GEORG MAIER, a witness for the Defense was sworn and testified through an interpreter as follows:

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

DIRECT EXAMINATION

QUESTIONS BY DEFENSE (Mr. Strong):

Q Lieutenant Colonel Maier, will you please give your full name?

A Maier, Georg.

Q What is your military rank?

A Lieutenant Colonel.

Q Are you a prisoner of war?

A Yes.

Q Where are you presently held in custody?

A At this time in Dachau, otherwise in Garmisch.

Q Will you please tell us your rank and duties during the so-called Eifel offensive.

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A During the Eifel offensive, I was lieutenant colonel and G-4 of the Sixth Panzer Army.

Q Will you explain shortly to us your duties in the German Army?

A As 1-A of the Sixth Army, it was my task to work on the leadership orders of the Sixth Army and to see to it that these orders were transmitted to the troops in a regular manner.

Q Who was your immediate superior?

A The chief of the Army, General Kraemer.

Q You say chief of the Army -- do you mean to say chief of staff?

A Yes.

Q Do you remember to have seen the order of the day of General Dietrich?

A Yes.

Q When did you see it and where?

A I saw this order for the first time on the 8th or 10th of December in the headquarters Quadraath.

Q Will you tell us briefly as far as you remember the contents of this order?

A It was said that this was a battle of decision, that strong rank units and peoples' grenadier division together with our panzer army were to be pooled together and strike against the enemy toward the mass, that strong air corps strengths and V-weapons would support us and that everything depended on every man to do his job and that there was only one parole for the Army, that was forward to the mass.

Q By who were these orders of the day signed?

A General Dietrich.

Q Did you see the order of the day with your own eyes?

A Yes.

Q How long was it, approximately?

A About ten to fifteen typewritten pages -- ten to fifteen typewritten lines, not pages.

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Q Ten to fifteen typewritten lines?

A Lines, yes.

Q Now I read to you, Lieutenant Colonel Maier, from Prosecution's Exhibit "P-6" which is a statement signed by General Dietrich on 22 March 1946, in which he says in connection with the above mentioned order of the day: 'In the order which I issued for the Sixth Panzer Army, I ordered that our troops have to be preceded by a wave of terror and fright and that no human inhibitions should be showed.' Did the order of the day which you saw contain these remarks?

A No.

Q Are you sure about it?

A I am sure about it.

Q Do you remember an order of the day issued by General Kraemer sometime prior to the offensive in connection with the treatment of prisoners of war?

A Yes.

Q Will you tell us what this order said?

A That there was a l-C order of the Army Group upon which the order was issued.

Q When you state the Army Group, do you mean the Army Group commanded by Field Marshal Model?

A Yes.

Q Will you tell us what was contained in the order which you prepared - which was prepared for the Sixth Panzer Army?

A In this order it was said that the prisoners of war were only to give their name, rank and serial number and should be sent to the rear as soon as possible and that it was not desired that the troops were to carry out interrogations of prisoners of war.

Q Did it say anything about the treatment accorded to prisoners of war?

A It is possible, but I could not repeat it.

Q By whom were these orders signed?

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A General Kraemer.

Q Do you remember the operational order of the Army which was issued shortly before the Eifel offensive started?

A Yes.

Q Did this operational order contain anything about prisoners of war or civilians?

A It contained that the determined resistance of the civilian population was expected.

Q And what were you supposed to do when you encountered that resistance?

A Break it immediately.

Q Did it say anything about prisoners of war?

A No.

Q Did it say anything about any unusual methods of warfare to be used?

A No.

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4:30

Q Did it say anything about prisoners of war?

A No.

Q Did it say anything about any unusual methods of warfare to be used?

A No.

Q Do you remember the so-called "Supply Order", in German called "1-B", an order issued by your Army?

A Yes.

Q By whom was this order signed?

A General Kraemer.

Q Did this Supply Order say anything about prisoners of war or civilians?

A The usual about prisoners of war.

Q What do you mean by "the usual"?

A That prisoners of war were to be brought to the Supply and Gasoline Distribution spots and were to be taken back from there with empty convoys. And I remember also that the booty details, which were especially activated for this purpose, were also supposed to take prisoners of war off the hands of the troops.

Q Do you remember whether your Army orders, before they were issued, had to be submitted to some particular superior authority for approval?

A Yes, they were submitted to the Army Group for approval.

Q Did this happen in this particular case too?

A Yes, that was such in the case of these orders.

Q And were your orders approved by the Army Group B, before you issued them?

A Yes.

Q Do you remember, Lt. Col. Maier, when approximately (Lt.Col.Georg Maier -Direct)

the Order of the Day, the Operational Order and Supply Order were ready?

A That must have been at least eight or ten days before the beginning of this operation.

Q When would you say the Order of the Day was signed by General Dietrich?

A I can't tell you the exact day, but I believe between the 8th and 10th of December.

Q When would you say the Operational Order and the Supply Order was signed by General Dietrich and General Kraemer respectively?

A That might have been between the 4th and 6th of December.

Q Are you able to state with any degree of certainty whether these orders were ready and signed prior to December 12, 1944?

A Yes, it must have been the case, because on the 12th of December the assembly for the operation was already in operation.

Q Do you know, as far as you know from your own experience, whether any of these orders experienced any changes after December 12, 1944?

A No, I do not know that.

DEFENSE (MR. STRONG): Your witness.

CROSS EXAMINATION

QUESTIONS BY PROSECUTION:

Q Are you a member of the SS?

A Yes.

Q How long have you been a member?

A I entered the Waffen SS in 1933.

Q Are you a member of the Allgemeine SS?

A Yes.

(Maier - Cross)

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sh-3

Q When did you enter the Allgemaine SS?

A In April 1932.

Q Party member?

A Yes.

Q When did you enter the Party?

A At the same time.

Q Just what are your duties as 1-A of the Army?

A As I already said, it was my task to work on the  
Leadership Orders of the Army.

Q Leadership Orders cover Operational Orders?

A Yes.

Q Cover Orders of the Day?

A No.

Q Now I understand that the Order of the Day was signed  
some time before the 12th. How do you know that it was signed  
before the 12th of December?

A Because it was written by my clerks and because I had  
submitted the sketches for signature.

Q Did you see this order signed?

A I saw it signed.

Q On what day?

A It must have been between the 8th and 10th of December.

Q Who signed it?

A General Dietrich.

Q Do you know whether there was another Order of the Day  
prepared subsequent to this one?

A Yes.

Q There was? What day was it prepared?

A Order of the Day of the Army Group and an Order of the  
Day of the Supreme Commander-West.

(Maier - Cross)

Q And when did General Dietrich prepare another Order of the Day for the Eifel Offensive?

A No, only one Order of the Day was issued.

Q How do you know that?

A If another Order of the Day had been issued, that would have become known to me with almost one hundred percent certainty.

Q Now, what signatures appear on the Order of the Day?

A There is only one signature on the Order of the Day, that of General Dietrich, and it is countersigned by General Kraemer with the letter "K".

Q How many Orders of the Day have you ever prepared?

A I, myself, never prepared an Order of the Day.

Q How many Orders of the Day have your clerks prepared?

DEFENSE:(MR. STRONG): I object, if it please the Court. There is no evidence whatsoever that this witness ever prepared an Order of the Day - covered by Direct.

LAW MEMBER: But the evidence is to the effect that his clerks prepared the Order of the Day. He testified to that on Direct examination.

PRESIDENT: Objection overruled.

PROSECUTION: (To Reporter) Will you read the last question please?

(Whereupon the reporter read the last question of the Prosecution.)

QUESTIONS BY PROSECUTION:

A My clerks do not prepare the Orders of the Day, they merely write them.

Q Who prepares the copy then that your clerks write the Order of the Day from?

A Maybe I should explain to you how an Order of the Day (Maier - Cross)

becomes published. I do not understand your question.

Q I am not interested in any explanations as to how they are published. Will you read my question back please (to the reporter)?

(Whereupon the reporter read the previous question by the Prosecution)

QUESTIONS BY PROSECUTION:

A Do you mean the sketch?

Q I mean who draws up the Order? Who says that, "We will go out and fight ruthlessly and recklessly"? Who prepares that copy in phrase, and forms those words and makes it into an Order?

DEFENSE: I object to the language used by the Prosecution.

LAW MEMBER: The second phrase is objectionable. You might ask him who prepares the wording or issues the wording.

PROSECUTION: I thought I said that once and he didn't seem to get that point.

LAW MEMBER: The second phrase suggests that....

PROSECUTION: I will withdraw that second phrase. Will you delete the second phrase and then read the question please, Miss Reporter?

LAW MEMBER: Just reframe your question.

QUESTIONS BY PROSECUTION:

Q Who prepares the wording of the Order of the Day?

A In this case it was prepared by the Chief of the General Staff, General Kraemer.

Q Now you say you were present when Dietrich signed the Order. Did he sign it Dietrich, or did he sign it Sepp Dietrich, or did he sign it General Dietrich?

(Maier - Cross)

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sh-6

DEFENSE (MR. STRONG): Objection, the witness testified before that he was not present when Dietrich signed the Order, but he saw the Order signed.

PROSECUTION: Well, if the Court please, I may be in error but I thought I asked the question if he saw the order signed and I think he answered "yes", the way I recall it. I will withdraw it and ask another question so we will get rid of the debate.

QUESTIONS BY PROSECUTION:

Q What signature appeared on the Order of the Day?

A Dietrich, SS General and Panzer General of the Waffen SS.

Q You are quite sure of that?

A That is the usual signature which is under every order. It never changed.

PROSECUTION: That is all, no further questions.

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE (MR. STRONG):

Q Lt. Col. Maier, did you ever see copies of the Order of the Day which were issued after the offensive started?

A No. In the first place, we made as many copies as were necessary.

Q Did you ever see any copy which in its text was different from the one signed by General Dietrich prior to December 12, 1944?

A No, never.

Q Do you remember whether General Dietrich, in signing this order, used only his last name, or whether he used his first name in connection with his last name, or how it was signed?

A Only Dietrich.

Q Did you have any particular training as General Staff

Officer?

A Yes, I was in the War Academy for three months.

DEFENSE (MR. STRONG): No further questions.

PROSECUTION: May I ask a few more questions.

RE-CROSS EXAMINATION

QUESTIONS BY PROSECUTION:

Q With reference to this Order of the Day which you say was signed prior to the 12th of December, if Dietrich himself said that it was signed subsequent to the 12th would that change your answer any?

A No.

Q Do you suppose it would be possible that Dietrich was referring to an Order of the Day that you did not see?

A No.

PROSECUTION: No further questions.

DEFENSE (MR. STRONG): No further questions.

DEFENSE: Nothing further.

PRESIDENT: Any questions by the Court? There appear to be none, the witness is excused.

(Whereupon the excused witness withdrew.)

PRESIDENT: The Court will adjourn until 0830 tomorrow morning.

(Whereupon at 1650 hours the Court recessed until the following morning.)

(Maier - Recross)

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19. S. 1

Camp Dachau

19 June 1946.

MORNING SESSION

(Whereupon the Court reconvened at 0830 hours.)

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

PROSECUTION. Let the record show that all members of the Court, all members of the Prosecution with the exception of Lt Col Crawford and Mr Elowitz who are absent on business of the Prosecution, also Capt Byrne who is excused VOGG: all members of the Defense are present with the exception of Dr Pfister who is absent on business of the Defense: all the Defendants and the Reporter are present.

DEFENSE: If the Court please, the Defense calls as its next witness General Heinz Guderian and Lt Col Dwinell will conduct the direct examination on behalf of the Defense. I would like to state that this witness was released from the Nurnburg trial in order to testify in this case and his immediate return is insisted upon. It is requested therefore, that this witness be excused upon completion of direct and cross-examination.

General HEINZ GUDERIAN, a witness for the Defense was duly sworn and testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE:(Lt Col DWINELL)

Q What is your name ?

A Heinz Guderian.

Q Are you a prisoner of war of the American armed forces ?

A Yes.

Q What rank in the German Army did you hold just before your capture. ?

A I was Colonel-General.

Q What was your assignment of duty just before you were captured ?

(Guderian-direct)

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A I was on furlough.

Q What was your assignment before you went on furlough ?

A I was assigned as Inspector General of the Panzer Troops and was given the job of supervising the job of the Chief of Staff of the Army.

Q Will you please give the court a brief outline of your military career in the German Army ?

A I was educated in the Prussian Corps Cadets in February 1907. I was inducted into the Army as an Officer Candidate. I participated in the first world war and was a 2nd Lt and as a Captain in the General Staff at the end of the war. After the war I was taken over into the 100,0000 men army and occupied various positions at the front in the General Staff and in the War Department. From 1930 to 1931 I was Commanding Officer of a Motorized Battalion and in the fall of 1931 I became Chief of Staff of the Inspector General of the motorized troops in the War Department and I was promoted to Colonel in this position, in the spring of 1933, April 1st. In the summer of 1934 and Fall of 1935 I was Chief of Staff of the Panzer troops in the Headquarters of the Panzer troops. On the 1st October 1935 I became Commanding Officer of the 2nd Panzer Division in Wertzberg. On 4th February 1939 I became Major General and Commanding Officer of the 16th Army Corps. In the fall of 1938 I became General of the motorized troops. When the war started I was appointed Commanding General of the 19th Panzer Korps. Towards the end of June I was appointed General of the Panzer Group 'Guderian' in France. Prior to the beginning of the Russian campaign I became commander of Panzer Group "2". This Panzer group became the 2nd Panzer Army in October 1942. Towards the end of 1943 I was called back to the front and transferred to the Officer' reserve Corps in the Army headquarters. In February 1943 I was appointed Inspector General of the Panzer Troops and after the attempted assassination of Hitler in 1944 I received the (Guderian-direct)

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additional job of supervising the tasks of the Chief of Staff of the O.K.H. high command of the army. In that capacity I was in charge of the supervision operations of units on the eastern front. I was furloughed from this position towards the end of March 1945.

Q Will you describe the duty of Inspector General of the German Army ?

PROSECUTION. If the court please, we object because this is immaterial and irrelevant in this case.

DEFENSE: (Lt Col DWINELL). This witness testified that he was an Inspector General in the German armed forces and I am only asking him to further explain what his duties were in that capacity.

PROSECUTION: I believe the Prosecution would bend over backwards to allow this witness to go ahead with the testimony concerning his army career. I don't believe this is at all material in this case.

DEFENSE: (Lt Col DWINELL) Tank warfare is a very important issue in this case. He has testified to his experience as tank warfare officer and further that he was Inspector General of tank and armored troops and I believe this is material to the issue.

PROSECUTION: If the court please, if it was the position of a defendant, because all these people who are alleged defendants were in tanks and were therefore allowed to kill prisoners of war, then we will concede to this question as being material, otherwise we cannot see any materiality at all in this case.

PRESIDENT: Objection sustained.

DEFENSE: No further questions.

PROSECUTION: No cross-examination.

PRESIDENT: There appear to be no further questions: the witness is excused.

(Whereupon the witness was excused and withdrew.)

DEFENSE: The Defense calls General Hermann Priess as a witness. Dr Wisland will conduct direct examination on behalf of the (Priess-direct)

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Defense. The Defense does not contemplate recalling this accused.

General HERMANN PRIESS, one of the accused was duly sworn and testified through an interpreter as follows:

DIRECT EXAMINATION:

QUESTIONS BY DEFENSE:(Dr WIELAND).

Q What is your name ?

A Hermann Priess.

Q When were you born ?

A 24 May 1901

Q Are you married or single ?

A I am married and have three children aged 8, 7, and 1 years old.

Q Describe your military career to us briefly will you ?

A I entered the so-called old army in 1919 and later signed up for 12 years with the 100,000 men army. During my last two years service I was drafted as squadron commander. In July 1931 I had to leave the service since my period of service had expired. Since I did not have a secure position at that time yet, I entered the Waffen SS which at that time was still known as the "Verfugeinstruppe". In 1934 then I was platoon leader for one year, and Company commander for three years and became battalion commander in early 1939. In that capacity I took part in the Polish campaign with Panzer Division "Kampf" which is an armored division. After the conclusion of the Polish campaign I was transferred together with my entire division as cadre for the artillery regiment of the 3rd SS Panzer Division which was then being organized. I was Battalion commander there too and in that capacity participated in the Western campaign in 1940. In August 1940 I became Regimental commander and I was in charge of the Regiment from the beginning of the Russian campaign until 1943. For every position that I held up to and including Regimental Commander I had to prove my capabilities for that position by attending the various schools - service schools.

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From April 1943 until July 1944 I was Commanding Officer of the 3rd SS Panzer Division. In July 1944 I was recalled and got the assignment to organize the 13th SS Panzer Army Corps in Breslau as Commanding General. This Corps consisted of Volksgrenadier Divisions and Staff, as well as a Corps of troops consisting of Army personnel. Even before the unit was organized in the beginning- 31st August 1944, the Headquarters staff was transferred - moved - towards the western front. I there took over a sector of the front near Metz in early September, and I was in charge of the sector until 16 November 1944. In November 1944 I was transferred to the 1st Panzer Korps as Commanding General. I took charge of the Korps on November 18th 1944 and I was in charge of this Corps until the end of the war and I surrendered on 8th May 1945.

Q You just testified that you were appointed Commanding General of the 1st SS Panzer Korps in November 1944, what was your job there ?

A After I took over the Korps I was preparing for the Ardennes offensive which started at once. I also attempted in the short time which was available to me to familiarize myself with the Commanding Officers and troops.

Q In connection with this task which you were assigned, where were you on 12 December 1944 ?

A I arrived in Bad Neuheim at about 1500 hours.

Q What occurred there ?

A The Fuehrer made a speech there .

Q Who was present at that speech ?

A The two Commanding Generals of the Army, about half of the Commanding Generals of the Korps and Divisional Commanders, that is Commanders of the troops which were ready for the Ardennes offensive. Also General Field Marshal Model, Von Runstedt, Keitel, and General Jodl.

Q I am particularly interested in who was present from the (Priess-direct)

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6th Army ?

19. S. 6

A The Commanding General, General Dietrich, Major General Engel, Commanding Officer of the 12th Volksgrenadier Division, Brigadier Moehnke, Commanding Officer of the 1st SS Panzer Division, Krauss, Commanding Officer of the 12th SS Panzer Division and myself.

(Priess-direct)

Q What was the material substance of the speech of Hitler?

A The speech lasted for about two or two and one-half hours. The Fuehrer first spoke for one hour about the start of the war and developments during the war. He then turned to the offensive to come and said he decided to hit back again and he therefore prepared an offensive. It is to break out of the area of the Eifel mountains and its goal is Entwerp. I want to split the two western allies. I want to cut the British troops in the north off from their main supply point of Antwerp and take that point away from them and, in connection with that, knock out these armies. The situation then existing will control further operations. I made the best and best spirited troops available for this operation. And also everything that the whole front was able to cover along the line, what happens, and so forth. That was done partly at the cost to other fronts. The majority of the newly organized Volksartillery corps will be used in your sector so that you will have strong artillery support and for the first time again the aircorps will be put to action and it will attack the enemy airposts during the very first days. However, I cannot keep it secret from you that Germany will not be able to make another such effort. For that reason the attack must succeed. I would remind you not to spare yourselves. That you educate your troops not to spare themselves and that you inoculate them with the spirit of the attack of 1940 again. After that the General Field Marshall von Rundstedt briefly assured the Fuehrer that he could rely on his army and that the army would do everything possible to make the attack succeed.

Q Was anything said about prisoners of war in the speech of Hitler?

A No.

Q Was anything said about civilians?

A No.

Q About the discarding of human inhibitions?

(Gen. Præss - direct)

A No.

Q Was anything said about proceeding with brutality--about the necessity of proceeding with brutality?

A No.

Q Was it, perhaps, said that a wave of terror must precede the troops?

A No.

Q You have mentioned that he said that the offensive was to be fought ruthlessly and with rigor. What was that concerned with exclusively?

A That only concerned the fact that we were not supposed to spare ourselves.

Q What did you do after this speech?

A I left Bad Nauheim at about 2400 hours, going to my headquarters in Herrig.

Q Did you then issue any instructions concerning your corps?

A Yes, in the nights between the 12th and 13th and 13th and 14th, the corps took its alert positions.

Q What happened then?

A At noon of the 14th of December--of the 16th--correction, of the 14th of December, 1944, I took over the front section assigned to me and simultaneously I took charge of three army divisions, the 277th Volksgrenadier Division, the 12th Volksgrenadier Division and the 3rd air-borne Division. Also two Volkartillery corps and two Volks mortar brigades of the army.

Q What else happened on the 14th of December, 1944?

A In the afternoon I was in the headquarters of the 6th Panzer Army. I was there introduced to Lt. Col. Skorzeny. I had already received orders from army that, by order of army group the combat group Vola, which is a code name for Skorzeny, would be used in this sector with a special assignment. I had further been instructed that the corps Skorzeny had traffic priority and that the wishes of Skorzeny were to be considered favorably. Skorzeny then told me at army head- (Priess - direct).

quarters that he would attach his troops in future to the armored spearheads <sup>in</sup> the main line of resistance, and that he was to put part of them within the marching units of the divisions. And since, due to lack of time it was hardly possible to push such an order through at that time, I told Skorzeny to be at my headquarters in Schmidtein in the afternoon of the 15th to get together with his officers; that I would be commanding the officers in question over there too and the attaching and inclusion of Skorzeny's troops among other units was to be discussed and settled right there.

Q This conversation on the 15th, was it also—were orders for the offensive issued there also?

A No; no tactical orders were issued at that time nor were any orders for the conduct of the action.

Q Who was present at that meeting?

A And such an issuance of orders to regimental commanders, furthermore, is not the task of the corps but rather of the divisions and it was performed also on the 14th of December. In that meeting the only question discussed was the technical one of inclusion and attachment of the groups of Skorzeny.

Q Who was present at that time?

A The commanding officers of forward units. The commanding officers of marching troops. The two divisional commanders and troops, my chief of staff, Col. Lehmann, my G-3 of the corps, Major Naas and myself.

Q About what time did that conversation take place?

A The meeting had been called at 1500 hours but since some of the participants arrived late we couldn't start before 1520, but I myself had only ten more minutes since I had to be present at a meeting of the Third Airborne division at 1530.

Q What was the subject of the conversation before you left?

A I first read the order of the day of Gen. Dietrich, which came in that same morning. Then I briefly pointed out what the various

tasks of the commanding officers were. After that I produced Lt. Col. Skorseny and his officers and ordered that the commanding officers would discuss and coordinate the attachment and inclusion of his troops. I then put my chief of staff, Col. Lehmann, in charge and drove off.

Q You just mentioned the order of the day of Dietrich; do you know the substance of this order?

A Yes.

Q What was the substance?

A The substance of the order was as follows: We are confronted with a great decision. The Fuehrer made everything necessary for the offensive available to us. We shall proceed across the Maas with strong artillery and air support. The essential point is that the armored divisions cross the Maas quickly in order to cut the enemy off east of the Maas and annihilate him. In spite of bombing terror the home front has provided you with new weapons. I expect every man to do his full duty ruthlessly. Our goal is the Maas.

Q Was anything said in this order of the day about prisoners of war or treatment of civilians?

A No.

Q About brutal measures?

A No.

Q Did you hand this order over to your commanding general or did you merely read it to him?

A I only read the order; it was sent to various divisions by the mail.

Q How long was that order?

A The order included not quite half a typewritten page.

Q Was that order of a military nature?

A No.

Q What was its nature?

A Its nature was only propaganda.

Q What explanations did you provide with that order of Dietrich?

A I did not give any explanations to the order of Dietrich and merely again pointed out what the task of the various commanders would be.

Q What did you say in that connection?

A I said: Tomorrow the offensive will start. It will probably--which will probably decide the war. Our first goal is the Maas. Our second one, Antwerp. The Fuehrer has made the best provision, all the new weapons and also the new gadget, available to us. We have two Volkartillery corps, which means strong artillery support, available to us and, for the first time, the air corps will reappear. It will attack enemy airports during the very first days so that we can count on air superiority for the first period. You, my commanding officers and particularly the commanding officers of the forward detachments, have a difficult but also a beautiful task. The total success or failure will more or less depend on your individual success or failure. For that reason I shall repeat to you the written order that the forward battalions will pull through toward the Maas without any regard for cover of the flanks or communications; that they will take hold of one or more bridges there and that they will stop there and hold out under all conditions until the mass of the divisions will arrive. The Fuehrer and the commanding general of the army expect you, from the greenest soldier to the oldest commander, that you will not spare yourselves, and do your best. I expect all of you to do your duty.

Q Did you then say anything about prisoners of war or civilians?

A No.

Q Did you say anything about terror or brutality?

A No.

Q Then on your part no such remarks were made?

A No.

(Press - direct)

Q Did you receive visitors on December 15?

A Yes, at noon on the 15th the commanding general, General Dietrich, visited me.

Q What was the reason for his visit?

A That was the usual visit of the commander in chief--which the commander in chief pays to his commanding general before an offensive starts.

Q Was anything said about prisoners of war or civilians at that occasion?

A No.

Q Did Dietrich make any remarks about Hitler's speech on the occasion of his visit?

A No.

Q Do you remember the tactical order, so-called operations order, of the 6th Army, dated 10 December 1944?

A Yes.

Q Who was it signed by?

A By Dietrich.

Q Can you give us the material substance of this operational order?

A That was the commonly used order of attack for an army, containing a large number of paragraphs. The first paragraph: Enemy situation. Second: Own situation. Third: Mission. Fourth: Position. And so on.

Q Was anything said in there about prisoners of war?

A There was nothing about prisoners of war in the attack at all. There was one paragraph in there about civilian population.

Q What was contained in that paragraph.

A The paragraph said in its substance--the area into which our offensive will lead us is inhabited by hostile population--by a population hostile to us. They will most probably take part in (Priess - direct)

the fight. All resistance from armed civilians is to be broken by all means.

Q Did the operational orders contain any appendices?

A Yes, several.

Q What was the contents in what interests us at this particular moment? Did any of these contain anything about prisoners of war?

A Yes, in the supply order.

Q What did it say in there.

A In the supply order--in the administrative order, the prisoners collecting stations were ordered established. Also the transportation of prisoners to the rear, that they were to be moved back with empty convoys and then there was something in there about booty. That particular details were to be established to collect booty, and so forth.

Q Do you remember your testimony in Schwabisch Hall on April 16, 1946?

A Yes.

Q When did you get to Schwabisch Hall?

A I was arrested in the Historical Department of the American Army on the 11th of April, 1946. On the 12th I was taken to the prison in Schwabisch Hall with handcuffs by a Lt. Colonel from the Prosecution and I was locked up in a dark cell until my interrogation on the 16th, upon arriving there.

Q What do you mean by a dark cell?

A The cell was so dark in day time when the window was open that the guard had to turn on the electric light whenever he wanted to see through the peep hole in the door what I was doing.

Q You say you remember the testimony which you gave on 16 April. What did you say in the connection which interests us here? Can you repeat this now, or shall I give it to you?

A I think I can repeat it.

Q Will you please repeat it?

A It says in the written statement, to the best of my recollection,

the following was contained in the speech of the Fuehrer and in the army order, that terror was to be broken by terror and furthermore the possibility is left open that it said in the order of the day that a wave of terror was to precede—a wave of fright was to precede the troops.

Q I will read this section which you have mentioned, to you. You have said here: "I do not remember that the two orders of the 6th Panzer army contained statements to the effect that a wave of fright and terror was to precede the troops. However, it is possible that such a statement was contained in the orders, but I do not remember this at the time." Why did you talk about possibilities there? Will you please explain it?

A When the statement was reduced to writing I was again asked, as I had several times before, "Didn't it say in the army orders that you were to proceed with inhumanity and cruelty? My answer: "No, that certainly was not in there." Then the next question: But didn't it say that a wave of fright and terror was to precede the troops? My answer: "No, that wasn't either." And the next question: "But you have to admit that there were terror occurred in there." Since that was my first interrogation and since the matter was—had occurred at one and one-half years before, I could not give the wording of the order of the day at once. I therefore said: The order of the day contained only the usual appeal. At the moment I can't give you the exact wording. Thereupon I was immediately told: "Well, then, you will have to admit that there is a possibility." And then it was dictated.

Q You then did not write your thoughts down after your own—after you considered them yourself, but rather upon being dictated?

A Yes. The statement was dictated to me.

Q What other matters were put before you by the interrogating officers?

(Priess - direct)

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A I was told the following several times during the interrogation, after I had consistently answered negatively to the questions whether the army order contained anything about a wave of fright and terror preceding the troops and about proceeding with inhumanity! In the first place, you can admit that you, as a commanding general, were forced to transmit the army orders. We, as soldiers, know that quite well. It is the same in an American Army too, when a corps commander must transmit the orders from the army. If he doesn't do that he will be shot. In the second place, can you explain to us the differences in the testimony? You are the only one who is testifying that it was not in the army order, while everybody else admits it. Do you realize what a bad impression that would be making about you, and, too, how bad a light you, yourself, are putting yourself?

(Priess - direct)

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Q Was there anything in your -- anything that you yourself told the transmitting officer that was not incorporated in the statement?

A Yes, several.

Q Can you enumerate those?

A Number 1: In the morning of December 16th during the oral interrogation, I answered as follows to a question, 'Didn't it say in the Army orders that no prisoners of war were to be taken,' that I as an old soldier would not have transmitted any such order, regardless of what will happen to me. In connection with the same question, on the contrary, Army and corps both ordered prisoner collecting points to be established and organized the moving of prisoners of war. This testimony was not reduced to writing. Point 2 in connection with the conversation at my C.P. at Schmidtheim on December 15th; I stated that I did not mention here prisoners of war or civilians either during a reading of the order of the day or during a conversation afterwards. That was not taken down either. Point 3: The following testimony on December 9, 1944, a maneuver was organized at the Twelfth Panzer Division upon my orders. The division commander was in charge. All commanding officers of division down to battalion commanders together with their adjutants participated. Also present were the commanding officer of the 1st SS Panzer Division, Brigadier General Mohrke together with his G-3, Lieutenant Colonel Geimsen, my chief of staff, Colonel Lehmann and myself. In course of this exercise, the question was asked by one of those present what the forward detachments were to do with any prisoners which they were not able to move back. I thereupon interrupted the exercise and clearly ordered that the prisoners were either to be simply left there or to be simply sent back to infantry regiments which would follow and pick them up and take them over. I pointed to this testimony again when the statement was reduced to writing. The permission to write it down was denied with the following words: 'We are not talking about the shooting of prisoners of war here at all. That was not ordered either. Furthermore, your instructions are entirely according to the spirit of the

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Geneva Convention and therefore unnecessary and unimportant. I should like to state here that at that time I did not know the reason for either my arrest or my interrogation.

Q Did the First SS Panzer Corps which you commanded take any prisoners during the first days of the Eifel offensive?

A Yes, until about the 23rd of December, about 2300 of them, who were also turned over to the collecting points established by Army.

Q Did you know that Colonel Peiper had formulated a regimental order for this offensive?

A Yes.

Q Did you see that regimental order?

A Yes.

Q When did you see it?

A Colonel Peiper had made a report of his experiences after the offensive was over by order of the Lieutenant General of the armored troops, Guderian. This regimental order of Peiper was attached to the report I read and it contained the paragraphs usually found in a regimental order. I remember that the paragraph about the organization of a march and the route of march was very long. There was nothing in there that was in any way different from ordinary regimental orders.

Q Was anything in there about prisoners of war, any abnormal directives concerning that?

A Nothing was in there about prisoners of war.

Q You said that you took charge of the First SS Panzer Corps only on the 18th of November 1944, is that correct?

A Yes.

Q Did you know the commanding officers of the panzer troops when you took over?

A No, I didn't know either the commanders or the troops.

Q Was anything made known to you when you took over your position concerning the unreliability of the troops and their observances of the directives of the Geneva Convention?

A No.

Q You have already mentioned that during the short time at your disposal you made an attempt to familiarize yourself with the commanding officers and troops, is that right?

A That's right.

Q Did your division commanders have orders to report any such incidents as for instance violations of the Geneva Convention to you promptly?

A Of course.

Q According to German principles, who was responsible for the behavior of the troops?

A The division commanding general as the man in charge of the training of the troops and also as court appointing authority. He was the highest ranking commander who in one person was in charge of the training, orientation and a legal system.

Q In that case, the corps commander was not a superior to the appointing authority?

A No, the corps had neither a court nor did it have a judge advocate.

Q Where were you during the Eifel offensive?

A Any particular day, or in general?

Q In general.

A I went down to divisions daily, but of course the situation made it impossible for me to be in every division every day.

Q How many divisions were there under you?

A I have already enumerated them: Five divisions, two Volk-artillery corps and two mortar brigades. Those were not only SS divisions, the regimental were Army troops and one or two SS divisions.

Q Approximately into how many battalions were these divisions divided up?

A Omitting quartermaster troops, about 115 to 120.

Q Did you know anything during the offensive about the incidents which are now under discussion?

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A Yes.

Q When did you find out about it and in what manner?

A About the 22nd of December 1944 corps had to transmit an order to the First Panzer Division from Army.

Q What was the contents of this order?

A In that order Army ordered an investigation and demanded a report as to whether prisoners of war had been shot in the area of Malmedy. This report was made a few days later but the division commander Brigadier General Mohrke reported to Army that his division had not shot any prisoners of war. One or two days after that I again talked with Brigadier General Mohrke. He orally repeated his written report to Army to me, besides this, corps did not make any further inquiries about this matter nor did we receive any further reports. The fact that similar incidents were supposed to have happened in all these other towns I have found out only from the charge sheet which was handed to me on the 22nd April 1946.

Q Did you take any action upon this report or read this order from Army and this report from division, that is, any action of your own?

A Yes.

Q What did you do?

A The first thing I did when this order from Army came thru was to ask my chief of staff do you know anything about this. I received the answer 'no'. I then called the division commander by telephone. He also reported to me that he knew nothing. I then ordered him by telephone that this investigation ordered by Army would be put into action very energetically and as soon as possible and as I have already said, I again talked to the divisional commander after the official report by him had been given by Army.

Q Was there anything else you could do?

A No, not in that situation.

Q What do you mean by that situation?

A That was a large scale offensive. The division was involved in

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most serious combat. The area which was concerned by this matter was the main line of resistance so that the legal investigation could not be performed at all at that time. Furthermore, Army had taken the matter over by themselves by ordering this investigation, so that I could not make any decisions as to any further measures myself.

Q Can you, in this connection make any further statements concerning the position of corps commander which you were or the corps itself?

A The commanding general was the person responsible for corps. The corps itself is only a tactical command headquarters according to the tactical subdivisions. Divisions are put under the individual. It does not have any divisions assigned to it permanently. In that manner, the following were under the First SS Panzer Corps until the 27th of December: In the Sixth Panzer Army there were three Army divisions, two Volkartillery corps and two Volksmortar brigades of the Army and two SS divisions. After January 1st, 1945 with the Fifth Panzer Army General Von Monteufel, four Wehrmacht divisions, four Army divisions, that is, and one SS division.

Q By that you mean to say that as far as the divisions under one general corps are concerned, there is a constant change?

A Yes.

Q How long was the First SS Panzer division under you during the Eifel offensive?

A The First SS Panzer division was under me until 27 December 1944. On the 28th it was moved towards the Fifth Panzer Army under General Von Monteufel, and it belonged to the corps group "Decker" until January 4th and after that it belonged to the 58th Panzer Corps.

Q Does that mean a change of the sector to that division?

A Yes, entirely. The division was the first committed in the northern sector of that bulge of attack and then with the Fifth Panzer Army in the southernmost sector, in the southwest near Bastogne.

DR. WIELAND: I am finished.

DEFENSE: You may cross.

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PROSECUTION: I suggest that the Court take a recess at  
this time before we start the cross.

PRESIDENT: The Court will recess until 10:30.

(Whereupon at 1000 hours the Court recessed.)

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(Whereupon Court reconvened at 1030 hours.)

PRESIDENT: Take seats. Court will come to order.

PROSECUTION: If the Court please, let the record show that all the members of the Court, all the members of the Prosecution, with the exception of Lieutenant Colonel Crawford, who is absent on business of the Prosecution, and Captain Byrne, who has been excused by verbal orders of the Commanding General, all the members of the Defense, with the exception of Lieutenant Colonel Dwinell, Dr. Pfister and Dr. Leer, who are absent on business of the Defense, all the defendants and the reporter are present.

DEFENSE COUNSEL: Counsel for the Defense recalls the accused, former General Hermann Priess.

HERMANN PRIESS, one of the accused, a witness called by the Defense, resumed the stand and testified further through an interpreter as follows:

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

CROSS EXAMINATION

QUESTIONS BY PROSECUTION (MR. ELOWITZ):

Q Priess, do you remember that in any part of the speech given by Hitler at Bad Nauheim, whether he used the word "terror"?

A Yes, that is the first part of his speech but I did not mention it heretofore because I was under the assumption that only matters concerning the offensive were of interest here.

Q I will read you now a portion of the statement you

(Priess-Cross)

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made at Schwaebisch Hall. Did you write at that time:

"Terror is to be met with terror. Any resistance is to be broken ruthlessly."?

A I wrote that and supplemented it as far as I remember.

Q Friess, this is the way you supplemented it, is it not?

"I interpreted the phrase of the Fuehrer referring to terror as meaning that the enemy air attacks on the German population should finally be avenged."

Is that not correct?

A I wrote that sentence. However, I did not formulate that sentence. The sense which I make out of that is somewhat different.

Q When you wrote this statement you were under oath, were you not?

A I was put under oath afterwards.

Q You were put under oath and swore to the truth of the statement as it was written, is that not correct?

A Yes.

Q Was the statement true at the time you wrote it?

A The sense in which I understood that sentence is true. Furthermore, I had no opportunity to read over the statement before being sworn.

Q Do you recall the time this statement was taken, Friess?

A Yes, in the afternoon of the 16th of April '46.

Q That is correct. Do you remember the morning of the 16th of April?

A Yes. In the morning of the 16th of April I was interrogated orally.

Q When the statement was dictated in the afternoon,

(Friess-Cross)

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do you recall that every sentence that was dictated was weighed carefully by you before being written down?

A That is not quite correct.

Q Do you recall making changes in several of the sentences that were dictated to you before you wrote them down?

A It is hard to make changes before they are written down. However, those changes were dictated to me in a large proportion, also supplements that were put in later on. As proof I mention the sentence which was read to me before where it says something like this: That I understood terror was met by terror as meaning that the German Air Corps was to fight back against the American Air Force. In this sentence I had to add the word "finally" as can be seen very clearly in the statement.

Q Then Priess, why did you add this sentence?

"I considered the speech of the Fuehrer as propaganda which preceded the offensive and did not conclude from it that the fighting methods on the Western Front should be changed."

A That is correct. That is what I just testified to.

Q Why did you consider it necessary to explain your interpretation of the Fuehrer's remarks concerning terror?

A I can emphasize again only that those were in my thoughts but that it was dictated to me. To my question at the beginning in which form I was to write the statement I was told that it would be dictated so nothing superfluous and unimportant would be included.

Q Was the last sentence I just read to you true?

A I would ask you to please repeat the sentence.

(Priess-Cross)

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Q "I considered the speech of the Fuehrer as propaganda which preceded the offensive and did not conclude from it that the fighting methods on the Western Front should be changed."

A That is right.

Q Friess, can you describe to the Court what methods of fighting the German armed forces employed other than fighting methods on the Western Front up to that time?

A Where?

Q That is your statement. That is your sentence. What did you mean by "the fighting methods on the Western Front should not be changed". Changed to what?

A During my interrogation it was often mentioned that the fighting methods would be changed against the Geneva Convention and I assume that the one who dictated when he dictated, meant that.

Q Did you have in mind that there were methods of fighting other than those experienced on the Western Front?

A The expression as I mentioned before does not derive from me. Furthermore, during the interrogation it was said, in contrast to the Eastern Front. I again emphasize that I did not use that expression.

Q But you wrote it.

A After it was dictated to me that way, yes.

Q Friess, I refer you to another part of your statement in which you mentioned the two orders that came from Army, order of the day and tactical order:

"I remember that these two orders said that we had to push through ruthlessly to the Maas. That every man had to give his best and terror had to be met by terror."

A The term "terror is to be broken by terror" I

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already explained how that was made up. I furthermore mentioned in my testimony that the forward detachments were supposed to break through to the Maas without regard to flanks and communications.

Q You still have not answered my question, Priess. Was that sentence correct?

A With the exception of "terror broken by terror", yes.

Q Then you continue:

"I interpreted those remarks concerning ruthlessness, use of terror, etc. as propaganda in the same manner as I did the speech of the Fuehrer in Bad Nauheim and I did not believe that through that there would be any irregularity in fighting methods."

A I can only again emphasize that all of these sentences were not my thoughts but were dictated to me. The sentence, "terror would be broken with terror" presents a false picture in the statement because it misses the fact that it was said in connection with the air terror.

Q There was nothing said in connection with the air terror in the one order of the day and the other order, the operation order that came from the army headquarters, is that not correct?

A In the order of the day; in the operational order, no.

Q Then you continue:

"I also assumed that my division commanders understood and interpreted those remarks as I did."

A Yes, because when I said that this condition was understood only one way, I was told that I could not say what others understood in that.

Q Is that not true? Were those remarks not capable of more than one interpretation?

(Priess-Cross)

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A That could be perhaps, but these matters in this case could not possibly be understood otherwise.

Q You held a meeting on the 15th as you testified, of commanders of all advance elements. Is that correct?

A Of the commanders who were concerned with the detachment of the troops of Skorzeny.

Q Were there no other commanders of other advance elements present?

A No.

Q Do you know a commander of the 1st Reconnaissance Battalion of the 1st Division was present?

A Yes, he was there.

Q He was not with Skorzeny's unit, was he?

A He was in charge of a large group so he had to be instructed about the changes in the order of march.

Q Now, at this meeting you also clarified the supply order concerning the method of collecting prisoners of war and returning them to the rear?

A No.

Q You stated you gave certain testimony because it was told to you that no responsibility was attached to you as corps commander, is that correct?

A I did not say the first part, only the second part.

Q You stated you were in the Waffen SS since 1934. Is that correct?

A Yes. However, the Waffen SS at that time was called Verfuellungstruppe.

Q Was it not called the Allgemeine SS?

A No. The Allgemeine SS was something different.

Q What were the duties of the SS you refer to?

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A It was a pure military training troop first.

Q You testified that you were commander of the 13th Army Corps prior to your taking over your duties of the 1st Corps. Was that not the 1st SS Corps?

A I was Commanding General of the 13th SS Army Corps, not Panzer Corps.

Q Friess, did you ever hear of a book called "Tschingis-Chan and his Legacy" written by Michael Prawdin?

DR. WIELAND: I object. I don't know what the book of "Tschingis-Chan" has to do with it.

MR. ELOWITZ: I merely asked the witness if he is familiar with it.

LAW MEMBER: He is an accused. He can be cross examined as to any matter that has an applicability to the case. It may be tied in later, I don't know. How do you expect to tie this in?

MR. ELOWITZ: We expect to tie it in subsequently by showing that a certain course of indoctrination was given to the members of the Waffen SS and that the philosophy as embodied in this volume was part of the training and the philosophy that was intended to be inculcated into the SS troops and that the methods of fighting as outlined in this book were to be adopted by the Waffen SS and when certain expressions of fighting were mentioned in orders or otherwise, it had a certain definite meaning for the troops who were indoctrinated with this volume. Since the witness has testified that he considered certain remarks from leaders as propaganda, this volume will explain to the Court that it had a different connotation.

PRESIDENT: Objection is overruled.

MR. ELOWITZ: Will the reporter read the last question, please?

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

(Friess-Cross)

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THE WITNESS: Yes.

QUESTIONS BY PROSECUTION (Mr. Elowitz):

Q Is it not true that thousands of copies of this  
volume were distributed to SS troops and leaders?

A I don't know that.

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follows

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Q . Would you deny that these were so distributed?

A I can only say that I don't know it. The troops that were under me did not receive them, however, I have to add that such a book was given to me as a Christmas present.

Q By whom?

A From - I don't remember the name - from the headquarters of the Reichsfuehrer.

Q That is Reichsfuehrer Himmler's office?

A That is a so-called Welfare Office, which sends Christmas presents to the Commanders for Himmler, for Christmas.

Q Himmler was Chief of the Waffen SS, was he not?

A If you understand with that the military leader of the SS, the answer is "no".

Q Is he the political leader of the SS?

A He was in charge of personnel and philosophical matters over the Waffen SS.

Q And he frequently held meetings with high ranking officers of the SS, did he not?

A I can't say that either, because I myself was never there.

Q Didn't Himmler recommend on several occasions that this book I have just mentioned should be required reading material for every SS, Waffen SS officer?

A Himmler never talked to me about that book.

Q Do you remember this passage in the book: (Reading) "Now Europe should become familiar with what Mongolian warfare meant. The first attack, according to Tschingis-Chan's tactics had to carry terror and panic into the remotest part of the country. It had to be paralyzed by the feeling of an elementary fateful destruction to which resistance would seem senseless. Nothing was to remain of the cities but what might be of use to the Mongols; young women, skilled (Priess - Cross)

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craftsmen and, auxiliary services for the continuation of the war, strong slaves. Escapees who had escaped the massacre carried the picture of the terror. They knew only to relate about murder, burning, raping, and senseless fury. People left their cities, burned their own villages, and fled at the first approach of these terrible hordesmen which appeared to them as veritable devils, the scourge of God. They fled into fortified places, were hiding in woods and in remote areas. The name, "Tatars", designating the tribe which at first came from the Orient to Europe, was changed by the people to "Tartars", which means descendants of the Tartaras, emerging from the underworld. Nobody knew that this terror was a method of warfare as a pretense for having tremendous numbers at the disposal."

A No, I did not read the book.

DEFENSE (DR. WIELAND): I was to object, because the witness had not been asked whether he had read the book at all.

PROSECUTION (MR. ELOWITZ): That is all.

DEFENSE: Dr. Wieland.

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE (DR. WIELAND):

Q Do you know, in general, about this book?

A No, not that either. I can only repeat that I didn't read the book.

Q Do you know that it is nearly a presentation of Russian history?

A It is possible; I don't know.

PROSECUTION (MR. ELOWITZ): If the Court please, there is nothing to indicate what history that is. The book has been described as a story of Tschingis-Chan, and the witness has testified that he had received a copy of it, and I see no pertinency to the counsel's question that it is merely part of the Russian (Priess - Redirect)

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history. The question is leading, of course.

PRESIDENT: The objection is overruled.

DEFENSE (DR. WIELAND): I propose that all testimony in connection with the book of Tschingis-Chan be stricken from the record, since the witness testified that he did not read the book at all.

PROSECUTION (MR. ELOWITZ): May it please the Court, the witness is an accused in this case. The Prosecution expects to produce evidence at a later time that the book has been distributed to the Waffen SS, in which the accused has been a high ranking officer. The witness has testified that certain remarks which he has heard from superior officers was nothing but in the nature of propaganda, and it is for the Court to determine at a later time whether such was the case. The Court can well be guided in its decision by the contents of this book, which the accused received as a gift from the highest ranking political officer in the SS.

LAW MEMBER: The Court will reserve its decision to strike the testimony pending supplementary testimony at a later date.

DEFENSE: Nothing further on Redirect.

PROSECUTION (MR. ELOWITZ): I have a question on Cross examination.

RE-CROSS EXAMINATION

QUESTIONS BY PROSECUTION (MR. ELOWITZ):

Q Priess, you testified that all references to terror that appeared in the Army orders that you received was something that you interpreted to mean as nothing more than propaganda, and that it was capable of and that that was the only logical (Priess - Recross)

interpretation that should be placed on the remarks. Is that correct?

A No.

Q Will you answer that question again. What was your impression or interpretation of the word "terror" that appeared in the Army order that you received?

A During my interrogation in Schwaebisch Hall, which was my first interrogation as I testified to before, and during which I had no opportunity at all to think back and consider, that is the reason I could not at once remember the exact wording. Today, after I have had time for consideration, I testified to that which was contained in the Army orders.

Q You testified this morning, did you not, that Army Orders of the Day contained references that "terror would be met by terror"?

A No.

Q Do you mean that you cannot recall stating that, or that you did not state that?

A I did not say that this morning.

Q What SS Divisions were with the first SS Panzer Corps during the Eifel Offensive?

A The 12th Panzer SS Division was under me up to the 20th of December, and the 1st SS Panzer Division until the 27th of December 1944.

Q Is the 12th SS Division usually referred to as the "Hitler Jugend Division"?

A Not usually. That is, as to the official name.

Q And the 1st SS Division, the official name of the 1st SS Division is the Leibstandarte Adolf Hitler, is that correct?

A The official name is 1st SS Panzer Division, Leibstandarte Adolf Hitler.

(Priess - Recross)

Q Now, at the time the investigation of the killing of PW's was made, as you testified about, did the headquarters of your Panzer Corps occupy an area in the vicinity of the Cross-roads where the PW's were killed, South of Malmedy?

A Which investigation of PW's are you talking about?

Q The one you testified to this morning?

A The investigation, you mean, based upon the order of the Army?

Q That's right.

A At this time the Corps Headquarters was in Born.

Q Did the Panzer Corps troops occupy that area, the 1st Panzer?

A In which?

Q The area about Malmedy, in the general vicinity of where the PW's were killed?

A No. The area in the vicinity of Malmedy was in American hands. The main front line ran somewhat north of Engelsdorf, almost South of the Cross-road, and then bent up East.

Q Well, do you know that that area was held by German troops up until the middle of January and American troops were not able to occupy the area?

A I was not in that area in the middle of January. I, myself, left on the 28th of December.

Q Ordinarily, when your superior headquarters of the Army orders investigations, does that relieve you of any responsibility in carrying out the investigation?

A In the first place, the order was not given to me but to the Division, however, as Commanding General I felt responsible for matters of that type and for that reason did  
(Priess - Recross)

everything that was possible to be done in that situation, at that time, as I testified to this morning.

Q Now, when you were interrogated, you discussed that investigation as to the killing of PW's South of Malmedy, did you not?

A No. I was only asked once, in the afternoon of the 17th of April 1946, if I knew anything about that.

Q If I told you that you stated the morning before your statement was written down that you talked with Standartenfuhrer Peiper about the shooting of American PW's, would that change your answer?

A On the morning of the 17th I did not say that I had talked to Peiper about this matter.

Q Do you remember stating that the report of the investigation went from Mohnke to higher Army Headquarters?

A I said that the report from Mohnke went to the Army.

Q The report of the investigation of the shooting of PW's, is that what you mean?

A Yes, naturally.

Q Then your statement this morning that you were interrogated and had no idea what the interrogation was about, or what you were held for was inaccurate, is that correct?

A It is correct. My testimony of this morning is correct.

PROSECUTION (MR. ELOWITZ): That is all.

DEFENSE: Nothing further on Redirect.

EXAMINATION BY THE COURT

QUESTIONS BY THE LAW MEMBER:

Q At some time between December 16 and December 28, when you left the area, did German troops advance as far as (Priess - Court)

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Stoumont and LaGleize?

A Yes.

Q Were those troops members of your corps?

A Yes. That was the Panzer Group Peiper which was in the area Stoumont-LaGleize, and belonged to the 1st SS Panzer Corps.

Q Was Peiper present at the meeting on the afternoon of the 15th of December?

A Yes.

Q When did you call your Division Commanders on the phone with respect to the investigation into the shooting of prisoners of war?

A Immediately after the order of the army was transmitted.

Q Can you fix the time of day and the date?

A It was towards the evening. I had been with the troops during the day and returned in the evening, so it was towards evening.

Q Of what day, if you can fix the day.

A 21st of December.

Q Where was the Command Post of the 1st Panzer Division between the 17th and the 23rd of December, when you visited it?

A In Hallschlag, on the morning of the 17th of December, there was situated the C.P. of the 1st SS Panzer Division. Before noon, that is, towards noon of the 17th of December, the C.P. of the Division moved up. It was situated up until towards evening of the 18th of December on the road of advance, because it could not get through because of traffic jams. During that time the Corps had no communication with the Division. Then later on, I can't say the exact day, the 19th or 20th, it was in Engelsdorf, then on the 19th or 20th it moved up into a  
(Priess - Court)

farm, the name of which I do not remember, which however is in the forest East of Recht -- I mean West of Recht.

Q Did you visit the Command Post of the 1st Panzer Division when it was located in Engelsdorf?

A Yes, on the 20th of December.

Q Did your route to that Command Post lead you past the Cross-Roads Southeast of Malmedy?

A No, that was the main fighting line, because we did not get North of the advance route of the Panzer troops. My way from the C.P. went from Born to Engelsdorf. That is the large road, which on the map goes from Engelsdorf Southeast.

Q What was the furthestest Western point you visited yourself during this Eifel campaign, in this area?

A In this area the C.P., the last C.P. that I mentioned of the Panzer Division.

Q Will you go to the map and point out that last place? (Whereupon the accused Priess did as directed.)

PROSECUTION: Let the record show that the accused indicated a point on Prosecution Exhibit No. 3, Southwest of Houvegnex, approximately...

LAW MEMBER: Five kilometers Southwest of Engelsdorf.

PROSECUTION: Yes, about 5 kilometers Southwest of Engelsdorf.

PRESIDENT: Any other questions by other members of the Court? There appear to be none, the witness is excused.

(Whereupon the excused witness withdrew.)

(Priess - court)

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19. S. 1

DEFENSE: The Defense calls as its next witness Lt Dietrich Ziemssen. The Direct examination will be conducted by Dr Rau on behalf of the defense. The Defense does not contemplate recalling this witness.

Lt DIETRICH ZIEMSEN, a witness for the Defense was duly sworn and testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE: ( Dr RAU)

Q What is your name please ?

A Ziemssen, Dietrich.

Q When and where were you born ?

A 26 August 1911 in Heilbronn.

Q Do you belong to the German army ?

A Yes, I was in the Waffen SS.

Q You are now a prisoner of war of the United States forces ?

A Yes

Q Where are you now confined ?

A In Camp Dachau - Cage # 3.

Q What was your last military rank ?

A SS Obersturmbannfuhrer.

Q Explain please, in a short manner, your military career ?

A In 1934 I entered the Waffen SS. In 1936 I was Untersturmfuehrer (2nd Lieutenant) in the Regiment "German" and Regiment "Der Fuehrer". From early 1940 to 1943 I was in Regiment "Viking" from 1943 to 1944 I was in Brigade "Nederland". From May until September 1944 I was in the War Academy and since September 1944 I have been I-A of the Division Leibstandarte.

Q What was your official position at that time ?

A I was I-A of the Division.

Q Who was your immediate superior ?

A The Divisional Commander Oberfuhrer Moehnke.

Q What were your duties as I-A of the Panzer Division ?

(Ziemssen-direct)

# 208

19. S. 2

A I had to work on the Officers' Orders - leadership Orders and I was in charge of the work of the Staff.

Q When did the Division first know about the Eifel Offensive offensive ?

A On 9th December.

Q Where was the Division at that time ?

A The Division was South-West of Bonn.

Q What units belonged to it ?

A 1st Panzer Regiment, Grenadier Regiment I, Grenadier Regiment 2, Reconnaissance Battalion, Artillery Regiment, Motorized Battalion, Anti-Aircraft Battalion, Engineer Battalion, Single Battalion and supply units.

Q What were these units doing at that time ?

A The units were being reinforced in the autumn of 1944. Officers and Non-commissioned officers, and enlisted men were constantly training.

Q Did the training also consist of questions and problems about prisoners of war ?

A The treatment of prisoners of war was contained in the general instructions to the troops.

Q Was such an instruction ordered, and by whom ?

A Those instructions were ordered already in September meaning the instructions that were issued by the Division.

Q Did the Division supervise the fact that these instructions were being given ?

A Yes.

Q By whom ?

A By the commanding General of the Division. I myself took part in such training.

Q In which unit ?

A Once I took part in the exercises of the Panzer Regiment.

Q Do you mean Panzer Regiment I ?

(Ziemszen-direct)

# 208

A Yes, Panzer Regiment I.

19. S. 3.

Q During these exercises what was stated concerning prisoners of war ?

A During one of these exercises the problem was discussed as to who in the Panzer Regiment was in charge of the guarding and transportation of the prisoners of war.

Q And what was the final decision on that ?

A It was decided that the guarding would be taken care of by the crews of the vehicles that had been knocked out.

Q Who said that ?

A Standartenfuehrer Peiper.

Q Which military unit was over the division ?

A The 1st SS Panzer Korps.

Q And then ?

A The 6th SS Panzer Army.

Q Did you receive orders from this headquarters about the treatment of prisoners of war ?

A That was shortly before the offensive - the beginning of December when a special order came down for the I.C. which contained instructions concerning the treatment of prisoners of war.

Q What was contained in those instructions ?

A That prisoners of war were to be treated decently and it had to be taken care of that they were sent out of the fighting area as fast as possible.

Q Was it stated where to ?

A From the fighting area, that means to the prisoner of war collecting point. Furthermore, there were instructions concerning their interrogation.

Q What was stated about that ?

A The units under the division were not to carry on any long drawn out interrogations. A prisoner of war only had to give his name, rank and serial number, and no other information was to be gotten (Ziemszen-direct)

# 208

19. S. 4.

from him by any kind of coercion.

Q Were there also prisoner of war collecting points mentioned ?

A No, not in this order. This order was a general order having no regard at all to the offensive.

Q Who issued this order ?

A It was issued by the 6th Panzer Army .

Q Can you tell us who signed it ?

A It was signed by the Chief of Staff Brigadefuehrer Kraemer.

Q What did the Division do upon receipt of this order ?

A I myself was in charge of the conference for the Adjutants of the units, and during this conference I made known the substance of this order and I talked with the adjutants about the value to be gotten from enemy news.

Q Did you at that time perhaps mention what was to be done with prisoners of war especially with respect to the evaluation of interrogation ?

A Yes! I told them that it would be very important to see to it that prisoners of war would be sent as fast as possible to the I.C. of the division and if there should be a large number of prisoners of war that they should be taken back to the collecting point by empty convoys.

Q You stated before that you also received instructions about prisoner of war collecting points - was that in another order ?

A Yes, that was in another order.

Q What kind of order was that ?

A Those were the special instructions for supply attached to the operational order.

Q Who issued the operational order ?

A The operational order that I received was issued by the 1st SS Panzer Korps.

Q When did you receive this order . That was after the 9th of December - it was probably the 10th or the 11th.

(Ziemszen -direct)

# 208

19. S. 5

Q What did the Division do with this order ?

A The order of the Korps was re-cut by the Division and was issued to the units in the division on 14th December.

Q What was re-cut ?

A The order was considerably shortened because there were many matters in the order from Korps which were of no importance to the units under the division.

Q What were those details which you considered to be unimportant ?

A Mainly those matters which concerned other divisions.

Q Was the order concerning the collecting points retained in your order ?

A Yes it was retained.

Q What other orders did you receive ?

A In the operational order of the Korps there were also sentences contained about the evacuation of the prisoners.

Q What was contained in that ?

A It stated in there that it was the task of the grenadier units of the reconnaissance unit to take over the task from the advance units.

Q And who had signed that order?

A It was signed by Gruppenfuehrer Priess.

Q Did you receive orders of the day ?

A Yes.

Q Which ones and when ?

A The Division received three orders of the day, one from General Field Marshal Von Runstedt, one from General Field Marshal Model and one from Oberstgruppenfuehrer Dietrich.

Q What is the difference between operational and supply orders mentioned before, and an order of the day ?

A Operational and supply orders caused tactical and operational (Ziemsse-direct)

# 208  
19. S. 6

ational measured, whereas orders of the day are issued by a Commander in Chief when he wants to address troops in his own words without any measures necessary to be taken.

Q Who signed the order of the day of the army ?

A The order of the day was signed by Oberstgruppenfuehrer Dietrich.

Q And also his first name ?

A I don't know.

Q From where did you get the order of the day ?

A I received the order of the day from the 1st Korps.

Q Do you remember what was contained in the order of the day ?

A Yes, I know the contents.

Q Can you repeat the contents here ?

A Yes: the contents were something like this: " It is the task of the army to break through to American positions; to penetrate to the Maas, this offensive is of importance to the decision of the war - that it would therefore be necessary that every man worked relentlessly - that the offensive was to be carried by Panzer units of the army and the Waffen SS together with Volksgrenadier Divisions supported by new weapons and again for once supported by the Luftwaffe (air Corps).

Q How many lines were there approximately ?

A About 8 to 10 lines.

Q Do you remember the contents of the other orders of the day ?

A The order of General Field Marshal Model emphasized particularly that every one of our units had to attack relentlessly where-ever they met the enemy and the order of General Field Marshal Von Runstedt particularly emphasized the importance of the campaign.

Q How did you receive the order of the day from the army ?

A That was transmitted through the Korps on 14th.

(Ziemszen-direct)

#208

19. S. 7.

Q What did you have done with this order ?

A The order was transmitted to the units of the Divisions on 15th with instructions to read it on the night of 15th to 16th December.

Q I now have something to say: The Commander in Chief of the Army, General Dietrich once testified that he had ordered that a wave of terror and fright was to precede the troops, secondly that no humane inhibitions were to be shown, and thirdly that the resistance of the enemy was to be broken by terror, is that which I have just said true altogether, or partly ?

A No! such expressions were not contained in this order.

Q Why can you answer to the negative to that with such certainty ?

A Because I never read such expressions in any order: I certainly would have noticed that and remembered it.

Q What conferences about the offensive took place with superior officers ? and when ?

A Immediately before the offensive in the marshalling area. There was a conference at the Korps at Schmittsheim.

Q What was talked about at this conference ?

A There we were told about what Skorozeny had to do.

Q Who was present ?

A Obergruppenfuehrer Priess was in charge of the Conference, the Divisional Commanders were present as well as Skorozeny and Hardieck.

Q Did you also talk about prisoners of war ?

A No.

Q Were perhaps heard orally those expressions used as to having to advance with a wave of terror which had to precede the troops and without any humane inhibitions being shown and such ?

A No.

Q What did General Priess at that time say ?

(Ziemszen-direct)

#208

19. S. 8

A He emphasized the importance of the offensive. He also mentioned very shortly the job to be done by the individual divisions, and then he told us about the task of Skorczyeny, and then left to the Chief of Staff of the Korps, the details as to the attachment of Skorczyeny troops to our units.

DEFENSE: If the Court please, would you like to discontinue this examination for the lunch recess as it will go on for some time yet ?

PRESIDENT: Yes. The Court will recess until 0830 hours tomorrow morning.

(Whereupon the Court recessed at 1200 hours. 19 June 1946.)



UNITED STATES VS. VALENTIN BERSIN, ET AL

6-24

(THE MALMEBY CASE)

By authority of  
and 4 Aug 1950

CLASSIFICATION CANCELLED

DEFENSE EXHIBITS ■ 1 THRU ■ 41

15

000701

MALMEDY

MILITARY GOVERNMENT COURT  
CASE RECORD.

Legal Form No. 8  
DEFENSE EXHIBITS  
1 TRRU 41

Case No. 6-24

Prosecutor LT COL BURTON F ELLIS

~~Subordinate~~  
~~Intermediate~~ Military Court.  
\*General

Defence Counsel COL WILLIS M EVERETTE JR

Place DACHAU, GERMANY

Interpreter .....

Date 194

Reporter .....

Members of Court:

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

Accused VALENTIN BERSIN, ET AL

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas <u>VALENTIN BERSIN, ET AL</u>	Not guilty	
Findings		
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 .....

*17559 of Volume III*

.....  
(Signature of reviewing authority)

\*Strike out words not applicable.  
756 OMGB Printshop

000702

INTERNAL ROUTE SLIP

HEADQUARTERS, U.S. FORCES, EUROPEAN THEATER

B-7746  
3301

FILE NO: 388.6-128

SUBJECT: Discharge of German Prisoners of War DATE: 31 May 1946

(Number each memo or minute consecutively. Fill in each column, signed legibly. Draw a line across the sheet. Use entire width of sheet for long memoranda.)

No.	From	Page to	Date	HAS THIS PAPER BEEN COORDINATED WITH ALL CONCERNED ?
3	ITEM USFET German Affairs JA War Crimes Branch (in Tur)	G-1	31 May 1946	Documentation as civilian internees as requested in c/n 1 above was completed on 9 May 1946.  For and in the Absence of the Theater Provost Marshal:  <i>[Signature]</i> Colonel, Deputy Theater Provost Marshal
				<p>DISPATCHED - 5 JUN 1946</p> <p>10 11 12 13 14 15 16 17 18 19 20</p> <p>10-14-15-16-17-18-19-20</p>
				<p>GA/WHV/ows/2-4607</p> <p>Request contained in Minute #1 has been compiled with.</p> <p>For the A C of P, G-1,  <i>[Signature]</i> A. F. S. MACKENZIE Lt. Colonel, GSV Actg. Chieft. German Affairs Branch</p>
				<p>Incl: n/c</p> <p>DISPATCHED 4 JUN 1946 G-1 Div Hq USFET Main</p>

13-3-3773  
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JA War  
Crimes  
Branch  
IN  
6 JUN 1946  
German Branch (EO)  
N 144

RECEIVED  
JUN 1946  
FOR THE THEATER  
GERMAN AFFAIRS  
Colonel, Deputy  
Theater Provost Marshal

D  
E  
A  
1

000703

Defendants in the Massey Case who have not been discharged as of April 1946:

1-2-34	MUGLIN, Valentin	3106558012	Unterscharführer	1st Pa Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MUHN, Willi	310831322	Sturmmann	11th Pz Gr Co, 3d Bn, 2d Pz Gr Regt.
1-2-34	MÜLLERMEYER, Kurt	3106558015	Unterscharführer	1st Pa Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Friedrich	3106558098	Oberscharführer	2d Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Roman	3106558016	Oberscharführer	7th Pz Co., 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Manfred	3106558090	Oberscharführer	2d Co, 1st Recon Bn., 1SSAN
1-2-34	MÜLLER, Josef	3106558000	Generaloberst	6th SS Pz Army
1-2-34	MÜLLER, Fritz	3106558018	Sturmmann	1st Pz Co., 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Georg	3106558019	Sturmmann	7th Pz Co., 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Heinz	310808218	Grenadier	11th Pz Gr Co, 3d Bn, 2d Pz Gr Regt.
1-2-34	MÜLLER, Arndt	3106558000	Unterscharführer	1st Bn, 1st SS Pz Regt LUSAN
1-2-34	MÜLLER, Fritz	310831363	Grenadier	11th Pz Gr Co, 3d Bn, 2d Pz Gr Regt.
1-2-34	MÜLLER, Heinz	3106558021	Grenadier	11th Pz Gr Co, 3d Bn, 2d Pz Gr Regt.
1-2-34	MÜLLER, Ernst	3106558022	Notenführer	3d Pz Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Hans	3106436614	Hauptsturmführer	1st SS Pz Regt, USAN
1-2-34	MÜLLER, Max	3106558024	Notenführer	3d Pz Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Armin	3106558058	Notenführer	11th Pz Gr Co, 3d Bn, 2d Pz Gr Regt.
1-2-34	MÜLLER, Hans	3106558066	Unterscharführer	1st Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Hans	3106558031	Unterscharführer	6000 Pz, 1st Co, 1st SS Pz Regt.
1-2-34	MÜLLER, Joachim	3106558027	Sturmmann	3d Pz Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Heinz	3106558008	Notenführer	6th Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Hubert	3106558029	Oberscharführer	3d Pz Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Siegfried	3106558030	Sturmmann	6th Pz Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Leonai	310891112	Oberscharführer	6th Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Oskar	3106558001	Hauptsturmführer	7th Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Georg	3106558020	Sturmmann	1st Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Fritz	3106558026	Brigadeführer	1st Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Werner	3106558054	Unterscharführer	9th Pz Pz Co, 1st SS Pz Regt.
1-2-34	MÜLLER, Erich	3106558035	Unterscharführer	9th Pz Pz Co, 1st SS Pz Regt.
1-2-34	MÜLLER, Arnold	3106558050	Sturmmann	2d Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Anton	3106558036	Unterscharführer	12th Pz Gr Co, 3d Bn, 2d Pz Gr Regt.
1-2-34	MÜLLER, Erich	3106558037	Unterscharführer	7th Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Gustav	3106558038	Sturmmann	3d Pz Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Paul	3106558039	Hauptsturmführer	Recon Bn, 1st Co, 1st SS Pz Regt.
1-2-34	MÜLLER, Joachim	3106558011	Standartenführer	1st SS Pz Regt, USAN
1-2-34	MÜLLER, Hans	3106558040	Unterscharführer	2d Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Georg	3106558041	Hauptsturmführer	10th Pz Gr Co, 3d Bn, 2d Pz Gr Regt.
1-2-34	MÜLLER, Hermann	3105307244	Gruppenführer	1st SS Pz Corps
1-2-34	MÜLLER, Fritz	310892990	Grenadier	11th Pz Gr Co, 3d Bn, 2d Pz Gr Regt.
1-2-34	MÜLLER, Rolf	3106558042	Unterscharführer	1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Wolfgang	3106558043	Grenadier	11th Pz Gr Co, 3d Bn, 2d Pz Gr Regt.
1-2-34	MÜLLER, Rolf	3106558044	Sturmmann	1st Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Axel	3106068770	Unterscharführer	2d Pz Gr Co, 3d Bn, 2d Pz Gr Regt.
1-2-34	MÜLLER, Erich	3106310461	Oberscharführer	9th Pz Pz Co, 1st SS Pz Regt.
1-2-34	MÜLLER, Rudolf	3101511979	Unterscharführer	12th Pz Gr Co, 3d Bn, 2d Pz Gr Regt.
1-2-34	MÜLLER, Paul	310350009	Sturmbannführer	1st Co, 1st SS Pz Regt, USAN
1-2-34	MÜLLER, Oswald	3103907100	Unterscharführer	11th Pz Gr Co, 3d Bn, 2d Pz Gr Regt.
1-2-34	MÜLLER, Franz	3106558046	Oberscharführer	2d Pz Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Hans	3106558047	Hauptsturmführer	7th Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Gustav	3106558048	Sturmmann	3d Pz Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Werner	3106558049	Oberscharführer	6th Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Heinz	3101600482	Sturmmann	3d SS Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Herbert	3106558062	Sturmmann	11th Pz Gr Co, 3d Bn, 2d Pz Gr Regt.
1-2-34	MÜLLER, Erwin	3106558051	Notenführer	2d Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Edmund	3106558057	Notenführer	11th Pz Gr Co, 3d Bn, 2d Pz Gr Regt.
1-2-34	MÜLLER, Heinz	3106558058	Oberscharführer	11th Pz Gr Co, 3d Bn, 2d Pz Gr Regt.
1-2-34	MÜLLER, August	3106558053	Hauptsturmführer	6th Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Hans	3106558054	Sturmmann	1st Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Johann	3101204148	Honore	3d Pz Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Günther	310275093	Sturmmann	11th Pz Gr Co, 3d Bn, 2d Pz Gr Regt.
1-2-34	MÜLLER, Herbert	3107041576	Notenführer	2d Pz Co, 1st Bn, 1st SS Pz Regt.
1-2-34	MÜLLER, Otto	3106558055	Unterscharführer	1st Co, 1st SS Pz Regt, USAN
1-2-34	Van CAMEDE, Willi	310833151	Unterscharführer	Recon Group, 9th Pz Pz Co, 1st SS Pz Regt.
1-2-34	ZWIGART, Paul	3106558056	Unterscharführer	9th Co, 3d Bn, 2d Pz Gr Regt.

000704

Defendants in the *Murphy* Case who have been discharged as of 26 April 1946:

6-24 BOLZE, Marcel 3106558013 Sturmman 3d Pz Pz Co, 1st Pz Bn, LSSAH  
(Discharged by USA 10 Oct 1945)

6-24 BOE, Friedel 3106558014 Unterscharfuehrer 3d Pz Pz Co, 1st Pz Bn, LSSAH  
(Discharged by England)

6-24 DIEFENTHAL, Josef 3106558017 Sturmabfuhrer 3d Bn, 2d Pz Gr Regt, LSSAH  
(Discharged by Soviet Union 29 Jun 45)

6-24 HINDEL, Heinz 3106558025 Hauptcharfuehrer 11th Pz Gr Co, 3d Bn, 2d Pz Gr B.  
(Discharged by USA 2 Oct 45)

6-24 KIES, Friedel 3106558031 Sturmman 3d Pz Pz Co, 1st Pz Bn, LSSAH  
(Discharged by USA 19 Aug 45)

8-24 KUNTEL, Gustav 3106558032 Sturmabfuhrer 1st Recon Bn, LSSAH  
(Discharged by USA 24 May 45)

RAUB, Theo 3106558000 Rottenfuehrer 11th Pz Gr Co, 3d Bn, 2d Pz Gr B.  
(Discharged by USA June 1945)

REHAGE, Heinz 3106558010 Untersturmfuehrer 7th Pz Co, 1st Bn, 1st SS Pz Regt.  
(Discharged by USA Aug 1945)

6-24 SCHAEFER, Willi 3106558045 Oberscharfuehrer 3d Pz Pz Co, 1st Pz Bn, LSSAH  
(Discharged by England)

Class #1  
88-340

000705

INTERNAL ROUTE SLIP

(Classification)

HEADQUARTERS, U.S. FORCES, EUROPEAN THEATER

0-2130  
B-925  
3501

FILE NO: Discharge of German Prisoners of War

DATE 26 April 1946

(Number each memo or minute consecutively. Fill in each column, signed legibly. Draw a line across the sheet. Use entire width of sheet for long memoranda.)

No.	From	To	Date	HAS THIS PAPER BEEN COORDINATED WITH ALL CONCERNED ?
-----	------	----	------	--

1. J.A., G-1, German War Crimes Affairs Branch Group

26 April 1946

1. The Malmedy War Crimes Case involving seventy ~~512~~ (746) members of the German military establishment is scheduled to go to trial at Dachau, Germany, on or about 2 May 1946.

2. In order to preclude the possibility of legal complications arising with respect to the trial of the case, it is desirable that the provisions of "Disbandment Directive No. 8", Headquarters, United States Forces, European Theater, dated 16 February 1946, be carried out at once. It is therefore requested that the perpetrators in this case named in the attached list, now in custody at Dachau, be immediately discharged as prisoners of war and documented as civilian internees.

3. It is requested that this office be advised when documentation as civilian internees has been accomplished.



*C. B. Mickelwait*  
C. B. MICKELWAIT,  
Colonel, JAGD,  
Deputy Theater Judge Advocate.

1 Incl. as stated.  
Telephone WIESBADEN 8707.

2. G-1 TFM 26 April 1946  
G-1 Br.

GA/HHC/eeg/2-1267

Forwarded for your immediate action.



For the A C of S, G-1:  
RECEIVED  
29 APR 1946  
Lt Colonel, GSC  
Chief, German Affairs Branch

(Classification)