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The Nuremberg Military Tribunals and the origins of International Criminal Law

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CHAPTER 4: The Trials

INTRODUCTION

The previous chapter explained the evolution of the 12 NMT trials. This chapter concludes that discussion by providing a brief synopsis of those trials. Each synopsis has three primary sections: (1) the counts in the indictment; (2) biographical information about the judges who heard the case; and (3) the verdicts and sentences. A number of synopses also contain a fourth section on noteworthy aspects of the trial, such as its historical context, evidence of bias on the part of the judges, or misconduct by one of the parties.

I. THE *MEDICAL* CASE

A. The Indictment

Twenty-three defendants ultimately stood trial. Twenty-one of the defendants had been included on Taylor's September 9 list. The other two had been added prior to trial: Bertha Oberhauser, a doctor at Ravensbrueck who was a member of the Hohenlychen Group; and Waldemar Hoven, the chief doctor at Buchenwald.

The indictment contained four counts. Count One alleged that all of the defendants had engaged in a "common design or conspiracy" to commit war crimes and crimes against humanity. Count Two, the war-crimes count, alleged that the defendants were responsible for a variety of medical experiments conducted "without the subjects' consent, upon civilians and members of the armed forces of nations then at war with the German Reich," including high-altitude, freezing, malaria, and sea-water experiments at Dachau; spotted fever, poison, and incendiary experiments at Buchenwald; and sterilization experiments at Auschwitz and Ravensbrueck. The count also alleged that Rudolf Brandt and Sievers were responsible for the Strasbourg skeleton-collection murders and that Karl Brandt, Blome, Brack, and Hoven were responsible for participating in the Reich's euthanasia program.¹ Count Three, the crimes against humanity count, alleged that the same experiments and murders constituted crimes against humanity when conducted "upon German civilians and nationals of other countries."² Finally, Court 4 alleged that ten of the defendants were guilty of criminal membership because they had been members of the SS during the war.

B. The Tribunal

The *Medical* case was heard by Tribunal I, which consisted of Walter B. Beals (presiding), Harold L. Sebring, and Johnson Tal Crawford, with Victor C. Swearingen serving as the alternate. Beals, the first judge to be invited by the War Department to serve on a tribunal, was a Justice of the Supreme Court of Washington and had served as a Major in the Army on an American military tribunal in France during World War

¹ Medical, Indictment, paras. 8-9, I TWC 15.

² Id. at 16, para. 11.

I. Sebring was a Justice of the Supreme Court of Florida who had been decorated during World War I by both the U.S. and France for valor during combat. Crawford was a justice of the Oklahoma District Court and had also served during World War I. Swearingen, a former Special Assistant to the Attorney General of the United States, had been a Lt. Colonel in the army during World War II and served after the war as chief of the Operations Section of the War Department's War Crimes Office.³

C. Noteworthy Aspects

The *Medical* trial involve two notable instances of misconduct by witnesses. In the first, a prosecution witness, Karl Hoellenrainer, tried to attack Beiglbock after being asked to identify the defendant as the man who conducted salt-water experiments on him. The Tribunal held Hoellenrainer in contempt pursuant to Article VI of Ordinance No. 7, which permitted tribunals to “deal summarily with any contumacy,” and sentenced him to 90 days in the Nuremberg Prison. It released him three weeks later after Hoellenrainer apologized for his actions.⁴

The more serious misconduct involved Andrew Ivy, the head of the University of Illinois at Chicago's Medical College, who was the prosecution's star expert witness at trial. Prior to his testimony, Ivy was present during the cross-examination of another prosecution witness, Walter Leibbrandt, a professor of medical history at the University of Erlangen, who had testified that experimentation on humans was unethical even if the subjects consented and the experiments had medical value. On cross, Leibbrandt admitted that the standard he endorsed condemned not only the defendants' experiments, but also American malaria experiments conducted on inmates at Stateville Prison in Illinois during the war. Concerned by Leibbrandt's testimony, Ivy decided to defend the Stateville experiments by testifying that they had been overseen and approved by a public ethics committee. There was just one problem: no such committee had existed, much less one that had approved the experiments.

Undaunted, Ivy returned to the United States and convinced the Governor of Illinois, Dwight Green, to form an *ad hoc* committee – the Green Committee – to advise him on the ethics of medical experimentation on human subjects. Ivy did not tell the Governor that he intended to testify when he returned to Nuremberg, the committee never met, and the committee's “report” was authored by Ivy himself. Ivy nevertheless not only claimed at the *Medical* trial that the Green Committee had approved the Stateville experiments, he responded to a defense question about whether “the formation of the committee had anything to do with the fact that this trial is going on” by testifying that no such connection existed.⁵ It is unlikely that the prosecution was aware of the true facts – but it is beyond question that Ivy blatantly perjured himself.

³ Background Information on Judges, 1-2.

⁴ See *Medical*, Further Order of the Tribunal, 21 July 1947, XV TWC 967-70.

⁵ HORST H. FREYHOFER, *THE NUREMBERG MEDICAL TRIAL: THE HOLOCAUST AND THE ORIGIN OF THE NUREMBERG MEDICAL CODE* 102-03 (2004).

D. Outcome

Tribunal I announced the verdicts on 19 August 1947 and imposed sentence the next day. Seven defendants were acquitted: Blome, Pokorny, Romberg, Rostock, Ruff, Schaefer, and Weltz. The highest-ranking acquittees were Rostock, who had been Chief of the Office for Medical Science and Research under Karl Brandt, and Kurt Blome, who had been the Deputy Health Leader of the Reich under Leo Conti. The remaining acquittees were less important – officials involved in aviation medicine (Ruff and Weltz), or staff doctors in various Reich medical institutes (Pokorny, Schaefer, and Romberg).

The other 16 defendants were all convicted on Counts Two and Three. Nine were also convicted of membership in the SS. No defendant was convicted on Count One because – as discussed in Chapter 12 – the tribunals held, following a joint session, that conspiring to commit war crimes or crimes against humanity was not criminal under Law No. 10. Sentences ranged dramatically. Seven defendants were sentenced to death; five were sentenced to life imprisonment; and the other six received sentences ranging from a high of 20 years to a low of 10 years. Oberhauser, the only female defendant convicted in any of the trials,⁶ received a 20-year sentence.

II. MILCH

A. The Indictment

Field Marshal Milch was indicted on three counts. Counts One and Two involved war crimes. Count One alleged that Milch was responsible for deportation to slave labor and slave labor because, in his capacity as a member of the Central Planning Board from 1942-1945, he had helped create the Nazis' slave labor program, which had resulted in the deportation of at least 5,000,000 workers to Germany.⁷ Count Two alleged that Milch was responsible for the high-altitude and freezing experiments conducted at Dachau⁸ – although, revealingly, the count provided no factual allegations connecting Milch to the experiments. Finally, Count Three alleged that the acts in Counts One and Two constituted crimes against humanity insofar as they involved German nationals and nationals of other countries.

B. The Tribunal

Milch was heard by Tribunal II, which consisted of Robert M. Toms (presiding), Donald F. Phillips, Michael A. Musmanno, and an alternate, John L. Speight. Toms was a Circuit Court judge in Michigan and a former prosecutor whom Clarence Darrow had described – after facing off against Toms in the famous Sweet Trials in 1925 – as “one of the fairest and most humane prosecutors that I ever met.”⁹ Phillips was a judge of the Superior Court of North Carolina who had been decorated by the

⁶ Inge Vermetz, the only other female defendant, was acquitted in *RuSHA*.

⁷ Milch, Indictment, para. 4, II TWC 361.

⁸ Id. at 362-63, paras. 8-9.

⁹ <http://www.encyclopedia.com/doc/1G2-3498200150.html>.

French for his service as a 1st Lt. in World War I. Speight was a lawyer who had served as a Special Attorney in the Justice Department during World War II.¹⁰

Musmanno was one of the most interesting judges at Nuremberg – and the only judge to hear three different cases (*Milch*, *Pohl*, and *Einsatzgruppen*). He was exceptionally well-educated, holding six degrees, including a PhD from the University of Rome. Prior to the war he had worked as a defense attorney in Pennsylvania, been elected to the Pennsylvania legislature, and served as a judge in the state’s Court of Common Pleas. He had defended Sacco and Vanzetti in 1927 and was so devastated by their executions that he came to believe that the death penalty was little more than state-legislated murder.¹¹ During the war he had served as a Navy liaison officer to the Fifth Army in the Italian Campaign, being wounded twice in combat. When the Allies liberated Sorrento, he had been appointed Military Governor of the peninsula.¹²

As noted in the previous chapter, Musmanno was the only non-civilian to serve on one of the tribunals – he finished the war as a Commander in the Navy. Taylor had expressed concern to OMGUS and the War Department about the idea of a Commander “sitting on a tribunal which may be called upon to try field marshals and high ranking generals,”¹³ but relented in the face of positive recommendations from General Clark and Micky Marcus. The Navy nevertheless promoted Musmanno to Captain after he was formally appointed to Tribunal II to at least partially equalize the disparity.¹⁴

C. Outcome

Trial began on 2 January 1947 and ended with sentencing on April 17. The prosecution’s case-in-chief lasted only eight days and involved the live testimony of only three witnesses.¹⁵ The verdict was a split decision. The Tribunal acquitted Milch on Count Two, concluding – as the OCC expected – that the prosecution had failed to prove Milch’s connection to the medical experiments beyond a reasonable doubt.¹⁶ But it convicted him on Counts One and Three, finding that he knew about the slave-labor program and “himself urged more stringent and coercive means to supplement the dwindling supply of labor in the Luftwaffe.”¹⁷ The Tribunal sentenced Milch to life imprisonment.

III. THE *JUSTICE* CASE

A. The Indictment

The 15 defendants in the case were all accused of participating in what the *Justice* tribunal described as “a nationwide government-organized system of cruelty and

¹⁰ Background Information on Judges, 2-3.

¹¹ Earl, 232-34.

¹² Id. at 235.

¹³ Memo from Taylor to Petersen & Clay, 21 Nov. 1946, NA-153-1018-5-85-1, at 1.

¹⁴ Earl, 238-39.

¹⁵ JOHN ALAN APPLEMAN, *MILITARY TRIBUNALS AND INTERNATIONAL CRIMES* 152 (1954).

¹⁶ Milch, II TWC 778.

¹⁷ Id. at 787.

injustice... perpetrated in the name of law by the authority of the Ministry of Justice, and through the instrumentality of the courts.”¹⁸ Most of the defendants were officials in the Ministry of Justice, such as Schlegelberger and Klemm. The others were judges and prosecutors affiliated with the Nazis’ notorious People’s Court and Special Courts, such as Rothaug, Oeschey, and Lautz.

The indictment contained four counts. Count One charged all of the defendants with conspiring to commit war crimes and crimes against humanity. Counts Two and Three then detailed the specific war crimes and crimes against humanity that formed the objects of the conspiracy. Count Two, the war-crimes count, emphasized the Nazis’ barbaric Night and Fog program, “whereby civilians of occupied territories who had been accused of crimes of resistance against occupying forces were spirited away for secret trial by certain Special Courts of the Justice Ministry within the Reich.”¹⁹ Count 3, the crimes against humanity count, focused on the fate of German civilians under the Nazis. It alleged that, following the invasion of Poland in September 1939, the Ministry of Justice used the People’s Court and Special Courts to create “a reign of terror to suppress political opposition to the German Reich” and to further the extermination of German Jews by applying discriminatory laws to them in legal proceedings that lacked “all semblance of judicial process.”²⁰ Finally, Count Four alleged that seven defendants were guilty of criminal membership in the SS, SD, or Leadership Corps of the Nazi Party.

B. The Tribunal

The *Justice* case was heard by Tribunal III, which consisted of Carrington T. Marshall, James T. Brand, Mallory B. Blair, and an alternate, Justin W. Harding. Judge Marshall, who was the Chief Justice of the Ohio Supreme Court, was the first presiding judge, but health issues forced him to resign his position toward the end of the prosecution’s case-in-chief. Judge Brand replaced him as the presiding judge and Judge Harding joined the tribunal. Brand was a Justice of the Supreme Court of Oregon. Blair was an Associate Justice of the Court of Civil Appeals in Texas. Harding, who had served as a Major in the Army during World War I and as a JAG Colonel during World War II, was a lawyer who had been a federal judge in Alaska from 1929-1933 – the only federal judge to sit on any of the tribunals.²¹

C. Outcome

Trial began on 5 March 1947 and ended on December 4. Four defendants were acquitted: Barnickel, Cuhorst, Nebelung, and Petersen. Cuhorst was the Chief Justice of the Special Court in Stuttgart; the others were either judges or prosecutors with the People’s Court. Seven of the 10 defendants were convicted on both Count Two (war crimes) and Count Three (crimes against humanity); Rothaug was convicted solely on Count Three. Four defendants were acquitted on Count Four (membership), while three were convicted. Alstoetter was convicted solely of criminal membership in the

¹⁸ Justice, III TWC 985.

¹⁹ Justice, Indictment, para. 13, III TWC 21.

²⁰ Id. at 23, para. 21.

²¹ Background Information on Judges, 3.

SS. Four defendants were sentenced to life (Schlegelberger, Klemm, Oeschey, and Rothaug); four were sentenced to ten years of imprisonment (von Ammon, Mettgenberg, Lautz, and Joel); one was sentenced to seven years (Rothenberger); and one was sentenced to five years (Alstoetter).

IV. POHL

A. The Indictment

The 18 defendants in the Pohl case were all officials in the WVHA, one of twelve main SS offices. The WVHA had been responsible for the the administrative needs of the entire SS, including overseeing the concentration camps, and had “managed and controlled a vast number of economic enterprises” that were “operated almost entirely by the use of concentration camp labor.”²² Pohl had been the chief of the WVHA; Frank and Loerner had been his deputies. The other defendants had either directed one of the five departments in the WVHA, known as *Amtsgruppe*, or had run one of the offices within a department. For example, Heinz Fanslau had been the chief of *Amtsgruppe A*, which was the supreme authority for the finance and administration of the SS as a whole, while Josef Vogt had been the head of the auditing office within *Amtsgruppe A*.

The *Pohl* indictment followed the pattern established in the *Medical* case. Count One charged all of the defendants with conspiring to commit war crimes and crimes against humanity. In particular, it alleged that the defendants had conspired to establish and maintain concentration camps in Germany and other countries; to supply concentration-camp inmates to various public and private “industries, enterprises, and undertakings”; to provide subjects for medical experiments; to exterminate the Jews; and to plunder the private property of civilians deported to Germany.²³ Count Two, the war-crimes count, provided additional detail about the WVHA’s operations in occupied territory, particularly concerning the murder and mistreatment of civilians and POWs in the concentration camps. Count Three alleged that the acts in the previous counts constituted crimes against humanity insofar as they involved German nationals and nationals of other countries. And Count Four alleged that all of the defendants except Hohberg, the executive officer of the *Amtsgruppe* that managed the SS’s economic enterprises, were guilty of criminal membership in the SS.

B. The Tribunal

The *Pohl* case was heard by Tribunal II – Toms, Phillips, and Musmanno. Toms was once again the presiding judge.

C. Outcome

Trial began on 8 April 1947 and ended on November 3. Three of the defendants were acquitted: Vogt because of his relative unimportance in *Amstgruppe A*²⁴; Rudolf Scheide, the Chief of *Amtsgruppe B*’s Office V, because the only evidence of his

²² Pohl, V TWC 966.

²³ Pohl, Indictment, para. 3, V TWC 202.

²⁴ Pohl, V TWC 1002.

guilt was his official WVHA title²⁵; and Horst Klein because his office in Amstgruppe W, which dealt with social and cultural affairs, had not been connected to the concentration-camp system.²⁶ All of the other defendants were convicted on both Count Two and Count Three, and all but Volk were convicted on Count Four. Four were sentenced to death (Pohl, Eirenshmalz, Sommer, and Loerner); three were sentenced to life (Frank, Mummenthey, and Kiefer); and nine were sentenced to 10-25 years imprisonment.

The convicted defendants in *Pohl*, like convicted defendants in all of the cases, filed petitions with General Clay asking for sentence reductions.²⁷ Unlike the other cases, though, the judges of Tribunal II asked Clay to reconvene the Tribunal so that they could consider revising the defendant's sentences.²⁸ Their request, which Clay granted, was based on the claim of two defendants that the Tribunal had considered briefs that the prosecution had submitted in support of its closing argument, even though it had expressly instructed both the prosecution and defense at trial not to submit such briefs. The Tribunal did not state whether it had, in fact, considered the prosecution's briefs. Nevertheless, "[i]n conformity with the policy of the Tribunal to afford defense counsel every possible opportunity to present full and complete arguments in behalf of the defense," it gave the defendants permission to submit their own closing briefs.²⁹

All 15 defendants submitted such briefs. In response, Tribunal II reduced Loerner's death sentence to life imprisonment, Kiefer's life sentence to 20 years, Fanslau's 25-year sentence to 20 years, and Bobermin's 20-year sentence to 15 years.

V. FLICK

A. The Indictment

The indictment contained five counts. Count One alleged that the six defendants had committed war crimes and crimes against humanity by making use of "tens of thousands of slave laborers and prisoners of war... in the industrial enterprises and establishments owned, controlled, or influenced by them" and by subjecting those workers to "inhumane conditions with respect to their personal liberty, shelter, food, pay, hours of work, and health."³⁰ Count Two alleged that all of the defendants other than Terberger had committed war crimes and crimes against humanity by systematically plundering public and private industrial property in France and the "Occupied East."³¹ Count Three alleged that between January 1936 and April 1945 Flick, Steinbrinck, and Kaletsch had committed crimes against humanity by participating in "persecutions on racial, religious, and political grounds, including particularly the 'Aryanization' of properties belonging in whole or in part to Jews"

²⁵Id. at 1017.

²⁶ Id. at 1060.

²⁷ General Clay's sentence reviews are discussed in Chapter 15.

²⁸ Appleman, 166-67.

²⁹ Pohl, Order Permitting Defendants to File Additional Briefs, 14 July 1948, V TWC 1166.

³⁰ Flick, Indictment, para. 6, VI TWC 15.

³¹ Id. at 18-19, para. 10.

who lived in Germany, Czechoslovakia, and other countries.³² Count Four alleged that between January 1933 and April 1945 Flick and Steinbrinck had committed war crimes and crimes against humanity by financing the SS's many atrocities against the Jews. Finally, Count Five alleged that Steinbrinck was guilty of criminal membership in the SS.

B. The Tribunal

Flick was heard by Tribunal IV, which consisted of Charles B. Sears (presiding), Frank N. Richman, William C. Christianson, and an alternate, Richard D. Dixon. Sears was the Official Referee of New York's Court of Appeals, having spent the previous 23 years as a judge on the New York Supreme Court. Richman was a former Judge of the Supreme Court of Indiana. Christianson was an Associate Justice of the Supreme Court of Minnesota. Dixon was a former Judge of the Supreme Court of North Carolina³³ and had originally been recruited by OMGUS to serve as the Deputy Secretary General of the NMTs.³⁴

C. Outcome

Trial began on 21 April 1947 and ended on December 22. Burkhart, Kaletsch, and Terberger were acquitted, the Tribunal concluding that all three were entitled to a defense of necessity on the slave-labor count (Count One) and that Burkhart and Kaletsch had played only minor roles in the plunder of the Rombach plant in France – the only act of plunder it considered criminal. No defendant was convicted on Count Three, the Aryanization count, because the Tribunal held that Law No. 10 did not criminalize pre-war crimes against humanity that were not connected to war crimes or crimes against peace. Friedrich Flick and Weiss were convicted of slave labor in connection with the company's use of slave labor at its Linke-Hoffman Werke; Flick was also convicted of plundering the Rombach plant and cooperating with the SS, a crime that the Tribunal considered functionally equivalent to membership in the SS.³⁵ Steinbrinck was convicted only of criminal membership. Flick was sentenced to seven years imprisonment; Steinbrinck, five years; and Weiss, 2.5 years.

VI. *FARBEN*

A. The Indictment

The 24 defendants who stood trial in Farben divided into three categories. Nineteen were members of the *Vorstand*, including Schmitz, Schnitzler, and Ambros. One, Krauch, was the Chairman of the *Aufsichtsrat*. Four directed various plants and department within Farben, such as Duerrfeld. Because of health reasons, Max Brueggemann was dismissed from the trial in September 1947 at the joint request of the prosecution and defense.³⁶

³² Id. at 21, para. 13.

³³ Background Information on Judges, 4.

³⁴ Earl, 217-18.

³⁵ Flick, VI TWC 1216.

³⁶ Farben, VIII TWC 1362.

The indictment, at 51 pages the longest in the trials, contained five counts. Count One alleged that all of the defendants, “acting through the instrumentality of Farben and otherwise,” had committed crimes against peace by participating in the Nazis’ numerous acts of aggression, from the invasion of Austria in March 1938 to the war against the United States in December 1941. The count traced the long history of the relationship between Farben and the Nazis, emphasizing Farben’s financing of Hitler’s regime, the “tremendous expansion of Farben’s manufacturing facilities far in excess of the needs of a peacetime economy,” and the company’s awareness that Hitler intended to use its arms to wage aggressive war.³⁷ Count Two alleged that all of the defendants had committed war crimes and crimes against humanity by systematically plundering the occupied territories. Count Three alleged that all of the defendants had committed war crimes and crimes against humanity by using hundreds of thousands of slaves in its various plants and factories. The count particularly emphasized Farben’s construction of the infamous buna plant at Auschwitz, Auschwitz III-Monowitz.³⁸ Count Four charged Schneider, BueteFisch, and von der Heyde with criminal membership in the SS. And Count Five alleged that all of the defendants had conspired to commit the crimes against peace identified in Count One.

B. The Tribunal

Farben was heard by Tribunal VI, which consisted of Curtis G. Shake (presiding), James Morris, Paul M. Hebert, and an alternate, Clarence F. Merrell. Shake was the former Chief Justice of the Indiana Supreme Court. Morris was a Justice and former Chief Justice of the Supreme Court of North Dakota. Hebert was the Dean of the Louisiana State University School of Law; during the war he had served as Chief of the Industrial Law Branch in the Judge Advocate General’s Office in D.C. Merrell was a lawyer in North Dakota and Indiana.³⁹

C. Outcome

Trial began on 27 August 1947 and ended on 30 July 1948. The Associated Press released a number of the verdicts before they were announced by the Tribunal, provoking considerable outrage at the journalist, Tom Reedy, who was responsible for the mix-up.⁴⁰ Ten of the 23 defendants were acquitted, including Hoerlein, a Nobel Prize-winning chemist, and von Knieriem. One defendant, Fritz ter Meer, was convicted of both plunder (Count Two) and slave labor (Count Three). Ambros, Duerrfeld, and BueteFisch were convicted solely on Count Three, while nine others – most notably Krauch – were convicted solely of plunder. All of the defendants were acquitted of the crimes against peace charges (Counts One and Five), and the three defendants accused of membership in the SS (Count Four) were acquitted of that charge, as well. Sentences ranged from eight years for Ambros and Duerrfeld to 1.5 years for Jaehne and Kugler.

D. Noteworthy Aspects

³⁷ Farben, Indictment, para. 18, VII TWC 19.

³⁸ Id. at 54-58, paras. 132-143.

³⁹ Background Information on Judges, 5-6.

⁴⁰ Letter from Deane to Taylor, 3 July 1987, TTP-14-7-22-489, at 3.

The prosecution was appalled by the verdicts and sentences. Josiah DuBois, Taylor's deputy at the trial, described the judgment as "the fantastic foundation of an Auschwitz that never was, and then the tower of straw built up over it."⁴¹ Judge Hebert, who issued a passionate dissent on the slave-labor charges, agreed with DuBois, telling him not long after the trial that "[w]hen I first read the indictment, it was difficult to believe that all of this had happened. By the time we reached the end, I felt that practically every sentence of the indictment had been proved many times over."⁴²

The problem was that Judge Hebert's colleagues appear to have been predisposed toward the defendants from the beginning. Drexel Sprecher, the chief of the Farben Trial Team, later claimed that one of the judges' assistants attacked him in the bar of the Grand Hotel as "anti-German."⁴³ Tom Bowers describes Judge Morris as "outspokenly prejudiced" against the prosecution and notes that his wife "often invited the wives of IG Farben directors on trial for drinks, especially Baroness von Schnitzler."⁴⁴ And the German press reported at the time that Judge Shake often hosted the defendants' German lawyers at the Grand Hotel, despite the fact that Germans were not normally allowed inside it.⁴⁵

The majority's hostility toward the prosecution was also evident at trial. As discussed in Chapter 6, the *Farben* tribunal restricted the prosecution's cross-examination of defendants and defense witnesses to 20% of the time required for direct examination, even though it did not impose a similar time limit on the cross-examination of prosecution witnesses. Indeed, Judge Shake consistently chided the prosecution for being too slow, at one point asking a prosecutor how much longer cross-examination would take and then responding, when the prosecutor said that he had just finished, "Sorry I didn't speak sooner."⁴⁶ Even worse, when the prosecution introduced compelling evidence that Wolfgang Alt, a Farben employee who had been serving as an "assistant defense counsel" for the defendant Ambros, had instructed officials at Farben's Ludwigshafen plant to hide a large number of documents concerning Auschwitz from American officials and had personally hidden documents in his home, the Tribunal refused to cite Alt for contempt, found that he had done nothing wrong, and actually admonished the prosecution – based on inaccurate assessment of the situation – for "taking matters into their own hands by threatening potential witnesses with arrest and participating in an unwarranted violation of the privacy of the home of a member of the staff of defense counsel."⁴⁷

Such evident bias, of course, requires explanation. The answer seems to be two-fold. To begin with, Judge Morris simply rejected the idea that private economic actors, driven by the profit motive instead of by ideology, could commit serious international crimes. As he told a journalist after his retirement, he believed "some people were

⁴¹ DUBOIS, *DEVIL'S CHEMISTS*, 340.

⁴² JEFFREYS, 339.

⁴³ BOWER, 358.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ APPLEMAN, 183.

⁴⁷ Farben, Order, 8 Mar. 1948, XV TWC 1039.

tried [at Nuremberg] who should not have been – they were a bunch of eager selfish big businessmen like you would find in any country.”⁴⁸

The judges in the majority also apparently believed that prosecuting German industrialists was a bad idea in light of the growing Soviet threat, because it might deter American industrialists from providing the U.S. government with the resources it needed to fight the Cold War. That theme emerges clearly in a series of exchanges between Judge Morris and DuBois. On the very first day of trial, Morris told DuBois that “[w]e have to worry about the Russians now; it wouldn’t surprise me if they overran the courtroom before we get through.”⁴⁹ DuBois recounted that statement in his book *The Devil’s Chemists*, leading Morris to write him the following year. Instead of denying the statement, however, Morris expressed satisfaction that DuBois’ book “recognizes my appreciation of the Russian menace,” adding that he “had already become alarmed over the Moscow influence that was then so visibly present in Nurnberg.” He also pointed out that, given that the last Farben defendant was released by 1951, “[i]t would seem that the tribunal was entirely in step with the progress of history and that we were wise in not creating dangerous precedents which would have been an impediment to the future foreign policy of our country.”⁵⁰ DuBois’s wrote back that judges were supposed to ignore such extra-legal concerns and that he believed “the fear of Russia and communism weighed so heavily on your mind that you grossly misinterpreted, in good faith, many incidents.”⁵¹

Judge Morris was not alone, of course, in his belief that convictions in Farben might undermine the war against communism. The U.S. government agreed: as DuBois noted in his book *The Generals in Grey Suits*, Mickey Marcus, the head of the War Department’s war-crimes division, told him before the trial that the Department’s attitude toward the case against Farben was determined by two things, “Russia and the atom,” and that it believed a prosecution – particularly for aggression – would discourage both German and American industrialists from working with the U.S. government.⁵²

VII. THE *HOSTAGE* CASE

A. The Indictment

The indictment contained four counts, all of which alleged the commission of both war crimes and crimes against humanity. Count One alleged that the defendants had ordered the execution of thousands of civilian hostages in occupied territory in reprisal for attacks on German troops. The count emphasized that the hostages had been executed “without benefit of investigation or trial” pursuant to “arbitrarily established ratios varying from 50 to 100 for each German soldier killed and 25 to 50 for each German soldier wounded.”⁵³ Count Two alleged that the defendants had

⁴⁸ Quoted in Alberto L. Zuppi, *Slave Labor in Nuremberg’s I.G. Farben Case: The Lonely Voice of Paul M. Hebert*, 66 LA. L. REV. 495, 523 (2006).

⁴⁹ BOWER, 358.

⁵⁰ Letter from Morris to DuBois, 26 Mar. 1953, TTP-4-1-LC2-9.

⁵¹ Letter from DuBois to Morris, 9 Apr. 1953, TTP-4-1-LC2-9, at 1-2.

⁵² DUBOIS, GENERALS, 20-21.

⁵³ Hostage, Indictment, para. 1, XI TWC 766.

plundered public and private property, wantonly destroyed cities and towns, and murdered civilians in occupied Norway, Greece, Yugoslavia, and Albania. Count Three alleged that the defendants had illegally ordered their subordinates to deny POW status to and summarily execute captured members of “the military forces of nations at war with Germany.”⁵⁴ Count Four alleged that the defendants had terrorized, imprisoned in concentration camps, and deported to slave labor the civilian populations of Greece, Yugoslavia, and Albania.

B. The Tribunal

The *Hostage* case was heard by the second iteration of Tribunal V, now consisting of Charles F. Wennerstrum (presiding), Edward F. Carter, and George J. Burke. Wennerstrum – who would provoke significant controversy shortly after the trial, as discussed below – was a Justice of the Iowa Supreme Court. Carter was a Justice of the Supreme Court of Nebraska. Burke had been Chief Counsel for the Office of Price Administration in D.C. during the war.⁵⁵

C. Outcome

Trial began on 15 July 1947 and ended on 19 February 1948. Von Weichs was dismissed from the trial during the defense case because of ill health. Two defendants were acquitted: Hermann Foertsch and Kurt Ritter von Geitner, both of whom were Chiefs of Staff to higher-ranking defendants.⁵⁶ Seven of the other eight defendants were convicted on Count One (execution of hostages); only von Leyser, Rendulic’s subordinate, was acquitted on that count. Felmy, the Commander Southern Greece, was the only defendant convicted on Count Two (plunder). Five of the eight defendants, including List and Rendulic, were convicted on Count Three (execution of POWs). List and Kuntze were both sentenced to life imprisonment; Rendulic and Speidel were sentenced to 20 years; and the remaining defendants were sentenced to between seven and 15 years.

D. Noteworthy Aspects

On February 20, one day after the verdicts were announced and literally hours before departing Nuremberg, Judge Wennerstrum conducted a private interview with Hal Foust, a correspondent for the conservative *Chicago Tribune*. Wennerstrum condemned the *Hostage* trial as “victor’s justice,” accused the prosecution staff of failing “to maintain objectivity aloof from vindictiveness, aloof from personal ambitions for convictions,” and said that he “never would have come” to Nuremberg if he had known the true nature of the trials.⁵⁷ On February 23 the *Tribune* ran a story about the interview entitled “Presiding Judge at Nuremberg Disillusioned”; the

⁵⁴ Id. at 772, para. 11.

⁵⁵ Background Information on Judges, 6.

⁵⁶ The criminal responsibility of chiefs of staff for ordering and command responsibility is discussed in Chapter 11.

⁵⁷ *Presiding Judge at Nuremberg Disillusioned*, CHICAGO TRIBUNE, 23 Feb. 1948, 5.

interview was picked up by Reuters and published in all of the major U.S. papers, including the *New York Times* and *Washington Post*.⁵⁸

Judge Wennerstrum's criticisms were rejected by his fellow judges. The other members of Tribunal V, Judges Carter and Burke, stated that they believed the trial had been "well thought out" and "tried fairly."⁵⁹ Similarly, Judge Brand, who had heard the *Justice* case, described Wennerstrum's interview as "a libel upon our most revered institution, and a slur upon every one of the 35 judges who participated in the trials."⁶⁰

Taylor also responded to Wennerstrum – and inadvertently triggered one of the most controversial episodes in the trials. His response appeared in the *Chicago Tribune* the same day as Wennerstrum's interview was published,⁶¹ making it clear that he had received advance notice of the interview. The timing led Hal Foust to complain to the Army that Taylor had instructed a member of his staff to intercept the interview.⁶² In fact, as the Inspector General found after an extensive investigation, Taylor had obtained the interview by accident. He had first learned about it from one of his prosecutors, who had seen Foust and Wennerstrum talking in the Palace of Justice and then heard the Judge boasting that he had given an interview to the *Chicago Tribune* that would "blast the trials."⁶³ The next day, in response to a request for an earlier Foust dispatch, a press employee in Frankfurt had inadvertently given the OCC both the earlier dispatch and the Wennerstrum interview.⁶⁴ Taylor had then used the interview to write and distribute his response.

VIII. RuSHA

A. The Indictment

The indictment contained three counts. Count One alleged that the defendants had committed crimes against humanity by taking part in "a systematic program of genocide, aimed at the destruction of foreign nations and ethnic groups, in part by murderous extermination, and in part by elimination and suppression of national characteristics." That program, according to the count, involved a variety of acts, including preventing the reproduction of enemy nationals, forced Germanization, slave labor, and the persecution and extermination of Jews.⁶⁵ Count Two alleged that the defendants had committed a variety of war crimes, such as plunder, murder, deportation, and enslavement. Count Three alleged that all of the defendants except Viermetz, the female defendant, had been members of the SS.

B. The Tribunal

⁵⁸ HEBERT, HITLER'S GENERALS, 238-39 n. 24.

⁵⁹ *Id.*

⁶⁰ Letter from Brand to Young, 18 Oct. 1948, NA-153-1018-15-89-1, at 3-4.

⁶¹ *U.S. Prosecutor Blasts Attack on Nazi Trial*, CHICAGO TRIBUNE, 23 Feb. 1948, 5.

⁶² Memo from Huebner to CSUSA Washington, 23 Apr. 1948, NA-153-1018-1-85-1, at 1.

⁶³ Letter from Deane to Taylor, 3 July 1987, 3-4.

⁶⁴ *Id.* at 4.

⁶⁵ RuSHA, Indictment, para. 2, IV TWC 609-10.

RuSHA was heard by the second iteration of Tribunal I, which now consisted of Lee B. Wyatt (presiding), Daniel T. O’Connell, and Johnson Tal Crawford, the sole holdover from the original Tribunal I. Wyatt was an Associate Justice of the Supreme Court of Georgia. O’Connell was an Associate Justice of the Superior Court of Massachusetts and had served in World War I.⁶⁶

C. Outcome

Trial began on 20 October and ended on 10 March 1948. Vermietz, the female defendant, was acquitted without discussion. Five of the defendants were convicted solely of criminal membership: Meyer-Hetling, Ebner, Schwarzenberger, Sollman, and Tesch. All were sentenced to time served – less than three years in each case. The other eight defendants were convicted on all three counts. Greifelt, the head of the RKFDV, was sentenced to life imprisonment. Hoffman and Hildebrandt, the successive heads of RuSHA, were sentenced to 25 years each. The other five received sentences of between 10 and 20 years.

IX. EINSATZGRUPPEN

A. The Indictment

The amended indictment in *Einsatzgruppen* was modeled on the *RuSHA* indictment. Count One, a crimes against humanity count, alleged that the defendants had used the *Einsatzgruppen* to carry out “a systematic program of genocide.”⁶⁷ Count Two alleged that the defendants had committed a variety of war crimes, including the murder of POWs and civilians in occupied territory and wanton destruction not justified by military necessity. Count Three alleged that all of the defendants had been members of the SS and that some of the defendants had also been members of the SD or Gestapo.

B. The Tribunal

Einsatzgruppen was heard by the third iteration of Tribunal II: Michael Musmanno; John J. Speight, the alternate in *Milch*; and Richard Dixon, the alternate in *Flick*. According to Earl, Dixon was considered a capable judge, while Speight was viewed by his colleagues as “ineffective” and a “cipher.”⁶⁸ Musmanno, now presiding, requested the Navy to promote him “one more notch” to Commodore in order to reduce the “incongruity” between his rank (Captain) and the rank of the four defendants who were Generals in the SS. The Navy rejected his request.⁶⁹

C. Outcome

Trial began on 29 September 1947 and ended on 9 April 1948. No defendant was acquitted, although Otto Rasch, the commanding officer of *Einsatzgruppe C*, was severed from the case during trial for health reasons.⁷⁰ 20 of the 22 remaining

⁶⁶ Background Information on Judges, 6-7.

⁶⁷ *Einsatzgruppen*, Indictment, para. 2, IV TWC 15.

⁶⁸ EARL, 219.

⁶⁹ *Id.* at 239.

⁷⁰ *Einsatzgruppen*, IV TWC 411.

defendants were convicted on all three counts; Ruehl and Graf were convicted only of criminal membership. 15 defendants, including Ohlendorf and five of the six defendants added to the case in the amended indictment, were sentenced to death. (Von Radetzky was sentenced to 20 years.) The other defendants received sentences ranging from life (Nosske and Jost) to time served (Graf). Ohlendorf bowed his head to the judges when he learned of his death sentence,⁷¹ anticipating Eichmann's similar action 13 years later.

D. Noteworthy Aspects

The decision to impose the death penalty was very difficult for Musmanno, even though he had already sentenced defendants to death in *Pohl*. As noted earlier, he was personally opposed to the death penalty. Moreover, as Earl points out, he admitted in an early draft of his 1961 account of the trial, *The Eichmann Kommandos*, that he had come to see the defendants not as “beasts” but as “personable individuals.”⁷² After the trial, in fact, Musmanno spent a number of weeks at a Cistercian monastery contemplating the defendants' fates.⁷³

X. KRUPP

A. The Indictment

The *Krupp* indictment was modeled on the indictment in *Farben*. Count One alleged that the defendants had committed crimes against peace by financing the Nazis' rise to power and then “fully and willingly cooperating in the rearmament of Germany for foreign aggression.”⁷⁴ Count Two alleged that all of the defendants other than Lehmann and Kupke had committed war crimes and crimes against humanity by systematically plundering public and private property, particularly industrial property, in countries occupied by the Nazis. Count Three alleged that all of the defendants had committed war crimes and crimes against humanity by participating in the “enslavement and deportation of foreign and German nationals, including concentration camp inmates,” and by forcing POWs to engage in the manufacture and transport of armament in munitions.⁷⁵ Finally, Count Four alleged that the defendants had conspired to commit the crimes against peace detailed in Count One.

B. The Tribunal

Krupp was heard by the second iteration of Tribunal III, which now consisted of Hu C. Anderson (presiding), Edward J. Daly, and William J. Wilkins. Anderson was the presiding judge of the Tennessee Court of Appeals and had served in World War I. Daly was a judge of the Superior Court of Connecticut and the state's former Attorney General. Wilkins was a judge of the Superior Court of Washington and had

⁷¹ EARL, 264.

⁷² Id. at 262. Musmanno eliminated those comments from the published version of the book.

⁷³ Id.

⁷⁴ *Krupp*, Indictment, para. 15, IX TWC 15.

⁷⁵ Id. at 29, para. 46.

served as Judge Advocate for the Second Air Force in Colorado during the war. He had been awarded a Silver Star for his service during World War I⁷⁶

C. Outcome

Trial began on 8 December 1947 and ended on 31 July 1948. One defendant, Pfirsch, was acquitted. No defendant was convicted on Count or Count Four, because the Tribunal granted a defense motion to dismiss the crimes against peace charges on the ground that the prosecution's evidence was insufficient as a matter of law. Four defendants were convicted of both plunder (Count 2) and slave labor (Count 3), most notably Alfried Krupp. Two defendants, Eberhardt and Loeser, were convicted solely of plunder, while four defendants, including von Buelow, were convicted solely of slave labor. Krupp, Mueller, and von Buelow were each sentenced to 12 years; the other defendants were sentenced to between time served and 10 years. Krupp was also ordered to forfeit all of his real and personal property.

D. Noteworthy Aspects

Two events in February 1948 had a major impact on the *Krupp* trial: the Soviets overthrew the Czechoslovakian government, and the Military Governor in the Soviet zone issued an order preventing access to Berlin.⁷⁷ The possibility that the Soviets would move further west so unsettled the judges still in Nuremberg that John Young, the presiding judge in *High Command*, asked General Clay whether OMGUS had made plans to evacuate the judges and their families in case of a Soviet attack. Although Clay assured him that it had, a number of Americans left Nuremberg, including Judge Daly's wife and daughter.⁷⁸

The intensification of the Cold War also affected the trial – as well as the ongoing *Ministries* and *High Command* trials – more directly. After the events of February 1948, visiting American politicians began to overtly pressure the OCC and the tribunals to end the trials as quickly as possible.⁷⁹ One of the prosecutors in *Ministries*, for example, reported that it was “bluntly asserted to the prosecution staff and to the judges in private conversations... that the real enemy, Russia, was growing stronger and the trials were further weakening efforts to restore Germany to the necessary economic viability that would permit her to serve as a bulwark against communism.”⁸⁰

Such pressure obviously did not prevent the *Krupp* tribunal from convicting the defendants of slave labor and plunder. There is also no evidence that the Tribunal's rejection of the crimes against peace charges was motivated by the concerns expressed by Judge Morris in *Farben*. What is clear, however, is that the *Chicago Daily Tribune* spoke for many conservative elements in the U.S. when it later claimed that although the trials were “designed to give the maximum aid possible to Communist penetration of Germany,” the “partial acquittals offer some hope that the

⁷⁶ Background Information on Judges, 7.

⁷⁷ MAGUIRE, 167.

⁷⁸ WILLIAM JOHN WILKINS, *THE SWORD AND THE GAVEL* 194 (1981).

⁷⁹ MAGUIRE, 184.

⁸⁰ Quoted in *id.*

administration and its military representatives in Germany are backing away from the insane policy of destroying the German people, really in vengeance.”⁸¹

Krupp also witnessed the NMT trials’ most dramatic confrontation between judges and defense attorneys. On January 16, all ten of the attorneys attending the morning court session stormed out of the courtroom to protest a Tribunal ruling concerning the use of commissioners.⁸² The Tribunal continued with the trial without the attorneys until lunch – an unwise decision, as Taylor later noted⁸³ – and then, when they failed to appear for the afternoon session, held six of the attorneys in contempt and ordered their arrest. Five of the imprisoned attorneys later apologized to the Tribunal and were permitted to continue with the case, but one – Guenter Geissler – refused to apologize and was prohibited from continuing to represent Alfried Krupp.⁸⁴

XI. *MINISTRIES*

A. The Indictment

The 50-page indictment, the second longest in the trials, contained eight counts. Count One alleged that most of the defendants had committed crimes against peace by participating, in various ways, in the Nazis’ wars of aggressions and invasions. Count Two alleged that the same defendants had conspired to commit crimes against peace. Count Three, a war crimes count, alleged that a number of the defendants were responsible for the murder of POWs because they had participated in the issuance and execution of the “lynch law” for Allied flyers and the Commando Order. Count Four, a crimes against humanity count, alleged that between January 1933 and September 1939 a number of the defendants had participated in the murder, mistreatment, and persecution of German Jews. Count Five alleged that most of the defendants had committed war crimes and crimes against humanity by participating in the Nazis’ “systematic program of genocide.”⁸⁵ Count Six alleged that a number of the defendants had committed war crimes and crimes against humanity by plundering public and private property, both real and personal, in occupied territory. Count Seven alleged that most of the defendants had committed war crimes and crimes against humanity by enslaving and deporting civilians in occupied territory on a massive scale. Finally, Count Eight alleged that a number of the defendants had been members of the SS, SD, or Leadership Corps.

B. The Tribunal

Ministries was heard by the second iteration of Tribunal IV, consisting of William C. Christianson (presiding), who had been part of Tribunal IV in *Flick*, Robert T. Maguire, and Leon W. Powers. Maguire, who had been recommended by Judge Brand – OMGUS had asked Brand to remain in Nuremberg after the *Justice* case, but he had declined – was a lawyer in Oregon and a Standing Master in Chancery for the

⁸¹ Quoted in Danner, 672.

⁸² The role of commissioners in the trials is discussed in Chapter 6.

⁸³ Telford Taylor, *The Krupp Trial: Fact v. Fiction*, 53 COLUM. L. REV. 197, 206 (1953).

⁸⁴ Krupp, Ruling of Tribunal III in Matters Relating to Contempt of Court, 21 Jan. 1948, XV TWC 1012.

⁸⁵ *Ministries*, Indictment, para. 39, XII TWC 44.

U.S. District Court of Oregon.⁸⁶ The historian Peter Maguire, Judge Maguire's grandson, described him as "a conservative Republican" who was nevertheless "sympathetic to the views of the War Department."⁸⁷ Powers was a former Justice of the Iowa Supreme Court.⁸⁸

C. Outcome

Trial began on 6 January 1948 and ended on 13 April 1949. The Tribunal dismissed Count Four during trial, having concluded that Law No. 10 did not criminalize peacetime crimes against humanity that were not connected to war crimes or crimes against peace.⁸⁹ Two defendants were acquitted: von Ermannsdorff, Woermann's deputy in the Foreign Office; and Meissner, the head of the Presidential Chancellory. Five defendants were convicted of crimes against peace – the first and only such convictions in the trials: Lammers, Koerner, Keppler, von Weizsaecker, and Woermann. The other defendants were convicted on various permutations of the non-dismissed counts. Berger received the longest sentence, 25 years. Stuckart received the shortest sentence, time served.

A week before the end of trial, the *Ministries* tribunal issued an order permitting the defendants to file motions alleging errors of fact or law in the forthcoming judgment. Nineteen defendants did so. The Tribunal dismissed most of the defendants' claims as meritless, but set aside Steengracht von Moyland's conviction for the murder of POWs (Count Three) and von Weizsaecker and Woermann's convictions for crimes against peace (Count One).⁹⁰ The Tribunal also reduced the sentences of the three defendants from seven to five years.⁹¹ Judge Christianson dissented on both the dismissed charges and the sentence reductions.⁹²

XII. HIGH COMMAND

A. The Indictment

The indictment contained four counts. Like the *Farben* and *Krupp* indictments, Counts One and Four alleged that the defendants had committed crimes against peace and had conspired to commit crimes against peace, respectively. Notably, the count emphasized the defendants' participation in planning the various wars of aggression and invasions; their waging of those wars and invasions was secondary.⁹³ Count Two alleged that the defendants had committed war crimes and crimes against peace against by participating in the issuance and execution of the Commissar and Commando Orders, by murdering and mistreating POWs, and by forcing POWs to engage in work directly connected to war operations. Count Three alleged that the defendants had committed war crimes and crimes against peace in occupied territory

⁸⁶ Background Information on Judges, 7-8.

⁸⁷ MAGUIRE, 177.

⁸⁸ Background Information on Judges, 7-8.

⁸⁹ That issue is discussed in Chapter 10.

⁹⁰ The crimes against peace dismissals are discussed in Chapter 8.

⁹¹ Ministries, XIV TWC 946.

⁹² Ministries, Order and Memorandum of the Tribunal and Separate Memorandum of Presiding Judge Christianson, 12 Dec. 1949, XIV TWC 960-67.

⁹³ See, e.g., High Command, Indictment, para. 10, X TWC 17.

by deporting and enslaving civilians, plundering private and public property, and engaging in wanton destruction not justified by military necessity.

B. The Tribunal

High Command was heard by the second iteration of Tribunal V, now consisting of John C. Young (presiding), Winfield B. Hale, and Justin W. Harding, who had been the alternate in the *Justice* case. Young was the former Chief Justice of the Supreme Court of Colorado. Hale was Judge Anderson's colleague on the Tennessee Court of Appeals.⁹⁴

C. Outcome

Trial began on 5 February 1948 and ended on October 28. On the first day of trial, General Blaskowitz committed suicide by throwing himself down a staircase in the Nuremberg prison.⁹⁵ According to Hans Laternser, von Leeb's attorney, one of the prosecutors told him the same day that "Blaskowitz did not need to do that as he would certainly have been acquitted" – a statement that led Laternser to wonder why, if that was true, the OCC had bothered to indict him.⁹⁶

Two of the 13 remaining defendants were acquitted: Hugo Sperrle, a Field Marshal in the German Air Force; and Otto Schniewind, an Admiral in the Germany Navy. None of the defendants were convicted of crimes against peace, because the Tribunal held that they did not satisfy the crime's leadership requirement.⁹⁷ All of the defendants other than von Leeb were convicted on both Count Two and Count Three; von Leeb was convicted only on Count Three. Warlimont and Reinecke were sentenced to life imprisonment. The other defendants were sentenced to between time served (von Leeb) and 22 years (von Roques).

D. Noteworthy Aspects

Like Judge Morris, Judge Young – the judges' delegate to General Clay in the aftermath of Czechoslovakia and the Berlin Blockade – was deeply afraid of the Russians. He considered communism "a hellish thing... like cancer," viewed the Americans in Nuremberg as "a bunch of sitting ducks," and constantly stated that he "never wanted to get away from anything so bad in my life."⁹⁸ That fear directly affected his view of the trial: in a letter written in late June 1948, he admitted to his sons that "most of the things were done to the Russians and I am getting so that doesn't seem so bad to me" and complained regarding the crimes against peace charges that "[i]t is certainly a peculiar situation to be trying men for aggressive war against a nation whose aggressive tactics have the world now in a state of turmoil and alarm. Just like trying one gangster for killing another gangster from a gang that is on a rampage while the trial is going on."⁹⁹ Judge Young also grew increasingly

⁹⁴ Background Information on Judges, 8.

⁹⁵ Statement by Deane, 5 Feb. 1948, TTP-5-1-4-63.

⁹⁶ Laternser, in METTRAUX, 475.

⁹⁷ That requirement is discussed in Chapter 8.

⁹⁸ Quoted in HEBERT, HITLER'S GENERALS, 136.

⁹⁹ Quoted in *id.* at 129.

desensitized to the atrocities that the defendants had committed, at one point telling his sons in a letter that “it is getting like the story Johnny likes – ‘Along came a locust and took another grain of corn’ – only it is ‘Along came an SD and killed another bunch of Jews’.”¹⁰⁰

¹⁰⁰ Quoted in *id.* at 128.