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TRIAL BY MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS

of

ERICHARD VON MACKENSEN

and

KURT MAELZER

on

19th NOVEMBER, 1946

SECOND DAY

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SECOND DAY

Tuesday, 19th November, 1946.

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PROCEEDINGS
of a
MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS

held at
THE UNIVERSITY OF ROME

on
19th NOVEMBER, 1946

upon the trial of
ERERHARD von MACKENSEN and KURT MAELZER, German Nationals in the charge
of the Commander 56 Rest and Transit Camp.

ORDERS BY:

LIEUTENANT GENERAL SIR JOHN HARDING.

PRESIDENT

MAJOR GENERAL I.S.O. PLAYFAIR, C.B., D.S.O., M.C.

MEMBERS

LIEUTENANT COLONEL E.C. SEBAG-MONTEFIORE

Darham Light Infantry.

LIEUTENANT COLONEL D.K. HAYMAN

Lincolns.

LIEUTENANT COLONEL R.W. TYRRELL

Oxf & Bucks.

LIEUTENANT COLONEL P.S. KEEN, M.B.E.

Devons.

JUDGE ADVOCATE

C.L. STIRLING, Esq., C.B.E., K.C., Deputy Judge Advocate General to the Forces.

SECOND DAY

SECOND DAY

Tuesday, 19th November, 1946.

(At 1000 hours the Court re-assembles pursuant to the adjournment, the same President, members and Judge Advocate being present)

(The accused are again brought before the Court)

HERBERT KAIFLER resumes his stand at the place from which he is giving his evidence.

COL. HALSE: I finished my examination in chief yesterday.

THE JUDGE ADVOCATE: Will you tell learned counsel that they are both entitled to cross-examine this witness if they want to and that they can put any questions that they like until they are stopped by the Court. I do not think the Court really mind whether counsel for von Mackensen goes first but whatever they do I think it would be better to keep to that order throughout.

Cross-examined by DR. KELLER

Q You said yesterday in your examination in chief that General Maelzer said the following things; that he had said the whole quarter should be blown up and, as you said yesterday, you answered: "Well, I do not think that will be necessary". Did you want to say by this the following: "Such an action can really not be carried through"? A. I wanted to say that such a reaction really was quite out of the question.

Q And why not? A. Because such an action would have been a very excited affair and I am quite sure that General Maelzer, after his first excitement died down, realized this himself.

Q Did you also think that such an action would produce a new way of hatred? A. I thought at that time as I think to-day; that all these actions which we used to call reprisals were tactically wrong, politically not right, and therefore should have been avoided.

Q You said yesterday: "Mackensen and myself, we were convinced that higher authority would order the shooting of Italians in the ratio of one to ten".

THE PRESIDENT: Is that what he is supposed to have said?

THE INTERPRETER: That is what he is supposed to have said, yes.

DR. KELLER: (To the witness) During your first interrogation you said the following: "I proposed to Mackensen" - that is a quotation out of your first interrogation - "I proposed to Mackensen that the official communique should mention the ratio one to ten but because of the big number involved not all the people should be shot".

THE PRESIDENT: "Should have been shot" or "should be shot".

THE INTERPRETER: "should be".

DR. KELLER: "Mackensen agreed". Was it not the same way as you said in your first interrogation, that -----

THE JUDGE ADVOCATE: We shall all get confused unless learned counsel makes it quite clear what he is talking about. Now, this witness has made a statement. He can call it what he likes but he must refer to it always in the same way. In addition to that he has given evidence in Court here and I am not clear what he

is putting to the witness when he says "in his first statement". Will learned counsel make it quite clear whether it is the deposition he is talking about or the evidence given on oath in this Court?

DR. KELLER: I refer to the written statement which Kappler made.

COL. HALSE: May the witness see it? (Handled)

DR. KELLER: (To the witness) I repeat my question. Was it not in the way as you said in your written statement, i.e. that you made a proposition to General von Meckensen and that he agreed to it? A. My written statement from the 4th August and my evidence given in my examination in chief yesterday are not discredited at all. There is no discrepancy I can see in them because, if I may say so, I think both are right because I would like to mention that I continued the conversation with General von Meckensen after Meckensen had finished his conversation with Maelzer, apparently about the same topic, and, as I remember, yesterday I gave a gist of this conversation between General Meckensen and myself and in my statement of the 4th August I said Meckensen agreed to it under the condition that he himself would be responsible for issuing the orders concerning these reprisals and, as I see it, these words are almost the same as the words which I uttered yesterday during my examination and the next phrase shows what I mentioned yesterday as the real result of our conversation.

THE PRESIDENT: What does he mean by "the next phrase"?

THE WITNESS: The next phrase which starts: "I proposed this to General Meckensen".

DR. KELLER: Did you have only one conversation with General von Meckensen, one conversation on the 'phone? A. I believe only one.

Q Meckensen did not ask you into his office because matters were dealt with which cannot be mentioned on the 'phone and were not the following persons present at this conversation, the Chief of Staff, Col. Hauser, and the chief judge of Army No. 14, Sdeigenthal? A. I cannot remember.

Q Is it quite possible that they were there?

THE JUDGE ADVOCATE: We are getting nowhere with this. The witness is being asked a very simple question - was he, I gather, called to von Meckensen's headquarters and did he see the general there. Let us have that first. That may have been as to the people who were there when you asked him first of all when he agrees that he was called to see von Meckensen about this.

THE INTERPRETER: He said he could not remember.

THE WITNESS: No, I do not remember.

DR. KELLER: During this conversation these two persons which I have mentioned, the Chief of Staff, Col. Hauser and the Chief Judge, Sdeigenthal, should have been present. A. May I ask when this conversation is supposed to have taken place?

Q On the 23rd immediately following the telephone conversation, and the reason why Meckensen called for this conference was that he was of the opinion that these matters cannot be dealt with on the 'phone. A. Now that I hear about it I would not like to exclude the possibility that it did happen although I cannot remember at this moment. I would not exclude the possibility.

Q And during this conversation Hitler's demands for reprisals for this outrage on the 23rd were mentioned for the first time.

THE PRESIDENT: What is the question?

DR. KELLER: I only mention this as to refresh the memory of the witness. (To the witness) Can you remember? A. No, certainly not. I do not remember that this decision was mentioned, Hitler's decision.

Q You mentioned yesterday the expression "death worthy". Is not rather the expression "candidate for death"? A. When?

Q When you yesterday mentioned the word "death worthy", when you said you had enough "death worthy" people at your disposal.

THE JUDGE ADVOCATE: I do not remember him saying he had enough persons who were worthy of death available.

DR. KELLER: I would like to ask the shorthand-writer to look that up. I only want to say that he used the expression "death worthy".

THE JUDGE ADVOCATE: May I assist, if I can. My note says, speaking about this interview with von Meckensen: "The result was, if it remained the responsibility of von Meckensen to take reprisal action then he would order shooting in the ratio of one to ten and that would also be the numbers to be published. In reality it would be my task to shoot only so many as were worthy of death".

DR. KELLER: Yes. (To the witness) I asked whether, during these conversations, the expression "candidate for death" was used? A. I agree it is quite possible that I did say one candidate for death. When I said "candidate for death", which I might have said so, I said exactly the same sense as I explained to the court yesterday "worthy of death", but I never said, neither yesterday nor then, that I had a sufficient number of death worthy people. On the contrary.

Q On the contrary in your conversation with Meckensen? A. Yes.

Q When you mentioned this word "candidate for death" did Meckensen not ask you "How is it possible that you have so many people in arrest?"? A. That is quite possible but I do not know.

THE PRESIDENT: What does he mean, does not know - does not remember?

THE WITNESS: I cannot remember.

DR. KELLER: Your answer is: "Ratio being depends that you are responsible for a big area". A. Are you asking whether it is right?

Q Yes. A. I cannot remember that I gave this answer but I certainly did not give this answer because it would have been wrong.

Q And your answer allegedly was also that it is your habit, even those people who were condemned to death, not to execute those because through their help you hoped to get into the centre of the partisan movement. A. I cannot remember this detail either but it is quite possible that I said this. That might be true, what you quoted just now, but with the exception that I could not have shot these people. I could have only passed them in bigger groups to the military courts for trial.

THE PRESIDENT: I am not clear what that means. A. I myself could not have shot them. I could have only passed them on for trial in bigger groups to the military courts.

THE PRESIDENT: Are we still on the point as to why there were so many?

DR. KELLER: Yes. (To the witness) Did Meckensen not ask whether pleas for mercy were not put in by these candidates? A. No, I cannot remember.

THE PRESIDENT: I thought the answer was "No", was not it? A. Yes, that is so.

THE JUDGE ADVOCATE: Can we wait a minute there? You see, the whole of these questions, if they have any importance at all, depend upon whether this man had any conversation with Meckensen. Would you ask the witness now, having heard all this, whether he is prepared to say he had an interview with Meckensen or not?

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THE WITNESS: After having heard all these details, to the best of my knowledge and the best conscience I do not dare to say that no such interview had taken place but in my clear memory it still existent -----

THE JUDGE ADVOCATE: What does that mean? It means nothing to me.

THE INTERPRETER: It is just words, words, words!

THE PRESIDENT: The answer is that he does not remember such an interview.

THE JUDGE ADVOCATE: Will you ask learned counsel if he can be more specific and say where it took place, who was there and what time it was, and things like that?

DR. KELLER: (To the witness) Meckensen has spoken with you on the 'phone. He told you that this matter cannot be dealt with on the 'phone and he asked you to come to him into his office. You came and during this conversation the Chief of Staff was present.

THE JUDGE ADVOCATE: Where, where did he go? Did he have to leave Rome and go somewhere? If he did surely he can remember whether he got into a car and went to the quarter. That is the sort of question the Court want.

DR. KELLER: This conversation had taken place in the headquarters of General von Meckensen on the Monte Mario which is just outside the confines of Rome, and present at this conversation were the Chief of Staff, Col. Hauser and the Chief Judge of Army No. 14, Steigerthal.

THE JUDGE ADVOCATE: At what time?

DR. KELLER: I cannot say the exact time but very soon after the telephone conversation which had taken place in the office of General Maclzer. General Meckensen just tells me it was in the evening. General Meckensen is not able, at the moment, to state the exact time. He states it was in the afternoon or early in the evening.

THE WITNESS: I, up to now, was fully convinced that I saw General Meckensen the first time in my life on the 24th March when the burial took place. If now these details are given and if General Meckensen can remember it so exactly I cannot exclude the possibility that this conversation took place. As far as I can recollect all these arrangements of General von Meckensen's were given over the telephone.

DR. KELLER: (To the witness) Had it happened in Italy before the 24th March 1944 that people were shot in a ratio of one to ten? A. Yes, several times.

Q When? A. I cannot state the dates but I can remember in one case the reason.

Q Where did that happen? A. In Rome.

Q On whose orders? A. On order which I got from General Maclzer's H.Q. as an order from 14th Army.

Q You cannot state the time? A. No, but I remember that in one case it was for the shooting of a German Sonderfuhrer at Piazza Hispano.

THE JUDGE ADVOCATE: A Sonderfuhrer?

THE INTERPRETER: Yes.

THE JUDGE ADVOCATE: That is some special kind of fuhrer?

THE INTERPRETER: He states it is a military officer's rank.

DR. KELLER: (To the witness) Did you get the order to carry out the reprisal from any other H.Q. except the telephone conversation mentioned yesterday with Major Boehm? A. This question is not correct because Major Boehm did not give me the order to carry out this reprisal.

Q Who did give the order to carry out the mission? A. General Maelzer.

THE PRESIDENT: Just a moment. Are we now back onto the subject of this charge or are we still talking about the previous occasion in Rome when one of these reprisals took place?

DR. KELLER: I am referring to the topic of the charge. (To the witness) You said yesterday that you referred matters to H.Q. Why did you refer matters to H.Q.?

THE JUDGE ADVOCATE: What do you mean by that?

DR. KELLER: The H.Q. of the Army Group, Kesselring's H.Q., 14, Kesselring.

THE WITNESS: I telephoned Army Group for that reason because Major Boehm told me that an order had been issued by the Army Group and because I wanted to be absolutely sure of that because if it would have been an order from 14th Army Group the agreement which I had with General von Meckensen would be in force.

COL. HALSE: Did he say 14 Army Group or 14 Army?

THE WITNESS: 14 Army, General von Meckensen.

THE PRESIDENT: So it is not Kesselring's headquarters you are talking about; it is Meckensen's headquarters.

THE WITNESS: I want to explain exactly. After I had received the order by Boehm over the telephone I telephoned to OHSW, this is Kesselring's H.Q., because Boehm said it was an order from OHSW and because I wanted to be sure of that because it it would have been an order from 14th Army then the personal agreement between General von Meckensen and myself would have been valid.

THE JUDGE ADVOCATE: Would have been what?

THE INTERPRETER: In force.

THE JUDGE ADVOCATE: I have a note that Major Boehm telephoned to the witness. Then my note follows on: "After this conversation I telephoned to General Heuser, BOS.1". Is that the same telephone conversation he is now talking about or is it a different telephone conversation of which he has said nothing at all before?

THE WITNESS: No, that is another conversation and it is mentioned in the paragraph above the former paragraph, this conversation; the second paragraph on page 2.

THE PRESIDENT: The last paragraph on page 1 on the English translation.

THE WITNESS: That is the conversation to which Dr. Keller is referring just now.

DR. KELLER: (To the witness) In the agreement which you had with General Meckensen over the telephone it was decided to make a false report. Why do you believe now, when you say you think the order might have come from higher authority, that you could not have made in the same way a false report?
A. Because an essential part of the agreement between Meckensen and Kappler was the fact that it would be Meckensen's responsibility to order the reprisal.

Q Why did you then not ask General von Meckensen if he would cover, also in the case that it was an order from higher authority, the false report? If less people would have been shot? A. I do not know why I did not do that but also General von Meckensen did not telephone me to tell me that I could do that also under the changed circumstances.

- Q I refer now to the case of Piazza Hispano which was mentioned before, the shooting of the Sonderführer. What was this Sonderführer's name? A. I do not know any more.
- Q Can you not at least state approximately the time when that happened? Was it before Christmas; was it in the old year? A. No, not for that reason; because there were three cases and one of these three cases was the case of the Sonderführer.
- Q Did these cases when Italian civilians were shot in the ratio of one to ten happen before the Allied landing at Naturno? A. I cannot state it with certainty but I believe that these cases happened before Christmas.
- Q But before Christmas the 14th Army was not yet down here. The 14th Army at that time was still in northern Italy. A. Then it most probably happened later or what also is possible is it was ordered by another army, but I do not know that any more.
- Q Rome was up till the middle of February 1944 not in the area of any army. The commander of Rome was under the direct orders of Field Marshal Kesselring. A. What is the question?
- Q From which military H.Q. did you get this order? A. The order to the previous shootings?
- Q In the ratio of one to ten. A. Yes.

THE PRESIDENT: It is not clear what the question is or what the answer is. Will you ask the doctor to repeat the question because I am not quite clear what it was?

DR. KELLER: (To the witness) Do you remember still that these orders to shoot Italians in the ratio of one to ten were given by military H.Q.'s? A. Yes, because in all cases these orders were transmitted to me by General Maelzer's H.Q. as orders from higher authorities.

THE PRESIDENT: The answer is "Yes". Very well.

DR. KELLER: Who, in these cases, transmitted these orders to him?

THE PRESIDENT: What cases?

DR. KELLER: In the mentioned three previous cases.

THE WITNESS: It is completely impossible that I can recollect that also only approximately; if in one of these cases the order was given verbally in a conversation or over the telephone I cannot recollect because I cannot even remember the cases as such. I only know for sure that there were previous cases whenever in the much smaller extent.

DR. KELLER: Were these three previous cases published in the newspapers or were they published in another way? A. I personally did not see any publication, neither in the three previous cases nor in the last one.

THE PRESIDENT: The question was "Were they published?". What is the answer? A. I believe not.

DR. KELLER: Where are these people who allegedly have been shot buried? A. These shooting took place in a strong point which normally was used for such purposes by the Italians and Italian H.Q.'s were detailed for the burial of the bodies. To give a precise answer to this question it should be sufficient to ask the Italian police officer where the bodies of executed bodies were buried because I myself do not know.

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Q What was the name of the commander in this strong point that these shootings took place? A. Not only now but also then I did not know the names of any of the commanders of the Italian strong points.

Q Can you give the names of leaders of your H.Q. who carried out these shootings? A. Yes.

Q Give the names. A. In all cases Schueltz was responsible.

THE PRESIDENT: What is Schueltz; what is his rank? A. Captain Schueltz.

DR. KELLER: Where were these people who have been shot taken from? A. They were selected under the same viewpoint as I have stated yesterday for the other case.

Q Has a return about the carrying out of the order been given by you? A. I do not remember now to whom personally I rendered these returns. I am quite sure that the returns have been rendered because General Maelzer's H.Q. was always very exact in requesting these returns.

Q Can you name the officer of General Maelzer's H.Q. to whom these returns have been rendered? A. The one case of the Ardentine Caves, yes, because when I, on the afternoon of the 24th, returned for the second time from the Ardentine Caves to my office Major Boehm had once or twice already telephoned and asked for the returns.

Q And in the previous cases? A. I do not know to whom personally they rendered returns. I do not remember if in these cases I personally telephoned to Major Boehm or if Capt. Schueltz telephoned perhaps to GSO.I.

THE PRESIDENT: These are previous cases? A. Previous cases.

DR. KELLER: I would like to ask for an adjournment for a moment so that I can confer with my client.

THE PRESIDENT: I will take the opportunity of adjourning for ten minutes. Will that cover the discussion which the Herr Doctor wishes to have?

DR. KELLER: Yes.

(At 1105 hours the Court adjourns)
(At 1125 hours the Court re-opens)

(The accused are again brought before the Court)

The Witness resumes his stand at the place
from which he is giving his evidence and
is further examined as follows:

THE PRESIDENT: Would you ask the Herr General Richter if he has had time for the conversation he required?

DR. KELLER: Yes. (To the witness) Did you speak, on the evening of the 23rd March 1944, with Field Marshal Kesselring? A. I do not think so.

Q Did you not say to the Field Marshall that you can provide the required number for this action out of the number which is at your disposal, out of the number of people who were condemned to death? A. No, certainly not.

Q Was Obergruppenfuhrer Wolfe, on the morning of the 24th March, in Rome? A. No, he arrived on the 24th but in the evening. In the evening of the 24th March.

Q After the execution had been carried out or before? A. After.

Q Were some incidents against German soldiers before the 24th March - did these incidents happen in Rome or in your area? A. Yes, quite a number of incidents happened.

THE JUDGE ADVOCATE: What incidents are these now? Are they the ones we had before or are these new ones?

DR. KELLER: Incidents in which German soldiers were involved.

THE WITNESS: Yes, quite a number of them.

DR. KELLER: Could you say, just approximately, how many? A. Four or five in Rome before the date of 24th March.

Q Were these bomb outrages or other outrages? A. No, all together four or five.

THE PRESIDENT: That does not answer the question, does it?

THE WITNESS: All together the number was four or five including bomb outrages or others.

DR. KELLER: How many soldiers were wounded in this bomb outrage which occurred on 23rd March? A. 50 were wounded to such an extent that they had to be sent to the hospital - about 50.

Q And slight casualties which had not to be sent to the hospital, how many of those? A. I do not know but out of the whole company there was hardly anybody who was not hurt in a more or less slight degree.

Q I am speaking about the outrages which happened before the 23rd March. Were there soldiers also killed during those incidents? A. Yes, some of them.

Q Could you tell me how many were killed? A. All together four or five.

Q Do you know how many, do you know the number of losses occurred in outrages which happened outside of the city of Rome? A. I cannot give any numbers. I can only say that the number was very much higher.

Q Was it tried to find the culprits who were responsible for the incident which occurred on 23rd or the culprits who were responsible for the outrages which occurred before this date? A. Yes, in all cases because that was really our duty.

Q And the result of the investigations? A. The result is that all these incidents were cleared up, that all the investigations were positive.

Q Were the culprits found? A. Only partly.

THE PRESIDENT: I am afraid I do not understand that. The answer to the question "Were the incidents all cleared up" was "Yes" and "Were the culprits all found", "No".

THE INTERPRETER: That is exactly the answer.

THE WITNESS: In the case of the incident in the Via Rosella the case was cleared up. I want to say by this that we could reconstruct all what happened.

DR. KELLER: In the case of the Via Rosella did you find those who were responsible for it? A. One of five was found.

Q One of five. When did this happen? A. About three weeks afterwards.

Q And did you find some sort of plant which was responsible for the manufacture of bombs or explosives? A. Not only once did we find stores containing all these explosives but several times.

THE PRESIDENT: That was not the question.

DR. KELLER: (To the witness) I did not ask about stores but I did ask about proper plant, a factory where these explosives were manufactured. A. Yes, this we discovered as well.

Q And could you find those persons responsible for the manufacture of those bombs and explosives? A. Yes, partly we could find those responsible for it.

Q What were the crimes of which those Italians were accused of who were in German custody? What charges were they under? A. I cannot answer this question exactly. Partly I can answer this question.

Q Were they only actions, hostile actions, against the German Army? A. Yes.

DR. KELLER: I have finished my cross-examination.

Cross-examined by DR. CHRIST.

Q From which circles came the culprits of the 23rd March, 1944? A. The leader of the group of five, of the terror group, was a student of medicine from Florence, the son of a professor. The rest was composed from all branches of professional life. There was also a mechanist among them.

Q Did the culprits belong to the illegal resistance movement? A. This could not be established in detail. Surely, they did not act on their own decision only.

Q Do you know that on 19th December 1943 at 1800 hours a bomb outrage occurred against the Hotel Flora, the H.Q. of General Maelzer? A. Yes.

Q Do you know that a bomb outrage occurred against a group of German soldiers coming out of the cinema at Piazza Barberini? A. At this cinema two outrages happened.

Q Do you furthermore remember that a bomb outrage was carried out by a bicyclist against guards relieving at the prison? A. Yes, I do.

Q Was a prohibition against bicycling issued as a consequence of this outrage? A. I believe, yes, by General Maelzer.

Q Do you know anything about a bomb outrage at the Pinchio Bridge against a German car? A. Yes, I do, and this case I did not count amongst the four or five which I mentioned before.

Q Do you know anything about an outrage against the German railway canteen? A. I do not remember that.

Q Do you remember anything about an outrage carried out in a locality on the outskirts of Rome whereby three German soldiers were killed? A. Yes, the culprit was apprehended.

Q Do you remember if, in night time, German soldiers were shot in the Tiber area? A. I did not think of that before but now I hear of it, I do.

Q Do you know anything about a plot to blow up General Maelzer's H.Q. at Quorza Italy? A. Yes, I have seen the film and the proof.

Q Can you state anything if there have been issued warnings for the Italian population in the case of new outrages? A. Yes, such publications were issued several times but I have to confess that during the month in question I had no time to read the newspapers.

Q But can you recollect the contents of these publications? A. I cannot remember details of the contents.

Q Was in these publications spoken about a ration in reprisals of ten to one in the case of new outrages? A. I cannot remember now to have read the particular case in what that was stated but in my memory I think it is probable.

Q You stated yesterday that on 23rd March, on the evening of 23rd March 1944, you

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got the following order by Major Boehm; ten times the number of victims of Italians are to be shot within 24 hours. Did you not receive, the following morning, a further order from General Maelzer? A. I do not remember for the moment if I received a further order.

- Q This order which General Maelzer transmitted to you as coming from General Mackensen, respectively from higher authorities, had the following content: 320 persons are to be shot, that selection of these people and the carrying out of the order is the sole responsibility of the SD? A. I not only cannot remember such an order but it is impossible that this order was given in this form. The carrying out of this order could not have been ordered to me otherwise it would have been impossible that at 12 o'clock we had a discussion about who should carry out the reprisal.
- Q Did not General Maelzer explain to you on that occasion that he got the order from von Mackensen and did not issue it on his own behalf? A. On several occasions during the 23rd and 24th it was mentioned that this order was not General Maelzer's order.
- Q Is it not possible that this order, as I have mentioned it before, has been issued to you before that time? A. It is quite possible that this order in this form has been given to me already on the 23rd by Major Boehm with the exception of the point of the carrying out.
- Q General Maelzer alleged that he himself transmitted the order to you. A. It is quite possible that General Maelzer has shown me the order in repetition of the previously given order.
- Q You stated yesterday that 'the duty to select the victims was the duty of the person who got the order for the reprisal, in my opinion, General Maelzer.' A. This is my opinion as a logical consequence of that what an order includes.
- Q Afterwards you stated yesterday: 'I had to select the death worthy and to compile a nominal role'. A. Yes, and I stated also why.
- Q How do you explain this contradiction? A. I do not consider that a contradiction because the order was given to the HQ of the German commander and therefore it was the duty of the HQ of the German commander to provide the victims but as first, because it was usual and second, because it was not suitable, the German commands could not select the victims. Therefore the task of selecting the victims in previous cases and in the case of Via Rosella as well has been passed over to me.
- Q According to General Maelzer this passing over of the task in previous cases did not occur? A. What is the question.
- Q General Maelzer states that in previous cases this passing over of the task did not occur. A. I do not know if General Maelzer wants to say that I did not select the victims.
- Q Was it not perhaps possible that it was your duty to select the victims? If it would have been in the order transmitted to me as mentioned before then it would have been my formal duty but practically, in my opinion, this leads to the same result.
- Q You stated yesterday that it is quite understood that you had to submit the nominal role of the victims to General Maelzer. On the other hand you stated that you had not to render a return to any military HQ how you are reaching the number. How do you explain this contradiction? A. Did I say in this form the second part of the question as mentioned now.

THE JUDGE ADVOCATE: What I have got is this: "I may have mentioned this matter next day to Maelzer about the Jews. I did not have to make over a list to any military headquarters. I made a return on my own initiative to HDS. I took a list on the 24th to General Maelzer, a nominal roll. I did not look at it --" and so on. That is my version of it. Will you tell counsel if they do not agree with what I say they are quite entitled to ask the president to have the shorthand-writer read, but if they are satisfied that it is substantially right we do not want to do it.

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DR. CHRIST: That is completely correct and I propose to go on. (To the witness) Did this nominal roll set out to which groups the people belonged who were put on the list? A. Yes, there was a column provided in the list where reason was given for each name.

Q But you said you did not know if you reported to General Maelzer about the 57 Jews. A. Also that is correct.

Q General Maelzer denies strongly that already in previous cases orders have been issued for shooting in the ratio of one to ten. I put in front of you that General Maelzer was not under any military HQ and had no formations under his command. Only if the police was concerned it would have been General Maelzer's affair. Do you remember on that that in the three previous cases the order was transmitted to you by a military formation? A. Yes.

Q Was it perhaps possible that this order was given by an air force formation? A. It might be possible via General Maelzer's HQ.

Q Was it possible that these cases mentioned by you did occur before October 1943? A. In one case it might be possible.

Q One more question. Can you say anything about your military relations between you and General Maelzer? A. The German commander of Rome had the authority to issue orders to all German formations in Rome.

Q But this authority to issue orders referred only to military affairs? A. I do not know that exactly. I only know that also in question of supply such an authority existed.

Q Had he any authority to issue orders to you? A. Yes, regarding my activity within the city of Rome.

Q But you had your own SS generals via Lieut-general Haster? A. Yes, the relations to issue military orders were very complicated. The first point, as officer in charge of the Auszenkommando of Rome I was under the orders of EDS.

THE PRESIDENT: And EDS was?

THE INTERPRETER: Chief of the Security Police.

THE WITNESS: In the second line I was bound regarding my activities within my operational zone to orders of the army within whose area I was. In the third line regarding my activity in Rome I was bound as all other military formations in Rome to the orders and instructions of the German commander of Rome, and in the fourth instance I had instructions by Field Marshal Kesselring regarding the case of the 23rd January 1944 when the landing of Naturno occurred regarding the safeguarding of landing installations.

COL. HALSE: There was some reference to "polizei".

THE PRESIDENT: Did you hear?

THE INTERPRETER: That is exactly what he said.

DR. CHRIST: I have finished my examination.

THE JUDGE ADVOCATE: Col. Halse, you wish to re-examine?

COL. HALSE: No, thank you.

THE JUDGE ADVOCATE: (To the witness) How many times do you say now that you have personally talked with Mackenson on the 23rd or 24th March? A. I cannot exclude the possibility that I have been in his office.

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- Q How many times, taking that into account, do you say you have talked with Mackensen? A. Not more than twice.
- Q And how many times do you feel that you have ever talked to Kesselring? A. Only on those dates.
- Q Only at this time? A. In those two days not at all.
- Q When did you start to make, prepare, your nominal roll? A. Approximately about 2100 hours.
- Q Why did not you start before? A. All the preparations were already ordered by other officers in charge of it.
- Q Your conversation with Major Boehm was at about 5 o'clock, was it not, on the afternoon of 23rd March? A. Was it not later?
- Q I do not know; I am asking you. A. I said already yesterday that I cannot remember the exact times but I believe it was a little bit later.
- Q Now when you talked to Mackensen on the 'phone do you say that you told him that if a reprisal was to take place you had not enough people who were worthy of death or not? A. Certainly.
- Q Then it would follow, if you are right, that when it was reported to von Mackensen that 320 people had been executed he must have known that amongst them would be people who were not worthy of death according to you; is that right? A. Yes, the real sense of the word, yes.
- Q Do I understand that you arranged with Mackensen that the public should be told that 320 people had been shot as a reprisal but in fact you agreed with him that not such a large number would in fact be shot? A. That is so.
- Q Then are you suggesting that General von Mackensen was a party to a subterfuge in which the desired number of one to ten would not in fact be executed? A. It is more than subterfuge.
- Q Do you consider that you had had orders or at least that you knew that Kesselring himself wanted the full ratio of ten to one to be carried out? A. I had to assume from different reasons that if it was not Kesselring's headquarters, the OBSSW, that at least it was a higher military authority, higher than the 14th Army.
- Q Now what authority had you got to take out Italian subjects who were in German custody? A. I do not understand the word "authority".
- Q A number of the people you included on your nominal roll were in prison and under the authority of the Germans and not the Italians; is that right? A. With the exception of those which were handed over by the Italian police.
- Q If you will just answer my questions we will get on quicker. What authority had you to take out from one of the gaols an Italian subject who was being held there on the authority of the Germans? A. Who issued the order said only that 320 Italians had to be chosen as victims without giving any further details.
- Q Would you try and answer my question? On the afternoon of 24th March a number of Italians were taken from German custody and shot. You were in charge of that. Where did you get the authority to take those people out of the gaols? A. This authority I had to assume out of my orders that I had to provide the nominal roll of the victims. First I am speaking about that group which was in the charge of the Security Police. I got the authority from the EDS.
- Q Could people be taken out of a gaol in Rome like that without reference to the Governor of Rome, the Military Governor? A. Those groups which were responsible for the delivering of the prisoners into the prisons had also the right to take them out without reference to the commander.

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- Q And shoot them? A. This right was not quite fixed in the same way as the putting them into the prison and the taking them out.
- Q No; you got a number - not a very large number - but a number of Italians who had been sentenced by the military court martial, had you not? A. Yes.
- Q And how did you convince the military judge that you were entitled to take these people away? A. He agreed with me that the sentence should be carried out in the flavour, say, of the reprisal actions.
- Q Do you mean he just did it because you asked him to, or would he have to apply to somebody in his turn to get permission to let you have them? A. I do not know whether he went to higher authority for the verification of this question. I do know, however, that he had to go to higher military authority when the question arose whether those people who were condemned only to slight imprisonment whether they should be included into the number of those to be executed.
- Q And who did he go to, do you know? A. He told me that he asked for the decision of the chief judge attached to headquarters of Field Marshal Kesselring.
- Q And is this chief judge a military officer, a Wehrmacht officer, do you know? A. He is a military judge.
- Q But is he of the Wehrmacht? A. Yes.
- Q And the chief military judge was, according to you, prepared to hand over some Italians who had been sentenced to imprisonment so that they might be shot; is that right? A. Those who were convicted and sentenced to long imprisonments, yes.
- Q When you blew in the cave, what date was that? A. For the first time it was on the evening of 24th but, of course, it was done several times, not only the first time.
- Q Did you use an aerial torpedo? A. If the Court wishes I shall explain it.
- Q No, if you answer the question. What did you use? A. The work was done by engineers and I cannot give any details how they did it and what they used. I can only say where these explosives were; I could say that, but that is all.
- Q Were they military engineers? A. They belonged to the army but, I do not know, maybe they were paratroop engineers.
- Q About these Jews; whose idea was it to send the 57 Jews to be shot? A. This solution was arrived at during the conversation between Hauser and myself and I asked: "Well, how do we reach the required number?". When I told Hauser the approximate number - because I could only say it approximately as I had no clear idea how many so called death worthy people are at my disposal - he answered with another question: "How many have you to your disposal at all?" and when I told him approximately the number of all the people who were at my disposal he wanted to have some specific groups named into which groups they were formed.
- Q I do not want to go on with that. When did you decide that 33 Germans were killed in this explosion? A. It must have been between the time when I had the telephone conversation with General Maelzer and the time of the execution, when the execution took place.
- Q Have not you always said, up to the time you came in Court, that it was 32 Germans that were killed? A. No, my number which I gave was always 33.
- Q Where did you give that number? A. In the statement which was handed to me by the Court sergeant.
- Q Is it there? You have got: "Later the number of victims rose to 32 and I decided to add the 57 Jews". Where is the statement about 33? The statement I have, which you made, is as follows: "Later the number of victims rose to 32 and I decided to add the 57 Jews". Which is right? A. And then, at a later

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stage, there were 33.

Q Do you say you said that in your statement? A. I am certain that I did say this.

THE JUDGE ADVOCATE: He might have a look at his statement in the lunch hour.

(At 1235 hours the Court adjourns)

(At 1415 hours the court reopens)

(The accused are again brought before the court)

A. KAPPLER again takes his place
at the witness stand and is further
examined as follows;

THE JUDGE ADVOCATE: Has the witness had an opportunity of seeing his statement? A. I have seen my statement.

Q And do you find anything in that statement to the effect that five more Germans died after the original 28? A. I had to see that the number 33 is not mentioned in my statement.

Q Why have you mentioned it in this trial then? A. During my interrogation when I made the statement I said "33", and I made a cross just now in the presence of Major Reade where the figure 336 is mentioned.

Q What has that got to do with it. I do not follow. I am suggesting that you said, and have always said until you come into court here that 32 Germans were killed and therefore 320 Italians should have been killed, that you were told 336 had been shot and therefore on your original statement it would look as if 16 and not 6 more Italians were shot than should have been? A. Not only today in this court but during all the interrogations that I had in Florence in May 1945 or during several interrogations which had taken place in Rome I referred to the interrogation on the 3rd August, I mentioned always the figures 33 and 336. It is put to me by the Learned Judge Advocate that for the first time in this court do I mention the figure 33; it is not so at all because when I was interrogated in Rome and I was told that 335 were shot I myself on my own initiative responded immediately, "No, 336 were shot".

Q Do you ever remember when talking to General Von Mackensen any reference to appeals for mercy in the case of people who were to be shot? A. No.

Q Is this true? This is what General Mackensen said: "I can also remember that I expressly asked Kappler whether appeals for mercy had been put in by those sentenced to death to which he answered that such was indeed the case but according to superior SS orders they were not allowed to be dealt with on principle"? A. No, it is not true and it is quite impossible that it should refer to any cases of the Fosse Ardeantine.

Q In General Mackensen's statement he refers to a fictitious order in connection with the number of people who had been shot. Do you know anything about that? A. Maybe General Mackensen refers to this fictitious order in the same way as I referred when I spoke about an agreement between General Mackensen and myself.

Q What is the fictitious order you are talking about? A. I did not speak about a fictitious order.

Q Had you got power to order the Italian authorities to hand over Italian subjects whom they were holding. Who arranged this; did not you, with Cerutti and Caruso? A. I certainly would have had the possibility to construe a sort of possibility to issue the order but at that time I did not do so.

Q Who ordered Caruso to provide these Italians? A. I certainly have not given Caruso this order; whether he got it from Army Headquarters or higher authority I do not know.

Q You agree, do you, that Caruso handed over to you a number of Italians which had been in his charge, is that right? A. That is correct.

Q And you did not get the nominal roll in that case until well on in the afternoon of 24th March, is that right? A. Only when the persons themselves arrived.

Q And can you not tell this tribunal who authorised Caruso to hand over these

Italians? A. I assume the order of the police.

Q Who do you mean by the chief of police? A. Tamburini; at that time the chief of police was called Tamburini.

Q Were they subject to orders by the German authorities? A. No; there was no secret circle of order from the German authorities to these Italian authorities.

Q How many copies of the nominal roll did you have? A. At least three; maybe more.

Q What did you do with them? A. When we ourselves did not need them any more in our own offices we sent them to the SDs at Verona.

Q Did you give General Keelzer one? A. I do not think so but it may be that he did receive one.

Q You showed him one? A. Yes, one I brought to him on 24th March.

Q How many names were on that list when you showed it to him? A. Approximately 250.

Q Were the Jews on it? A. Yes.

Q As numbers or by name? A. (pause) I understand the question but I am thinking about it. I do not know, but as a group they certainly were on it.

Q The Italians were not on it, the ones you got from the Italians? A. No.

Q When this was all finished on the night of the 24th did you make any report to General Keelzer? A. Yes, not to him personally but to his office.

Q In writing? A. No, first a telephone conversation; when I returned to my own office I sent a message requiring a report about the execution to be handed in.

Q Would you tell me; what I want to know is, did you make an official report that this shooting had been carried out to General Keelzer? A. This telephone report could be, or was regarded as an official report.

Q So you were making an official report that this had been carried out, is that what you say? A. Yes, I have given this official report on the phone.

Q Why did you report to him? A. Because it was the office of the Commander of the City of Rome which was concerned with receiving this report that the orders had been carried out.

Q Did you report to General von Mackensen's Army that you had carried out this order? A. No, because the proper chain of commands was through the German commander of the City of Rome, and I would like to add that I had a telephone conversation with Major Böhm and I complained about the haste with which I was treated and he said it is not he who urged this quickness but it is higher authority were urging him.

Q Did you make any official report that you had carried out these orders to Kesselring's formation? A. No, not directly.

Q You never got any written orders to do this from anybody, did you? A. No.

Q And you never made any written report that you had carried out the order? A. No.

Q Is it not very extraordinary that you got no written orders and that you made not written report to your superiors that you had carried them out in a serious case of this importance? A. If you realise the chain of commands and

the situation in which we were I do not find it very strange.

- Q You knew that you were doing something which was very serious, shooting no less than 220 Italians in Rome, did you not? A. And that is the reason I had all these telephone conversations before that time.
- Q Did you never think that later on people might put the whole blame on to you and you would not have a single piece of paper to say, "Those are my orders and I carried them out"? A. At that time I did not think of it. I believed in the legal rightness of this order and I took this order very seriously.
- Q Was there anything to prevent you saying, "I will not carry out this duty unless I have some written orders to that effect"? A. I am quite certain if I would have asked for a written order I would have got it, because it was not the idea that they did not want to give me a written order but it was not the usage to issue written orders.
- Q Who do you think you would have got these written orders from then? A. If I had asked for a written order I would have to ask General Keelzer for it and I am quite certain that he would have asked either 14 Army or Headquarters OBW and he would have got it. I am quite certain of this.
- Q Lastly, when all this was over what sort of communique was given to the Italian people whom this reprisal was made against? A. I do not remember the exact wording of this communique but I do remember that a very peculiar sort of style in which the communique was issued was ordered by the Foreign Office of Berlin.
- Q Did it set out the names of the people who had been executed? A. No.
- Q Did it give the numbers? A. Yes.
- Q How many did it give? A. The number of 320 and not 332 because the communique was ordered before the termination of the action.
- Q Had you something to do with the wording of the communique? A. No.
- Q Was it printed before this execution? A. I do not know when it was printed but it was given to the publishing firm.
- Q When was it posted up in Rome? A. I do not know because I do not think even that I have read it myself.
- Q Do you know whether it was purported to be signed by anybody? A. I do not remember.
- Q Did it not say in this communique by whose orders these people had been shot? (No answer)
- Q It did not say you, of course, did it-- that is was your order? Did it say the commander in chief has done so, or Army commander or military governor, or what. Can you tell us who was supposed to be putting out this order, because I take it you could not put out this communique in Rome without the permission of the military governor in Rome? A. As far as I remember no German authorities were clearly named in this communique. I got to know about this communique from the phone by a man called von Borsche from the German Embassy and he told me that he just received the wording of the communique and he asked me which number should be put in.
- Q The whole point of the reprisal surely was to deter Italians from attacking the German troops was it not? A. If that was the aim then the wording of the communique should have had a different style.
- Q What did you gather the communique was being posted in Rome for? A. I do not understand this question.
- Q Would not the sensible thing, if you wanted to stop attacks on the German

troops by Italians and you had shot 320 Italians to bring that about, that you would post that up in the City of Rome as an example and deterrent to other Italians? A. That was done in all the newspapers; it was published in all the newspapers.

THE PRESIDENT: Keegler, I want to be quite clear about one or two of the answers you have already made. These policemen, this police battalion of Tebaldi's, was that a unit of the Wehrmacht? A. No, it was a police unit, but sometimes as a regiment it was part of the Wehrmacht. In this case they stayed under the command of the German commander of the City of Rome as a police unit.

Q And this was the unit that General Meelzer wished to carry out the shooting? A. Yes.

Q Your assenkommando operated in and close to the City of Rome, is that right? A. That is correct.

Q I assume that it had an area within which you had responsibility? A. That is correct.

Q Was the Ardentine Cave within that area? A. Yes.

Q And similarly the commander of the Rome Garrison had an area of responsibility? A. That is correct.

Q Was the Ardentine Cave within his area? A. I am not quite certain about this; it might have been just within or very little without.

Q In that case it must have been within the area of Lt. Army? A. Yes.

Q In either case it must have been within the area of the Lt. Army? A. In either case.

Q The answer is yes? A. Yes.

Q You spoke of the blowing in of the cave by engineers? A. The blowing, in, yes.

Q I think you said that these engineers were troops; they were Wehrmacht? A. Yes.

Q Who told them what to do? A. Hauptsturmführer Kohler.

Q Kohler is one of your officers? A. That is correct.

Q How did these engineers come to be put under you for this purpose? A. I do not know how Kohler managed this.

Q But Kohler is one of your officers, captains? A. Yes, Kohler was responsible and he was put in charge by me to find a suitable place and then see the action was carried out.

Q Who said that the engineer troops were to take orders from Kohler? A. I do not know how Kohler did it, whether he went to the company commander or the battalion commander I do not know, of the engineers.

Q Did you have anything to do with getting engineer troops? A. No.

Q Did you tell Kohler to get some? A. Yes.

Q You did? A. Yes.

Q And would Kohler have gone direct to the unit and asked for troops? A. I assume this.

Q Were these troops under the command of the commander of the Rome Garrison? A. I do not know because I do not know whether they belonged to the Wehrmacht or to the Air Force.

Q In answer this morning to a question by the Herr General Richter you said that the nominal roll of victims contained a column for the reason that the names were included? A. That is correct.

Q Was that column filled in in every case? A. Yes, because I remember that very often only a sign, a letter, was put in.

Q What was put in opposite the 57 Jews? A. "Jews".

Q Nothing else? A. Nothing else; anyway only one word was given in this column as a reason -- a short word.

Q The reason in this case was "Jew"? A. That is so.

Q When Major Böhm spoke to you on the telephone and told you that the order was coming to shoot 10 Italians for every one German you then rang up ORSW? A. That is correct.

Q And the person you spoke to was an officer of IA, that is an officer of operations? A. Yes, in the command of Kasselring.

Q That is ORSW? A. Yes.

Q What the court wants to know is why you had to ring ORSW and not your own IDS? A. Because the order for the execution was issued by military headquarters.

Q I want to be quite sure about that. You regard it as entirely a military matter, is that right? A. It was quite clearly a military matter and Major Böhm, during the conversation, mentioned quite clearly as an order being issued by ORSW.

Q You are now 59 years old, is that right? A. Yes.

Q So in 1944 you were 57 years old, a comparatively young man and your command consisted of about 60 men, is that right? A. Yes.

Q Am I right in supposing that the whole affair of the Ardentine Gaves was distasteful to you? A. Not only distasteful.

Q What else? A. It was a terrible work for me, in the proper sense of this word.

Q So you mean it made a deep impression on you? A. A very deep impression.

Q And many of the details remain extremely vivid to you, no doubt? A. Yes.

Q You are giving evidence before a military court; all the officers here are military officers. Are you seriously trying to tell this court that you do not remember being summoned especially to a conference by no less a person than the Army Commander, General von Mackensen; have you forgotten that? A. I said that I do not exclude the possibility of this conference but it did not appear on the surface of my consciousness.

Q In other words you may have met the Army Commander but you have forgotten? A. Yes.

A WITNESS: Under whom were the German jails in Rome? A. A part of the prisons were under my command, prisons belonging to the orbit of the security police, and the bigger part or the so-called right wing, a German unit, in the prison Regina Coeli and it was subordinated to the chief judge of the German military court in Rome.

Q And was the chief judge of the military court in Rome under General Maelsner's orders or under whose orders? A. He was subordinated to General Maelsner.

Q So you got your orders with regard to these jails through the Chief Judge from General Maelsner, is that right? A. Which order?

Q You got any orders with regard to these jails? A. No, because I had no

particular orders to receive from this Chief Judge because they were general standing orders about the bringing in and the treatment of prisoners there.

- Q You were responsible for the prisons ? A. Only for that part which I mentioned before.
- Q That is where these victims came from, is that right ? A. Only part of the victims.
- Q Just one other thing; how many do you say were shot at the Ardeatine Caves ? How many Italians were shot ? A. I said 336.

THE JUDGE ADVOCATE: Will you tell learned counsel they can put any additional questions they like to the witness, but they must be related to the questions which have been put by the court.

DR. KELLER: The learned Judge Advocate repeatedly mentioned reports which were rendered by Kappler. Kappler used the word "Vollzugsmeldung" which means a report regarding the carrying out of an order. I am afraid it will not be clear what Kappler intended to say. What was the wording of this report of the carrying out of the order which you rendered ? A. I do not remember the exact wording of that report. The meaning of the report must have been, "The order has been carried out by such and such a time".

- Q So you did not report until such and such a time such and such people condemned to death or people worthy to be of death; of these have been executed. You simply reported "order carried out by such and such a time" ? A. Because more was not required.

DR. CHRIST: No questions.

Re-examined by COLONEL HALSE

- Q Will you look at this document ? Is that the list that you got from the Italians, the first document on the top ? (handed) A. May I mention in this connection that I personally did not receive this list, but that I saw it on the following day when Friebke reported to me that six men more had been shot.
- Q What I want to know is whether that is a photostatic copy of the list which came to your office ? A. No.
- Q Have you never seen that before ? A. I cannot remember, I do not believe so.
- MAJOR READE: The prosecution had hoped to call before the court Wilhelm Koffler, who was a prisoner-of-war in British hands. However, Koffler has escaped and in those circumstances I propose to rely on Regulation 81A and put in his statement in English and Italian and to read it out to the court.

THE JUDGE ADVOCATE: Major Reade, I think the President would like me to convey to you that he, and I think the court, feel that whenever a witness in the flesh is obtainable he ought to be here, and the record only used if he is not. We do feel that the prosecutor, if he gives an assurance as to this it must be on a very sound ground, and the President would like to know actually how it comes about that this man is not here and why it is not possible to get him here if you want to put his evidence in.

MAJOR READE: As I just said he escaped from custody as a prisoner-of-war.

THE JUDGE ADVOCATE: How do you know that ?

COLONEL HALSE: Koffler was to have been called as a witness in this case but after arrangements had been made my office was informed by Central Mediterranean Forces that he had escaped from the cage where he was being held and every endeavour was made to recapture him, but up to the present he has not been caught and we have no information as to when he is likely to be caught in the very near future.

THE PRESIDENT: When was this information conveyed to you from GMP?

COLONEL HAISE: Some three or four weeks ago.

THE PRESIDENT: He has been missing for three or four weeks.

MAJOR READE: I take it this will be exhibit 6, the original Italian.

THE JUDGE ADVOCATE: Supposing the court are prepared to accept the assurance of Colonel Halse but we want to be assured on every case that you yourself have made proper enquiries.

(The court confer)

THE JUDGE ADVOCATE: The court are satisfied and you may put in his affidavit.

(Affidavit of Wilhelm Koffler, dated 12th October, 1945, is read, marked exhibit "6", signed by the President and attached to the proceedings)

COLONEL HAISE: The next witness I proposed to call was Untersturmführer Guenter Amann, but in view of the fact that there was no cross-examination of Kappeler on what happened in the cave I do not propose to call him unless the court wish to see him or the defence wish to cross-examine him.

THE INTERPRETER: The defence does not wish Amann to be called for themselves.

THE JUDGE ADVOCATE: The court would rather like to look at what he says, and if there are any other witnesses which you wish to do the same with would you indicate their names to the court. What are the other names of people in the same position.

COLONEL HAISE: There is Raffaele Allanello, Eleonora Lavino and Bruno Spampinato. I shall have either to call them or put their affidavits in. They are formal matters proving photographs and examination of the bodies in the cave.

THE JUDGE ADVOCATE: I have already intimated if you are going to rely on affidavits you must satisfy the court that they cannot have the witness in its place. That is the principle that the court laid down.

COLONEL HAISE: At the moment all I can say is that Amann is the one I am not proposing to call.

THE PRESIDENT: The court will adjourn for a short time and will study the deposition of Amann and then say whether we wish to see him in person or not.

(At 1540 hours the court is closed until 1600 hours)

THE JUDGE ADVOCATE: The court have no objection to your putting any questions you like to this witness but they are only interested in the evidence he has made before which is to be found in the last part of the third paragraph of his deposition.

GUENTER AMANN is called in, and, having been duly sworn, is examined by COLONEL HAISE as follows:-

Q Are you Guenter Amann? A. Yes.

Q Were you an Untersturmführer in the Sicherheitspolizei? (Answer not interpreted)

Q That question could quite easily have been answered Yes or No. Please answer questions Yes or No normally. Were you an Untersturmführer in the Sicherheitspolizei? A. I want to make an explanation to that.

THE PRESIDENT: We do not want an explanation.

COLONEL HALSE: Were you serving in Rome in 1944? A. Yes.

Q Do you remember the killing of some policemen in the Via Rosella? A. Yes.

Q That was on 23rd March 1944? A. Yes.

Q Did you see any notices put up in Rome with regard to action taken by the authorities after that incident? A. I believe, yes.

Q What did those notices say? A. That these persons were shot as a reprisal for this outrage.

Q What persons were shot? A. As far as I know only persons who were charged.

Q That is not the question I am asking. You say that the notices which you saw said that persons were shot because of the bomb incident. Did it say how many people were shot? A. I do not know.

Q Did you see who those notices were signed by? A. If I remember rightly they were signed by Kesselring.

THE JUDGE ADVOCATE: I do not know whether it is your fault, my fault or the witness's fault but you apparently are asking him about notices put up after the shooting. If you read what it says there

COLONEL HALSE: I beg your pardon; it is my fault. (to the witness) Did you see any notices before the incident of March 1944 in Rome? A. Not of this kind; I believed to have seen some but I think I was mistaken.

Q Do I understand you to say you saw no notices before 23rd March 1944? A. There was once a menace that acts of sabotage against the German Army would be punished with the death sentence.

Q I am not asking about punishment with the death sentence; I am asking if you saw notices before March 1944 where it said that 10 Italians would be killed for every German killed? A. No, I have not seen them.

Q Did you see such notices after March 1944? A. I cannot state that with certainty. I have an idea of a poster which I have seen but I cannot state it on oath.

DR. KELLER: No questions.

DR. CHRIST: No questions.

THE JUDGE ADVOCATE: Would you mark the passage in the Italian statement, Major Forest, and would you give the English translation?

MAJOR FOREST: "I have seen official German posters which were put up in Rome and it said that 10 Italians would be shot for every German who was shot by the patriots, and these posters were signed by Kesselring."

THE JUDGE ADVOCATE: Has the witness heard that? A. I have heard it.

Q That is taken from your statement which you signed on 13th October 1945. Will you tell the court why you made that statement, if it was not true, in 1945? A. I have made a mistake.

Q How did you come to make such a stupid mistake as that? (No answer)

Q Do you want to tell the court now that you never saw any notices and you do not know what you are talking about, is that so? (No answer)

COLONEL HALSE: I do not know if I can help the court but there were certainly notices posted very much later in July and August of 1944.

THE JUDGE ADVOCATE: Will you say to the defending counsel that the court feel that they can attach no weight whatsoever to this witness either for or against the accused and if they are satisfied with that they will have the

witness removed from the court.

THE INTERPRETER: The defense counsel agrees.

COLONEL HALSE: The next witness I am going to call may cause a good deal of trouble in the back of the court. I do not know if you want any more military police brought in.

THE PRESIDENT: Is the Marshal of the court aware of that.

MARSHAL OF THE COURT: I think we can handle anything.

RAFFAELE ALLAMIELLO is called in, and, having been duly sworn, is examined by COLONEL HALSE as follows:-

Q Is your name Raffaele Allamiello ? A. Yes.

Q What is your address ? A. Home.

Q What is your proper address, not the name of the town ? A. Via Electore D'Arborea, 12.

Q Were you in 1944 a Commissioner of the Italian Public Security Service ? A. Yes.

COLONEL HALSE: I understand there is not contest of what this witness is saying and I would like to lead if I can. I think that would be very much simpler.

DR. KILLER: We agree.

COLONEL HALSE: You were the liaison officer with the German police, acting with the German police liaison officers, were you not ? A. I have been a liaison officer with all foreign polities from 1936 and therefore I also was in that capacity with the German police.

Q Do you speak German fluently ? A. Not at all.

Q On 23rd March 1944 were you sent for by Kappler ? A. Yes.

Q Did Kappler tell you of the incident of the Via Rosella ? A. I knew of that incident already.

Q Did Kappler say whether he was going to communicate to anybody senior in the Army about the incident ? A. Kappler told me that he had received orders from the German HQ to shoot 10 people -- to shoot 120 Italians. I exposed how serious that reprisal was going to be and I was told those were superior orders.

Q Did he say who had issued the orders to him ? A. I believe he told me, Kesselring.

Q You were then told to report the next morning, were you not ? A. No, all I have just said now took place on the morning of the 24th.

THE JUDGE ADVOCATE: Is he now saying that everything he has mentioned up to date happened on the morning of the 24th ?

COLONEL HALSE: Do you say everything you have told us about the interview with Kappler took place on the morning of the 24th ? A. Yes.

Q Did you have any conversation with Kappler on the 23rd ? A. On the telephone.

Q How did he tell you that he had to take reprisals then ?

THE JUDGE ADVOCATE: Colonel Halse, it is hopeless. Quite rightly you are trying to take it shortly. I understand he is now going to say he talked on the phone on the 23rd, and had an interview on the 24th. We shall have to start again.

COLONEL HALSE: The telephone conversation on the 25th with Kappler; did Kappler tell you if he had any orders then with regard to the incident in the Via Rosella? A. No.

Q What did he tell you on the telephone that day, very shortly? A. He briefly told me about the incident and then he told me to report to him on the following morning.

Q And the next morning he told you when you visited him that he had received orders from Kesselring? A. Or at least that orders were coming from Kesselring.

Q And the orders were that 10 Italians were to be killed for every German? A. Yes.

Q Did Kappler tell you he had been working all through the night? A. Yes.

Q Did he say he had selected a number of prisoners? A. Yes, 270.

Q Did he say that some of those had been tried and others were still awaiting trial? A. No. (pause) I correct myself now. He told me that a number of these persons had been selected according to how serious an offence they had committed, and then he added that another group of these persons had been provided for by the German Hq.

Q Did you get any orders as to whether you had to produce any more people to be killed from Kappler? A. No, Kappler, on the previous evening had asked the Questura Garuso for 80 prisoners and the Questura Garuso had answered that he was not in a position to supply those persons, and that the warden had about 50 of them and for that purpose Questura Garuso had asked the authorisation from the Minister Buffarini.

Q What it amounted to was this, that the Italians had to find 50 to be killed, is that not right? A. These, according to orders given by Kappler to Garuso and on the following day to the Chief of the Italian police.

Q Who were the persons responsible for selecting the 50 prisoners to be shot? A. Garuso and his officers.

Q In the afternoon of the 24th did you go to Garuso's office to find out how he was getting on with the selection? A. No, I went to the Questura and there I saw that they were making the list; then I withdrew into another room.

Q While you were waiting in the room did you have a telephone call from Kappler? A. Several telephone calls from the Germans arrived; of many of these one was from Kappler.

Q Was that asking you to hurry the list up? A. Not simply this but it was saying that if the list did not arrive immediately they would have chosen persons themselves, taking them from everywhere and even in prison.

THE PRESIDENT: That is if the list was not produced quickly?

COLONEL HALSE: Did you see the list when it was completed? A. No, it was handed over to me so that I might have brought it to the director of the prison of Regina Coeli.

Q Then you must have seen it? A. Afterwards, after it had been compiled and it had been handed over to me.

Q What is the question I asked you at first. Answer my questions? A. Which question?

Q I asked you whether you had seen the list? A. Yes, afterwards, yes.

Q Look at that document, is that the list? (handled)

THE JUDGE ADVOCATE: Is it the actual list?

COLONEL HAISE: A photostat copy of it.

Yes

THE WITNESS: Just the first sheet of it which was made in two copies. When I arrived at the prison the Director Carretta told me that in the morning had had received this call from the Questura, the phone call, by which was told to prepare about 30 detained persons.

COLONEL HAISE: I am not the least bit interested in the telephone call.

Have you ever seen the document -- in the top right-hand corner and bottom left-hand corner? A. All these documents I have seen. This one on the top of the page is one of the two copies which was sent by Questura Caruso to the Director of the prison.

Q What are the other three photostats there? A. It is the same list but with all detail which was compiled several days later by the Questura.

Q When you got the list on the top left-hand corner of the page first were there any alterations in it as there are now? A. No.

Q Who made those alterations?

THE JUDGE ADVOCATE: Would it not be well for the court to see some of this. It is going to be a frightful feat of memory.

COLONEL HAISE: This photo here is the list of the 50 names which he says was handed to him and he handed it over to the prison. This, one, two and three; one list he says was prepared afterwards giving these full particulars, date of birth and the crime for which they were held.

THE JUDGE ADVOCATE: Perhaps the court would like to see it as far as you have got it. You are making this an exhibit.

COLONEL HAISE: Yes.

(Photostat, page 5, is marked exhibit 7, signed by the President and attached to the proceedings)

THE JUDGE ADVOCATE: Perhaps the defence would like to look at this. (handled) If they want to examine the document for a moment or two they can do so. We do not want to hurry them.

DR. KELLER: I have not the slightest impression that the rights of the defence are limited.

COLONEL HAISE: Look at the top left-hand document. There are 11 names altered? A. Yes.

Q Who altered those names; just the names, that is all? A. Carretta in agreement with me.

Q When were the names altered? A. When I arrived at the prison. Carretta informed me that the Germans had got hold of 30 detained persons and that their names had already been given through the phone to the Questura and therefore 30 persons belonging to that list had already been taken away. In addition 11 detained persons for common crimes who by a mere chance were together with those.

Q Do you mean that those people had been taken and they were not on the original list? A. They were not on the original list.

Q And so you took off 11 persons who were named on the original list, is that right? A. Yes, it was simply a mere fact of cancelling the names and not

substitution of names. Had those 11 names not been cancelled those 11 persons would have been handed in with the list and they would have gone despite of the 11 persons who had already been taken away.

Q Did you satisfy yourself that only 50 people were taken away from the prison?
A. I had no other of delivering prisoners from the prison, neither would I have accepted such an order. I would not have accepted such an order because I had nothing to do with such things.

Q Whose signature appears at the bottom of the photostat in the top left hand corner?
A. Garuso's.

Q Does the wording at the top of that document read thus: "The chief of the guards of the Regine Cherli will hand over to Lieutenant Tumati of the German police, who asked for them, the detained persons in this prison who are of the Questura's disposition"?
A. It is so; the sense is that.

Q Those other three photographs there, do they give the crimes for which the people were held in jail?
A. No.

Q What do they give?
A. Yes, I do see it now; in this it is stated "armed robbery" and so forth.

Q Just look and see if these are the crimes alleged to have been committed: "Armed robbery", "common prejudice"?
A. Yes.

Q "communists"?
A. Yes.

Q Party of action?
A. Yes.

Q Espionage?
A. Yes.

Q Will you take it from me that there are three armed robbery, 16 common prejudice, two communists, 27 party of action and two espionage?
A. Yes.

Q Under Italian law does armed robbery carry the death sentence?
A. No, that is I mean in normal times, but at that time that sort of crime was punished by the Germans with the death penalty.

Q These prisoners were held by the Italians for trial in Italian courts, were they not?
A. Naturally.

Q Common prejudice; did that carry the death sentence in Italian courts in 1944?
A. No.

Q Being a communist; did that carry the death sentence in an Italian court?
A. I do not know at that time because at that time they were very severe about this matter.

Q Party of action; does that carry the death sentence?
A. These are persons who were arrested for determined facts. The indication of the political party to which they belonged has nothing to do with the crimes for which they were arrested; I do not know about that crime.

Q But you told me that this is why they are held in the prison because they are members of the party of action?
A. But according to determined facts, I believe, they were arrested. That is what I believe.

Q One last question: when instructions were given for that list to be prepared did Kappler say that the people on it were to be those who were death worthy?
A. He said that they had to be executed according to how serious the offence they had committed was.

Q Did you check that list to see whether all the people who were on it should have been on it?
A. No, no, I just had the order to hand the list over to the director of the prison.

Q But Kappler told you to go to the deputy chief of police of Italy to get the list, did he not? A. No, he told me to inform the deputy chief of the Italian police that he wanted 50 persons for the afternoon.

Q He told you who was to be on the list; people worthy of death? A. He said according to the seriousness of the offence; naturally had there been people deserving ~~of~~ the death penalty these would have been included.

Q Did you tell the deputy police chief of Italy what Kappler had told you? A. I was the liaison officer; I informed him of what had been told to me.

Q When you got the list back from the deputy chief of police did you ask whether it complied with Kappler's orders? A. The list I got, the list from the Questura Carruso and not from the chief of the police. I had no other charges but simply that of the postman, so I could not interfere either with the way the list had been prepared nor with the contents of it.

Q And though you were the liaison officer for the police department you did not make certain that the instructions of your German masters had been carried out? A. It was not my duty to insure about that.

DR. KRIEGER: No questions.

DR. CHRIST: No questions.

THE JUDGE ADVOCATE: The court may have some questions for this witness in the morning. The witness can now withdraw.

THE INTERPRETER: The witness wants to make a statement before he goes.

THE JUDGE ADVOCATE: What does he want to say.

THE WITNESS: I want to inform the court that I was the liaison officer between the Italian and the German police during the time of the occupation of Rome by the Germans because I was ordered to do that by the Intelligence Service of which I have always been a faithful member.

(The witness withdraws)

(At 1710 hours the court is adjourned until 1000 hours tomorrow, Wednesday 20th November, 1945)