

TRIAL BY MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS

of

BERNHARD VON MACKENBACH

and

KURT HARTNER

on

20th NOVEMBER, 1946

THIRD DAY

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PROCEEDINGS

of a

MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS

held at

THE UNIVERSITY OF BOMBAY

on

20th NOVEMBER, 1946

upon the trial of

BERNHARD von MACKENSEN and KURT MAHLER, 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. SIBBAG-MONTEFIORE

Durham Light Infantry.

LIEUTENANT COLONEL D. K. HAYMAN

Lincolns.

LIEUTENANT COLONEL R. W. TYRRELL

Oxf & Bucks.

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

Devons.

JUDGE ADVOCATE

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

THIRD DAY

Wednesday, 20th 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)

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

THE JUDGE ADVOCATE: How many Germans do you say had died by the evening of 24th March, 1944 as a result of the bomb which had been thrown at them in the Via Rosella? A. I believe that all together 27 or 28.

Q Can you tell the Court who gave the instructions for the Italian authorities to hand over these Italian prisoners which are set out in the nominal roll?

A. I know because I have been following the trial of Caruso that Caruso admitted that on 23rd March he had orders from Kappler to furnish 80 Italians.

Q These Italians that were taken away from the prison on the afternoon of 24th March were under the authority of Caruso; is that right? A. Yes.

Q Can you help us as to why Caruso should take orders from Kappler? A. Kappler issued these orders to Caruso because Caruso was the representative of the Italian police which was at that time in the Via Rosella.

Q Another subject. You were living in Rome, were you not, prior to 24th March and after? A. Yes.

Q Did you see, either in the papers or in the form of placards on the wall, before the 24th March, statements by the German authorities of what would happen if outrages were committed against German troops? A. I have heard about it but I do not remember that I myself have seen it.

Q After 24th March did you see any announcement in the papers or otherwise coming from the German authorities with reference to the shooting of these 320 Italians? A. Yes, I have read it in the papers.

Q And what was the gist of this announcement that appeared in the papers? A. It was an official communique and it did not say more than that these 320, who were described as communists of Badoglio, were executed as reprisal for the bomb outrage which happened before.

Q Did it indicate from what authority this was being issued? In other words, was it purporting to be signed by any person? A. I do not remember.

Q Was it merely a statement that the shooting had been carried out as a reprisal, or did it go on to say what would happen if there were any further outrages? A. I believe that that was not the case.

THE PRESIDENT: The Court have been examining this exhibit. Now, how many of these 50 names had been tried and convicted? A. I do not know; I cannot say this.

Q Do you know of any having been tried and convicted? A. I have no idea about this; I cannot say anything about it because I have been only a liaison officer and therefore it was not in the orbit of my duties.

THE JUDGE ADVOCATE: Do counsel want to put anything on what we have asked?

DR. KELLER: The question is out of the question of the Court. The witness said that 27 or 28 Germans were killed ----- . It was a misunderstanding.

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THE JUDGE ADVOCATE: Would you explain to learned counsel that instead of me telling them every time they can put supplementary questions if they will just get up and tell the President each time, whether they want to or do not want to, it will go quicker.

DR. CHRIST: NO questions.

(The witness withdraws)

COL. HALSE: Now may I have the Court's direction with regard to this witness and the two witnesses who gave evidence yesterday, Kappler and Amann. Do the Court want them here again? Alianello, I cannot guarantee where he will go to, but the others will be at the rest camp if wanted.

THE JUDGE ADVOCATE: I think it is entirely a matter for the prosecution. He must be in a position to produce witnesses as and when the Court want them, with reasonable notice.

COL. HALSE: My next witness was to be General Presti, an Italian witness who resided in Rome until the day before yesterday when he reported to this Court. He failed to report to this Court yesterday morning; he is not here this morning, and people have been to his house and he has disappeared from Rome. I am in the Court's hands. If the Court think I should not put in his affidavit, in view of those circumstances, I will not.

THE JUDGE ADVOCATE: I suggest you have enquiries made, presumably through the Italian police, and if he can be obtained here before you close your case, well and good. I think the Court do expect witnesses who can help them should be found. If there is anything you want, assistance from the President, about that, then of course he will do it.

COL. HALSE: I am very much obliged, but I think I ought to rest it at this moment so that it does not appear that I am taking a witness out of turn.

DR. KELLER: I have no particular interest for this witness.

DR. CHRIST: I have no interest either.

THE JUDGE ADVOCATE: Is it clear to you, Col. Halse, that if you want to use his affidavit, before that can be done you will have to satisfy the President that reasonable steps have been taken to get this man here. I agree that it will have to be done, presumably with the assistance of the Italian police.

BRUNO SPAMPANATO is called in and, having been duly sworn, is examined by COL. HALSE as follows:

Q Bruno Spampanato? A. Yes.

Q And your address is? A. Naples, Via Monte Galvario, No.5.

Q During the late war were you the director of the Italian newspaper, The Messagero? A. Yes.

Q Do you remember the bombing of the German police on 23rd March 1944? A. Yes.

Q Before that bombing did any notice appear in the Italian press as to whether reprisals would be taken by the Germans for killing of German soldiers? A. No.

Did any similar notices appear on the walls of Rome or in the vicinity of Rome?
A. I do not remember.

- Q But you are certain there were none in the press? A. As far as I remember, no.
- Q On 25th March was a communique issued to the press with regard to the action taken by the Germans after the bombing? A. Yes.
- Q Can you remember the terms of that announcement? A. I do not remember the wording of the communique but I remember that it was similar in all the newspapers.
- Q Did it say that a police column had been attacked? A. Yes.
- Q Did it say how many policemen had been killed as a result? A. Yes.
- THE JUDGE ADVOCATE: Col. Halse, did he say how many had been killed?
- COL. HALSE: I am much obliged. (To the witness) How many had been killed did it say? A. As far as I remember the communique spoke of 32 men.
- Q Did it say how many civilians had been killed as a reprisal? A. As far as I remember the communique said of a reprisal of ten to one.
- Q Did it say who had issued the orders for the killing of ten to one? A. No.
- Q Did it bear any signature or statement from whom it was issued? A. No, there was a communique issued by the Ministry of Instruction at that time as was the communique which concerned the then republic.
- Q After this notice did you see on posters or in the newspapers an announcement that in future reprisals would be taken in the ratio of ten to one? A. After this notice there was a note sent by the same ministry of popular culture inviting the population to be calm and orderly in order to avoid such events.
- Q Did that note say what would happen if the public did not assist? A. No, it was just a general note as I have said, which invited people to be calm, to remain in order, in order to avoid eventual reprisals.
- Q A few days after the notice which appeared in the press was there a meeting at which Maelzer and Kappler were present? A. Yes.
- Q Maelzer is in the dock now? A. Yes.
- Q This was a conference of the local press? A. This was a press conference at which took part all the directors of the Rome newspapers and all the newspapers of the other Italian towns.
- Q Did General Maelzer, through an interpreter, welcome the press to the meeting? A. He spoke a few words.
- Q Did Kappler then address the meeting? A. Kappler gave more details than what had been already said in that note delivered into the previous note delivered to the press.
- Q Did he speak to you in Italian all the time or was it necessary for him to use an interpreter sometimes? A. As far as I remember he spoke almost always in Italian.
- Q Did he have to use an interpreter sometimes? A. I do not remember.
- Q How many German policemen did Kappler say had been killed? A. I do not remember but I must assume that he has repeated the same number which appeared in the note.
- Q Did Kappler say to the meeting whether the persons responsible for the incident had been arrested? A. Please specify better the question.
- Q Did Kappler say to the meeting whether he had arrested any of the Italians who had actually thrown the bomb or were responsible for the throwing of the bomb? A. I do not remember.

- Q Did Kappler say how many people had been shot as a reprisal at the meeting?
 A. As far as I remember he repeated the same figures issued in the communique. That means that this would say that he spoke about a ratio of one to ten as a consequence of the outrage on Via Rosella.
- Q Did Kappler say if the people who had been shot had been tried and sentenced?
 A. No.

Cross-examined by DR. KELLER

- Q Can you tell if prior to 23rd March any outrages against German troops would happen?
 A. I have to mention that I came to Rome only on 16th December 1943 and therefore do not know what happened prior to that date.
- Q Do you know what sort of incidents against the German soldiers were committed from 16th December 1943 until 23rd March 1944? A. I do not remember that the press has said anything of that kind.
- Q That was not my question. I wanted to know whether you knew something about it.
 A. We simply knew what the above said Ministry of Popular Culture informed us through official communique and that was what we published then.
- Q Do you know whether in Rome some measures were taken to protect German soldiers?
 A. I do not know this.
- Q Do not you know that on 20th December 1943 because of these incidents curfew for the Italian population was fixed for 1900 hours? A. Yes, I know this as all the citizens know about it.
- Q Do you know something about the prohibition for Italian people to use 'cycles because of an incident which occurred through a cyclist against German troops? A. Yes, I remember that. I saw this news published in the press and as all the other news this had been sent by the competent ministry.
- Q Do you remember whether even before the date of 23rd March this ministry of Popular Culture made some communique asking the Italian population to keep calm and to co-operate? A. More than a communique. There were instructions given over the 'phone by the competent ministry to the civilian newspapers.
- Q Were these instructions meant to ask the civil population to keep calm or did they ask also for co-operation with the German authorities? A. They invited the population to be calm and to be orderly and at the same time invited them to respect the German authorities, considered to be the Allied authorities of the Italian Republic.

Cross-examined by DR. CHRIST

- Q I am speaking now about this conference. The witness said that General Maelzer was present at this conference with the press and that he spoke a few words of welcome. Do you remember whether General Maelzer did not leave very soon after having spoken these few words of welcome? A. As far as I remember General Maelzer remained for the whole time that the conference lasted.
- Q Did Kappler, when he took the word, did Kappler mention that although the real culprits of this bomb outrage of 23rd March were not yet caught but nevertheless all sorts of investigations were being carried out? A. I am not in a position to speak about what was said about three years ago.
- Q I ask that the Court should put to this witness what he has said in his affidavit. I put it to you that you said in your statement: "Kappler said further on that although the real culprits for the bomb outrage have not yet been arrested but investigations are being carried out". A. I made this statement in a closer date to the events. If I say it in my statement I confirm what I said then now.

Q Did Kappler further say that the criminals had some death among the young soldiers of the Reich, decimating and mutilating their bodies horribly?
A. I confirm what I stated on that occasion.

Q Did Kappler say something more in detail about this decimating and mutilating of bodies? A. I am now at this moment not in a position to remember. If I have said anything like that in my previous statement I confirm what I then said.

Q Do you remember that on 19th December, about 1800 hours, a bomb outrage was committed against the General Headquarters in the Hotel Flora?

THE JUDGE ADVOCATE: What year?

DR. CHRIST: 1943.

THE WITNESS: I do not remember about this circumstance because I took possession of my management of the *Messenger* on 16th December and immediately after that day I started for the north of Italy.

DR. CHRIST: Did you not hear anything about this bomb outrage on the Hotel Flora? A. I do not remember.

Q Meisler says that you have seen him just before Christmas 1943, and that you yourself had spoken to him about this bomb outrage. A. It may also be, because before Christmas the directors of the newspapers paid visits to the local Italian and German authorities.

Q Do you remember that as a security measure against incidents committed against the German soldiers the beginning times for theatres and operas were put instead of the evening into the afternoon hours? A. Yes.

DR. CHRIST: No further questions.

THE JUDGE ADVOCATE: I think you are not only a journalist but a lawyer; is that right? A. Exactly.

Q I find, in your statement of 5th September 1945, this sentence: "Owing to my position I was constantly in contact with German officers of the German Command in Rome". A. These contacts were held by practically all the journalists and directors of the Italian newspapers and also administrative and other personnel in contact with Germans.

Q Had you anything to do with the preparation of the communique which was issued on 25th March 1944? A. No.

Q Was that communique issued to the press before these 320 had been shot or not? A. It must have been afterwards because it was published on the 25th, and anyway the same communique was sent out to the different newspapers in the same wording completely.

Q Do not you remember when this communique was issued to the press? A. The papers were sent out in the morning about 0900 hours. Therefore the communique must have been sent to us in the early morning hours. It must have been in the morning hours because I do not remember that the night before we were speaking about it at all.

Q Were you on friendly terms with Kappler? A. No.

Q Did you believe this story that political prisoners had been taken from these gaols and shot? A. I do not understand the exact sense of this question.

Q You said that what you mentioned in your earlier statement would be probably correct; is not that right? A. Certainly.

Q You then said this: "He", that is Kappler "further stated that 320 political prisoners had been taken by the Germans from the Via Tasso and Regina Coeli prisons". A. Then I say it again, what I said before, that to-day I am

much further away from that time.

THE JUDGE ADVOCATE: Does he adhere to what he says?

THE INTERPRETER: He does.

THE JUDGE ADVOCATE: Did you believe that 320 political prisoners had been shot?
A. I must have believed that if there were political prisoners because, in spite of the very sad affairs and the sad incidents, I could not imagine that anybody else but people who had something to do with politics would be mixed up with it.

Q As a journalist in contact with the German Command in Rome, did not you know that among the people shot were Jews who had nothing to do with politics and had committed no crime at all? A. I had only official contacts with the German authorities and in these official contacts never this question was even touched, this question which was very painful to me not only as a journalist but also as an Italian and as a citizen of the Socialist Republic. I have got to say the Socialist Republic which had lost its freedom at that time.

Q Your impression is that when Kappler was talking about the 320 political prisoners General Maelsner was present and listening; is that right? A. General Maelsner was presiding at this conference and he was at the head of the table.

Q My last question. During all your contacts with the German Military authority at this time was it ever told to you on whose orders these 320 people had been shot? A. The answer is, quite shortly, "No", and neither in my official contacts during the weekly conferences which we had nor in the more personal affairs this question was never raised and never answered. Therefore the answer to the question is "No".

Q Do you say that at this press conference General Maelsner, who presided, never told you and the others on whose orders these 320 people had been shot?
A. After the few words of the welcome which General Maelsner pronounced, neither during this welcome which he gave us nor at a later stage mentioned anybody upon whose orders they were shot.

THE PRESIDENT: In the early months of 1944, had your newspaper a wide circulation?
A. It had a very wide publication because it is a rather popular paper and it had a wide publication before and afterwards.

Q The answer is "Yes", is it?

THE INTERPRETER: Yes, the answer is yes.

THE PRESIDENT: Then if the German authorities had wished to bring some important matter to the notice of the Italian people they would be certain to have included your newspaper; is that so? A. Yes.

Q And during those early months of 1944, no notice was published in your paper that reprisals against Italians would be on the scale of ten to one? A. No, I certainly do not remember that at all.

Q Do not you think you would have remembered such an important notice, with such possible consequences, to the Italian people? A. It is certain that I would have remembered.

DR. CHRIST: You said before that as far as you remember General Maelsner was present during the whole conference? A. Exactly so.

Q And later you said that he was at the head of the table? A. Exactly so.

Q Do you want to say by saying this: "As far as I remember"? A. I remember exactly the opening of the meeting. I remember the general gist of what was said and I remember that Kappler spoke most of the time.

Q Are you quite certain in your memory that General MacLizer was present all the time during the conference? A. I cannot say whether during the intervals or before the end of the meeting he has gone away, but as far as I remember, and I have the remembrance quite clear now before my eyes, I am certain that all the time that Keppler was talking he was present and at the head of the table.

DR. CHRIST: No further questions.

DR. KELLER: I am referring to the question of the President whether warnings from German authorities were issued. Your answer was: "I do not remember that warnings appeared in the papers"? A. That is so.

Q And when the President asked you further: "But would you not remember if such warnings would have appeared in your paper?" your answer was: "I certainly would have remembered"? A. Yes.

Q If you are so certain that you would remember, why was your answer not a quite decisive "No" to the first question of the President? A. Because when the honourable President put the question for the first time the question was more general than the question was rather specific and I answered as I did.

DR. KELLER: May I ask the President of the Court to repeat that first question?

THE PRESIDENT: I think, without referring to the shorthand-note that my first question was: "In the early months of 1944, had your newspaper a wide circulation". That was my first question, doctor.

DR. KELLER: I did not mean really the very first question of the President. (To the witness) I mean the question of the warnings. He asked twice and you did not answer the first one with the decisive "No", only the second one. A. I repeat that I do not remember whether such warnings were issued or not but I repeat again that had such important warnings been I would exactly remember them now.

Q So you admit, through your answer, that such warnings might have been issued and I take note of this answer as defending counsel.

THE PRESIDENT: I did not hear any question asked. What is the question?

DR. KELLER: (To the witness) My question is, do you say that it is quite impossible such warnings might have been issued? A. Now, in the most categorical way, I say that had those warnings been I would remember them. In other words it is very easy to check this, it is sufficient to take the newspapers of that time and look at them.

DR. KELLER: No further questions.

(The witness withdraws)

{At 11.45 hours the Court adjourns}
{At 12.00 hours the Court re-opens}

Guisepe GARBINDI recalled in and, having
been duly sworn, is examined by COL. HALLER
as follows:

Q Is your name Guisepe? A. It is.

Q And your address please? A. Via Salaria, 300, Rome.

Q In March, 1944, were you in Via Tasso prison? A. I was.

Q Why were you held in that prison? A. I do not know of what I was accused.

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- Q Was that a prison which was run by the Germans? A. Yes.
- Q On 24th March were you sharing a cell with four other people? A. With other five.
- Q Do you know why they were in the prison? A. We knew it according to what they told us.
- Q What did they say they were in prison for? A. One was a Communist, another one had given shelter to some British people, another one was a genuine of the Anti-Fascist. Another one was under suspicion of being an
- Q Had they, to your knowledge, from what you learned from them, by the 24th March 1944 ever been tried? A. They had neither been tried nor been interrogated.
- Q On the afternoon of 24th March were four of those people taken out of your cell? A. At half past two.
- Q Who were they taken out by, the Germans or Italians? A. They were taken out of the cell by three German serjeant-majors.
- Q Were their names called from a card or were they just pulled out at random? A. One of these serjeant-majors had a lot of papers in his hands. Another one, pointing out with his finger, was saying "You, you, you and you".
- Q After they left the cell on 24th March did you ever see them again? A. Never.
- Q Did you receive instructions later on, from one of the Germans, to pack up their belongings? A. On the same evening the serjeant-major, Meyer, gave us the order to prepare their kits.

THE JUDGE ADVOCATE: Just a minute. Are you suggesting that these people were shot?

COL. HALSE: Yes.

THE JUDGE ADVOCATE: You perhaps do not want to give the names; is that it?

COL. HALSE: I was going to raise that point in a moment. I think it would be desirable that names were not mentioned in Court. I was going to get the General to write the names down and check them on that list. These names were held by the SD, not by the Italians.

THE JUDGE ADVOCATE: Unless you want it the Court does not want the names of these, unless the defence want them

DR. KELLER: The defence understands the reasons perfectly.

COL. HALSE: (To the witness) Having made up these parcels did you take them out into the hall of the prison? A. No, we packed everything, blankets and everything, which belonged to the prisoners and left them on their places.

Q Later were they collected together with other parcels of the same nature? A. On the following morning.

Q Will you look through that list and see if those four men to whom you have referred are on it? (Handed) A. Do I have to read the names?

Q No. I want you just to look through the list and tell me if the four names which you have been speaking of are on it. A. I have found three names.

COL. HALSE: I was going to have this list put in as an exhibit with another witness.

THE PRESIDENT: The list is going in anyhow?

COL. HALSE: Yes. (To the witness) When looking through that list, did you see other names that you knew? A. Many names.

Q And the names that you knew in that list, had those people had any trial before 24th March 1944, to your knowledge? A. I cannot this because we were separated. We were scattered in different cells.

Cross-examined by DR. KELLER.

Q You were an Italian officer? A. Yes.

Q When did you leave the Army? A. In 1919 after the first World War.

Q Have you been, in this war, the leader of a resistance group? A. Yes.

Q Do you know that in Rome and also in other parts of Italy incidents were created by members of this resistance group against the German Army? A. I would like to clear something.

THE PRESIDENT: Can the witness not answer that question first?

THE WITNESS: It is necessary to give a picture of the situation.

THE PRESIDENT: Please keep it as short as possible.

THE WITNESS: My position was an exceptional one because of my name. All the unsatisfied Italians on one side and on the other side, they came to me. I established that all my contacts, either with individual officers or with officer groups, would start from the same ground and since I did not believe that the Allies would arrive very quickly I took care of these several people either by letting them back or anyway by helping them against the Nazi persecution or the Fascist persecution. For this reason I never closed up my office and all what I did I did it open to everybody. I ask the general now to repeat his original question.

DR. KELLER: Before I ask this question again I would apply to the President of the Court whether I can give, also very shortly, an answer to the story of the witness.

THE JUDGE ADVOCATE: Not unless the learned counsel wishes to go into the witness box, which would be very awkward. He is quite entitled, from what he knows, to put it to the witness and ask him whether he agrees or disagrees.

DR. KELLER: I only want to say that I have all the respect for all the deeds that the Italian patriots have made and I say this as a German officer. (To the witness) Now, I am going on with my questions. Do you know something about the incidents which were created by the members of the resistance movement against members of the German army, be it in Rome or outside? A. Yes, I do remember that perfectly well.

Q Is your opinion that these incidents were legally admissible; I mean according to International Law?

THE JUDGE ADVOCATE: In addition to being a general and, I think, an engineer, is he an expert in International Law as well?

THE WITNESS: No.

THE JUDGE ADVOCATE: I think you can only put questions about opinions to experts.

DR. KELLER: I would like to express to the Court ----

THE JUDGE ADVOCATE: May we cut it short? The President will allow you to put any question you like.

THE PRESIDENT: No, I allow him to put this question.

THE WITNESS: The right of the actions of these bands just outside the city of Rome was considered by us perfectly legal. Inside the city of Rome we were all very much worried and we took very good care that such incidents would not occur.

DR. KELLER: I ask my question again. Were these outrages which were committed in Rome, in regard to International Law, legally admissible? I repeat, I do not ask whether you think they were legally admissible but I want to know whether they were. A. I considered them absolutely inhuman and illegal.

Q Why did you think that these acts committed in Rome would not be legal?
A. Because people who committed such actions were sheltering themselves behind the shoulders of women and children and it was very difficult to make a distinction between criminals and real partisans.

Q Was not the reason rather that these committing these outrages in Rome did not have any insignia which are ordered by the Hague Convention? A. As far as I know. My legal knowledge does not reach so far. I am speaking as a soldier.

Q Did not you know, as an officer of the Italian army, that an occupation power had the right to see that peace and quiet reigned, even maintained by force?
A. You see, the situation is rather difficult. Rome was, at that time, in a special position and we were all worried to see that order and calm was maintained.

Q I regret I have to repeat this question because the answer is not the answer to my question. I repeat the question again. Did not you know, as an officer of the Italian army, that an occupational force had the right, nay, the duty, to see to it that quiet and order and discipline should reign in town and if it is disturbed to see to it that it should be maintained even through force, and please answer "yes" or "no"? A. Quite so, yes, but within certain limits.

Q Did you know Field Marshal Kesselring? A. No, I have never known him.

Q But you knew that Field Marshal Kesselring was C.I.C. of all the German armies in Italy? A. And I tried to be in touch with him.

Q You know, of course, that Field Marshall Kesselring did everything in his power to pacify Rome and Italy? A. This is an opinion.

Q Do you want to say by this that Field Marshal Kesselring did not undertake anything? A. I want to say this. It is an opinion that Field Marshal Kesselring has done all he could to maintain calm and so forth. We do not see this.

Q Do you know that Rome was declared an open city on the initiative of Field Marshall Kesselring? A. Yes.

Q Do you know - I am speaking to you now as an Italian officer - do you know what sort of disadvantages this declaration entailed for the German army and do you know what it meant, not only to Italy but also to the whole civilized world?
A. No doubt.

Q Then I ask why did not the chiefs of the resistance movement help Field Marshal Kesselring in his desire to pacify not only Rome but Italy, and why did they force the German army to take these reprisals? A. Because there was not one chief of the resistance.

THE INTERPRETER: There is a mistake in the translation. The general asked not for one chief but chieftains. (To the witness) Why did not the chieftains of the resistance movement help Field Marshal Kesselring in his desire to pacify not only Rome but Italy, and why did they force the German army to take these reprisals? A. Because the chieftains of these underground movements were in conflict; the north with the south, and therefore they kept themselves hidden.

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COL. HALSE: I think questions are being put to this witness by the doctor as to what happened after Rome was made an open city. My instructions are that Rome was an open city after this witness was in prison and what happened after that this witness could not give any evidence about.

DR. KELIER: (To the witness) I am referring now to the nominal roll which you have looked through, and your remark was that you know quite a number of these people on the list. Did you know these people out of your activities as a member of the resistance movement? A. No, I had known them before.

Q Were they members of the resistance group? A. Yes, but they had been officers under my orders before.

DR. KELIER: No further questions.

DR. CHRIST: No questions.

(At 1250 hours the Court adjourns)

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COL. HALSE: I think questions are being put to this witness by the doctor as to what happened after Rome was made an open city. My instructions are that Rome was an open city after this witness was in prison and what happened after that this witness could not give any evidence about.

DR. KELLER: (To the witness) I am referring now to the nominal roll which you have looked through, and your remark was that you know quite a number of those people on the list. Did you know these people out of your activities as a member of the resistance movement? A. No, I had known them before.

Q Were they members of the resistance group? A. Yes, but they had been officers under my orders before.

DR. KELLER: No further questions.

DR. CHRIST: No questions.

(At 1250 hours the Court adjourns)

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(At 1430 hours the court reopens)

(The accused are again brought before the court)

THE PRESIDENT: The court has studied the evidence of this witness and has no questions to ask.

(The witness withdraws)

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

- Q Are you Wilhelm Harster ? A. Yes.
- Q During the war were you a lieutenant general of police ? A. Yes.
- Q And in the end of 1943, in 1944 and 1945 were you the officer commanding the Sicherheitspolizei in Italy ? A. Yes.
- Q Did you at any time have any discussion with Kesselring as to reprisals in Italy ? A. A short discussion.
- Q When did that take place ? A. December 1943.
- Q Who else was present at the discussion ? A. General Wolff.
- Q He was the head of the SS in Italy at the time ? A. Yes.
- Q What was the discussion you had with Kesselring ? A. The question was whether when incidents occurred involving the lives of German soldiers reprisals should be taken in the area where these outrages occurred.
- Q What reprisals were suggested ? A. In the beginning it was not a question of suggestion but it was a question which I asked.
- Q Why did you ask it; had reprisals already been taken ? A. Because my commandos were asked from military formations in some areas whether they, commandos, could not take part in these reprisals.
- Q The reprisals of killing people or only destroying villages ? A. No, the question concerned only persons and not villages or localities.
- Q Had there been shootings in Italy then before this discussion took place ? A. I do not know about any shootings.
- Q Why did you ask Kesselring this question ? A. I repeat because my commandos were asked from local military formations, from military units.
- Q What -- to carry out these shootings ? A. Yes, to executions, or it did not give the executions and therefore I could not.

THE PRESIDENT: I do not understand that.

COLONEL HALSE: What I am asking you is this: did any of your sub-units report to you that they had been asked to carry out executions before your meeting with Kesselring ? A. Yes.

- Q Who were those commandos ? A. I cannot be quite certain but I think it was a case in Bologna or Florence.
- Q Where people had been killed as a reprisal for a German being killed ? A. They should have been killed.
- Q But were they killed is what I asked ? A. I do not know, from my sub-units, not.

- Q Was the ratio of 10 to one mentioned at that conference ? A. No.
- Q What is the job of the Sicherheitspolizei when a German soldier is killed by partisans ? A. The first line to find the culprit or the culprits and to find the circles who ordered the outrage.
- Q At this discussion did you point that out to Kesselring ? A. Yes.
- Q Did you discuss with him who was to do the shooting if there were to be reprisals ? A. Not in detail.
- Q Did he say that there would be reprisals if German soldiers were killed by Italians ? A. No.
- Q You merely discussed the possibility of reprisals having to be taken ? A. Yes.
- Q And did you discuss with him what was to happen in case you could not find the perpetrators ? A. I discussed with him the case if a military unit could not wait till the time that the police had found the culprits.
- Q What did Kesselring say was to happen if the military unit could not wait until the police had found the culprit ? A. I suggested that in the case that a military unit could not wait till the perpetrators are found such persons should be taken who either are already condemned or are awaiting sentence.
- Q That does not make sense; who were already condemned and who are awaiting sentence are the same, are they not ?

THE PRESIDENT: No, I do not think so.

COLONEL HALSE: You are quite right, sir; there is a slight technical difference. (to the witness) Kesselring said that only people who had been sentenced to death or who had been convicted of crimes punishable by death were to be killed for reprisals ?

THE JUDGE ADVOCATE: That is not what he said. He said that such persons should be taken who were already condemned or awaiting sentence. Does it mean awaiting a sentence of death ?

COLONEL HALSE: When you spoke of "or awaiting sentence", do you mean awaiting a sentence of death ? A. I meant at that time such persons who were convicted of crimes, which at that time were to be punished with a death sentence.

- Q That is to say only people actually sentenced were to be killed ? A. Convicted, but it was not necessarily convicted in court. If, for instance, a person was found with an arm in the hand he was to be sentenced to death. It was sure that he would be sentenced to death.
- Q So what you mean is that only those people who were sentenced to death and those against whom there was a case which would result in a death sentence if they were brought to trial ? A. Yes, such which were charged or where a charge was prepared.
- Q But it was not necessary that they should be brought before a court of justice to be tried ? A. I do not understand the question.
- Q In law, as we understand it, a man is not guilty until he has been tried and convicted. Even if there is ample evidence in the view of the prosecution that he would be convicted he is still not convicted and cannot be punished. Do I gather that in the German law a man can be punished without a trial ? A. No, he could not be punished for that crime.
- Q Is a man guilty until he is tried ? A. Guilty, not.
- Q So the people who were found in possession of arms and had not been tried

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were not found guilty of the offense? A. As guilty, not.

Q But those people were to be killed if it became necessary to kill for reprisals? A. It was the suggestion that if units considered it necessary to take immediate reprisals at the utmost such persons should be taken.

THE PRESIDENT: "At the utmost", what does that mean?

THE INTERPRETER: No people charged with a lesser crime should be taken.

COLONEL HALSE: I comes to this, does it, that Kesselring agreed that anybody who was found in possession of arms could be shot for reprisals? A. No.

Q What did he agree to? A. He agreed that in the case that reprisals should be necessary the persons for the reprisal could not be chosen from the public but should be those, chosen from those sentenced to death or whose trial was pending for a charge punishable with the death sentence.

Q Was the question of Jews discussed at that conference? A. No.

Q Or the question of people who were not liable to suffer the death sentence if they were convicted? A. No.

Q Even if the sentence was as much as 15 years? A. The question was such charges which were at that time punishable with the death sentence and such charges in war time were quite many even in cases where, perhaps, afterwards a sentence of imprisonment might have been pronounced.

Q You have got a person charged with an offense for which the maximum penalty is 15 years ... A. I believe this detail was not mentioned at that conference. This conference happened by mere chance on an airfield.

Q Did Kesselring say he would make the necessary arrangements through military channels to let that be known to his subordinate commanders? A. I do not know and I do not believe so; I only remember that I asked permission to inform my sub-units by my channels.

Q And did you inform your sub-units? A. Yes.

Q What is the geisseln shooting? A. That is a reprisal.

Q Turning now to your command, you were the head of the Sicherheitspolizei; did you have under your command aussenkommandos? A. Yes.

Q Was one of those aussenkommandos commanded by Kappler? A. Yes.

Q He was stationed in Rome, was he not? A. Yes.

Q Had General Maelzer, the commander of Rome, any command over Kappler and his aussenkommando? A. In as far as it concerned the security of the City of Rome, yes.

Q I am not certain; was the unit which suffered the death of the 32 men under your command? A. No.

Q As a policeman can you say whether that unit was under the command of Maelzer? A. I cannot state that on oath; I can only suppose it.

THE PRESIDENT: Suppose what; suppose it was? A. That Maelzer had authority of command inasfar as, regarding the security of the City of Rome.

COLONEL HALSE: I want to come to 23rd March 1944. Did you have a telephone call with Kappler? A. Yes.

Q About what time of day was that? A. In the late evening.

Q I want you to tell me in your own words as shortly as you can what Kappler told

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you? A. Kappler told me that a bomb attack had occurred on the marching column of the Police Regiment Bozen, and that on that occasion a number of -- I do not remember quite exactly the number, but it was less than 30 and more than 25 -- had been killed. The telephone call occurred just at a time when Kappler returned from an inspection on the spot of the attack. During that inspection on the spot of the attack, during which Kappler heard the first time, had to perform the police duties in order to find the culprit or culprits was also spoken about reprisals. As a result of this conversation, or perhaps of later conversations Kappler was asked to select persons which should be shot in a ratio of 10 to one for the number of German police personnel killed. He would now return from this conference and had the task of selecting these people during the night because the time for the execution of this order was fixed already for the following day.

Q Did Kappler tell you who had issued the orders? A. I believe he said that the Army issued the order.

Q Who in the Army? A. The name, if it was the commander in chief, a certain name has not been mentioned.

THE JUDGE ADVOCATE: I do not follow that answer.

THE INTERPRETER: I thin it was a misunderstanding.

COLONEL HALSE: I asked what formation in the Wehrmacht had issued the order?
A. Not the Army, but the 14th Army.

Q Was any mention made of the Rome garrison? A. German?

Q German? A. In which connection?

Q Was the commander, Rome, mentioned? A. I do not believe so during this conversation.

Q You have told us that Kappler said he would have to collect the people. Did he say whether he had enough people? A. He could not do that at that time as he had not a view over the affair. He had just at that moment returned from the spot of the crime.

Q Did you have a later conversation with him then? A. Yes.

THE JUDGE ADVOCATE: We had better have something to fix that.

COLONEL HALSE: What time was the first conversation you are speaking about?
A. Late in the evening.

Q And the second conversation, what time? A. At the end of the night or in the morning; I cannot state an hour.

Q Do you mean about midnight or it might have been midnight and it might have been 9 o'clock in the morning? A. I believe surely that it was considerably after midnight.

Q Did Kappler at that conversation tell you whether he had succeeded in getting the ratio of 10 to one? A. He said he would not have succeeded yet to reach the ratio, especially because in the meantime a number of wounded men had died and moreover other Italian and German authorities would be on the search.

Q Did he say whether he had got any further orders at that conversation? A. He only explained to me that it was insisted upon the time fixed and upon the ratio one to 10.

Q Do you know whether Kappler was able to collect the one to 10 ratio from people who had been sentenced to death? A. I did not know that until the moment when he told me that he would not be able to do so.

Q When did he tell you that? A. He told me that I believe during the second conversation, I believe during the end of the conversation.

Q Did he say how he was going to make up the number? A. He told me that he had no other way out if it was insisted upon the time and the number than to take a number of Jews who were in his charge.

Q Did he say whether those Jews had committed any crime? A. No, he did not.

Q Did you agree to the adding of these Jews to the list? A. I had not to give an agreement. I only took knowledge of that, because it was not my order.

Q But he was under your command, was he not? A. It is correct but he did not get the order for this action from me; he got the order for the military HQ in whose area he was active.

THE JUDGE ADVOCATE: Is this what Kappler is supposed to have told him or what he is assuming?

COLONEL HALSE: Is this what Kappler told you or what you assume to be the position? A. All this is my own opinion, not what Kappler said to me.

THE PRESIDENT: He said he did not give the order.

COLONEL HALSE: You did not give the order for the adding of the 57 Jews?
A. No.

Q But you approved of them being added? A. I have to repeat that I had not to agree; I only had to take note of it. I only had to agree to an action which was carried out under my orders.

Q I do not understand the answer.

THE PRESIDENT: I think it is "if it was carried out". Will you ask that?

THE INTERPRETER: I had to take note of it. The word "Agreement" can only be used in the case where I had the power to order.

THE JUDGE ADVOCATE: What I want to know is could not he have said to Kappler, a subordinate, "You cannot use these Jews". Had he the authority?

COLONEL HALSE: Could you have said to Kappler: "You must not use these Jews"?
A. I could have done it perhaps, but without success.

Q Did you say to Kappler, "You must call the Army's attention to the fact that you are adding 57 Jews"? A. Kappler told me on the telephone that he had spoken to the Army about the difficulty of drawing up the list.

Q "Id he say whether he had told Army that there were 57 Jews on the list?
A. I cannot say that; the whole conversation was not done for getting directions; it was only to inform me.

Q Did you remind Kappler of the arrangement which you said you had informed him of previously that only those people worthy of death should be killed as reprisals? A. This was mentioned during the conversation, from my side or Kappler's side but all this was a telephone conversation where not everything could be spoken over thoroughly.

Q On the second occasion when he said he had told the Army that he was having difficulty in getting the numbers did he say if he had told 14 Army, Army Group South West, or the commander Rome or whom?

A. I believe to remember that he only mentioned the word "Army", and this for us was equivalent to the 14th Army.

Q Did you hear any more of the incident then? A. Only when it was closed; the incident was closed.

Q Do you know if your superior Wolff went to Rome? A. Yes, I have spoken with Wolff in the night after the telephone conversation with Kappler and anyway I knew that Wolff wanted to come to Rome on one of the next few days.

Q Do you know when he got to Rome? A. He came then a day earlier to Rome and arrived the day after the incident had taken place.

Q Do you know what time he did arrive? A. I assume in the morning hours.

Q That is on the 24th or 25th? A. No, I speak about the 24th.

Q Did you hear after the incident that 335 people had been killed? A. Yes, this number was reported to me by Kappler. I am not quite certain whether this number was reported, but a number was reported.

Q Did Kappler tell you it was in excess of the ratio of 10 to one? A. No, on the contrary Kappler told me that a few men had died in the meantime and a few others were just dying.

THE JUDGE ADVOCATE: I do not think he understood the question.

COLONEL HALSE: I will put it another way. According to Kappler the most who died at the time that the reprisals were taken was 33. Actually, according to Kappler, 336 people were killed. Did Kappler tell you that six more people than the ratio of 10 to one had been killed? A. No, he did not say so and it was not necessary because he told me before that some people were still in a dying state and then when I heard the number I thought that some more had died.

Q Tell me this; was Kappler's unit the right unit to carry out that execution? A. In this case I do not think so.

Q Why do you say that? A. Because in my opinion the unit which had been victimized should carry out also the reprisals.

Q Herster, before this incident had there been any other incidents where reprisals in the ratio of 10 to one had been carried out in Italy? A. I do not know about any.

Q Did you have anything to do with warnings to the public about cooperating with the German Government after Mussolini's puppet Government had been formed? A. No, nothing.

Q Did you see any notices in the streets or in the papers warning the Italian Republic that they would be shot in the ratio of 10 to one if soldiers were killed, before 24th March 1944? A. No.

Q So, so far as you know, and you are the head of the Sicherheitspolizei this was the first occasion on which there had been reprisals in the ratio of 10 to one? A. As far as I know, yes.

CROSS-EXAMINED BY DR. KELLER.

Q I will start with the last question by the prosecution. Would it not have been absolutely necessary that if such shooting, reprisals in the ratio of one to 10 would have been carried out by some unit under your command you would have known about it? A. In reality and in the proper course of matters I should have been informed, but, of course, things were in such a state at that time that it might have happened without my being informed.

THE PRESIDENT: The answer is No? A. With a small probability.

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DR. KELLER: Did you not receive weekly or monthly reports/which you should from have known that so many people were shot as reprisals? A. Such reports were, of course, delivered into my office but it was not my duty to read them; somebody else in my office could have read them as well.

Q But if in such reports it would have been mentioned that so many Italian nationals were shot as reprisals then you certainly would have known or would have been informed about it, would you not? A. With some certainty, probably.

Q I am referring now to the conversation which you held with Field Marshal Kesselring on the aerodrome. Can you tell us the reason why you made that proposal. I am speaking about your suggestion that only people who had already been condemned to death or were accused of crimes which carry the death sentence, that only such people should be chosen as victims? A. Because in my opinion if you had to take hostages from other circles then the result would have been just the opposite from what you wished. Apart from that my duties, the duties of my officers and HQ was to try to find through investigation who the perpetrators were and not the carrying out of reprisals.

Q Was it not the reason that you made this proposal because if somebody had to be shot it would be better to shoot offenders of the law than innocent persons? A. The reason to put it in short was that when I was principally contrary to the shooting of the hostages for the reason which I mentioned before, but in the case that a military HQ was of the opinion that reprisals should have been taken it would be better to take such people who were sentenced to death or charged with a crime which was punishable with the death sentence -- may I add it would be better to take such people than innocent people.

Q Is it the usage in the German language to call a person guilty only when he or she has been found guilty by a court, or do we Germans call a person guilty which is convicted on the basis of the evidence at hand?

THE INTERPRETER: Convicted by whom, because otherwise the court cannot follow this argument?

DR. KELLER: I shall alter my question. The court is of the opinion

that only a person was guilty who was found guilty by a court in a trial. In Germany do we not call a man guilty already in the case that the investigations, and the investigation officials have found that so much evidence is against the man that then we can use the German word, *Schuldig*, guilty? A. We in Germany use the word guilty already in the sense that police investigation collected such a lot of evidence that we think he is guilty.

Q Is it the duty of the German police organisations and of the prosecution to collect only that evidence which speaks against the accused or were not explicit orders given, especially in the last years -- I mean after 1933 -- that each investigation organisation had to collect also such material which speaks in favour of a charged person? A. The development of the law on investigation, as far as I know, in the last 20 years was such that it was given the task to the police investigating organisation to collect all material, pro and contra so that the case would be handed over to the prosecution in the court as complete as possible.

Q Was it not like that if the prosecution opened the charge against an accused only in very exceptional circumstances new elements during the trial could come up? A. It was the aim of the police investigations to avoid all further questions after the investigation was closed, and therefore to investigate all and this task, the main parts, succeeded. Only in exceptional cases it was necessary to make further enquiries after.

THE JUDGE ADVOCATE: Would you ask the witness for my information whether there during this judicial enquiry by the Germans the accused is allowed to give evidence at all himself? A. He can make a declaration but in our law an accused can not give evidence on oath, and the same applies in the trial.

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DR. KELLER: Is that the reason that the statement of a charged person is not considered trustworthy, only because he is charged of an offence and he made the declaration without being on oath, or does he find the same belief in the witness if there are not special reasons to prove his untrustworthiness? A. The fact that a person is charged has no influence on his trustworthiness.

Q Was it not right in Germany to avoid as much as possible the giving of an oath in order to avoid false evidence on oath, perjury, and because it is supposed that a person giving evidence before a court is telling the truth? A. I know that the development was such for this reason to avoid as much as possible the oath in court.

Q You stated that during the second telephone conversation Kappler told you that the Army insisted on the time and number of victims as fixed. In saying that he expressed that he tried to diminish the number of victims? A. I have the impression that he tried to avoid that the number fixed should be increased.

THE PRESIDENT: Does he mean the number fixed or the number available?

DR. KELLER: I do not understand what you want to say, saying he wanted to avoid an increase of the fixed number. You most probably want to say he wanted to avoid that more persons out of the fixed framework should be taken? A. I understood that the General Richter wanted to say that the number of the hostages should be increased, but I now understand from the question that not the number of hostages but the number of killed police personnel is to be understood; then my answer is different.

Q The witness did not understand my question. (to the witness) During the second telephone conversation Kappler told you that he had difficulty to find the number of hostages in the ratio of one to 10, and he told you that the Army insisted on the number and on the time fixed for the execution. If I speak about the Army I mean the 14th Army. If he used the word "insisted" it could only have intended to express that he tried to decrease the number of victims to be shot? A. In any case I understood that he tried that the number of hostages should not be increased by further casualties in the police. It should remain at the first number.

Q He told you that he had on the afternoon of the 23rd a telephone conversation with Mackensen, then in the case that he had not enough candidates or persons sentenced to death available the number of victims should be less; less persons would be shot and the number reported would be higher than the actual number shot. Did he not tell you about this agreement? A. I hear this now for the first time.

Q Have you knowledge about the enquiries of your HQ in the fighting of the Italian partisans? A. I am sure not to have knowledge about all cases.

Q Do you know where the partisans got arms and ammunition from? A. I know that a good part of it came by parachute from the air.

Q Do you know if the partisans were wearing easily visible badges or insignia? A. This was various; I know that the biggest part of them had no insignia, but that there were units who were wearing certain badges or certain insignia such as neck scarves and armbands but this was of a small part only.

Q Already before the armistice? A. Which armistice.

Q I asked if this insignia was worn already before the armistice on 2nd May 1945? A. Yes.

DR. CHRIST: No questions.

Re-examined by COLONEL HALSE

Q When you have prepared your case against an accused where the case would warrant the death sentence, have you had occasions when a man has been acquitted when brought to trial, or sentenced to a less sentence? A. If the

investigations were completed it is possible that the accused is sentenced to a lesser punishment than the death sentence if certain paragraphs of the law are applicable. An acquittal did not happen to me.

Q But it has happened ? A. I do not know about any.

(At 1600 hours the court is closed until 1630 hours)

THE JUDGE ADVOCATE: Harster, about your meeting with Kesselring I think you said you used the word agreement, is that right ? A. Yes, agreement is correct.

Q What do you mean by the word agreement ? A. That General Kesselring was exactly of the same opinion as I myself.

Q Did you gather that if reprisals ever had to be made by Kesselring himself he would ensure that only people were shot who had been either condemned to death or who were on trial for a crime carrying the death penalty ? A. Yes, that is exactly what I meant.

Q You have made several statements, have you not, in this case before -- written statements ? A. Yes.

Q And I suppose you told the truth in these statements to the best of your ability ? A. I did so.

Q Have you got the statement of 7th August 1945. The fifth paragraph: did you say in your statement this: "He", meaning Kappler, "told me that he had received orders from the city commander, Rome, and from 14 Army and that in these orders the proportion of one to 10 had been laid down for the reprisal" ? A. Yes, I have got it.

Q Just read it ? A. I have read it.

Q Is that true ? A. That the commandant of Rome had something to do with the case; I gathered this from the fact that he, the commandant, was present with Kappler where the outrage occurred.

Q Would you mind answering my question, was it true that Kappler had told you that he had received orders from the city commander, Rome, and from 14 Army and that in those orders the proportion of one to 10 had been laid down for the reprisal. Did he tell you that or did he not. It is a simple question of fact ? A. That is so.

Q And do you agree that the city commander, Rome, is General Maizler who is in the dock ? A. Yes.

Q And presumably the 14 Army is the Army commanded by the other defendant, Mackensen ? A. That is correct.

Q When you were told about these reprisals and that 57 Jews were to be included why did you not say "I must ring up at once Field Marshal Kesselring and tell him that he is breaking his agreement with me and when I have done that I will take it up with General Mackensen and the commander of Rome whom you told me have given you these orders" ? A. Because my next superior officer, General Wolff, arrived in the same night, or took up his journey in the same night, and General Wolff, being my superior, was entirely in the picture.

Q Was there anything to prevent your telling General Wolff about these Jews and asking him to see Kesselring ? A. When I had this second conversation with Kappler General Wolff was on his way towards Rome.

Q What time did General Wolff get to Rome ? A. As far as I remember in the morning hours.

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- Q Of what day? A. On the day after the outrage; that was the 24th.
- Q He was in Rome, was he, at the time when these reprisals took place?
A. He must have arrived at that time.
- Q You made two other statements, one on 23rd February 1946 and an amplification of it on the same day? A. Yes, that is so.
- Q Have you ever said in those statements at all that Kesselring's Army Group had ordered these reprisals to be taken? A. No.
- Q Do you know whether you have ever said that in these statements? A. Although it is quite a little while I still think that I remember quite well what I did say;.
- Q Look through it, the parts which deal with the outrage. (handed) A. I cannot see it in this paragraph at all.
- Q Do you accept, or not, that you have not mentioned in your statement that you were informed by Kappler that these reprisals had been ordered by Kesselring as distinct from 14 Army, of the city commandant of Rome?

THE INTERPRETER: I do not quite understand the question.

THE JUDGE ADVOCATE: Does he agree that in these statements he has not mentioned that he had been told by Kappler that these reprisals had been ordered on the instructions of Kesselring, but on the contrary they had been ordered by 14 Army and the city commandant of Rome? A. I understood the question, the first question that these reprisals had something to do with an order emanating from Field Marshall von Kesselring's headquarters.

- Q I am asking whether you have ever said so in any of your statements? A. Do you mean, sire, that Field Marshall von Kesselring was the originator of the order?
- Q I am asking you a very simple question, to look at your statements and to say if you ever said in those that you were told by Kappler that these reprisals had been ordered by Field Marshall von Kesselring? A. I have never said this.
- Q So you were left with the impression after you had finished with Kappler that these reprisals had been order either by 14 Army or the city of Rome commandant or both, is that right? A. That is correct.
- Q In your statement of 22 February 1946 you apparently said this, "The fact that the shooting was carried out on the express orders from the military by members of my department only came to my notice days afterwards. I put in a complaint about it to General Wolff on his return?" A. Yes, I have read it.
- Q What were you complaining about? A. Because, as I said before, the court adjourned I was of the opinion that not members of my unit should have carried out the execution because it was no concern of theirs.
- Q What military authorities was this complain directed against? A. It was like that, that Kappler told me orders were received.
- Q Do try and follow me. You are a Lieutenant General making a report to your senior officer complaining about the military. You must have told him what military you were complaining about? A. It was not a proper written complaint but it was a conference between me and Kappler and General Wolff was present as well.
- Q You will not answer the question, but I am going to put my question until I get an answer. You have written down in your statement, and it is your own words: "I put in a complaint about it to General Wolff on his return?" A. Yes, I read it.

- Q You were complaining because your detachment had had to shoot these people, were you not? A. That is correct.
- Q And you were complaining that some military authority had made them do it? A. Yes.
- Q We get back where we started. Who was the military body or the commander you were complaining about? A. It must have been 14 Army.
- Q And was your commanding officer sufficiently courteous to tell you the result of your complaint? A. He agreed with my complaint and wanted to pass it on to the proper authorities.
- Q Do you not agree that the one person it ought to have gone to was Kesselring? A. The chain of command between, if I may say so, the bottom and the top or myself to Field Marshall Kesselring was Wolff.
- Q I quite agree but do you not agree that if you wanted to complain about the commander of 14 Army through General Wolff it would naturally have to go through Field Marshall Kesselring? A. That is correct.
- Q Can you tell me, perhaps you cannot, what were these Jews. Were they Italian Jews or German Jews, or what sort of Jews were they? A. I can only assume and my assumption is that in the majority they were Italian Jews.
- Q What were they doing in Rome. Do you know whether they had been put into prison or something or do you not know anything about this part of the case? A. These people were imprisoned at that time in Rome.
- Q And they were intended to go to Germany, were they not? A. I do not know that, but anyway away from Rome because Rome was in the front line at that time.
- Q When you discussed this so called agreement with Kesselring did you ever raise the question how reprisals were to be carried out if there were not in fact enough people under sentence of death, condemned to death or awaiting sentence for an offence which would carry the death penalty? A. We never talked about this because the question of the ratio was not touched at that time.

THE PRESIDENT: Harster, you are how old? A. 42.

- Q You were a lieutenant general at the age of 40 then? A. That is correct.
- Q Had you commanded the security police other than in Italy? A. In Holland.
- Q So you were an experienced SS officer. The court wants to be quite clear about the chain of responsibility. With your experience you should be able to oblige the court. Kappler was for technical police purposes under your orders, is that right? A. Yes.
- Q And because the area in which he operated was so near the fighting front he was to a large extent under the orders of General Maelzer also? A. That is correct.
- Q And your technical superior was General Wolff? A. Yes.
- Q Turning to the occurrence at the Ardeatine Caves. Would it be correct for Kappler to report the completion of his share in that work to General Maelzer? A. It is to be assumed so.
- Q And would you expect Kappler to report to you also? A. Yes.
- Q Did he do so? A. Yes, after the completion.
- Q Was that a written report? A. I believe it was a teleprint, a report by teleprint.

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- Q What did it say ? A. Only the number of those who were shot and the time when it was completed.
- Q When did you first realise that more had been shot than had been intended ? A. It never came to my knowledge because I was always under the impression that more and more victims died in the meantime.
- Q You did not realise that too many had been shot ? A. No.
- Q And Kappler never told you so ? A. No, he never told me; I only heard during my interrogations about it.

THE JUDGE ADVOCATE: Have counsel any questions ?

DR. KELLER: In the statement of 22 February 1946, the last sentence that was mentioned by the learned Judge Advocate, this complaint which you mentioned there; was this a formal complaint which was to be carried through by the normal duty channels ? A. It was a verbal complaint and by the manner how General Wolff accepted it I had to assume he would pass it over to higher authority.

DR. CHRIST: No questions.

(The witness withdraws)

D'AGOSTINI OTTAVIO is called in, and, having been duly sworn, is examined by COLONEL HALSE as follows:-

- Q What is your full name ? A. D'Agostini Ottavio.
- Q Do you live at 41 Via Alessandro Volta, Rome ? A. Yes.
- Q Are you official photographer to the comune of Rome ? A. Yes.
- Q On 8th July 1944, acting on the instructions of the Mayor of Rome, did you go to the Ardeatine Caves ? A. Yes.
- Q Did you there take a number of photographs ? A. Many photographs.
- Q Later under the direction of Dr. Antonio Carella, did you take a further series of photographs of those caves ? A. Some of them after orders of Dr. Carella.
- Q Will you look at the photographs in this book and will you tell the court whether those are prints of the photographs you took at the Ardeatine Caves ? (handed) A. Some of these are reproductions, some of these are reproductions of sketches.
- Q I am referring only to the photographs in the book. Will you look at the photographs and tell the court whether they are prints of photographs you took ? A. Yes.
- Q The Are the negatives of those photographs in your possession ? A. I have handed them over to the British police.

(Book of photographs is marked exhibit '8', signed by the President and attached to the proceedings)

THE JUDGE ADVOCATE: Have learned counsel had an opportunity of seeing them ?

THE INTERPRETER: The defence do not wish to see the photographs.

THE JUDGE ADVOCATE: Do they wish to question the witness ?

DR. KELLER: No questions.

DR. CHRIST: No questions.

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THE PRESIDENT: You said that you are the official photographer to the Commune of Rome? A. That is so.

Q Were you the official photographer two years ago? A. Yes.

Q When you took these photographs you were the official photographer?
A. That is correct.

THE PRESIDENT: For the information of the court who will have an opportunity of studying these prints later they are photographs of the reopened Ardeantine Caves and their contents.

(The witness withdraws)

COLONEL HALSE: May I say that I have only two more witnesses to call. I anticipate those will not be very lengthy ones; I therefore anticipate that my case will be closed during the session tomorrow morning. I do not know if the court has any intention of going to visit the Ardeantine Caves or the Via Rosella. If they do it might be a convenient time to do it tomorrow morning after I have finished my case.

(The court confer)

THE PRESIDENT: The court sees no likelihood of their wanting to go to visit either of those places but I am grateful for the suggestion and the information about your case.

THE JUDGE ADVOCATE: Who are your two witnesses?

COLONEL HALSE: There is Serrentino and Eleonora Lavinino.

THE JUDGE ADVOCATE: You are not calling Umberto Presti?

COLONEL HALSE: He is the gentleman who has disappeared overnight.

THE JUDGE ADVOCATE: What about De Fanizza Bona?

COLONEL HALSE: No.

(At 1710 hours the court is adjourned until 1000 hours tomorrow, Thursday, 21st November 1946.)