

7

⑧

TRIAL BY MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS

of

EBERHARD VON MACKENSEN

and

KURT MAELZER

on

27th NOVEMBER, 1946

NINTH DAY

INDEX

THE ACCUSED, MARLER

Page
2.

A. KAPLER, recalled

24.

-----OOOO-----

PROCEEDINGS

of a

MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS

held at

THE UNIVERSITY OF ROME

on

27TH NOVEMBER, 1946.

upon the trial

of

EBERHARD 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	Durham Light Infantry.
LIEUTENANT COLONEL D. K. HAYMAN	Lincolns.
LIEUTENANT COLONEL R. W. TYRRELL	Oxf. and 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.

NINTH DAY

Wednesday, 27th 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)

THE ACCUSED MARLKER resumes his stand at the place from which he is giving his evidence and is further cross-examined by Colonel Halse as follows:

- Q Yesterday there was some doubt as to whether or not von Mackensen had ever said, "Only persons sentenced to death by a competent court will be shot" ? A. When I spoke yesterday about people who committed a crime which carried the death penalty then of course I meant that those people are the same who were condemned to death by a properly constituted court.
- Q Do you then draw no distinction between a person who has committed a crime which carries the death penalty, and a person who has been sentenced to death by a competent court ? A. When I spoke this phrase at that moment I did not think of this difference.
- Q Are you now speaking of your evidence yesterday or your present views ? A. About my evidence which I gave yesterday.
- Q Now I am going to ask you the same question again. Do you say there is no difference between a man sentenced to death by a competent court and a person who is alleged to have committed a crime which carries the death penalty ? A. Now it is quite clear to me after the thorough discussions which we had yesterday.
- Q But before yesterday did you see no difference between those two things ? A. Of course it was quite clear to me that there is a difference, but at the moment when we were talking about it this sort of hair-splitting difference did not become quite clear to me.
- Q So you consider that a person sentenced, and one awaiting trial, is a hair-splitting difference do you ? A. No, I do not say this.
- Q I want to go further into this question of the second conversation with von Mackensen. I want you to tell me again what was said. First let me see if this is right; Mackensen asked you how many people you had available for a reprisal to be taken ? A. Yes.
- Q You said you had none ? A. That is right.
- Q And you did not intend to arrest anybody as a hostage ? A. Yes.
- Q But the SD might have people who had acted against the security of the German Army ? A. Yes.
- Q What did you mean by that, people in custody or people sentenced to death ? A. I did not know this at that time. What I wanted to say is, only people who had committed a crime against the security or safety of the German Army.
- Q So you, when you were saying that, were not thinking of people sentenced by a court ? A. No, I do not want to say this.
- Q Mackensen then said that only people under arrest for actions against the German laws should be considered ? A. Yes.

- Q But no hostages ? A. Yes.
- Q Is that what Mackensen said ? A. Yes.
- Q No question up till now of only people sentenced to death ?
A. That is correct.
- Q Then did he go on to say, only people could be arrested for a crime which would carry the death penalty; is that right ? A. Yes.
- Q And you then said, "What about people arrested for a crime for which the maximum is fifteen years?" ? A. It was a question and nothing but a question which I asked Generaloberst Von Mackensen, whether also these people could be taken who had a punishment up to fifteen years imprisonment.
- Q That is exactly what I put to you, and you said yesterday that von Mackensen said those people were not to be considered ? A. That is correct, and for me there was no question either about these people any more.

THE JUDGE ADVOCATE: All this is very puzzling to me. I would like to read what he said last night. When Mackensen said that only people could be taken who had been sentenced to death, he said, "Can people be taken serving sentences of fifteen years?". "I do not remember the answer but I believe he declined this". He is now apparently quite sure that Mackensen said it. That is what he said last night. I took a note of it, "I do not remember the answer" - that is Mackensen's answer. Is he now swearing he does know the answer?

COLONEL HALSE: (To the witness) Last night when I was cross-examining you I asked you what Mackensen said when you referred to the people suffering fifteen years. You then said, "I do not remember the answer but I think he declined" ? A. Yes, and I stand to this answer.

- Q At that time, when that conversation ended, it was quite obvious to you that Mackensen had in mind some people being killed who had not been sentenced to death, was not it ? A. No, I do not think so because von Mackensen must have thought himself about it. After all no decision had been taken yet.
- Q I am asking you your opinion, not what General von Mackensen thought. From the conversation which you had with von Mackensen he was saying people who had been arrested for crimes carrying the death penalty should be considered, was not he ? A. Those who carried the death penalty.

THE JUDGE ADVOCATE: I still do not think he understands.

COLONEL HALSE: No. (To the witness) According to your evidence, von Mackensen was saying to you, "How many people are there available who have been arrested for crimes against the German State?" ? A. I could not answer that question because I did not know.

- Q But that is what you have been telling the court for the last five minutes and last night as well, that is what Mackensen said to you ? A. I do not mean I cannot answer this question now, I mean I could not answer then to Mackensen.
- Q At the end of that conversation who did you think were to be considered as the victims to be shot for a reprisal ? A. I cannot answer this question because I did not know who was available.
- Q Well then I will put it another way round. Who, at the end of the conversation, did you think Mackensen was considering as people to be shot ? A. I would have had to ask more questions about that.
- Q Well you did not ask any more questions did you ? A. I asked Kappler who was present then -

Q That is what I am coming to. You turned to Kappler who was present; is that right? A. -----whether he has people available.

Q Did you say what sort of people? A. I referred to my conversation with Mackensen.

Q I want you to tell the court in your own words what you said to Kappler, it is very important? A. I told him von Mackensen had the following conversation with me, "What sort of people have you at your disposal for possibly necessary atonement measures?". I answered Mackensen, "None".

Q We are talking of a conversation you had with Kappler. How can you answer Mackensen?

THE JUDGE ADVOCATE: General Maelzer, we assume that you are feeling quite well and that you are an educated man and that you ought to be able to follow simple questions. Now, is there anything in the form of the questions as they are being put to you that is causing you trouble so that you do not understand them? A. No, I only said these phrases in a slow way, but of course, I am quite capable to speak quickly.

THE JUDGE ADVOCATE: Will you understand that you are being asked at the moment to give now to the best of your knowledge the effect of the conversation which took place in March 1944 between you and Kappler after you had ceased talking on the phone to von Mackensen.

THE INTERPRETER: Maybe it is my fault, because the General said he quoted; that is what he said to Kappler, "I asked this, Mackensen answered this".

THE JUDGE ADVOCATE: That may clear it up.

COLONEL HALSE: That clears it up.

THE WITNESS: I said, "I have not the intention to take hostages". Then I repeated again in my conversation with Kappler that the SD ought to have somebody available. Then I told him also, Kappler, that Mackensen told me that only people should be taken who committed some crime against the German State, and not hostages, and only people should be taken who committed a crime which carried the death penalty. I told Kappler also that I asked Mackensen whether also people who served an imprisonment of fifteen years might be taken. I am quite certain that I gave Kappler also the answer which I received from Generaloberst von Mackensen, but of course to-day I am not quite certain of it, I am not quite certain of this answer any more.

COLONEL HALSE: Now is that the end of your part of the conversation? A. No, it is not. I asked then Kappler, "Are there any people available? Have you got some people?".

Q Is that the end? A. No, he gave me an answer, "Approximately 200", but it was just on the spur of the moment, this answer, and then he left the conference.

Q Did he say anything about the Italians? A. What sort of Italians?

Q Did he say anything about getting some from the Italians? A. I cannot remember any more.

Q Listen to what you said on the 9th October, "Kappler answered me that he had about 200 such people available and that additional people could possibly be obtained from the Italians"? A. That is correct. I did not understand your question exactly.

Q Did you communicate that information to von Mackensen? A. Yes.

Q At that moment General it was quite clear, was not it, first of all that Kappler had not got enough people to make a ten to one ratio? A. Up to then I did not know about the ratio of one to ten.

- Q It was also quite clear, was it not, that people who had not been sentenced to death by a competent court were being considered? A. For my part not, not as far as I am concerned.
- Q I want to go back. I dealt with the second conversation. I want you to go back to the actual incident. You were there? A. Yes.
- Q You were very annoyed? A. Yes.
- Q You wanted to take immediate reprisals? A. Yes.
- Q By blowing up that quarter of the town? A. I spoke about blowing the house up after evacuation.
- Q A number of people had been arrested, had not they? A. Four persons for another offense.
- Q No, all sorts of people were lined up against the railings? A. That is correct.
- Q And they were taken away by the police? A. I do not know that, I was not any more present.
- Q Before your departure did you give Kappler orders to carry out investigations? A. I did not give an order; I gave an instruction. That is to say I asked him to do that because this was his duty.
- Q In the German language is there any difference between the word "instruction" and "request"? A. There is a tremendous difference.
- Q Why did you in your statement use the word "instruction"? A. An instruction is a polite question in our language, like a suggestion, "I suggest you make some enquiries".
- Q I leave the scene of the incident and I come to your report to higher authority. Is it right that you reported to CBSW? A. Only the incident.
- Q And did you also report to AOK 14? A. Yes, to General Hauser and to Generaloberst von Mackensen himself.
- Q Is this the conversation that you had with General von Mackensen. Von Mackensen asked you, after you reported the incident, what you thought ought to be done by way of a punishment? A. Yes.
- Q You said that you had no suggestions to make? A. Yes.
- Q Mackensen said that you must say what punishment had to be adopted? A. Yes.
- Q You referred to the examples of Paris, Brussels and Nantes? A. Yes.
- Q Those were reprisals were they? A. I had heard about these cases and only mentioned them in my embarrassment to give an answer at all.
- Q Do you know what happened in those cases? A. No.
- Q They why did you say, "which were in the way of reprisals" in your statement? A. It was considered only as measures of atonement without thinking of the special ratio.
- Q You merely suggested that the same thing should happen as had happened before and you did not know what that was? A. No, I took it only as measures for atonement should be taken.
- Q Was Kappler present during this conversation? A. No.

- Q Did Kappler speak to Mackensen in your office ? A. Only two minutes.
- Q But he did speak to Mackensen in your office on the telephone ? A. Yes.
- Q When was the first time you heard the words, "ratio one to ten" ?
A. On the following morning of the 24th.
- Q Very well. Did you attend any conferences that day in connection with this matter ? A. No.
- Q So on that day, according to your evidence, you only had the two telephone conversations with von Mackensen ? A. Exactly, the three.
- Q The first one we have just been speaking of, the second one when you had to speak to Kappler and the third one after you had spoken to Kappler ?
A. Yes, that is right.
- Q You say do you, coming to the actual order, that you did not hear about it till the next morning ? A. Yes.
- Q Kappler says that you gave it to him on the same night. It may not have been you, your IA, Major Boehm ? A. The IA did not give him an order. It appears that he gave him a representation of what he, the IA, knew.
- Q What do you mean, your IA, Major Boehm, gave him a sort of prepared order ?
A. He did not give any order. It appears that he informed Kappler about what he had heard from GBSW.
- Q So Kappler might well have known that the ratio was to be ten to one on the night of the 23rd and you did not ? A. I did not know.
- Q But Major Boehm might have known something about it ? A. I cannot say that.
- Q Because you have heard the evidence in this court, have not you ? A. Yes.
- Q The Field Marshal got the order that night and he passed it on at once ?
A. But the order did not come to me. As I have said in my statement, I received the order on the morning of the 24th by Generaloberst von Mackensen.
- Q When you got the order from von Mackensen was it in the terms, "320 people are to be shot, Execution and choosing of these persons is solely the task of the SD. Report on carrying out by 7 o'clock in the evening" ? A. Yes.
- Q I want you to look at the statement which we were talking about yesterday, referring to the fifteen years. You were saying yesterday that this paragraph about the fifteen years was referring to the wrong conversation ?
A. Yes.
- Q I want you to listen to the rest of that paragraph and what you said there: "This detail of the order I passed on to Kappler together with the rest of the order and at the same time I made it clear to Kappler that I had received this order from Mackensen and that I had not given it myself" ?
A. The first sentence belongs above to the other conversation, to that point where hostages are mentioned. The second part, where I explained that it was not my order is on the right place.
- Q Did you know then how many people were dead at the time you passed this order on ? A. Yes, I did, 32 policemen.
- Q So then you knew the ratio one to ten, did not you ? A. No, but I thought it would be because 32 and 320 is a ratio of ten to one.
- Q Did you ask Kappler, when you passed that order on, "Are you satisfied that you have got enough people in accordance with von Mackensen's enquiry of yesterday?" ? A. No, I did not because I did not know what he had agreed with von Mackensen.

- Q Did Kappler ask you where he was to get these 320 bodies ? A. No.
- Q Did Kappler appear surprised to get the order ? A. No.
- Q And he asked no questions at all ? A. No.
- Q After you issue an order in the German Army do you always say, "Any questions?" ? A. No, not always.
- Q Did you see Kappler later on that day ? A. Yes.
- Q About 12 o'clock ? A. Yes, it might have been shortly before 12 o'clock.
- Q Why did you see Kappler ? A. Kappler came to see me and reported personally to me about the result of the investigation in the Via Rosella.
- Q Did he then tell you that he had only collected four people who had committed some other crime ? A. He spoke about that report, that he arrested four men for another offence and that he did not find anybody else.
- Q Did he say what was to happen to those four men ? A. He did not say that.
- Q Was there any question raised at that meeting as to who was to produce the firing party ? A. No, this was in a conversation between myself and Major Dobrick.
- Q Was Kappler there ? A. Yes, Kappler was present.
- Q Will you tell us about that conversation ?

THE JUDGE ADVOCATE: Is it at the same interview ?

COLONEL HALSE: I am much obliged. (To the witness) Is this at the same time as Kappler was reporting ? A. Dobrick came ten minutes later than Kappler did but they were at the same time present.

- Q Will you tell us what the conversation was. Who started ? A. I myself started.
- Q What did you say ? A. I told Dobrick that I was astonished that not he, Dobrick, did receive the order.
- Q What order, the order to carry out the execution ?

THE JUDGE ADVOCATE: I do not understand the answer, what was it ?

THE INTERPRETER: "I told Dobrick that I was astonished that not he, Dobrick, received the order".

COLONEL HALSE: (To the witness) What order ? A. To carry out the execution what was ordered to the SD. Dobrick answered, "You are right, but my people are not trained far enough", whereupon I answered, "I believe you are right. As far as I know these people are not ready to do that".

- Q Just one minute. Did Dobrick say he was prepared to carry it out ? A. If he would have got the order I have no doubt he would have carried it out, but I believe he would have expressed his doubts before.
- Q Did you ask him to carry out the order ? A. I could not do that, it was forbidden to me. Dobrick was under my orders for security measures. I should have asked General Wolff about that.
- Q Did he say that his men could not be expected to do it because they were religious and they had a very short time ? A. I do not know that any more, I only remember his doubts which I mentioned before, those doubts about training.

- Q That is what Kappler said Dobrick said. Will you accept that as being a fact ? A. That is how I had it in my memory anyhow.
- Q Did you then communicate with AOK ? A. Yes.
- Q Why did you speak to them ? A. Because Kappler asked me for troops. I could not furnish him any troops because I had none.
- Q You spoke to Hauser did you ? A. Yes.
- Q Did you ask him for troops ? A. I repeated to Hauser what Kappler had told me and expressed this demand.
- Q Did Hauser say that as the police had suffered the loss the police would have to carry out the order ? A. No.
- Q What did he say ? A. He could not furnish troops as the order said, "Carrying out for the SD".
- Q Did you point that out to Kappler ? A. Yes.
- Q Did he raise no question about it ? A. No.
- Q Did you ask Kappler at that interview how he had got on with the selection of the victims ? A. I could not do that, it was forbidden to me. I had not to interfere with this matter.
- Q The security of Rome was involved, was not it ? A. Yes.
- Q A matter of very great personal interest to you ? A. Yes.
- Q The great man himself had ordered reprisals in the ratio of ten to one ? A. Yes.
- Q Were you not interested in making quite certain that those reprisals were carried out to the last man ? A. I myself not.
- Q Do you mean to say you did not ask Kappler, "How are you getting on with this job?" ? A. No.
- Q You are asking the court to believe that ? A. Yes, I hope the court will believe that.
- Q You have got in your headquarters an Oberkriegsgerichtsrat, have not you ? A. Yes, I had four of them.
- Q Did you make enquiries of them as to whether any application had been made to them for the handing over of accused sentenced to death by the SD ? A. I had nothing to do with that because arrested people were not on the charge of the court martial.
- Q A Kriegsgericht is a court martial, is not it ? A. But I was only the convening authority for punishments up to five years.
- Q Do you mean to say you cannot convene any court for a crime for which the sentence is death ?
- THE INTERPRETER: It is a mistake. He can convene but he is only allowed to confirm sentences of five years.
- COLONEL HALSE: (To the witness) This Kriegsgericht of yours would know how many cases had been confirmed in your area, would not he ? A. Yes, he knows that.
- Q Did you ask him then, or at any other time, how many people had been taken away by the SD ? A. I did not ask that because I did not know.

- Q Can you tell the court this; in whose custody is a suspected person placed when arrested; I am speaking about at Rome? A. This person could have been arrested by the SD, by the Gestapo or by the Military Police.
- Q In whose prison is he put when arrested? A. In an Italian prison.
- Q What is that, either Via Tasso or Regina Coeli? A. Regina Coeli.
- Q Was Regina Coeli under your command? A. No.
- Q Was Via Tasso under your command? A. No.
- Q Under whose command was Regina Coeli? A. It was under Italian command. We had only one wing where the prisoners of the divisions, armies, and from my courts were placed.
- Q And under whose charge were those prisoners, the Italians or the Germans? A. These placed there by German courts were under German guards.
- Q Who was the commander of the German guard? A. He was a Captain, I do not know his name now.
- Q Did he have to have an authority to release a person who had been convicted of an offence? A. He needed an authority from Doctor Winden.
- Q And if Doctor Winden had to give such an authority you were his Commanding Officer, were not you? A. Yes, but I had not to issue orders to him in these affairs.
- Q Supposing Kappler had arrived at Winden's office and said, "I want some people in your prison; can I have them?", would not Winden have come to you or one of your branches, one of your staff, and said, "Is this alright?"? A. When the punishments were below five years yes, above five years no.
- Q How can Winden release somebody whose sentence is above five years? A. He had to speak about that with the authorities which had to confirm that longer sentence.

THE JUDGE ADVOCATE: I still do not understand. Is he saying that this man Winden, even when a man was being held for trial, had authority to release him without getting an authority from anybody?

COLONEL HALSE: I was coming to that now. (To the witness) While a man is in custody awaiting trial, I am speaking of Italians arrested by the Germans, in what prison does he go? A. In the Italian prison which is under German guard in the case that the offence comes before a German court.

- Q So he would go into Regina Coeli, German branch? A. Yes, in the German prison.
- Q Is the Hauptmann under your command in charge of that prison? A. No.
- Q Under whose command is he? A. It is a branch depending from Berlin. It is called the Direction of Army Prisoners, or something of that sort.
- Q If you have got command of an area do not you command all the troops in it? A. No, Rome was an exception.
- Q So there were lots of units in Rome, Army units that did not come under your command? A. All of them were not under my command, with the exception of my staff.
- Q For administration and discipline the same? A. I could issue orders only for road discipline, otherwise they were not under my command.
- Q And you say that a prison in Rome which contains a lot of dangerous Italians is not under your command although you are responsible for the security of Rome? A. No, for this purpose the guard was there under the Security Command of the military prison.

- Q Do you know if the SD has the power to go in and take somebody out of a military prison without a "by your leave" ? A. I do not know that; this question never came to me.
- Q But at any rate, during all these discussions with Kappler it was never suggested to you by Kappler that he had got to get any authority to get the bodies? A. No.
- Q You remember you had this conversation with Kappler at 12 o'clock ? A. Yes.
- Q Kappler said he handed you a list ? A. He did not hand over a list to me.
- Q And that you were surprised to hear that only four people who had been in the Via Rosella had been in custody ? A. Yes; might I explain why I supposed that in this narrow street, which is Via Rosella, the preparations which were necessary for the outrage could not have remained unobserved by the civilian inhabitants, and for this reason I expressed my astonishment, that is all.
- Q Did you know that those four people were going to meet their death in the afternoon ? A. No, I had no idea of that.
- Q Did you ask Kappler and make certain whether they were or not ? A. No.
- Q Did you care whether they met their death that afternoon or not ? A. I was completely excluded; I had no authority to supervise the SD.
- Q You made no enquiries from Kappler whatever as to how he was going to get his bodies ? A. No.
- Q Not a single one ? A. No, no-when.
- Q Although you were the commander of Rome and this was a crime committed in your area ? A. Yes.
- Q Although the order was issued by Hitler himself ? A. Yes.
- Q Were you very surprised when the Father, who was a representative of the Pope at your headquarters, asked you for a list of names ? A. I expected that.
- Q Did that Father say whether or not the people who had been killed were innocent ? A. He did not ask that.
- Q When did you first hear that 57 Jews had been killed ? A. About the number of 57 I heard never. That Jews had been shot I heard about half a year later.
- Q When did you first hear that a boy of 14½ had been shot ? A. I never knew that before; I heard it for the first time here in court.
- Q When did you hear that the killing had taken place in a cave ? A. About five or six days later.
- Q Who from? A. Kappler.
- Q Did Kappler describe the killing to you ? A. No.
- Q Did he say that he had taken part in it himself ? A. Yes, he told me that.
- Q When did you get the report that the killing had been completed ? A. It was not a return, it was a report.
- Q I said "report". When did you get a report from Kappler that the execution had been completed ? A. At about 1900 hours, it might have been 1930 or 1915.

- Q Kappler was with you at 12 o'clock mid-day ? A. Yes.
- Q Did you congratulate him on the expedition in which he had managed to carry out the shooting ? A. No, because I was excluded. I had no authority to interfere or to take care of this matter.
- Q When did you first hear that 335 people had been killed ? A. This figure I heard the first time here.
- Q Did you know that innocent people had been killed very shortly afterwards ? A. I supposed that it had been people who were sentenced to death.
- Q But the Field Marshal and your superior officer, the Generaloberst, both knew shortly afterwards that innocent people had been killed; were you told about it as well ? A. I afterwards did not care any more about this affair, I had other tasks.
- Q And nobody told you anything at all ? A. I did not hear anything.
- Q You were quite callous about the whole thing, were not you ? A. I cannot say that, but I was excluded from this affair. A Führerbefehl, an order of Hitler, had been carried out and the case was closed for me. This affair decided me in my innermost just as the outrage.
- Q And yet you made no enquiries about it ? A. No.
- Q What did you think of the SD, nice chaps ? A. Up to that moment I had a good opinion of the SD in Rome. They did not trespass their powers in any way.
- Q Always prepared to do the dirty work for the Wehrmacht as well, were not they ? A. No, I cannot say that; they had enough dirty work in their own lives.
- Q Did anybody discuss with you the question of the blowing up of this cave ? A. No.
- Q When Kappler told you that he had carried out the execution in the cave did you ask him what he had done with the bodies ? A. No.
- Q You know what the Roman public are like, do not you General ? A. No, the Roman public had nothing against me, on the contrary, because honest people were convinced that I had nothing to do with this matter.
- Q I am talking about you as the Commander of Rome. Sooner or later the Roman public would know that 320 had been killed ? A. I suppose so.
- Q Sooner or later the Roman public would know who it was that had been killed ? A. I suppose so.
- Q And those people would want the bodies of their dear ones for burial ? A. I can suppose so.
- Q Did you make no enquiries to find out where the bodies were so that if you had requests from the Father attached from the Vatican you could tell him ? A. I sent this Father to the SD who could give the information and if other people would have come I would have done the same with them.
- Q And you did not bother about it at all ? A. I had no reason to do so; it was without the limits of Rome.
- Q How do you know it was outside the limits of Rome ? A. I was told so by Kappler, the cave outside Rome.
- Q Kappler told you it was outside Rome did he ? A. Yes, he did so. I did not say so in my statement but I know it was outside Rome.
- Q So you were able to wash your hands of it ? A. I do not want to say that.

Re-examined by Doctor Christ.

Q The learned prosecutor asked you about the second conversation with Mackensen: "What was your opinion if people were meant who were sentenced to death". You answered this question, "In my opinion I do not know because there were none". I ask you now, was the result of this second conversation with von Mackensen that in your opinion -----

COLONEL HALSE: That is a leading question.

DR. CHRIST: (To the witness) -----only people should be shot who were sentenced to death? A. Yes.

DR. CHRIST: No further questions.

DR. KELLER: Have I the permission of the court to ask this witness a few questions concerning questions which are negative against my client?

THE JUDGE ADVOCATE: Well he has not got the right to but in a military court all the court are trying to do is to get the facts. If the court agree I will give him the permission.

DR. CHRIST: One more question. (To the witness) I ask you, was exclusively all supervision of the SD forbidden to you? A. Yes.

Q Have you been confirmed in that opinion by the explicit explanation of von Mackensen, that you had nothing to do with this affair?
A. This was one of the reasons.

DR. CHRIST: No further questions.

Re-examined by Doctor Keller.

Q Did you make a statement in this case on the 9th October? A. Yes.

Q I am referring now to the second conversation which you had with Mackensen: "Shortly afterwards Mackensen phoned me and asked me what sort of people are available etc. As Mackensen had no direct line with the SD Headquarters I myself phoned Kappler and told him about my conversation with Mackensen". To-day you said, "I told Kappler, Kappler was in my office" and then you gave a consecutive description in the proper consecutive temperament what really did happen, and finally you said he left and he went to another conference. Later on the learned prosecutor asked you how many conversations you had had with Mackensen. Your answer was three. First your report, second Mackensen questions you on the phone and then, after the telephone conversation with Mackensen, you rang or you spoke on the phone with Kappler, third you notified to Mackensen what you heard from Kappler - in your statement and also in your last answer to the learned prosecutor.

THE JUDGE ADVOCATE: This is quite the longest question I have ever heard in any court of law and I do not appreciate quite how the witness can follow all this. What is the point of the question; will you come to that.

DR. KELLER: (To the witness) What is right now, did you tell Kappler about the wishes of Generaloberst von Mackensen whilst Kappler was in your office, or did you tell him this on the phone? A. I said already yesterday that I remember now that it did not take place during a telephone conversation, but it did take place whilst he was in my office.

Q Why did your answer to the last question of the learned prosecutor then follow: "Mackensen rang me and asked me what sort of people are available. I asked on the phone Kappler, 'What sort of people have you got now' "?
A. I did not say that I rang Kappler, I said Kappler was present in my office, and then, after the second conversation Kappler took the receiver.

DR. KELLER: Maybe the learned Judge Advocate would be good enough to see in his notes whether what I put to the witness was right or not, and if the learned Judge Advocate could not help in this matter then I would like to see that the official notes could be read out.

THE JUDGE ADVOCATE: I am afraid that I have not taken a note of all this because I assume that a witness gives an answer to a question because he is asked a question and he gives an answer to it. I am completely lost as to what counsel is now doing.

COLONEL HALSE: I understand that the Herr Doctor is suggesting that on one occasion the witness said he telephoned Mackensen three times, and he does not understand why because Kappler was in the room when he was talking to Mackensen on the second occasion. I should have thought the very simple question was, "Did you put down the receiver and say, 'Will you ring me back and I will ask Kappler, who is with me'?"

DR. KELLER: (To the witness) You said that on 24th March 1944, in the morning, you got the order from Generaloberst von Mackensen that 320 Italians are to be shot etc. etc. What did you do after having received this order?
A. I passed this order on at once to Kappler.

Q What was it, a written order you passed on, or on the phone? A. I passed it on through the phone.

Q And who received the order on the SD? A. Kappler.

Q Kappler in his evidence did not say anything about this. He said always that he received an order from Major Boehm, and that happened in the evening of the 23rd March. Is that right what you say now or is the position that you make a mistake? A. No, I did not make a mistake as Major Boehm did not give me an order, he only notified me. This pre-notification was mentioned before.

DR. KELLER: No further questions.

(At 1140 hours the court adjourns)

(At 1150 hours the court re-opens)

(The accused are again brought before the court)

THE ACCUSED MAHLER resumes his stand at the place from which he is giving his evidence and is further examined as follows:

THE JUDGE ADVOCATE: What was your correct title on the 23rd March 1944?
A. Lieutenant General and German Commander of Rome.

Q And of course you had been appointed by the Wehrmacht? A. Lieutenant General of the Air Force and German Commander by the Wehrmacht.

Q The military authorities considered your position to be so important that it should carry the rank of Lieutenant General; is that right?
A. No, I was promoted Lieutenant General because I was due for promotion.

Q Well, at any rate, the position was considered to befit an officer holding the rank of Lieutenant General? A. I cannot answer this question. I was selected by Field Marshal Kesselring.

Q Do I understand that the rank of the senior officer of the SD in Rome was that of Lieutenant Colonel? A. That is correct.

Q Was it not your duty to report to the Army and to Kesselring any matter of military interest which might come to your notice in Rome? A. That is so.

Q And was it of no interest to you to know whether the population of Rome, as a whole, were in a quiet or unexcited state? A. Yes.

Q And I suppose from time to time when you saw von Mackensen he would say, "Is Rome quiet and peaceful or is there anything you want to tell me about it?" A. I had done this.

Q Is it not an index to the crime of a great city that there are a large number of people under sentence of death? A. Certainly.

Q Do you not think it was a matter at this time of great military moment that General Kesselring should have been told that the state of Rome was so bad that there were no less, on that particular day, than 320 Italian nationals under sentence of death?

THE INTERPRETER: You mean Kesselring or Mackensen?

THE JUDGE ADVOCATE: I do not mind either.

THE WITNESS: I always passed on reports either to Mackensen, or mainly to Field Marshal Kesselring.

THE JUDGE ADVOCATE: Did you never take the simple precaution of having a member of your staff keep you informed of the number of Italians under sentence of death at any given time? A. Doctor Winden always reported to me as these people were dealt with and judged by my own military courts.

Q I think you have told us that by the 24th March you understood that the reprisal would take the form of shooting 320 Italians who had been already sentenced to death? A. When I passed this order on nothing was about that in the order.

Q I am not asking you that, I am asking you, on the 24th March did you appreciate or not that the position was that 320 people were to be shot, all of which had been sentenced to death? A. I did not know this.

Q In Rome at this time how many courts had the power to pass a death sentence on an Italian? A. I had my own military court. How many courts there were, for instance divisional courts who were stationed in the outskirts of Rome, I do not know.

Q Were there any Italian courts that could sentence anybody to death? A. Yes, but they were not under my command.

Q Would you try and answer the questions, we shall get on much quicker. Were there Italian courts competent in Rome to pass sentences of death upon Italians? A. Yes.

Q How many? A. I do not know.

Q Do you mean to tell us that as the Military Commandant of Rome you were not even informed about matters of that kind? A. I repeat my answer, no. I was not informed because there was an Italian Commandant as well.

Q When you convened a court martial did the proceedings not come to you in any event afterwards, before they were passed on to Kesselring if there was a death sentence involved? A. If my own court dealt with a matter then I got of course a report about it.

Q I am only talking about the courts which you yourself convened. We are wasting such a lot of time? A. Yes.

Q So you did know in every case, did you not, the sort of number of death sentences that were being passed in your courts? A. Yes.

- Q So on the 24th March you must have known whether your court martials had been sentencing any people to death or not ? A. Yes, I knew four.
- Q Now what is Winden, is he an officer or not. Was he an officer of the Wehrmacht or was he a civilian; would you tell me his status ? A. He was a member of the Judge Advocate General's Department but a German officer of the Wehrmacht.
- Q Does he sit on the actual court martials himself ? A. Yes.
- Q And if a court martial has sentenced an Italian to undergo some imprisonment what right has Winden to let that man go anywhere else than the prison in which he has been told to serve his prison sentence ? A. If a man had been sentenced then he goes into the German wing of the prison.
- Q Is not there some committal order signed by somebody like yourself which is handed to the governor of the jail as his authority for taking in this person ? A. No, that was done by Doctor Winden himself as Judge.
- Q Do I understand that Italians were to be shot as a reprisal for the incident in the Via Rosella ? A. If high authority was satisfied with it, yes.
- Q Would you not agree with me that the very essence of a reprisal is to tell the city of Rome that a horrible outrage has been committed upon some German troops and that as a result 320 citizens are being shot and that if there are any more incidents further reprisals would have to be taken ? A. I did not have these thoughts at that time but otherwise I do, yes.
- Q Now you know, do you not, that the point of a reprisal is to coerce the party who is committing these wrongs into not doing it again ? A. I agree.
- Q And if you were satisfied that this bomb outrage was caused by some partisans then is not the sensible thing to try and find as many partisans who think the same way and inflict the reprisal upon them, to coerce their comrades not to do it again ? A. I agree entirely with the learned Judge and I assume that the circle from which those people were taken was just that one.
- Q You agree with me, do you not, that the real force and reason for a reprisal for this outrage in the Via Rosella to be greatly weakened if people such as Jews or people who had never committed any terrorist activities at all were shot ? A. I agree.
- Q And it is a little difficult to know what the military authorities were trying to do in this case, but I should like to know your version as the Commandant of Rome. What notice was put up after this shooting which correctly described what had happened or what would happen in the future if any further bomb outrages occurred ? A. I do not remember the contents of it, but at any rate I was not allowed to publish any sort of communique or put up posters because all that was done by H.Q., Army Group.
- Q Well now, as the Commandant of Rome, living in Rome, after the 24th March can you tell us whether you saw any real notice put up all over the city saying a reprisal had been taken, what for, and that the inhabitants of Rome must appreciate that if it went on further strict military measures would have to be taken ? A. I do not really remember that I have seen any sort of poster all over Rome because I went always in my car and I went straight to my office so therefore I cannot remember.
- Q Is it true that some curious kind of announcement was made in the Italian Press talking about Badoglio Communists ? A. I cannot say because I do not speak Italian. I have not read it.

- Q Had you known that these unfortunate people who perished in the cave were going to be rounded up about 2 o'clock in the afternoon of the 24th, have their hands tied behind them and shot in the back of the neck in a cave, would you have thought that was the proper way, as an Army officer, for carrying out a reprisal? A. No.
- Q Perhaps we would agree, you as a soldier and I as a lawyer, that it was a brutal and callous massacre? A. Yes.
- Q Why did you allow General Hauser to be approached to supply troops to carry out the executions of these Italian persons who were to be shot as a reprisal? A. I only told him what I heard from Kappler and I did this so that the whole chain should be complete and ^{no} hole to be left.
- Q You had your orders or instructions quite clearly that this was a matter to be carried out by the SD? A. I did this only because I was asked by Kappler to do so and so that Kappler should see that I do all my possible to fulfil desires or suggestions.
- Q If you had a personal instruction from Mackensen that this should be done by the SD, if that were true, why did not you say to Kappler, "We cannot bother von Mackensen; he has settled it"? A. I did say that and I only acted in a comradely way because he asked me to do so.
- Q You know that Kappler contends that right up till this moment it had never really been settled as to who was to carry out the execution? A. This order arrived, I do not know, 0700 or 0800 hours and it said quite clearly what had to be done and what Kappler says is wrong.
- Q And Kappler has been telling the court that a suggestion was made that it should be carried out by Wehrmacht troops, that when Hauser refused that you said to him, "As Hauser will not carry it out, well, you must do it"? A. No, that was in the order.
- Q It is at any rate right to say that Kappler's story is confirmed to this extent by you, that application was made to Hauser for troops? A. I did ring Hauser but it was not at all my idea, or whatever I said I did only because Kappler asked me to pass this on.
- Q But at any rate you agree that Kappler is telling the truth about that part of the story, that he did get you to ring up the next higher military formation for troops? A. That is true.
- Q Do you know a Colonel Kolling? A. Yes.
- Q Is he an honest, upright, decent sort of officer? A. As far as I know he was in charge of the propaganda publicity.
- Q And no German holding such a position as that would be any other than quite an intelligent officer? A. Yes, I am certain of this.
- Q You have heard that the population was apparently uneasy about these shootings and wanted enquiries made as to who had been shot and why? A. Yes.
- Q And that this officer, who you say is intelligent, was given the task of finding out presumably the names, occupation and offences which they were alleged to have committed of these 320 people who had been shot? A. Yes.
- Q And can you think of a simpler task to be given to any officer? A. It is not a simple task.
- Q You say it is not a simple task when the Commander in Chief appoints a special officer to make these enquiries to find out who had been shot in the cave in Rome on that afternoon? A. I am sorry I misunderstood that. It is a simple task because he had only to go to those that executed this order and ask for the nominal roll.

- Q If he had a curious state of affairs would have been disclosed, would not it ? A. It is possible.
- Q Had you anything to do with arranging these enquiries that were made with Zolling ? A. No, he was not in my office.
- Q Did not you have to give him facilities, as the Commandant of Rome, to have access to documents and witnesses ? A. Certainly I know him, and if he had come into my office I would have asked him to go to Kappler to get all the necessary documents and files.
- Q Did you see the result of his report ? A. No, that went to General Wolff and Hauser.
- Q Zolling was a Wehrmacht officer, was not he ? A. I am sorry, I was speaking about the report made by Kappler. Zolling is a Wehrmacht officer.
- Q Did you see the result of Zolling's report ? A. No.
- Q You have heard what it was in this court, have not you ? A. I have heard it when the Field Marshal was examined.
- Q And obviously, if we accept the evidence of the Field Marshal, this is again a case in this curious event where an officer is apparently saying something which is obviously untrue, namely, that everybody that had been shot was a criminal ? A. I cannot give an answer to this. What is the question ?
- Q You agree with me, do you not, that quite a large number of the dead people were not criminals ? A. I heard about this and I read about this only here during the trial.
- Q You know, do you not, that Kappler's story is completely at variance with the story told by Field Marshal Kesselring, by General von Mackensen and yourself ? A. I do not know to what you are referring.
- Q Do you agree that the Field Marshal says: "I only agreed to the reprisal on the basis that people should be used who had been sentenced to death" ? A. I agree.
- Q Do you agree that General von Mackensen says the same ? A. Yes.
- Q Do you agree that Colonel Beelitz, in regard to the evidence he gives, is corroborating that Kappler was saying he had 320 people under sentence of death ? A. Yes.
- Q And you say that you made it crystal clear to Kappler that when you passed on Mackensen's order it related only to the slaying of Italians who had been sentenced to death ? A. It was not said in the order because the Generaloberst and Kappler had this agreement and had agreed about all this before.
- Q Now you know, Kappler's story is quite the contrary, and that shortly it is that he tried to collect as large a number of people as possible who were worthy of death, that he could not get them and that he had to take Jews and Italians and that he never from first to last told anybody that he had 320 people under sentence of death ? A. Yes.
- Q You realise, do you not, that Field Marshal Kesselring, supported by Colonel Beelitz, says that Kappler rang up Kesselring and told him specifically: "I have the necessary men under sentence of death that you want" and then this load was lifted off the soul of Field Marshal Kesselring ? A. That is possible because I have not heard it; I only heard it here at court.

- 7
- Q I asked you if you heard it in court. Now you will probably accept as a fact that at the time in Rome there were only about four or five Italians who came within that category? A. In my own court.
- Q You have heard the evidence about the number of people who were sentenced to death to the knowledge of Kappler which has not been disputed, as far as I know, these 320 people? A. I cannot answer anything concerning those people who were condemned by the SS or by the SD because I do not know anything about it.
- Q Is not it the most extraordinary feature of this case that Kappler should have been saying that to these very senior officers when the slightest enquiry by any of them, or by one of their staff officers, would have demonstrated as clearly as possible that he was telling stories which was completely untrue? A. I assumed at that time that Kappler would not lie to the Field Marshal.
- Q This is my question to you: do you realise that had one of these Wehrmacht officers so much as said, "I am going to see or check up these people; I am going to call for a roll of them", it would have been impossible for Kappler to have substantiated the statements he was making? A. That is quite possible, but it was of course not my duty.
- Q And it is quite clear, is it not, that this level headed, sensible, reliable SD officer apparently embarked on a most reckless course of lying to senior officers on this occasion, if the evidence of Field Marshal Kesselring and General von Mackensen is accepted? A. It is quite possible that he, Kappler, had conferences with his higher SS superior officers about which we do not know anything.
- Q Would you agree with me or not that Kappler's conduct, as he tells it, is very understandable if the truth was, as has been put before in this court, that the Wehrmacht ordered him to do their dirty work? A. No, I do not agree with that.

(At 1240 hours the court adjourns)

(At 1430 hours the court reopens)

(The accused are again brought before the court)

THE ACCUSED MARLZER again takes his place
in the witness stand and is further
examined as follows:-

THE PRESIDENT: Now, General, will you accept from me that this court has no doubts about the efficiency of the German Army as a fighting machine in 1944. We recognise that the system of command must have been good and the staff were also good. As General von Mackensen said here in court he had been anxious about the condition of Rome. He wanted a calm city because it was so close to his battle front. That is what he said, is it not? He even said that his artillery was deployed only just clear of the city. You were his representative in Rome? A. Yes.

Q He was in fact your immediate superior, was he not? A. Yes.

Q So he must have expressed his anxiety to you? A. Yes.

Q Did he do so on many occasions - more than once? A. Yes.

Q Would it be fair to say that he expected you to have your finger on the pulse of the Roman people? A. Yes.

Q By that I mean that he would expect you to know what people were saying and as far as possible what they were thinking and planning? A. Yes.

Q How did you do that? A. I was in contact with different parts of political parties and political opinions and I told these people always what I thought or what my opinions were and listened also to what they had to say so as to create a sort of bridge between us.

Q What staff had you? A. A staff of officers and a staff of administrative personnel, altogether six hundred men.

Q Six hundred? A. Six hundred.

Q Now turn to the 23rd March; very shortly after the bomb exploded in the Via Rosella the Generaloberst consulted you on the telephone, did he not? A. I rang him.

Q Yes, you may have rung him but when conversing on the telephone with him he consulted you? A. Yes, that is correct.

Q And I imagine that you, as his representative in Rome, were expected to make some suggestion from your knowledge of the Roman people? A. I expressed this in my statement.

Q You were not chosen for your post in Rome on account of your knowledge of the Italian language, were you? A. I have no knowledge of Italian at all. No, it was not that.

Q The generaloberst said in court here that he had reliance on your judgement? A. Yes.

Q He said that he had confidence in you. Did he ask you what would be the public reaction of the Roman people to reprisals? A. Not on that day.

Q When did he? A. At a later stage he asked me whether any reaction had taken place at all.

Q So he did not ask you what the reaction was going to be; he waited and asked you what the reaction had been? A. That is correct.

Q It would have been rather unfortunate if the reaction had been violent and you had not warned him. You say that the whole reprisal was arranged without any action, any contribution, on your part except that you did telephone to General Hauser and ask for troops? A. And except that I gave the general-oberst those examples in France when he asked me for suggestions.

Q But the only action you have told us of was a telephone call for some troops. A. I only transmitted or passed the request of Kappler on.

Q But surely you are not telling us the troops were going to be put, in your opinion, under the orders of the SD? A. No.

Q So they would have been in your charge? A. Probably somebody would have been - maybe I would have put somebody in charge or maybe the army themselves would have put somebody in charge.

Q But you were asking for them to come and do this job in Rome? A. No, I only passed Kappler's request on.

Q So you see that, General, is what I meant when I said to the generaloberst, "Is it not convenient for the army that the SD is at hand to do its dirty work for it?" That is what I meant and I ask you the same question. A. I do not think that the work that the SD was doing was dirty work at all and, therefore, I do not think we had to pass on dirty work to the SD.

Q We will not discuss how dirty the work was. Now, after the reprisals had taken place your duty was still to report the condition of Rome. That was always your duty? A. That is correct.

Q But now what puzzles the court is that you do not seem to have known the facts and you do not seem to have made any effort to find out what they were. A. I do not understand.

Q You have told us that in your relations with various political and other bodies in Rome you were prepared to give them information and accept information from them. The facts of this reprisal do not appear to have been known to you. Not for some time afterwards did you know how many people had been shot, how they were chosen, where they were taken, how they were shot, where they were buried, whether they were buried. Now how could you carry out your duty of estimating Roman reaction in complete ignorance of what had happened yourself? A. I would have answered, if any Roman would have asked me, "Please go to Kappler and he will tell you all you wish to know about it".

Q You are asking the court to believe you took a very detached view of this occurrence? A. No, I do not want to say that at all.

Q What do you want to say? A. On the contrary I was deeply impressed about it because it was Rome which was in my charge and I wanted that Rome should be a calm, tranquil city.

Q At one moment you say it is in your charge but as soon as we ask what you did about something it is all nothing? A. It was prohibited that I should take any part or any action in this matter. That is the reason that I did not interfere at all.

A MEMBER: General, I am speaking about the evidence of the 24th March. You have told the court that you had no knowledge where the bodies of the shot men were buried, is that right? A. I heard about it only at a later stage.

Q It has also been explained to the court that whenever an Italian died in German hands a card was sent to the relatives saying that death had occurred. In these cases under discussion would it not be natural for the families to apply to someone, to some German authority, to claim the bodies and would not that someone be you? A. That would be quite correct.

Q Then what would be your answer? A. I would have talked to Kappler about it and I would have tried my best to get that body for the family but I must say that this request was never put to me.

Q But you were responsible for the security and calm of Rome, is that right?
A. In the city, yes.

Q Surely if 300 men disappeared in a night their families are going to make inquiries at least within one week following the event? A. Nobody came to me to make any inquiries.

Q You stated in court this morning that you learned here for the first time that about 300 innocent people had been shot on the 24th March as a reprisal; is that right? A. That is correct.

Q After the surrender of Italy did you go to Bolzano to interview General Wolff?
A. I had no official business at all with General Wolff.

Q No business at all? A. No official business at all with General Wolff.

Q Did you not meet General Wolff after the surrender of Italy ----

COLONEL HALSER: I think the witness is asked about the surrender of Italy; surely it is the German surrender in Italy.

THE MEMBER: I am sorry. After the surrender of Germany in Italy. A. I did not understand but now I do understand and now it is correct.

Q Did you discuss with General Wolff reprisals that had taken place in the past in Italy? A. No.

A SECOND MEMBER: I want to make quite certain what was the exact status of Dobrick and his men. A. He was a major, his rank was major and he was commanding the 3rd Police Battalion.

Q Was that police battalion part of the SD? A. No, part of the SS.

Q How can there be any question of Major Dobrick's men doing the shooting on the 24th March? A. I was astonished that he did not get the order to do that, he, Dobrick.

Q Why did you discuss it with him when you got the fuhrexbefehl to say the SD were to do it? A. Only because he suffered the losses.

Q I always understood that orders were issued to be obeyed in the German Army as well as in other armies. A. It was different in our case because the SS was a body quite in itself and I had no right to interfere and to give any sort of orders; it could have been only through General Wolff.

Q But you had orders that the SD, a different body, was to carry out this shooting? A. Yes.

Q Why do you start trying to arrange for the SS to do the shooting? A. I did not try to arrange anything at all; I expressed only my astonishment that the order was not directed by the SS to his own troops.

Q To turn to another subject in March 1944 was there a government, an Italian Government, in the area of Italy in which Rome is situated which was recognised by the Reich? A. Yes.

Q Did that government run civil courts? A. Yes.

Q And did it run military courts? A. I should think so, but I had nothing to do with Italian authorities.

Q And that government was regarded as an ally by the Reich, was it? A. Yes, that was a government of Mussolini at that time.

Q Why were Germans arresting and trying Italian nationals? A. I cannot say anything about that; I suppose there was an agreement between the Reich Government and Mussolini's Government about this.

Q But you were convening and confirming courts for that purpose, were you not?
A. Up till five years.

Q But under what right? A. If crimes were committed against the German Wehrmacht.

Q In an allied country? A. It seems clear that it was an agreement between both the allied governments.

THE JUDGE ADVOCATE: Just as a matter of interest, we have never heard it up to date; was this bomb thrown at these policemen or do you know how the bomb came to go off? A. I cannot say; I do not know, but it is well possible because it was a big crater, diameter one metre and depth one metre and fifty centimetres.

THE JUDGE ADVOCATE: Does Dr. Christ wish to ask any questions or what the court has asked.

DR. CHRIST: The learned judge advocate put it to you that Colonel Zolling furnished wrong reports to the field marshal. Did Colonel Zolling have the possibility to find out the truth? A. Yes.

Q Was it only possible for him to find out the truth only if Kappler co-operated in it? A. Yes, because Kappler had the documents and the files.

Q Was it possible for Colonel Zolling to force Kappler to give an explanation either of the number of the victims or the manner out they were -----

THE JUDGE ADVOCATE: I am sure you do not want to make a false point but I asked about Winden who is the Wehrmacht judge and, if he had asked Winden, Winden would have told him he had been handing over people under sentence of imprisonment. It has nothing to do with Kappler at all.

DR. CHRIST: I wanted to touch this matter concerning Dr. Winden and if possible by asking General Blotner Keller about it. Kappler told us that three to five who were sentenced to death were shot. Do you know the number of those who were in prison and who were sentenced to death? A. In my own courts about 3, 4 or 5, not more, but of course there were other organisations who had their own courts; I give examples, Organisation Fockt, the Air Force, various divisional courts and of course the SS and others.

Q Did you hear about that during this trial, that some of those people who were properly sentenced to death were not amongst those who were shot at this occasion; did you hear about this only here during the trial? A. Yes, I believe a witness gave evidence concerning this.

Q Did you know about it that it was the usage of the SD that families of those who died should be notified in this very short and very unpleasant manner?
A. No, because I had no inside knowledge into matters concerning the SD.

Q Do you know whether the radio issued warnings to the Italian population? A. I have heard about it but I cannot say with certainty because I never listened to the Italian wireless.

Q Do you know whether through wireless future reprisals were threatened so as to avoid that future outrages should take place? A. It may be but I cannot remember.

Q But you think it is possible? A. Yes.

Q General Riether Keller received a letter yesterday and the letter says that warnings and new threats to take other reprisals in the case of future explosions were issued through the Italian wireless.

THE JUDGE ADVOCATE: Was that a question or a statement ?

DR. CHRIST: It is a statement because my witness cannot say really anything to that.

THE JUDGE ADVOCATE: I am afraid we cannot treat that as being evidence; in our courts counsel cannot give evidence when they are addressing the court. It does not very much matter but we cannot treat it that that is some evidence by somebody that this was so.

DR. CHRIST: No further questions.

THE JUDGE ADVOCATE: Is this again another occasion on which learned defending counsel for von Mackensen wants to ask further questions.

DR. KELLER: No, it is an application.

THE JUDGE ADVOCATE: Is it anything to do with while the witness is here?

DR. KELLER: No.

(The witness leaves the witness stand)

DR. KELLER: I would like to ask the court whether it is admissible that I put in as an exhibit that letter which my learned colleague was mentioning just before. The letter is written by an Italian - maybe from a lady - and anyway from an Italian.

THE JUDGE ADVOCATE: I think the court have expressed their policy to be that they only admit written documents when they are perfectly satisfied that some responsible person has not been able to come or cannot be found, but I think counsel will have to satisfy himself because he has a duty to the court not to put matters before the court unless he himself is satisfied that it is the right thing to do. If he can satisfy the court of what this is and that some responsible person who wrote it cannot be got here then the court might look at the letter but not until then.

DR. KELLER: These letters are anonymous and there are no addresses.

THE JUDGE ADVOCATE: I cannot advise the court that they can pay any attention to an anonymous letter for or against the accused.

COLONEL HALSE: I do not know if it would help Dr. Keller at all if I said that I do not deny that warnings were given after this.

THE JUDGE ADVOCATE: You cannot admit anything either. Let us have evidence on this. We have had certain evidence as to what was done and it is no good you saying to the court that you admit it. The court must go on the evidence they have.

DR. KELLER: If the court was interested I would like to say to the court that in the last few days there was a trial in Milano and there was a German accused named Koch and one of the witnesses was the man who had taken part in this outrage in the Via Rosella and he said that the originator of this outrage was a man whose name de guerre was Brooli Broole and he should be Togliatti who is now, I believe, a member of the Italian Government. Does the court wish to hear all the details about it ?

THE JUDGE ADVOCATE: I appreciate that Dr. Keller is speaking from German law in German courts and I am of course speaking as an English lawyer of English courts but it is entirely a matter for Dr. Keller to decide what witnesses he will call

and naturally if he has a witness that he thinks will help his case he will call him; if he does not he will not, but he cannot ask the court to take any responsibility as to what witnesses should be called. It is his responsibility and I do not know whether he is making some application that this person should be called or not. Otherwise we cannot listen to this.

DR. KELLER: I just wish to mention that.

THE JUDGE ADVOCATE: Dr. Christ, the position is now that you have called the accused General Imelner and are you desirous of calling any more witnesses yourself?

DR. CHRIST: I expressed my wish yesterday to the court from my application rather than General Rlother Dr. Keller should be asked to go into the witness box but only in case the court themselves are interested in this evidence.

THE JUDGE ADVOCATE: I think the court are not desirous at all that any individual who appears with the responsibility of conducting the defence of an accused should also figure as a witness in the witness box and I have had a word about this with the court and I do not think that the court wish there to be any suggestion that they would ask any counsel in the case to go into the witness box. I think the case is, so far as the court is concerned, that they do not wish counsel to go into the witness box and if he goes it must be upon the very express request of the defence themselves.

DR. CHRIST: Then the application is dropped.

THE JUDGE ADVOCATE: Now, sir, subject to any witnesses that the court desire to call or recall that concludes the evidence in this case.

THE PRESIDENT: The court will adjourn for ten minutes to discuss this question.

(At 1530 hours the court is closed until 1540 hours)

THE PRESIDENT: The court has decided to recall the witness Kappler.

A. KAPPLER is recalled upon his former oath, and
is further examined as follows:-

THE JUDGE ADVOCATE: Kappler, you are still on your former oath and there is just one aspect of this case, a very important aspect, about which we would like you to answer a few more questions. Since you gave evidence a number of distinguished Wehrmacht officers have alleged that you assured them that on the 23rd and 24th March 1944 you had sufficient people available sentenced to death to be used for a reprisal of 320 Italians and the allegation is that in defiance of that undertaking you then proceeded to take a large number of Italians who to your knowledge had not been sentenced to death. It has been stated that you yourself rang up Field Marshal Kesselring on the telephone and that you were very elated because you could say to him that you were able to furnish the number of those who had to be shot out of those people properly sentenced to death. Having heard that what do you say? A. I have heard and understood. I would like only to ask one question to make sure no mistake occurs; do I understand correctly when it is said, "sentenced to death"?

Q Yes; do you agree or disagree that you rang up the field marshal in person and told him that you were very elated because you could say you were able to furnish him with the number of those who had to be shot out of those people properly sentenced to death? A. No, I have not rung Field Marshal Kesselring personally. In the days of 23rd and 24th March I had neither phoned Kesselring nor spoken with him personally.

Q Your story is, I think, that you phoned a certain Lieutenant Colonel Ingelheim? A. I have spoken with an officer from 1st AF and I believe to be almost certain that it was Count Ingelheim.

Q Can we get down to something quite clear. Either you or Field Marshal Kesselring are misleading the court with regard to this conversation on the phone. Now, the same suggestion is being made against you, as I understand it, and it is suggested that you attended a conference with General von Mackensen. Just a minute, this takes a little time to get it fairly before the court; it is suggested that you went to General Mackensen's headquarters on the 23rd March 1944, between 5.30 and 7.30 in the evening and that in addition to General Mackensen there was present General Hauser and the army judge. Have you any knowledge whatsoever of attending a conference of that importance and that dimension on that day? A. I said the last time when I was asked by the president of this court the following, after having heard of the various details I cannot exclude the possibility that this conference did happen but what I thought that I agreed to on the phone perhaps was agreed then in person - through a personal conference and not on the phone.

Q You think you may have attended a conference then where General Hauser was present and the military judge? A. I cannot exclude this possibility although I do not remember exactly precisely but I have not answered yet the first question which the court asked me concerning those who were properly sentenced to death. I personally could not say really how many of those properly sentenced to death were available because only Judge Wenden was in the possibility to say how many were available but it is quite impossible that anybody should have thought that such a high number of those properly sentenced to death would be available but it is clear I have never spoken only of those sentenced to death but I personally have spoken only of those whose number was much larger amongst those who were death-worthy - todeswurdig.

Q Unless he wants to go on I have the point I wanted, whether he confirmed about the conference. A. I have made some notes which I have made during the last days. Does the court wish me to refer to them?

THE JUDGE ADVOCATE: The only thing I want is for the witness to answer the question which I think he has done. Does the prosecutor want to put anything on that?

COLONEL HAISE: No.

THE JUDGE ADVOCATE: Do defence counsel want to put anything on that?

DR. KELLER: No questions.

DR. CHRIST: No questions.

THE PRESIDENT: The court has considered the application of learned counsel for the defence that they should be allowed one clear day in which to prepare their final addresses. The court agrees to that request and will therefore adjourn until ten o'clock the day after tomorrow.

DR. KELLER: There is a request that the paybook of General Mackensen should be returned.

THE JUDGE ADVOCATE: Will the shorthand-writer make a note that the document relating to von Mackensen was returned to his counsel this afternoon?

(Document relating to the accused Mackensen is handed to Dr. Keller)

(At 1600 hours the court is adjourned until 1000 hours on Friday, 29th November 1946)