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TRIAL BY MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS

of

ERICHARD VON MACKENSEN

and

KURT MAELZER

on

25TH NOVEMBER, 1946.

EIGHTH DAY

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PROCEEDINGS

of a

MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS

held at

THE UNIVERSITY OF ROME

on

25th 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. 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.

EIGHTH DAY

Tuesday, 26th 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)

A. KESSELRING resumes his stand at the place from which he is giving his evidence and is further examined by DR. KELLER as follows:

Q Did you think that after the incident of 23rd March more incidents will occur?

COL. HALSE: I really must object to leading questions. The time has come when the witness is going to speak upon conversations he had with General von Mackensen. I must object to the witness being asked leading questions.

THE JUDGE ADVOCATE: Will you ask learned counsel for the defence from this moment to refrain from putting his questions in a leading form. I think he understands that.

DR. KELLER: May this question be answered in the form that it was asked?

THE JUDGE ADVOCATE: Yes.

THE WITNESS: My conciliatory policy would have been judged as weakness if not more severe measures would have been taken. I had to fear that this big incident of 23rd March might have become the leading flame to re-ignition of the whole movement and my first supposition that those few beginnings of the organization which I mentioned yesterday were changed into much larger forms, this position of mind became true indeed in the next few minutes which followed.

Q And why was the taking of these stronger measures not postponed until the police investigations were finished? A. The first police measures, for instance, the investigations and the finding of the perpetrators were finished and the result was negative and a further postponement of these measures was, because of the general military situation and the police situation, not desirable and not possible. Police measures, for instance, I mean the security measures in Rome, of which I had a very high opinion, showed themselves to be not so good. Now to the military situation, the frontline about 20 kilometres away from Rome and the area round the Naturno beach-head in heavy fighting, there were signs coming in more and more, signs that a bigger attack or heavier fighting is to be expected at the south front and therefore caution was necessary, and the long line of the sea made it possible that new landings might occur. This possibility made it clear for me that I had to expect these landings and, of course, always the danger of airborne landings, and then I had to expect that larger disturbances at Rome would be the signal to create military actions, actions on a very large scale and this was not only a heavy burden for me from the point of view of the military situation; no, even with regard to the Italian people themselves, because it is quite clear if heavy disturbances would have occurred in Rome I would have been forced to take sharp, very sharp, measures indeed and that is what I wanted to avoid at all costs and there was a great danger that my policy, seeking conciliation and co-operation, would have been destroyed from high authority - I speak about Hitler and Mussolini.

Q My last question to you; what was your opinion concerning Kappler? I speak up to the date of 23rd March 1944. A. When Italy left the Axis, at that time I remember I got to know Kappler. Kappler and Col. Dolman came into the area of my protection and asked for protection. During all the conferences, the various conferences I had with Kappler, I gained the impression that he is

an excellent official of the criminal police, an expert, very clever, very intelligent, and a great gift of combination and association. Whenever he spoke to me about any subject I felt the deep inner earnestness in him. I thought he is rather a hard character but imbued with a great sense of justice, and I would like to give an example about it. I asked him several times "what about the trials of some persons involved in partisan activities?". His answer was quite often: "The trial has not yet been prepared because quite a lot of evidence is still missing". That is, for instance, an example of his high sense of fairness and justice, and that is one of the reasons why I thought that he deserves my very deep confidence and what happened later I really cannot understand.

Cross-examined by DR. CHRIST

Q Do you know what Hitler's wishes were with regard to the ratio of those to be shot, apart from his wish that the whole quarter should be blown up?

A. Out of my own experience I know Hitler's order concerning the shooting, only the ratio of one to ten was reported, however, that I should resort to the sharpest measures against Rome. As examples, incidents in France were mentioned, for instance, the burning down of whole quarters in cities.

Q Do you know something about Hitler's requests, or demands, that people should be shot in the ratio of one to thirty?

COL. HALSE: That is a leading question.

THE JUDGE ADVOCATE: I thought he had just said he only knew of a ratio of one to ten.

THE INTERPRETER: "Out of my experience" - he said that.

THE JUDGE ADVOCATE: Ask him not to lead.

DR. CHRIST: (To the witness) Were you of the opinion that this ratio, one to ten, is absolutely necessary? A. The ratio one to ten or any other ratio did not carry any important weight in my eyes. My policy, on the whole, was always directed towards the aim that the population should avoid any such outrages. The question of reprisals constituted, in my idea, a question which had to be decided on each occasion separately.

Q How does it come that Col. Beelitz has so far reaching knowledge about all occurrences within the Army Group? A. Col. Beelitz was my LA, GSO.1, since a long time and his task was to deal with tactical, operational and territorial questions. For some of the time he was Deputy Chief of Staff as I spent about three quarters of my time far from my headquarters. My men were trained to observe all occurrences very well, exactly, and deal with them, and that is the reason why he now remembers so exactly what happened. Moreover, Beelitz's intelligence is above the average.

Cross-examined by COL. HALSE

Q Will you try and answer my questions briefly. I want to know, first, whether you consider you are entitled to order the killing of innocent persons as reprisals? A. I do not feel entitled to order the killing of innocent persons.

Q Even when the order is to kill in the ratio of ten to one you do not think that innocent persons should be included amongst the ten for each German killed? A. I do not think so.

Q Is that your view now, or was it your view on 23rd March 1944? A. This opinion of mine is my opinion of to-day and also my opinion at that time.

Q And was it your opinion throughout the period between the armistice between the Italians and the Allies and the time you left command of OBSS?

DR. KELLER: I object to this question because, in my opinion, the matter for

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this trial is only what happened about 23rd March. What happened after that date, in my opinion, does not concern this trial.

THE JUDGE ADVOCATE: I do not understand the objection. Would you elaborate it?

DR. KELLER: I do not know the British law. In our trials, however, only those matters are being discussed which are the topic of the charges which are brought against the accused.

THE JUDGE ADVOCATE: Our law is quite clear, that is, that you may hear any matter of fact which you consider to be relevant to the charges before you and I know of no proposition which, because some fact may have occurred after - even a long time after - those matters set out in the charge sheet, rules it out.

COL. HALSE: I will put the question again. (To the witness) Was it your view that innocent people should not be killed as reprisals the whole time between the day of the Italian armistice and the time you left Italy? A. If I answer this question with a short "Yes" then I must ask the Court to allow me to give a full explanation to it.

THE JUDGE ADVOCATE: Will you tell the witness that if he can answer a question "Yes" or "No" he should do so in the first instance and if he wishes to amplify it or explain it afterwards the prosecutor will wait until he has had that opportunity.

COL. HALSE: (To the witness) Will you answer it "Yes" or "No"? A. Yes.

Q Will you please give your explanation shortly? A. I want to fix the real sense of the word "innocent".

Q I was coming to that later on so perhaps my next question will cover your explanation. When you speak of an innocent person do you mean someone who has not been convicted of a crime? A. With the word "innocent" I mean people who were not convicted of this crime and secondly of people who had nothing to do with the whole complicity of that crime or of that question.

Q On that point you speak of people not convicted of this crime? A. I do not know whether the learned prosecutor speaks about this particular case which occurred in Rome or in a sort of quite general way which might cover us.

Q I am speaking of a general way. Let me give you an example. Do you think that a person who has been arrested by the German police for an offence against the German law but who has not yet been before a court and tried should be killed? That can be answered "Yes" or "No". A. No, in normal times or in normal cases, no.

Q When, do you say, is a normal case? A. I speak about a normal case in that way that a man can only be executed after having been tried by a proper court. For instance, an abnormal case would be if a man kills somebody else in passion. The third case, if you take hostages and you tell them that they are taken with a view that if anything in future might happen they will be killed.

Q May we leave out hostages all together because, in the incident of 23rd March, no question of hostages arose.

THE JUDGE ADVOCATE: That is not accurate, you know.

COL. HALSE: No hostages arose so far as people killed were concerned.

THE JUDGE ADVOCATE: You can put it that way, but we, presumably, are going to have some argument as to whether the order was not to kill hostages, by Hitler.

COL. HALSE: I will put the question another way round. (To the witness) No people were held in prisons in Rome as hostages on 23rd March, were they?

A. That is my opinion. There were no hostages, but I would like to point out that the word "hostages" is used in a most different way and, in my opinion, in the wrong sense of the word.

Q Would you just help the Court. First of all, very shortly, what is your view of the word "hostages"? A. Hostages are people who are taken with a view that a certain crime should be avoided and who are judged to be the suitable persons to be taken for that purpose and, secondly, people who are somehow concerned with that theme or with the fact with which we are dealing, so therefore those criminals who are attempting to do some crime should be forced to think that their own comrades are now the hostages and therefore this thought might act as a deterrent.

Q I am sorry, I do not understand. Let me try and put it to you. A hostage is someone who is taken and kept in prison and it is made known that if any crime is committed by the population that man will be killed; is that right? A. Yes, that is right.

Q That is the only definition of "hostage", is not it? A. Yes, but I must stress the fact that the hostages must be taken from the circle of those criminals, or who have something to do with that circle.

Q How can you take a hostage before a crime is committed?

THE JUDGE ADVOCATE: I do not follow your question at all. I should have thought that hostages were generally taken before crimes were committed, and as a result of crimes being committed - I do not know.

THE WITNESS: It is a preventive measure - that is the gist of my idea about hostages, that it should be a preventive measure because the others are the culprits and are the perpetrators.

COL. HALSBY: (To the witness) When did you first learn that some policemen had been killed in the Via Rosella? A. When I returned on the evening of 23rd March from the front-line; that was between 1900 hours and 2000 hours.

Q How many, did you hear, had been killed? A. I heard that the whole company was just wiped out and those were troops which were not combatant troops but were only on safeguarding of the Italian population.

Q Please remember what I asked you before, to answer my questions briefly. How many policemen did you hear had been killed when you got back to your headquarters? A. Approximately the figure 30 was mentioned as fatal casualties, and approximately 60 as wounded.

Q Were you told anything else when you came back to your headquarters? A. Yes, that there is an enormous amount of excitement.

Q Wait a minute. Were you told the matter had been reported to Hitler's headquarters; "Yes" or "No"? A. Certainly.

Q Were you told what orders Hitler had given; "Yes" or "No"? A. There was no order issued at that time.

Q Do you mean that when you got back from your visit to the front no order had been received from Hitler's headquarters? A. No orders.

Q So when Beelitz tells us that Hitler had ordered the complete destruction of the quarter and the killing of 30 to 50 to every German killed that is untrue? A. I would like to repeat the following: I said before that from Hitler's headquarters sharpest measures were asked for, the blowing up of the quarter and so on. Secondly, my Chief of Staff got hold of me immediately when I arrived and told me, in short words, what happened. Immediately afterwards two telephone conversations came, first, Kappler -----

THE JUDGE ADVOCATE: This is far too quick. We get a different version of all these things every time and I am trying to write them down so that the Court can fit them together.

COL. HALSE: (To the witness) Can we have it very shortly?

THE JUDGE ADVOCATE: Not shortly, but slower.

COL. HALSE: (To the witness) You came back to your headquarters? A. Yes.

Q The first person you saw was your Chief of Staff? A. Yes.

Q He told you that the police had been killed and wounded? A. Yes.

Q He told you the matter had been reported to the Fuehrer's headquarters? A. Yes.

Q He told you that Hitler had demanded the strongest measures? A. Yes, similar to France - not similar, but pointing out France.

Q Did he or Beelitz tell you, at any time, that Hitler had demanded killing in the ratio of one to 30 or one to 50? A. I can only remember all these things rather roughly and approximately and I cannot say with absolute certainty when the Fuehrer's orders arrived. A new situation arose -----

Q May we forget about the Fuehrer's order because I have not got to it yet. If Beelitz or Westphahl had told you that Hitler had ordered the ratio of one to fifty that fact would have stuck in your memory, would not it? A. I can only say once more that very long conversations between my headquarters and the OKW were held; I am certain of this.

Q I am going to ask you the question again and again until I get an answer. If your chief of staff or Beelitz had told you that Hitler had demanded reprisals in the ratio of one to fifty it would have stuck in your memory for all time, would not it? Did they ever tell you that? A. I do not remember the ratio one to thirty or one to fifty but I do remember that a higher ratio than one to ten was demanded.

Q General Oberst von Mackensen talks of one to twenty. Would that be the figure you have in mind? A. I must say once more to the Court: I returned at such and such a time from the front-line and I concentrated mainly on the question: "What have I to do concerning this incident?", and immediately afterwards I got the order of the ratio one to 10 and I was very happy that the previous demands, much higher, were softened to this ratio.

THE JUDGE ADVOCATE: Where did he say/got this from? I am trying to get a note in some sort of chronological order and I know you are trying to get it for me. The last thing I got was a discussion about the ratio. What was said after that?

COL. HALSE: He said that after he got back he had been told things by Beelitz and the Chief of Staff about ten to one. I am going to ask him if he got that from Hitler or where he got it from. He said in his answer that he was pleased to hear this.

THE JUDGE ADVOCATE: Would you ask the Field Marshal, to the best of his ability, to give us a chronological account of what was told to him that night?

COL. HALSE: (To the witness) May we go all over it again. You come in from the front? A. Yes.

Q You get a report from your Chief of Staff that this incident has occurred. He also tells you that the matter has been reported to Hitler's headquarters. Hitler has said "strongest measures to be taken" and refers to incidents in France; is that right? A. Yes.

Q But you cannot remember what else Hitler ordered at the present time; it was a higher ration, however, than ten to one? A. It is very difficult for me, having had all these various numerous and very important conferences in those last few years, to remember exactly every little detail.

Q Immediately after you had had this report from your Chief of Staff, what happened next? A. I went into my office and immediately a telephone conversation came.

Q Where did the telephone call come from? A. Two telephone conversations almost simultaneously; first, Kappler, second, HQ of Hitler. The conversation emanating from HQ, Hitler, was held by my Chief of Staff and Kappler's conversation came to my own telephone. It was the usage that all the telephone conversations which I held were listened in by my Chief of Staff or somebody else.

Q Let us deal with Kappler's telephone conversation because that was the first. Will you try, Field Marshal, as shortly as you can, to tell the Court what Kappler told you.

THE JUDGE ADVOCATE: Have we got this quite clear? I keep on taking notes and then we have further questions and they are altered. Let us get it definitely. Did Kappler ring him or did he ring Kappler?

COL. HALSE: (To the witness) Did Kappler telephone to you, that is to say, was it an incoming call or an outgoing call? A. Incoming call.

Q Will you tell the Court, as shortly as you can, what you now remember that Kappler said to you when he telephoned? A. My answer will be very short because the whole conversation lasted only for a minute. Kappler was very elated and happy and told me that he can say he was very elated and certain that he was able to furnish the number of those who had to be shot out of those people who had been properly condemned to death.

THE PRESIDENT: Did he say "elated" or "excited"?

THE WITNESS: Not "excited" but "elated".

COL. HALSE: Is that all? A. I thanked him from all my heart because a heavy burden was taken away from me.

Q It is extremely lucky, Field Marshal, that you had just had your conversations with your Chief of Staff before the telephone conversation with Kappler occurred, is not it? A. That was a happy incident.

Q Because if you had not had the telephone conversation you would not have had the first idea of what Kappler was talking about - if you had not heard the Chief of Staff you would not have had the first idea of what Kappler was talking about. A. That is correct.

THE JUDGE ADVOCATE: I do not understand how he knew this. So far we have not had a single word about shooting people who were sentenced to death. I should think his answer at this stage would be: "I do not know what you are talking about".

THE WITNESS: I first had the conversation with my Chief of Staff but secondly I would like to point out that I am not absolutely certain whether Kappler's telephone call was first or the telephone call from HQ.

THE JUDGE ADVOCATE: You see, whenever I raise a question which is rather a difficult one the witness immediately alters what he has sworn on oath. I took it down and he distinctly said the conversations took place, (1) Kappler, (11) Headquarters Hitler.

COL. HALSE: (To the witness) Even if the telephone conversation with Hitler's headquarters was before Kappler telephoned you, that statement that Kappler made to you could not mean anything at all, could it? Now listen; what I am getting at is this: did you know of any arrangement which had been made with Kappler? A. I did not know anything about this.

Q Did you know ----- A. At that time.

Q But Kappler telephoned you and said he had got enough people condemned to death to be killed; is that right? A. Yes.

Q But he did not know how many were to be killed at that time, did he? A. I must say once more I returned at, let us say, 1930 hours. Between 1400 hours, when it happened, and 1930 hours dozens of telephone conversations took place and many things happened.

Q Hitler's order was received about the same time as Kappler's telephone message? A. Approximately at the same time.

Q Until Hitler's order was received nobody except Hitler himself knew how many were to be killed? A. Yes, I assume that is right.

Q Then how could Kappler telephone you and say he had got enough people in the bag without killing innocent people? A. If I reconstruct the whole thing then I think that in the conversations between Army 14 and Kappler the number of those available was the foundation of the conversations, the number of those available to be killed. At that time I did not know about the conversations which had taken place between my headquarters, Beelitz for instance and Zolling for instance, and the OKW.

Q Now, you did not know that Hitler was going to order the ratio of ten to one, did you? A. When I took up the receiver I did not know that.

Q And if you did not know Kappler could not have known either, could he? You can answer that "Yes" or "No". A. May I have the question again?

Q If you will pay attention to my questions instead of trying to talk yourself we shall get on better. If you did not know that Hitler was going to order ten to one Kappler could not have known either, could he? A. Yes and no.

Q You can say that Kappler would know that Hitler was going to order ten to one before you got the order from Hitler's headquarters "Yes" or "No"; you can say that "Yes" or "No". A. I can only say "Yes or no". If I am allowed to explain -----

Q Will you say "Yes" or "No" and we will give you a chance of an explanation afterwards. I will repeat the question. Could Kappler have known that the ration of ten to one was to be carried out before you did? A. Approximately, yes.

Q Why do you say he could have known before you did if the telephone came to your headquarters? A. During my absence quite a number of telephone conversations had taken place and I am quite certain that certain results of these conversations were reached. I can well imagine that from my headquarters, as a sort of prophetic measure, the ration of one to ten was mentioned in a way: "Well, this ration might be reached" and then I can well imagine that through the SD channels the communique was passed on much quicker.

THE PRESIDENT: That is the answer to the question and the rest of it was a waste of time. The answer to the question is: "It might have gone through SD channels"; is that what it is? A. Yes.

COL. HALSE: So you are suggesting that Kappler was in communication with Hitler's headquarters with SD channels? A. Via Himmler.

- Q Do you know you are the first person who has made that suggestion in this Court though Kappler himself has given evidence and so has Hardster? A. I said only as a sort of assumption.
- Q That is the explanation, your explanation, for one of the questions I asked you? A. Yes.
- Q Now I want to go to the order which you received from Hitler. Will you try and take your mind back and tell the Court what that order said?
- THE JUDGE ADVOCATE: Would you ask him, first of all, who he was supposed to be talking to on the 'phone - this second conversation?
- COL. HALSE: (To the witness) First of all, who was the speaker at the other end of the telephone? A. As far as I know, General von Butla.
- Q And who was speaking at your end? A. Chief of Staff, General Westphahl.
- Q How did you hear the conversation? A. I did not hear that conversation.
- Q So all you got was the report from Westphahl as to what order was received? A. That is correct.
- THE JUDGE ADVOCATE: I am sorry. My note went as follows: "I went into my office and immediately two telephone conversations took place; one was Kappler and one was Hitler's headquarters".
- COL. HALSE: I think the witness, in one of his rambling statements, did mention that the Chief of Staff had the conversation with Hitler's headquarters.
- THE JUDGE ADVOCATE: Yes, but I want to link it up. I want to get a picture of this. Are we to assume that in his office his Chief of Staff was telephoning while he was present, or what? I do not understand his going into his office and the two telephone calls immediately.
- COL. HALSE: (To witness) Did the telephone call from Hitler's headquarters come through to your own office? A. No.
- Q To the Chief of Staff's office? A. Yes.
- Q So you did not know it was coming through at the time it came through? A. No, I did not know.
- Q And what you are telling the Court now - whatever you said in the past - is that a telephone bell rang in the Chief of Staff's office and the Chief of Staff got an order from Hitler's headquarters as to the reprisals which were to be carried out? A. That is correct.
- Q And that having got that order from Hitler he came in and told you about it? A. That is correct.
- Q Now will you tell the Court what your Chief of Staff told you Hitler's headquarters said was to be the order? A. The Fuehrer's orders were that the ratio should be one German killed to ten.
- Q Ten what? A. Ten hostages; ten Italians.
- Q Now which was it, ten hostages, ten Italians or ten Italian hostages? A. Ten Italian hostages.
- Q Will you try and get your facts right the first time instead of making three guesses. What else was in the order? A. "Immediate carrying out of order" and - I do not know whether it was during this conversation or during another conversation of the same evening - "Field Marshal Kesselring should really act this time thoroughly". I must explain that because I was believed

to be very free towards the Italians and therefore I was suspected that I would find some sort of means to get out of this order.

THE PRESIDENT: Before we have any explanations will you continue to answer the question as to what was in the order?

THE WITNESSES: I cannot remember that anything else was in that order.

COL. HALSE: We will go on and test your memory. Was the time at which the order was to be carried out mentioned? A. As far as I remember only quick carrying out of the order was demanded.

Q Secondly, did it state who was to carry out the order? A. The order was directed to myself and therefore I had to carry out this order.

Q Did the order say who was to do the actual shooting? A. In that order, certainly not. The whole thing was put to me as the Commander-in-Chief.

Q And so you were the person who was ordered by Hitler to carry out this order? A. Certainly.

Q How quite obviously you could not do it yourself, Field Marshal, so did you pass the order on? You can answer that one "Yes" or "No". A. I asked that the order should be passed on to Headquarters, Army 14.

Q Do you usually "ask" in the German Army; you usually "issue" an order, do not you? A. I said that I asked that the order should be passed on because I, personally, did not see or did not know the original order.

Q The order was passed on to whom? A. I assume either to the Chief of Staff or to the 14 of Army Headquarters 14.

Q The answer that you could have given me, quite simply, was "14 Army" and that was the answer I was asking you for. What order was passed on to 14 Army? A. The Hitler order in its exact wording.

Q Nothing was added to it? A. Nothing was added to this order.

Q And nothing subtracted from it? A. Nothing was subtracted either because in the meantime, through the conversation with Kappler, I knew that an agreement was reached between the 14th Army and Kappler that enough people were available, enough criminals who were already sentenced.

Q I am coming back to that in a moment. I still want to go on with the order. According to the Commander, 14 Army, when the order reached his headquarters the words "SD to carry out execution" appeared. A. I think that this order containing the words "SD" must have been issued later because on that day I did not know anything about the carrying out of the order through the SD.

Q Do you say, then, that your headquarters issued another order to 14 Army later that night or the next morning; "Yes" or "No"? A. Yes.

Q What was that order? A. This order contained the words "Carrying out of the execution by the SD".

Q I am putting this question to you in a way you can answer without any argument. Was the order issued because of some request for information from 14 Army or because of another order received from Hitler, or because you thought the SD were the right people to carry out the executions, or is there another reason that I cannot think of?

THE JUDGE ADVOCATE: With great respect, unless you ask him, first of all, if he gave this order it will not take us very far.

COL. HALSE: He said his headquarters issued it.

THE JUDGE ADVOCATE: I am not clear. I want to know if he, as Commander-in-Chief added to Hitler's order his own order that it will be carried out by the SD.

COL. HALSE: (To the witness) Did you issue that order personally? A. No, not I personally.

Q Did you authorize the issue of the order? A. My Chief-of-Staff had the responsibility.

THE JUDGE ADVOCATE: Col. Halse, I am sorry but it does seem to me that a question that should be asked is: did he consult, as one would expect, with his Chief-of-Staff and did his Chief-of-Staff say: "How are we going to carry this out?" and did he say: "I propose to use SD", and is that the policy he adopted?

COL. HALSE: (To the witness) Before the order was issued did you have a conversation with the Chief-of-Staff as to who was to carry out the execution?

A. I am certain that we have talked about it and it was quite clear to us, the 14th Army.

Q Which particular unit of the 14th Army were to carry out the execution?

A. The one army is such an enormous complexity that I was quite certain that I may leave it to the army itself.

Q Then why did your headquarters issue an order the next day saying the execution should be carried out by the SD? A. I do not know the reasons but I assume the lack of confidence in my own person and in Mackensen's person, the lack of confidence which Hitler had either in my own person or Mackensen's person.

THE JUDGE ADVOCATE: Col. Halse, again the Court are not getting what they want. They want to get a clear picture, so far as this witness is concerned, about this second order. Now he told me - I understood quite clearly - that a further order was issued by his own headquarters that night and that order laid down that the execution was to be carried out by the SD. Now, what I want to know is: did the Field Marshal initiate the policy of using SD or did the Chief-of-Staff do it without any reference to him?

COL. HALSE: I was going to ask that question when you were talking to the President. (To the witness) Did the order "Execution to be carried out by SD" emanate from your headquarters originally? A. I am almost certain, but I must say that I went, in the early morning hours of the 24th, to the front-line.

Q The order that the execution was to be carried out by the SD did not come from Hitler's headquarters; is that right? A. It did come from Hitler's headquarters.

Q But you said just now, in answer to my question, that the order that the SD were to carry out the execution emanated originally from your headquarters. A. The misunderstanding is that it was passed on from my headquarters but not originated from my headquarters.

Q So your recollection of it is this; that Hitler sent an order out, either the same night or the following morning, adding to the original order "Execution to be carried out by SD"? A. I suppose that was a written order which arrived in the early morning hours.

THE JUDGE ADVOCATE: My note is a complete muddle.

COL. HALSE: My mind is a complete muddle too!

THE JUDGE ADVOCATE: I have got a very clear note; I took it in full, and I took it at great length. He was asked about the Hitler order and he told us that he did not know what was in it but it was the Chief-of-Staff, but it was the

ratio of one German killed to ten Italian hostages. Then he said he did not say who was to carry the execution out and then he said "I had to carry out this order as it was directed to me by Hitler". Am I to understand that subsequent to this there was a further Hitler order?

COL. HALSE: Yes; I thought you made a note.

THE JUDGE ADVOCATE: As I understand it, when he made a reference to the execution to be carried out by SD he said it was a further order to be issued by his headquarters to 14 Army. When did this further conversation or order, whatever it was, come from Hitler, which he is now speaking about?

COL. HALSE: I understand that an order came down during the night and arrived in the early morning from Hitler saying "SD to carry out execution" and his headquarters passed that on to 14 Army. That is as I understand the position. Is that clear now?

THE JUDGE ADVOCATE: No, it does not make it at all clear because he told me, as I understood it, that when he got the first order from Hitler that order was passed on to the 14th Army in the exact form, nothing added, nothing subtracted. That is the first order?

COL. HALSE: That is so.

THE JUDGE ADVOCATE: I am not querying whether it is right or wrong but would he now fit into his story the order he got from Hitler, what it was and when it was?

COL. HALSE: (To the witness) Do you know when the order "Execution to be carried out by SD" was received from Hitler? A. I do not know when.

Q Can you say approximately what time it was, the same night or early the next morning, the 24th? A. I cannot say with certainty because at five or six in the morning I left my headquarters but I assume it was a teleprint which was sent during the night and arrived in the early morning hours and was put on the desk of my Chief-of-Staff.

COL. HALSE: Does that clear the matter up for you?

THE JUDGE ADVOCATE: Yes, it clears it up to get my note in chronological order.

(At 1140 hours the Court adjourns)
(At 1150 hours the Court re-opens)

COL. HALSE: (To the witness) That second order which you have told us about; was that the last order which you issued on this matter? A. Yes.

Q Just in case there is any more trouble about your headquarters, when I am speaking of you I mean you as OBSW and therefore include your headquarters. Did you know of any agreement which Kappler had made with von Mackensen? Will you first say "Yes" or "No", and I will ask you later what it was about. A. Yes.

Q From whom did you hear that? A. I heard it from a member of my staff.

Q What was the agreement? A. The possibility on the side of Kappler to furnish criminals who had been sentenced.

THE JUDGE ADVOCATE: Is that what he said, "possibility"?

THE INTERPRETER: Yes, the possibility and the willingness of Kappler to provide criminals who had been sentenced.

- COL. HALSE: (To the witness) You mean that Kappler had condescended to provide people who had been sentenced instead of Mackensen having to collect innocent victims? A. Yes, to avoid that innocent victims should be taken.
- Q Was there anything else in that agreement? A. I do not know.
- Q Did you know that Mackensen had agreed with Kappler that they would only kill those people sentenced to death? A. That was what I intended and that was what I assumed would happen.
- Q I have not finished. And that if there were not 320 people in that category a lesser number would be shot and a report would be sent to your headquarters saying that 320 had been shot. Did you know of that part of the agreement? A. I have understood. I did not know about this part of the agreement but it would conform entirely with my own mentality.
- Q Did you issue any order or instruction to 14th Army that only those people sentenced to death were to be shot? You can answer that "Yes" or "No". A. No.
- Q But that is what you intended should happen, is not it? A. I was in no doubt about that at all, first, because of the conversations with Kappler and second, of the report going from 14 Army to Army Group C.
- Q That was a report that you sent after the occurrence, after the shooting? A. I cannot understand this question.
- Q In that answer you spoke of a report going from 14 Army to Army Group C. A. Not a report, a telephone conversation.
- Q Are you speaking of a report made after the shooting? A. No, I do not.
- Q So it was another report received at your headquarters from 14 Army. Who was that report received from? A. I do not know because all these conversations took place between my own staff and the staff of Army 14.
- Q Staff to staff, was it? A. That is correct.
- Q What was that report or telephone conversation? A. Previously I mentioned that the intention of Army 14 was that fewer people should be shot as the number of those sentenced criminals would be a lesser one, but I added that I personally did not know about this conversation but that it was entirely conformant with my own mentality and my own thoughts.
- Q That is the conversation you were speaking of just now? A. Yes.
- Q You did not know about it? A. No.
- Q I will ask you again: if your view was that only people sentenced to death should be shot, why did not you issue an order saying so? A. Because I was quite certain that an agreement had been reached between Kappler and von Mackensen, and I am not quite certain whether I would have issued a written order concerning this because otherwise I would have been blatantly disobeying orders in front of my whole headquarters.
- Q But you could have made a telephone call, could not you? A. Yes.
- Q And you did not? A. No, I have not.
- Q Did you speak to General von Mackensen on this matter at all? A. No.

Q Not one word to General von Mackensen at all? A. I do not remember any conversation on that evening.

Q Or the next day, on the 24th? A. I was not present on the 24th.

Q 320 people sentenced to death is a large number, is not it? A. Yes.

Q Were not you surprised that you had confirmed the sentence of death on so many people? Were you surprised, "Yes" or "No"? A. I was surprised but it reached the whole question, reached a different level from the moment on that I knew what sort of criminals would be shot.

THE JUDGE ADVOCATE: I do not understand the answer.

THE WITNESS: I was surprised. All my inner doubts disappeared from the moment when I knew that it was not a question of innocent people but of people who had been sentenced to death previously.

COL. HALSB: (To the witness) Now, that is not an answer to my question at all. What I asked you was were you not surprised that you had confirmed the sentence of death on 320 people? Do you understand? A. I was surprised.

Q You were the confirming officer for Rome, were not you - all death sentences? A. Yes, I kept the right to confirm death sentences myself.

Q So every single case of a person sentenced to death in Rome would come to you? A. That is correct.

Q No doubt you read the proceedings in each case where a man was going to lose his life? A. I got quite extensive reports about it from the General Richter.

Q Do you tell the Court that you never read a set of proceedings when a man was sentenced to death and you had got to confirm that death sentence? A. When, in spite of the report rendered to me by the General Richter, there was not sufficient to clarify my mind about the case, then I myself read the proceedings.

Q Even if you only read reports, reading 320 reports on death sentences was a lot, was not it? A. I would never be able to do this.

Q Did not you at once think "Have I really confirmed 320 death sentences?" when Kappler told you he had got enough people to kill? A. When I spoke about those who were sentenced to death I did not speak about those whose sentences were confirmed by me but about those who were sentenced to death by a proper court.

Q The only German courts in Rome were military courts, were not they? A. Yes.

Q And you had to confirm all death sentences in Rome, did not you? Did you or did not you? A. Yes, but many cases were passed on to the Italian authorities.

Q But I thought you told me that we were dealing with offences against the German authorities. Are not we? A. Yes.

Q And you confirm all those? A. No, even in those cases people were passed on to the Italian authorities.

Q Now, Field Marshal, did you ever think it necessary to ring up General Keller and say: "How many people are there who have been sentenced to death"? A. I did not do this, because General Richter Keller would not have known about the number unless it concerned people whose death sentences had been confirmed by me.

Q But he could have found out for you, could not he? A. Yes, he could.

Q Did you think of taking that very simple precaution? A. I did not think of this because this time it was not the question of a properly constituted court but, after all, the question was reprisals.

Q And I suggest to you that you did not care whether the people shot were people who had been sentenced to death or not. A. I am very sorry and deeply perturbed that the learned prosecutor accuses me of this particularly as I, in many cases, allowed clemency and this fact is well known, and I ask the Court to ask General Richter Keller about this at a later stage when giving evidence.

Q Do not encourage me to raise questions as to your conduct in Italy. I am again suggesting to you that you took no steps whatever to confirm what Kappler said to you. A. I did not do this because I put my confidence in him.

THE JUDGE ADVOCATE: Col. Halse, my recollection was that Kappler was asked whether he had talked to Kesselring on this night and he then said: "I have no recollection of it at all". The matter was then dropped and I rather assumed from that that learned counsel were accepting what Kappler had said, but whether it is necessary to have Kappler back to put all this detailed conversation is another matter, but at the moment I do not know whether the Court are going to say there ever was or was not a conversation. That is a matter of fact.

COL. HALSE: Yes. (To the witness) Now you said this morning that police measures were finished and the result was negative. A. That is correct.

Q Do you know that there were no police enquiries instituted on that day at all?

THE JUDGE ADVOCATE: I have heard nobody say that there were no police enquiries on that day.

COL. HALSE: I am sorry. I thought Kappler said he had not done anything that day.

THE JUDGE ADVOCATE: That is a matter for the Court. My view was that Kappler got busy but did not get far.

COL. HALSE: (To the witness) Did Kappler get on with his investigations immediately afterwards? A. Immediately after the incident occurred; I do not know whether Kappler himself or officers under him.

Q And those enquiries continued for some time? A. Quite naturally, of course.

Q Did you make any appeal to the Roman public or to the man responsible for the bombing to give information before you ordered reprisals? A. Not before.

Q Did you give any warning to the Roman public that you were going to take reprisals in the ratio of ten to one? A. No, but the learned prosecutor and myself do not agree about the meaning of the word "reprisals" or, for that matter, of the word "warning" because to take hostages or to warn people should be a deterrent for the future.

Q But you could have said, could you not: "If the Roman public do not give up the man who carried out this bomb outrage within a certain time I will shoot ten Romans for every German"? A. Now, with the tranquility, and after three years has passed, I must say this proposition is a very good one.

Q But you did not do it, did you? A. I did not do it.

- Q "hen did you hear that the execution had been completed? A. At the earliest in the evening of 24th March or maybe the 25th because I am not certain whether I returned on the 24th from the front-line.
- Q When it was reported to you that the execution had been carried out was the number of persons killed stated? A. That is possible but I do not remember.
- Q When you heard that the execution had been carried out did you think that 320 people condemned to death had been killed? A. Yes.
- Q And that was because of what Kappler had told you and because of the agreement which you had heard Mackensen had made with Kappler? A. If it had not been the case then, from my own knowledge of von Mackensen's character, I am certain that I would have been called to the 'phone at once by Mackensen.
- Q Mackensen was going to send in a report that 320 people were shot however many were shot. A. If Mackensen would not have done so I myself would have done it, only the word "executed".
- Q When did you first hear that innocent people had been shot? A. Only during the time of my captivity at Nuremberg.
- Q Is that true? A. Yes.
- Q Do you remember making a statement to Lt.Col. Scotland? A. Yes, I remember quite clearly.
- Q Just listen to this: "(9) It was through the ambassador, von Weizsaecker, that I heard of the complaint of the Vatican that innocent persons and persons not connected with the matter had been shot at the execution". A. Yes, I remember. I am sorry, I forgot that, but the main thing about this paragraph is that after having received this complaint I gave orders to Zolling to look into the matter again and the result of these investigations showed that only people who were sentenced were shot.
- THE JUDGE ADVOCATE: Can you get the date he is speaking about? How long after the 23rd March that is.
- COL. HALSE: (To the witness) How long after the 24th March was it that von Weizsaecker told you of this complaint? A. I am not quite certain but I should think a few days later.
- Q And do you say that when you told Zolling to make enquiries the result of his enquiries was that only guilty people had been shot? A. That is correct; that is what I want to say.
- Q Did anybody enquire of Kappler whether that was the case?

THE JUDGE ADVOCATE: Col. Halse, I do not know what the evidence is but the Court have heard that here in Rome some 50 odd Jews, who were admitted by everybody to be completely innocent persons, were shot. I think this Court would take a lot of convincing that if the slightest enquiries were made by the Germans they would not have found that out. You can put that to him if you like but I am sure that is the view of this court.

COL. HALSE: I am much obliged. (To the witness) Did you know that 57 Jews had been killed? A. No, never.

Re-examined by DR. KELLER

- Q A question about the confirming of death sentences by yourself. Do you know from which courts these death sentences emanated whose confirmation you wanted to remain in your own hands? A. Only from those courts whose commanding

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authorities were under my command, was subordinate to me.

Q Do you know whether in central Italy there were units who were not subordinate to you? A. The highest SS and police officers and the General who was in charge of the German interests with the government of Mussolini and the whole Navy, and something which is pretty peculiar, although I myself belong to the air force the whole air force was not under my command or the organizations, for instance, the Todt organization or the Spear organization.

Q Was it possible that courts under the command of these organizations above mentioned could sentence inhabitants of the country? A. Certainly.

Q Now to the conference which was held after your return to your headquarters, not this conference with Kappler but the other one. Who told you about this telephone conversation? A. As far as I remember, my Chief-of-Staff.

Q And who were the persons who held this telephone conversation? A. As far as I remember, Westphal and Butla.

Q Do you know whether after this conversation another conversation took place and one of the people who held this conversation was General Westphal and the other person holding this conversation was a high ranking officer in Hitler's HQ? A. I know about this conversation. It was held between my Chief-of-Staff, General Westphal and General Yodl.

DR. KELLER: I apply to the President of this Court for the re-appearance of the witness, Col. Beelitz, and he will say to the Court that Hitler's order was passed.

THE JUDGE ADVOCATE: We cannot have what a witness will say. In my view nobody has had a better opportunity than the defence and the prosecution to put any questions they like to Col. Beelitz. I do not know what all this is about at the moment. When did this take place?

DR. KELLER: The Field Marshal said that shortly after his return this conversation took place between Westphal and Butla and, as the Field Marshal said, he returned approximately about 2000 hours. Col. Beelitz said that as far as he remembers Hitler's order came through about 2200 hours and this order came through in the conversation between Westphal and General Oberst Yodl.

THE JUDGE ADVOCATE: When?

DR. KELLER: On 23rd March, about 2200 hours.

THE JUDGE ADVOCATE: We have spent all morning asking Field Marshal Kesselring to tell us all he knew about these conversations. This is another one that took place about ten, is it?

THE WITNESS: I said already this morning that Westphal had a second conversation and during this second conversation the words "I hope that Kesselring will act thoroughly this time" were spoken and that I should not be soft-hearted as before but I said this morning -----

THE JUDGE ADVOCATE: I have got a note of all that. What exactly does the learned counsel apply to the Court to do? That is not clear.

DR. KELLER: Beelitz will say that yesterday when he spoke about this conversation he meant this conversation between Westphal and General Oberst Yodl and that the last order of Hitler's was not issued in the conversation between Butla and Westphal but in the following conversation between Westphal and Yodl.

THE JUDGE ADVOCATE: If the Court decide later to call Col. Beelitz, they will. That is a matter they will consider.

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DR. KELLER: Without Beelitz being recalled I have no further questions to the Field Marshal because I cannot continue my cross-examination.

THE JUDGE ADVOCATE: I confess that I am completely puzzled. I can quite understand it if he wants to ask Beelitz a question but I do not see how that stops him re-examining this witness.

DR. KELLER: I would like to ask for an adjournment because I must think about the further questions which I ask.

THE PRESIDENT: We are going to adjourn in any case.

(At 1245 hours the Court adjourns)

(At 14.30 hours the court reopens)

(The accused are again brought before the court)

A. KESSELING again takes his place in the witness stand and is further examined as follows:-

THE JUDGE ADVOCATE: Has learned counsel had an opportunity of deciding whether he wants to put further questions?

DR. KELLER: I would apply to the court for permission to ask some further questions. (To the witness) Now we are talking about the 23rd March 1944, at the time when you returned from the front line to your headquarters. Did you yourself after your return to your headquarters from the front line have any conversation with Hitler's headquarters - you yourself? A. No.

Q Do you know which member of your staff had spoken with Hitler's headquarters? A. I do know for certain that my chief of staff had talked with Hitler's headquarters but it is quite possible that other members of my staff also had had some conversations.

Q Do you know how often members of your staff had spoken on the 23rd March, after your return, with Hitler's headquarters? A. As I said before I know only about two conversations after my return, the second with Generaloberst Jodl, but of course there may have been some conversations about which I do not know.

Q Who had this first ^{telephone} conversation which you were mentioning? A. As far as I remember General Westphahl, chief of staff with Italia.

Q Did General Westphahl communicate to you the contents of this telephone conversation? A. Yes.

Q Do you know when this telephone conversation had taken place? A. As I said this morning very very quickly after my return.

Q And what did Westphahl say was the content of this conversation? A. The gist of this conversation was ratio one to ten.

Q Did he say something about who should carry out the shooting? A. Not at that time.

Q And who held the second conversation? A. General Westphahl and Generaloberst Jodl.

Q Did General Westphahl communicate the contents of this second conversation to you? A. I heard about the contents but I cannot say at what time.

Q Could you tell us what Westphahl told you? A. It was during the evening conference when Jodl expressed once more Hitler's view that this time the Field Marshal must really act thoroughly; whether other things were mentioned I do not know.

Q Colonel Beelitz said yesterday in his evidence the following: "At this conversation between Westphahl and Jodl the following message came through from headquarters, Hitler's headquarters of course; first the shooting of hostages in the ratio of one to ten, secondly execution through the SD." Do you think that Colonel Beelitz speaks the truth or do you think he is wrong?

COLONEL HALSB: Can he express an opinion of that sort, sir?

THE JUDGE ADVOCATE: I am getting so confused with all this. All I know is that Colonel Beelitz told us at 10p.m. he sent an order to the army; the order came to the Army Group from Hitler that Italian hostages in the ratio of one to ten should be shot. Order to be carried out by SD. It is entirely a matter for

the court to say whether you believe Colonel Beelitz; I do not think this witness can be asked whether this statement is true.

DR. KELLER: Now that I refreshed your memory do you remember that this order contained also the annex, "Execution through the SD" at that time when you heard about this conversation through Westphahl? A. I do not want to deny that at that time already some preorientation has arrived but I did not hear anything about it. I heard about it only on the next day or maybe on the second day.

Q You said just now there was preorientation or preknowledge; what exactly did you mean by this word? A. It was the usage that sometimes before a written order was issued two or sometimes even more telephone conversations with regard to this order were held.

Q So you would like to say that this conversation with Butla might have been such a telephone conversation which preceded the written order? A. It may be but I had the impression that it really was the order of Hitler. I myself did not hear this conversation; I was only notified by my chief of staff, by Westphahl.

Q I put it to you what Beelitz said in his evidence ----

COLONEL HALSB: How can he do this sort of thing in re-examination?

THE JUDGE ADVOCATE: What is the question being asked?

DR. KELLER: Have you any reason to believe that the order as described by Beelitz did not arrive in the form as described by him? A. I am quite certain that the order came in the way as Beelitz said and I admitted this before; I was only not quite certain about the time when it arrived.

Q In your opinion when did the final order arrive? A. I repeat once more I was convinced that when I returned the order was, "Butla one to ten"; then I know or I am convinced that during the second telephone conversation orders for sharper measures were given. It is quite possible that during this second conversation this additional order, "Execution through the SD" was issued but at that time I did not know about it; I heard about it only on the next day.

Q Now I am asking once more what was really the final order, the sharper order, the more severe, the second one or the first one?

THE JUDGE ADVOCATE: There are so many orders going round in my head I cannot clear them. We are adding to them and subtracting from them. Can I have a specific question? What order is this, is it the order that went to 14th Army or is it an order that came from Hitler?

DR. KELLER: What was the final order which came from Hitler's headquarters, first "Execution through SD", or second the first order, shooting of Italian hostages in the ratio of one to ten? A. The final report, I have no doubt about it, was the report which came by teleprint and where the additional sentence was contained, "Execution by SD".

THE JUDGE ADVOCATE: What did you mean when you were first examined by counsel when you said this: General Butla my chief of staff told me that Hitler's order was as follows ----

COLONEL HALSB: Westphahl, sir, was the chief of staff.

THE JUDGE ADVOCATE: When the two chiefs of staff had been having a conversation he was told by his chief of staff what the conversation was.

THE INTERPRETER: That is Westphahl.

THE JUDGE ADVOCATE: Westphahl: "The ratio should be one German killed to ten Italian hostages; immediate carrying out of the order; Field Marshal

Kesselring should not this time thoroughly" and when he was asked about the order he said quite categorically ----

THE INTERPRETER: Who was asked, sir?

THE JUDGE ADVOCATE: When the witness was asked about the order he said that the order reported to him, Kesselring, to say who was to carry out the execution and that he then passed on the order to the 14th Army in the exact form adding nothing and subtracting nothing. Why are you so sure that you had the order by teletype from Hitler containing the direction that the execution should be by the SD? A. I have said already this morning that I did not remember whether whilst during the first conversation or the second conversation this order to act thoroughly was given and I said already this morning that as far as I can remember this additional order, "Execution by SD" was contained in the teletype, the order which I received.

Q If Hitler had not interfered in this matter do I gather that you felt, as the commander in chief, that some sort of a reprisal was necessary? A. I would have had to deal with this matter on my own responsibility and within my own powers.

Q And did you think that it would require a reprisal with regard to shooting Italians who had nothing to do with the actual bomb outrage? A. I said already this morning I would not have done this and I say it emphatically now.

Q Then would you have taken no steps at all if Hitler had not required it? A. Yes, certainly.

Q What steps would you have taken? A. It is only a hypothesis and my answer is only retrospective. Two possibilities: first I would have appealed to Mussolini and secondly I would probably have had the idea to take out - out of the reservoir of those who had already been sentenced - and to notify the people of Rome and then to shoot those, but certainly I would not have even thought about the other measure mentioned here, for instance the blowing up of quarters of Rome on the evacuation of the population and certainly not the shooting of innocent people.

Q By innocent people do you mean people who had nothing to do with the bomb outrage? A. Exactly.

Q Were you under the impression that all the people who were actually shot had been sentenced to death? A. Yes.

Q And is it right that before the end of March you had appreciated that Kappler had not carried out what he had promised to you? A. I did not know this, particularly not because Zolling made inquiries into this matter on my orders.

Q And what sort of an inquiry was it? A. I heard from the Vatican through the person of Von Weizsaecker that innocent people had been shot as well and I was of course very excited about this. I gave immediate orders to my 10 Intelligence officer, Colonel Zolling, to make inquiries and Colonel Zolling made these inquiries, made an official report to me about it and I passed this report on to the Vatican and then I got an answer that there were fictitious hostages. I could not understand and so the answer was fictitious - they were not hostages at all; they were actually criminals but they were called fictitious hostages. I had to be quite convinced about the truth of this matter as no further questions were asked by the Vatican.

Q Just let us get this clear. When you ordered this inquiry to be made by this Intelligence officer presumably you told him to ascertain whether every person that had been shot was then under a death sentence? A. That is correct.

Q And are you telling us that this German Intelligence officer reported that

everyone of those persons had been sentenced to death before he was shot ?
 A. He gave me the written report which I passed on to Ambassador Von Weizaecker and this written report must have contained that answer.

- Q Did you think of passing this sort of report to your legal adviser ? A. In my staff it was a common thing that all the high ranking officers in charge of one department should converse and instruct each other about the matters in question.
- Q Do you not agree that any officer, however immature and however stupid, would have included in his report to you a list of the people who had in fact been shot and do you not realise that the moment anybody saw that list it was simple to demonstrate that a very large number - except possibly four or five - had never been under sentence of death at all ? (Answer not interpreted)
- Q Please say what you like. A. The number four or five is quite new to me; at that time I did not think of a nominal roll and I am not certain whether Colonel Zolling forwarded such a nominal roll to me or not.
- Q I am suggesting to you, Field Marshal Kesselring, that this so-called court of inquiry must have been another case where a German officer was making a fool of another German officer, namely yourself, if he was reporting that all the people who had been shot in Rome were under a death sentence. A. I cannot say to the learned judge advocate what sort of sources permitted Colonel Zolling to make this report in this way, therefore as I do not know where he got his knowledge from I cannot say whether he purposely made a wrong report to me or whether somebody else somewhere did something in the wrong way.
- Q You treated this as a serious inquiry by a competent officer, did you, and you passed this information on to the Pope's representative, did you ? A. Yes.

THE PRESIDENT: This report from your intelligence officer that you say was written and although you do not remember all the details in it, do you remember whether the number of Italians shot was reported to you as 320 or some other number ? A. I do not know. May I add that at the moment when I passed this order on to 14th Army then by all the very important tasks I had to attend to at that time it seems quite natural that I withdrew my own person from this matter.

- Q I did not ask anything about that at all. How comes it that this very junior police officer had such ready access to you; he rings you up and so on; are you in the habit of being rung up on the telephone by junior police officers ? A. No, it is not my habit, but I shall explain this; I said already this morning that Kappler and Dollmann asked for my protection and I supposed that Kappler's idea was to take the load off my soul by telling him the same thing what he said to 14 Army.

THE JUDGE ADVOCATE: Does learned counsel want to ask anything ?

DR. KELLER: Nothing more.

(The witness withdraws)

THE JUDGE ADVOCATE: It may be that the court might want to hear Field Marshal Kesselring again; I do not say they will but will you see he is not sent away till the end of the trial ?

COLONEL HALSE: All the German witnesses are in the precincts of the court.

THE JUDGE ADVOCATE: You rather wanted to have confirmed yesterday a portion of the evidence and I agree that it is quite proper that you should ask. Here is the official record from the shorthand-writer which I will ask Major Forest to read to you.

THE INTERPRETER: "Now I am coming to the execution of the reprisals against the Italians. Did you receive an order which asked for the shooting of Italians in the ratio of one to ten?"

(A) Yes. (Q) Who gave you this order? (A) G.H.Q. Kesselring.

(Q) Do you remember the date when you received this order?

(A) I do not remember really quite exactly; I should rather think it was on the phone before the conference started but of course I cannot be quite sure about that. (Q) What were the contents of this order? (A) I cannot remember, of course, the exact wording of this order, particularly as it came on the phone, but the gist of it was, as I said before, that

Italians in the ratio of one to ten must be shot as hostages.

(Q) As hostages you say? (A) As hostages I repeat. (Q) What do you mean this word as hostages? (A) That would have meant that I should have had to collect innocent people and then shoot those".

DR. KELLER: I understand it but I would like to add that I wanted to bring out that this order came from Hitler.

THE JUDGE ADVOCATE: I am sorry we cannot go into all this. What happened was I quoted my note which was challenged quite rightly and counsel then asked if he could have the shorthand note read. We have given him the shorthand note which appears to bear out my note. It was merely to satisfy him that the official note corresponded with what I put to the witness. What is it that counsel does want to say?

DR. KELLER: I wanted to say that Madsen's answers concerned those questions whose gist it was, "Did you get this order from Hitler?" and that Madsen understood my questions to mean this and that his answers meant it, that the order came from Hitler. That is all.

THE JUDGE ADVOCATE: What happened really was that I read my note to the witness and the note was as follows: "I received orders to shoot Italians in the ratio of ten to one from Kesselring as hostages probably before the conference on the telephone"; I then went on to say, "to collect innocent people and shoot them". The question was then taken up whether that was right or wrong according to the shorthand note but the witness was there saying that he got that order from Kesselring.

DR. KELLER: It is quite clear because Hitler's order had to pass through Kesselring's H.Q.

THE JUDGE ADVOCATE: Would you call your next witness please?

DR. KELLER: I have no further questions. The defence of General von Madsen is finished.

THE JUDGE ADVOCATE: One of the difficulties we are now in is that I attach the greatest importance to how, if it be a fact, Italians who had been sentenced to imprisonment by courts martial came to be included in this list and at one time I understood that there would be questions put to a witness on that. It was then suggested that we should have an expert who would tell us all about that and the result is that we are now left, or I am left, with no opportunity of dealing with this matter which I consider of paramount importance and which I thought was going to be dealt with by the learned defending officer, but I am not content to leave this matter, as far as I am concerned, here at the moment, Mr. Prosecutor. We have been told by Kappeler that he was handed over some number of people by the local military judge who was supposed to have consulted the military judge of the 14th Army and that is a matter which is of considerable importance.

COLONEL HALSE: I am afraid I cannot find the military judge, sir; it may be that another witness could help.

THE JUDGE ADVOCATE: We could call von Madsen.

COLONEL HALSE: I was suggesting we might know something about that if another witness gives evidence in the case of the second accused.

THE JUDGE ADVOCATE: I think I did tell General Maelzer at the same time as I told General von Mackensen about his rights about giving evidence.

THE ACCUSED MAELZER: That is correct.

THE JUDGE ADVOCATE: I do not think I put the formal questions to you whether you wanted to give evidence or not ?

THE ACCUSED MAELZER: Yes.

THE JUDGE ADVOCATE: Do you wish to give evidence yourself as a witness on oath ?

THE ACCUSED MAELZER: I do.

THE JUDGE ADVOCATE: And do you intend to call any other witnesses in your defence?

THE ACCUSED MAELZER: No, no witnesses.

THE JUDGE ADVOCATE: I am afraid the court were taken rather by surprise with the termination of the case for the defence and they are not quite sure whether the learned defence counsel has got any affidavits or anything to do with the case of von Mackensen or is he really content to leave the case now until he makes his final address.

DR. KELLER: I have finished my defence until my final address.

THE JUDGE ADVOCATE: Would Dr. Christ please call his accused straight away ? He has not got an opportunity of making an opening address because he is calling no other witnesses.

THE ACCUSED KURT MAELZER takes his place in the witness stand and, having been duly sworn, is examined by DR. CHRIST as follows:-

Q Your name is Kurt Maelzer ? A. Yes.

Q Born when ? A. Born on the 2nd August 1894.

Q When did you join the army ? A. On the 8th May 1914.

Q What was your rank and what were your duties during the first war ? A. I belonged to the air force, at that time part of the army, and my rank was lieutenant pilot officer.

Q And what was your occupation after the first war ? A. I was always a soldier.

Q What were your duties during this war ? A. First I was colonel in an air squadron and then I was commander of an air squadron; then I was in the air ministry working in charge of a department of the Air Ministry and then again commander of an air squadron stationed in Vienna and then to Italy.

Q When to Italy ? A. On the 21st September 1943.

Q What were your duties, what sort of orders did you receive then ? A. Supply duties at 10 Army.

Q When were you promoted to your present rank ? A. On 1st October 1943.

Q When did you become the commandant of Rome ? A. On 30th October 1943.

Q How long did you stay in this position ? A. Until 4th June 1944.

Q And you were directly subordinate, until February 1944, to Field Marshal Kesselring? A. That is so.

Q And then, after this date, directly under the command of Generaloberst von Mackensen? A. That is so.

Q And you were still in contact with Army Group Kesselring because of supply matters? A. That is so.

Q Did you command also troop formations? A. No.

Q Were the SD, for instance Kappler, under your command? A. No.

Q What were your main duties as commander of Rome? A. First tasks of representations.

Q What is that? A. Tasks of a more representative nature, liaison, for instance, with the Italian Government; tasks of administration.

DR. CHRIST: So to represent the German Wehrmacht in Rome, you were the highest ranking officer to represent them with the Italian people and also with the Vatican? A. That is so.

Q Were any Italian authorities under your command? A. No; it was more a question of co-operation, of mutual co-operation.

Q One could not say then that the Italian police were under your command at Rome? A. Again they were not under my command but they co-operated with me.

Q Did you try to bridge the political divergences which ran at that time in Rome? A. I did this several times; through the representative of the Vatican, Father Pankratius, I sent a message to all political leaders at Rome that I am open to them at any time listening to any requests they might make and trying to sort out their difficulties.

Q You tried, or you took all sorts of measures for the welfare of the Roman population; could you give us any examples? A. The court has heard already several of these measures, of these examples; I shall not repeat them, I shall give other examples, not those mentioned before. During the winter of 1943 whilst I was at Rome I inspected several parts of this city and I saw that particularly the poor parts of the population and especially the children had nothing to wear. I gave orders that twenty-five thousand small over-coats should be distributed to these children at Christmas time. I got a report that provision of milk for the children and the sick did not function as it ought to; I saw it with my own eyes that at the same time when the poorer parts of the population and the children had no milk at all in the richer parts quite a lot of milk was drunk. I made some arrangements after that and children and sick people got their milk and I got quite a number of letters from the Italian population where this was recognised.

Q Now we shall speak about the incidents which occurred before March 1943. Did an incident occur against your H.Q. and the Hotel Flora, another bomb incident by a bicyclist the consequences of which was the prohibition of bicycling; another incident from the Pinchio Bridge on a passing German car; two incidents when groups of German soldiers which came from the main cinema in Rome; an incident against a locality on the outskirts of Rome where three German soldiers were killed, further a plan found in the headquarters of the German commander in Rome that the Causa Italia should be blown up, is that correct? A. Yes, it is.

Q As security measures were there taken, first ourfew after 1900 hours, the prohibition of bicycling in the centre of the town, higher totals of the Italian police in patrol duties, the performance of theatres and cinemas advanced in the afternoon hours; is that correct? A. Yes, it is.

Q I now come to the bomb outrage of the 23rd March 1944; we have heard already that after the outrage you immediately came on the scene and that you reported to Army Group; what did you do then? A. I reported to 14 Army what I had seen on the scene of the crime and what had happened.

Q Did you speak also with Generaloberst von Mackensen? A. Yes. I did.

Q During this first conversation with Generaloberst von Mackensen have already counter-measures been spoken about? A. Yes.

Q Did you make propositions yourself or were you asked to make propositions? A. The first moment I had no propositions to make, only when asked by the Generaloberst I did make propositions.

Q Did you hear that Hitler had demanded severe measures? A. Till then I did not hear about that.

COLONEL HALST: Till when?

THE PRESIDENT: Is it till then or up to then?

THE INTERPRETER: Up to then.

THE PRESIDENT: Up to then he heard nothing? A. When I had my first conversation with Colonel General von Mackensen, up to then I did not hear anything about Hitler's demands.

DR. CHRIST: During one of the further conversations which you had with Generaloberst von Mackensen did Kappler join you and Kappler spoke after you with Generaloberst von Mackensen? A. Yes; in my first statement an error occurred; I then believe I had a telephone conversation.

THE JUDGE ADVOCATE: Just a minute.

THE INTERPRETER: "I made a mistake", he said, "in my first statement because it was in my memory as if I would have telephoned. I thought I had a telephone conversation. Between the time when I made my first statement and the beginning of this trial it came back to my memory that Kappler came personally to me."

DR. CHRIST: Do you know if Kappler then from you went to Generaloberst von Mackensen? A. After a short telephone conversation which Kappler had with General von Mackensen and after I had informed him about my second occasion with Generaloberst von Mackensen Kappler took leave from me stating that he had to go immediately to a conference. I suppose that it was to H.Q. 14 Army, Generaloberst von Mackensen, because he had just now talked to him. I want to state still the time, it was between 1700 and 1715 hours on 23rd March 1944.

Q Did you know the result of the conference between Kappler and Generaloberst von Mackensen, General Hauser and his army Judge Stelgerthal; did you learn about it afterwards? A. No.

Q Did you receive on the 23rd March Hitler's final order regarding the shooting of the Italians? A. No, I got it on the following morning; I cannot remember the exact time, it was very early.

Q Did you ask Generaloberst von Mackensen in one of your conversations if you had anything to do with this affair? A. After the order which he had passed on to me.

Q And what did Generaloberst von Mackensen reply to your question? A. "You have nothing to do with it; it is the matter of the SD".

Q Did you make it quite clear to Kappler that the order was not emanating from you but that it was an order of Hitler's transmitted through 14 Army? A. Yes; not only I did it but also my 1a Major Bohm did it.

Q What experience had you from your co-operation with Kappler regarding his trustworthiness? A. I met Kappler on several occasions during the situation conference where all officers of my staff and from other staffs came together. During this conference with him and others I had to observe that he was correct and he made an impression to be an expert of his line of work. Once when I wanted to know about the methods of investigation of the SD - only because I had a personal interest in it, not on duty - he then reported to me in a way that I could see that he did not approve of the methods of the SD about which so often was heard. I personally during my period of command of Rome never learned about a single case that he did do anything what was against the law, therefore I trusted in him till I unfortunately learned during the trial what things did occur.

THE PRESIDENT: Do you mean this trial now? A. Yes, this trial.

DR. CHRIST: Had you any doubts regarding international law about the order which you had to transmit to Kappler? A. No, because I knew that in the OKW was a department for international law and I had to suppose that all orders coming from the higher authority were thoroughly examined by this department.

Q Kappler pretended that he handed to you on the 24th March a nominal roll of the victims; is that correct? A. No, if this would be true I would not have sent some days later Father Funkhous, the Vatican representative, to Kappler in order that he should get from Kappler the names that he wanted to have.

Q Have you been told that on this nominal roll were also Jews and people who were not sentenced to death? A. We did not speak about these things; what I spoke about on that day was only that he reported to me regarding the result of the investigations in Via Rosella. He informed me that the result was in the negative; that nothing positive was found, that he arrested four people who have another offense.

Q Were you entitled to detail a member of your staff for the supervision of the shooting? A. No, because it was forbidden to me to supervise the SD or all SS formations in general.

Q Did you or your staff receive a report that the executions were carried out? A. Yes.

Q Do you remember the wording of this report? A. As far as I remember the report said only, "Order carried out".

Q Did Kappler ask you for engineering troops for the blowing in of the entrance to the Ardentine Caves? A. No, because I had no such troops under my command.

Q What were your inner relations to General von Mackensen and Field Marshal Kesselring? A. I had the highest respect for both of them.

Q Did you know Field Marshal Kesselring's opinion of Kappler? A. Yes.

Q How was it? A. I am naturally influenced today because I heard what Field Marshal Kesselring stated himself but I agree with him.

(At 1605 hours the court is closed until 1620 hours)

THE JUDGE ADVOCATE: Would counsel for von Mackensen like to question the witness.

DR. KEILER: No questions.

Cross-examined by COLONEL HALSE

Q General Meisler, when you passed on to Kappler the order to kill 320 persons you knew, did you not, that people not sentenced to death would be killed?
A. No, I did not know this.

Q Just let us look at your statement. Do you remember saying this in your statement, the second paragraph, page three of the English; do you remember making this statement which bears your signature? A. Yes.

Q Is this statement true? A. I would like to say something about this.

Q I am asking you first is the statement true? A. This statement which I signed is true.

Q Every word of that statement is true? A. There is a mistake in this statement; I was ill when I made this statement; now today on oath I would like to rectify this mistake.

Q Where do you say the mistake is? A. Concerning the paragraph dealing with the phrase "fifteen years imprisonment".

Q We will go to that paragraph and I will read out that paragraph slowly and you will tell the court where you say the mistake was.

THE JUDGE ADVOCATE: This is a statement which was made only about six weeks ago?

COLONEL HALSE: Yes. "I wish to add that when I received the order from von Mackensen for transmission to Kappler von Mackensen also said that the 320 victims had to be recruited from people who were arrested for a crime which would carry the death penalty or at least fifteen years imprisonment".

A. At the beginning of this trial I asked my defending counsel to point out to this court that this phrase should be put into a different place; it should follow the phrase, "hostages". That belongs to the second conversation with von Mackensen.

Q Which conversation is this? A. The second conversation where Generaloberst von Mackensen asked me what sort of people would be available for execution.

THE JUDGE ADVOCATE: Just a moment. I am getting completely lost; what conversation is this? A. The second conversation when von Mackensen rang me for the second time.

COLONEL HALSE: I do not think he has mentioned it; you will find it, I think, referred to at the bottom of the second paragraph, page 2: "As Mackensen had no direct line with SD headquarters".

THE PRESIDENT: Or is it the next paragraph?

COLONEL HALSE: That is what in his statement he said is the time it happened.

THE PRESIDENT: I see. If he says that the sentence you read out is in the wrong place what does he say is the right place?

THE JUDGE ADVOCATE: It is the words, "or at least fifteen years imprisonment", he says is in the wrong place?

COLONEL HALSE: Did von Mackensen ever mention to you the words, "or fifteen years imprisonment"? A. General von Mackensen told me that only people should be taken who were sentenced to death and I asked him whether also people who were undergoing a sentence of fifteen years because this conversation concerned itself only with thoughts how atonement measures if necessary should be carried out.

THE PRESIDENT: The answer before was incomplete.

THE INTERPRETER: "might be taken for the same purpose and I asked him whether these people undergoing a sentence of fifteen years might if necessary be taken as well".

COLONEL HAISE: Was not the words, "candidates for death" referred to by the witness?

THE INTERPRETER: First the witness said candidates for death or people who were condemned to death.

COLONEL HAISE: When did he talk about candidates for death?

THE INTERPRETER: Just before.

THE JUDGE ADVOCATE: I do not know what is the matter; it is an unfortunate day perhaps but I cannot get a clear statement for my note. Will you ask him to tell us again what the conversation was with General von Mackensen?

COLONEL HAISE: First of all you want to put this reference to fifteen years imprisonment in another conversation? A. It is correct; I want to do that.

Q Is the conversation that you want to put it into the conversation when Mackensen asked you who were available to be used as the victims? A. After the word "hostages" in my statement, where the word "hostages" is.

Q It is six lines from the bottom of the second paragraph of page two. May the witness see that and just indicate where he wants it to go on the German copy? A. I would like to add should follow immediately after the word "hostages".

Q Will you be good enough to tell the court what words you would like to put in after the word "hostages"? A. The whole phrase which states I would like to add that when except the number 320 because at that time I could not know that.

THE JUDGE ADVOCATE: It does not make sense.

COLONEL HAISE: "Mackensen stated that only persons already under arrest for actions against the German laws could be considered but no hostages. I wish to add that Mackensen also said that the victims had to be recruited from people who had been arrested for a crime which would carry the death penalty or at least fifteen years imprisonment". I think that makes sense, sir.

THE JUDGE ADVOCATE: You seem to have come back where you started. Clearly we are not understanding what he is trying to say. I do not think he means to convey that.

COLONEL HAISE: I think the easiest way, Herr General, would be for you to tell the court what von Mackensen said to you at that conversation; will you try and get it in detail; will you do it very slowly so every word can be translated? A. I am referring to the second telephone conversation.

Generaloberst von Mackensen phoned me and asked me what sort of people were available. I answered him, "I have none" and I added that I have no intention whatsoever to take hostages. Mackensen said only people may be taken who committed some crime against the German law and not hostages. Then he added that only people can be taken who were sentenced to death and I myself asked them whether people could be taken who were serving a sentence of fifteen years. I do not remember the answer of General von Mackensen but I believe that he declined this or was against it.

Q Now, General, you used, at some time during the last few minutes, the words, "candidate for death". Unfortunately those words were not translated into English. In what connection did you use the words "candidate for death"? A. Only as the same expression for people who were condemned to death.

Q You say that a person who has been condemned to death by a competent court is a candidate for death? A. That is so.

Q I just want to learn something about how this statement came to be made. How long were you making this statement?

THE JUDGE ADVOCATE: You will have to specify which statement; you mean the written statement?

COLONEL HALSE: The written statement of October 1946. (To the witness) How long did you take making it? A. I was questioned in the morning and the British officer, investigation officer, took it down in shorthand. In the afternoon I got the typed copy and it was already rather dark on that day and when I signed this statement and where I signed it the light was out of order. I read this, my statement, only outside of the room between the corridor and my room and that is how I explained that I overlooked this mistake of mine.

Q In how many places did you sign this statement? A. I signed two copies, one copy for myself and one for the investigation.

Q And in how many places in the document did you sign it? A. I cannot understand this question.

THE PRESIDENT: Show it to him.

COLONEL HALSE: I would rather not at the minute, sir.

THE WITNESS: I do not remember; I believe where the statement starts I put my signature and where it ends I put my signature but it may be twice or three times.

Q Do you know you also signed at the foot of the second page? A. Yes.

Q You also initialed the second page and the first page? A. Yes.

Q And you initialed a number of alterations in it throughout? A. Yes, mistakes which might have occurred also through typing.

Q They were typing errors but you initialed them? A. Yes.

Q Did you immediately above your signature have these words: "I have read over the above statement and had an opportunity of making any alterations and additions when necessary. It is true and correct and made voluntarily"? A. I have signed this but out of the reasons dark and lights out of order; I must have overlooked this mistake.

Q It is a very serious mistake, is it not? A. I have sworn today to tell the truth and I believe I have the right to rectify an error which I made at that time today when I am on oath before this trial.

Q I am testing to see which of your statements are now correct. When you were seen by Captain Thorne and Herr Propper you were told what the investigations were about, were you not? A. Yes.

Q And you were cautioned that you need not say anything unless you wanted to but if you said anything it might be taken down and given in evidence? A. And might be used in evidence for the prosecution.

Q You knew that there was going to be a prosecution, did you not? A. Certainly.

Q And you knew you were going to be involved in it? A. I assumed this after the conversation I had with these gentlemen.

Q And you knew how careful you must be in making a statement in order to make certain to have put down the truth? A. The gist of my statement is true.

Q And the only material matter which affects both you and Von Mackensen, you say is not true? A. The gist of this phrase is true; those phrases were spoken; only the connection in which they are put is wrong. It was after a telephone conversation and these words were spoken.

THE JUDGE ADVOCATE: As I understand it first of all he said something was

positive; now he is turning it round to a negative. First of all he said von Mackensen did say it and now he makes it a different reference and says he did not say it.

COLONEL HALSE: You say it was you who referred to fifteen years imprisonment, is that right? A. I asked whether these people with fifteen years imprisonment might be taken as well.

Q In your statement you say that von Mackensen said they would be taken? A. I had those words in my memory and now, after having thought about it very carefully, I am quite convinced that what I said at that time is logically wrong.

Q Or are you quite convinced, having thought about it very carefully, that what you say now may be a good defence to this charge and that what you said in this statement was a most damning thing both for you and von Mackensen? A. I cannot say anything about that.

Q I want to discuss a little more about your statement; you spoke to Kappler after this conversation, did you not, the one we are talking about now, the one you say that happened and Kappler said he had 200 people available? A. Approximately 200; he gave off-hand information.

Q And that you then told von Mackensen that Kappler had about 200 people available? A. Approximately 200; I informed Generaloberst von Mackensen about that.

Q You then got an order from von Mackensen; 320 people to be shot? A. Yes.

Q How long after your conversation with Kappler was it before you got that message? A. It might have been 8 o'clock in the morning of the 24th.

Q Did you satisfy yourself that Kappler had now managed to make up his figures to 320? A. When should I have satisfied myself of that? I passed on the order and had no more time.

Q Before you passed on the order or before the order was carried out? A. I added to my statement that von Mackensen told me to my question if I have anything to do with this affair, he told me, "You have nothing to do with that; it is the affair of the SD".

Q I am sorry, I missed out something. I want to go back to that conversation you had with von Mackensen. Is this bit of the statement correct, that Mackensen said only persons already under arrest for actions against the German law should be considered? A. Yes, that is correct.

Q That means, does it not, those people who are in arrest for offences, not persons sentenced to death for offences? A. I had nothing to do with people under arrest; I cannot give any guesses.

Q You are quite satisfied though, that Mackensen said only persons already under arrest for acts against the German laws will be considered? A. As this was only the preliminary conversation, yes.

Q So you had knowledge then, had you not, that Mackensen was considering more people than just those sentenced to death? A. I do not know; I did not speak with General Mackensen about that.

THE JUDGE ADVOCATE: Again I do not understand. Presumably he is an experienced officer. Is he saying that Mackensen was talking about people who were in arrest? I cannot understand whether he agrees he said that. He must know the difference between a person being in arrest and being sentenced to death.

COLONEL HALSE: Do you understand the difference between a person in arrest for a crime and a person sentenced to death for a crime? A. Yes.

Q They are quite different things, are they not? A. Yes, I know that.

Q Was Mackensen talking about people who were in arrest for crimes or people sentenced to death for crimes? A. That what I have stated in my statement; it was a preliminary conversation and had nothing to do with the final decisions.

Q Please do not bother about that at the moment; I am asking you a very simple question. Was Mackensen referring to people in arrest for crimes or people who had been sentenced to death for crimes? A. He did both; in the first sentence he spoke about people who were under arrest for offences against German laws and then he added finishing that only such persons who were sentenced to death should be taken.

Q There is nothing in your statement at all about people sentenced to death, is there? A. I believe that it is written down in my statement, "Such people who for an offense have to expect the death penalty".

Q That is not the same thing at all. A. No, that is not the same.

Q It is not the same is it? A. No.

Q In your statement, on page three, that we have been talking about the words were, "recruited from people who had been arrested for a crime which would carry the death penalty", was it not? A. Yes, that is correct. This is what I want to say also in my other expressions.

Q Listen to me; did von Mackensen ever say that people who were to be killed are only those people who have been sentenced to death? A. Only what I have written down; I have spoken nothing else which General Mackensen ----

Q I will put it again. Did General von Mackensen ever say to you, "The people who are to be killed are only those who have been sentenced to death by a competent court"? If he did the answer is yes; if he did not the answer is no. A. No.

THE JUDGE ADVOCATE: I am very sorry, Mr. Prosecutor, but whether he is understanding you or not I do not know but I have just taken a note which goes as follows: "Mackensen told me on the second telephone conversation he asked what sort of people were available. I answered none. I added, 'I have no intention to take hostages'. Mackensen said only people may be taken who committed crimes against the Germans and not hostages adding only people to be taken who are sentenced to death". He said that about five minutes ago and he now says it was not said. I think it would be rather better if we adjourned until tomorrow as I do feel that the witness does not quite understand the questions the prosecution are putting.

COLONEL HAISE: I will refresh his memory of it tomorrow. I do not know if you could give any directions about the work tomorrow. I imagine that this witness will be finished by lunch-time and probably other witnesses that the court want recalled will be finished by then. I do not know if you then want to start speeches.

THE JUDGE ADVOCATE: It is a matter for learned counsel to perhaps help us by saying whether they would be prepared to address the court or whether they want some little time to prepare their addresses.

COLONEL HAISE: I gather they want some time.

THE JUDGE ADVOCATE: Would you ask learned counsel what time they have in mind to prepare their final addresses after the court have completed the whole of the evidence?

DR. CHRIST: I would like to apply to the court to be able to call General Riether Keller as testimony because I gained the impression that the court themselves think that his evidence may be of some value for them.

THE JUDGE ADVOCATE: That may be or may not be but would you indicate how long you would like to prepare your final address after all the witnesses, whatever they may be, have been heard?

DR. KELLER: To prepare my final address I would apply to the court for a day's adjournment because quite a number of new things happened today and yesterday and I cannot use those until now.

THE JUDGE ADVOCATE: I still wonder whether he appreciates what I mean. When all the evidence is over if he is given say an afternoon and a night would he be prepared to address the court next morning?

DR. KELLER: What I want is a whole day because I am quite prepared to work through all night but the light is so bad where we are working and sometimes it is non-existent. I certainly do not want to create the impression that I want to procrastinate or prolong the trial but I do really think I need a whole day.

THE JUDGE ADVOCATE: And I take it your learned colleague would be satisfied with the same time you have?

DR. CHRIST: Certainly.

THE JUDGE ADVOCATE: We are obliged to learned counsel for indicating their views and when it arises the court will decide what they will do.

(At 1710 hours the court is adjourned until 1000 hours tomorrow, Wednesday, 27th November 1946)