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TRIAL BY MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS

of

EBERHARD VON MACKENSEN

and

KURT MAELZER

on

24TH NOVEMBER, 1946

SEVENTH DAY.

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PROCEEDINGS

of a

MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS

held at

THE UNIVERSITY OF ROME

on

24TH NOVEMBER, 1946.

upon the trial of

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

ORDERS BY:

LIEUTENANT GENERAL SIR JOHN HARDING.

PRESIDENT

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

MEMBERS

LIEUTENANT COLONEL E.C. SEBAG-MONTEFIORE

Durham Light Infantry.

LIEUTENANT COLONEL D.K. HAYMAN

Lincolns.

LIEUTENANT COLONEL R.W. TYRRELL

Exf. 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.

SEVENTH DAY

Monday, 25th November, 1946.

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

(The accused are again brought before the Court)

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

THE JUDGE ADVOCATE: General Mackensen, when would you say you first heard, on 23rd March, about this explosion in the Via Rosella? A. As far as I remember, and as I said in my first deposition, an hour or two after the explosion had taken place.

Q Did you have that reported to Kesselring's headquarters? A. Not myself, but I believe my Chief of Staff had done that immediately and, apart from that, I am certain that Major Boehm from the commander's office of Rome had reported it to Kesselring immediately.

Q When is the first time that you got what purported to be an order from Hitler on that afternoon? A. Just a little bit later. How much later I am unable to say to-day. We were in constant telephone communication.

Q With whom? A. Between my Chief of Staff, General Hauser, and Field Marshal Kesselring's headquarters and OKW.

Q What was the first order you heard emanating from Hitler? A. The first intimation came not in the form of an order; it was rather an information that Hitler was very angry and that he asked for the complete destruction of the whole quarter without any safety measures; destruction of the whole quarter, buildings and human beings together.

Q I do not understand. Were you being asked whether that was a right thing in your opinion, or why was it sent to you in that form? A. No, they did not want to hear my opinion about it but that is what I heard first as the intention of Hitler. I would like to stress the fact, to avoid misunderstandings, that our communications with Hitler's headquarters were very good. Indeed, Kesselring needed only to take up the receiver and we had the Army as if it were in the same house.

Q Would you answer my questions and not keep repeating what we already know. You received some message about Hitler's views on the afternoon of 23rd March; is that right? A. That is correct.

Q And who passed this on to you? A. From the headquarters of Kesselring via General Hauser, Chief of Staff.

Q Did I understand you to say before that Kesselring was not at his headquarters on this day? A. No, he returned only in the evening of 23rd March after all that had taken place.

Q Who, do you gather, was discussing this affair with Hitler or his Chief of Staff? A. It was either the Chief of Staff of Kesselring's headquarters, Westphahl, or his LA officer, Col. Beelitz who has given evidence in front of the Court. With whom he had spoken in general headquarters of Hitler's I do not know; I think it was General von Butla who dealt with all these matters and it may be that from Kesselring's headquarters Col. Zolling had spoken as well.

Q Did you get a further message to the effect that the ratio of the killings should be one to twenty? A. Yes, I have.



Q Eventually you got an order, did not you, from Kesselring that the ratio should be ten to one but they should be hostages and people who were innocent? A. Yes, the final order was that the ratio should be one to ten but that Hitler maintained his first demands that hostages should be taken and innocent ones. I want to amend this last phrase. He did not order that they must be innocent ones, but he said that hostages must be shot in the ratio of one to ten.

Q Was that the order which was passed on to you by your superior officer, Kesselring? A. I do not know exactly when this last order reached me because all that came by telephone but I know that Kesselring told me that he tried to diminish the ratio from one to twenty to one to ten and that Hitler agreed to this ratio, one to ten.

Q You said by hostages, did you not, that the people concerned would be just ordinary Italians who had nothing to do with the crisis and were not necessarily under any sentence by any court? A. That is what I understand that the word hostages meant but I did not want to take these hostages.

Q If you will just answer the question. Did you get any instructions to modify that order from Kesselring's Headquarters? A. No, I did not get an order from Kesselring, but I sent a telephone communication to Kesselring's Headquarters telling him about our agreement, the agreement between myself and Kappler, about those modifications about which he told the court before.

Q You mean that you told Kesselring about the agreement that you had come to with Kappler at the conference on the evening of the 23rd? A. I told him but I sent this message to Kesselring.

Q So you say Kesselring knew on the evening of the 23rd what you were going to do? A. In my opinion he must have heard it on his return on the evening of the 23rd, what had been agreed between Kappler and myself.

Q Is it right to say that you made up your mind to disregard the order of Hitler insofar as he had said that hostages would be taken? A. That is correct.

Q And do you feel that you as an officer in the Wehrmacht serving under Hitler were entitled to disregard his orders? A. I certainly had no right to disregard Hitler's order but I took this responsibility upon myself to act in this manner which might have landed me either in prison or on the gallows.

Q And you also reported this to Kesselring so that he could also be implicated in it too if he did not prevent you disobeying the orders? A. That is so, but I had deep confidence in Kesselring because of his humane attitude and apart from that I thought that he would be of great help because persons dealt with Hitler's headquarters.

Q Do I gather that in the case of the Commander order you again exercised your own judgment and disregarded it? A. That is correct and there is an affidavit purporting -----

THE JUDGE ADVOCATE: I accept his answer.

THE INTERPRETER: He mentions that there is an affidavit in the Nuremberg court made by Guideria.

THE JUDGE ADVOCATE: (To the witness) Is it right to say that you felt that you were in a sufficiently strong position commanding Wehrmacht formations to disregard the Fuhrer's orders when you wanted to? A. No, I cannot say this.

Q At the time you had your conference as you say with Kappler had you any knowledge at all as to who was responsible for the explosion on the Via

Rosella? A. I did not know it but I guessed who was the responsible.

Q Had you the slightest evidence of any shape or kind before you when you formed your judgment to impose a reprisal on the Italian Nationals that an Italian had anything to do whatsoever with the explosion in the Via Rosella?  
A. I could not imagine who else could be responsible for that explosion.

Q Would you answer my question? Is the answer that you had no knowledge from your police as to who had been responsible for the explosion in the Via Rosella before these Italians were ordered to be executed? A. I do not know whether I knew at that period already that two of those who were arrested by Kappler were implicated into this explosion. When I got to know about it I cannot say today any more.

Q When were you told that anybody had been implicated in this explosion?  
A. I just answered this question by saying that I do not know.

Q Had you known - I do not say that you did - but had you known that a boy of 14½ was to be executed as one of the people involved in the reprisal would you have issued orders that that was a monstrous thing and must be stopped at once? A. Naturally.

Q And if there was a man over 70 would your reactions have been the same?  
A. Yes.

Q If you had asked or told your Chief of Staff to ask for a list showing the ages of the persons who were going to be shot in the reprisals and you had seen there was one of 14½ and some over 70, what would you have done about it? A. It is a hypothetical question but then in such a case I would have known about it and I certainly would have taken action against it.

Q Do you feel you would have had the power to order Kappler not to do it?  
A. I could not order Kappler anything but I could make suggestions and I could express my wishes.

Q Now you have already told us that you disobeyed the Fuhrer's order. Do I understand now that you want to tell us that Kappler was disregarding your wishes? A. No, I do not want to say that. On the contrary because he was prepared to follow or to listen to my desires or wishes.

Q I am afraid you have not understood the question. You told us time and again that you arranged quite clearly with Kappler that he would only use for reprisals persons who had been sentenced to death. In spite of that he chooses a large number of persons whom we called "death worthy" which is something entirely contrary to what you had agreed with him, so in this very unusual reprisal we find the commander of the 14th Army disregarding the order of the Fuhrer and we find the man who carries out the execution, Kappler, flatly disregarding your wishes in the most flagrant possible way. Is not this somewhat shattering for the court who have presumably great belief in the German Army as regards obeying orders and discipline?  
A. I admit that it was very shattering for myself as well but I would like to say that Kappler and his subordinates never did belong to the Wehrmacht and I put my trust into that man only because he himself made these propositions for clemency and not I.

Q Did not you realise after this shooting that the famous name of von Mackensen must be associated with it and that it was most important to bring to justice or to bring before the S.D. the fact that Kappler had flagrantly gone against your wishes and that action should be taken against him? A. My answer to the first part of the question is I knew that my name will be mentioned in connection with this affair but I was not afraid of it because in my opinion at that time everything was done in the most clean way. My answer to the second question -----

THE JUDGE ADVOCATE: I will put it another way if you do not understand it.



From first to last did you take any steps to have Kappler punished for having acted in complete disregard of what you had agreed to do - I mean punished by his own superiors in the S.S.? A. I did not know anything about it that he flatly disregarded my wishes otherwise I would have had something done against it but I repeat that only on the 27th June 1946 when I heard it for the first time in London during my interrogation, with the one exception which I mentioned before that the number was increased. About these increased numbers I had a conference with General Wolff.

Q Do you say that if it had been left you you considered that a reprisal was necessary in order to coerce the population of Rome after this explosion?  
A. Yes, I do.

Q And as a military measure - and I am only concerned with the military aspect - you thought the ratio was a proper one of ten to one? A. Yes, that was a ratio neither too big nor too small.

Q And how did you come to arrive at that figure? A. Out of general considerations my idea was that severe measures were necessary. Second, during my conversations with Kappler he told me that the figure deriving out of the ratio of one to ten could be reached and by people who were condemned to death by a properly constituted court and I could not really take the ratio less than one to ten because otherwise Hitler would not have given his consent to it and the agreement was also that if this number of people condemned to death could not be reached in the ratio of one to ten then the number should be diminished.

Q You tell me that from the military point of view you considered it necessary that ten Italians should die for one German. If you had been told the fact that there were only some four or five Italians who were available to be used for reprisals what would you have done? A. This question was never asked of course in real life as it is now a hypothetical question asked by the court. I would have said if the number of those available would have been smaller than the agreement would have taken place that the bigger number should have been published and the smaller number of people would have been executed, but, of course, if the number would have been so small as mentioned, four or five, then I would have had to think twice or three times whether I could have kept this agreement in the same way, i.e. to publish the bigger number because then the danger would have been too great that Hitler should know about it.

Q Did you purposely not inquire as to the number that were not sentenced to death? A. That was the main topic of our conference and as I said Kappler told me that he had the sufficient number available, but if the question had been one or two or a small number less, then the agreement would have taken place that the bigger number would have been published and the smaller number would have been executed.

Q You know Kappler denies anything of this and says he never told you anything of the kind? A. Yes, I know this because I have heard it, but I must say that in his statement he says quite clearly that he himself made this proposition to me.

Q Where does he say in his statement that he put to you that you should only shoot people who had been sentenced to death? A. In his affidavit he says that he himself made the proposition to me that only a small number should be shot if a small number was available. I further answered to the previous question about this hypothetical question of the court what I would have done if only such a small number would have been available. I say again that this question was never asked in reality but now if I think about it I must say that in my opinion it would have not been against International Law in such a case to take even innocent people.

Q What was it that was reported to you by your Chief of Staff that there had been some difficulty about getting the people required to be shot? A.

As far as I remember it happened in this way and I think in London during my first interrogation I said the following: on the 24th March I was told that Kappler had some difficulties; my Chief of Staff told me that Kappler had some difficulties to reach the required number but these difficulties were overcome at a later stage and I suppose how they were overcome was that Kappler got from his superior, Hardister, orders concerning the further number and that is also how those Jews were included into the number to be shot. I did not attach too great importance to these difficulties for me it seemed quite clear that in such a case our agreement would be put into force, which means that the higher number would be reported and the smaller number shot.

Q The whole point of the reprisal was to coerce and keep the population of Rome quiet, was it not? A. Yes.

Q And what do you think the effect would have been if the Romans had got to know if the German was not carrying out his word and that when an attack had been made upon the Germans the Commander of the 14th Army was saying that he had shot a number of people when he had not in fact done so. Were you prepared to take the risk? A. Yes, I was prepared otherwise I would not have done it.

THE JUDGE ADVOCATE: Was not it of paramount military importance, I think you have said so yourself, that the population of Rome should remain calm because they were so close to the front line? A. That was of paramount importance because my front line was really the key position for the whole front in Italy.

Q Did not you have some anxious conferences with your Chief of Staff as to how important it was that the population of Rome should not have an opportunity of getting possession of or seeing the bodies of the martyrs? A. I had no conference about this.

Q Did not you realise that the one thing that would cause Rome to become restless was to see or obtain 320 bodies of people who had been shot in Rome? A. I believe that that was very important but I did not think very much about this because I left the whole execution of it unfortunately to Kappler.

Q But surely General, when you were talking to Kappler, and he was going to carry out this execution, would not you say to him, "But where are we going to put the bodies because there will be such a tremendous outcry unless we hide them from the Romans, the Roman citizens?" A. We never talked about this with Kappler. I do not remember and I think it is very improbable.

Q You agree, do you not, that the reason for a reprisal in International Law is that the persons to whom it is directed may be coerced into behaving themselves for the future? A. And I must say that for the next ten weeks they did behave in this way.

Q And it is not really to punish the people who are shot? A. No.

Q Because the people who are shot have done nothing wrong as regards the bomb outrage? A. I heard this during this trial.

Q In your statement of 27th June 1946 you used this curious phrase, "This thought decided me to take the responsibility for putting my name to the report to the Senior Army Group, a report which did not fully correspond in sense to the truth and stated that the requested number of persons had been liquidated". These are the words I want you to pay attention to, "as atonement for the bomb attack". A. Because with this report I had to correspond with the order given by Hitler.

Q You were not putting out a report that a reprisal had been inflicted at all but that you had taken action against people who were guilty and that they had been punished and therefore they had atoned for the bomb attack; that



is what you were saying, was it not? A. The order given by Hitler was that hostages should be shot as an atonement for this bomb attack. That was his order and that was my report.

Q What were you representing to the citizens of Rome then, that it was an atonement for what had been done or that it was a reprisal with a view to preventing any future incidents? A. I did not say anything to the Romans because what was said was said by Kesselring.

Q Kesselring was getting a lot of his information from your headquarters, was not he? A. Through the report which I sent to him.

Q And this was your official report to your superior officer, was not it? A. Yes, as I said yesterday and the day before, that was the command in the form of a teleprint.

Q And this was to deceive Hitler; is that what you was saying? A. Yes.

Q Did you deceive Kesselring as well? A. No, Kesselring knew.

Q He knew you were just sending up a bogus report? A. I do not know because I do not remember unfortunately the exact wording of this report.

Q What do you mean "unfortunately"? I am now asking you whether you were deliberately sending a bogus report to your superior officer and he knew he was getting one? A. I am not so because I am not quite certain whether I sent to Kesselring a bogus report or the true one. That is why unfortunately I cannot answer this question correctly.

Q I do not understand you. You have said quite clearly in your statement and I thought you accepted it, "I took the responsibility of putting my name to the report to the Senior Army Group". Do you want to go back from that and say you did not send a report? What way do you want to have it? I do not mind one way or the other. A. I would like to say that I stand to this phrase which I said in my affidavit. Incidentally, I was not sworn in when I made this affidavit, but I do stand to it and I did not put my name to this report. The signature was Army No. 14, but of course, Army No. 14, that was I because I commanded Army 14.

Q I wish you would answer a very simple question and I will take it in some detail. When the shooting had been carried out, as Commander of the 14th Army, you were under a duty to make an official report about it to the Senior Army Group; is that right? A. Yes.

Q And did you make any report on that occasion? A. Yes.

DR. KILMER: There is a differentiation in the German language between a report and report; for instance, if this order of Hitler's had been executed, then in my opinion it would have been sufficient to send a report with the following wording, "Order of Hitler from the 14th executed" but not another form of report then the whole matter would have been dealt with more extensively.

THE JUDGE ADVOCATE: I do not want to appear discourteous to learned counsel but I really do not follow the points of his interruption. I am only asking Von Mackensen of matters of fact. Let us go back again because I think these are the most elementary questions I can put. I cannot put them any fairer and I cannot understand why the witness does not answer them. (To the witness) When the shooting was over did you send an official account, report, anything you like, but information of it in the form of an official announcement to Kesselring? A. I think it is quite impossible that it should not have been done; in short, yes.

Q Now did this report take the form that a reprisal had been carried out or did it take the form that in effect hostages had been taken, innocent people, and they had been shot as an atonement for the bomb outrage? A. I do not know. I could add something but my answer is I do not know but if the court wishes I could add something to the answer.

Q Was there a written document sent to Kesseling? A. I am convinced yes every day.

Q Will you add anything you like? I cannot pursue it; I cannot waste the time of the court by pursuing this. Will you add anything you like? A. I am quite convinced that this report went to Kesseling's headquarters with the usual evening teletypings as every day they went by teletype and the proper wording unfortunately is not remembered by me. The signature was ACK.14, not my signature but of course for me it was the same. ACK.14, that is me.

Q I leave it at this. You now say you do not remember what was in it, yet on 27th June 1946 you were saying this and I will read it to you once again, "Hls thought decided me to take the responsibility of putting my name to the report to the Senior Army Group, a report which did not fully correspond in sense to the truth and stated that the requisite number of persons had been liquidated as atonement for the bomb outrage". You realise that I put to you that which you said on the 27th June? I understand you to say now that you do not remember what was in it at all? A. I stand to this phrase entirely and I say again that Kesseling knew exactly through my report what happened in truth.

THE JUDGE ADVOCATE: Are we to gather there were two reports then?

THE INTERPRETER: No, he stands exactly to paragraph 3.

THE JUDGE ADVOCATE: (To the witness) Did your Chief of Staff, General Hauser, report to you some time on the afternoon of the 24th that a request was being made for Army troops to shoot the Italians by way of reprisal? A. Yes.

Q He did? A. I was told by my Chief of Staff.

Q You do understand the question? I am not trying to trap you at all - whether he told you this on the afternoon of the 24th March? A. I do not know exactly the date but I know that it happened that my Chief of Staff told me about it.

Q You have heard that Kappler said that Maessler did that because they were having a conference and Dobrick was refusing to shoot the Italians, that Maessler had wrong up the Chief of Staff and told him this is what Kappler said, that Dobrick the leader of the battalion that had been bombed was refusing to shoot the Italians and could they have military troops.

Q Have not you told us that at the conference of the night before when you even think Maessler may have been there that it had already been settled beyond question that the S.D. were to carry it out. Why on earth should Maessler and Kappler be asking you for troops at noon the next day if you had settled it as you say absolutely and conclusively on the previous night? Why if you had, as you said, settled at a conference that Kappler who was present with the S.D. should carry it out, should they be asking for military troops? A. I cannot remember the date but I do remember with exactitude that the fact is true that Army personnel were requested to carry out these executions.

Q Are you prepared to contradict Kappler that it was noon on the 24th? A. I must contradict because at noon on the 24th the executions were already being carried out.

THE JUDGE ADVOCATE: He means the preparations.

THE INTERPRETER: No, not the preparations, the executions.

THE WITNESS: As far as I know, and of course I was not present, the executions



were carried out on the evening of the 24th.

THE JUDGE ADVOCATE: (To the witness) Do you no Oberkriegsgerichtsrat Linden?  
A. No, I do not.

THE PRESIDENT: In Rome you had a permanent Lieutenant-general? A. Yes.

Q And it would be perfectly natural to consult him after this event occurred in the Via Rosella, would not it? A. Yes.

Q He was the man in closest touch with the people of Rome? A. Yes.

Q Had you confidence in his judgement? A. Yes.

Q And so you naturally - and it seems to the court a perfectly natural military procedure - asked him what action he thought was necessary? A. Yes.

Q He says that you did ask him and that you insisted on his making some suggestion? A. Yes.

Q You told the court yesterday that you did not remember that but I take it you agree it would be a perfectly natural thing to do? A. Yes, I do not remember exactly but I am quite convinced that it is probable.

Q One other point. In your wide experience of these two wars - you have served on the Western Front, you have served in Poland, you have served on the Russian Front - you must have had experience of reprisals by civilians?  
A. No, I must say I have never had any experience of those either on the Western Front or in Poland, not even in Russia.

Q Have you ever heard of instances where reprisals against the civilians had to be taken by the soldiers? A. I do not know, I cannot remember whether in an official capacity I have heard; maybe in conversation it was mentioned but I cannot remember exactly.

Q Never in Holland, never in Belgium, never in France, never in Poland, never in Russia? A. The main time of my military activities were at that time duties in Russia and we were very short concerning news service and I really cannot remember whether I heard about any examples. I would like to add to the president that there was one very important order of Hitler's that everybody, even the most senior general, was only told those things which concerned his own command and even those things only at the moment when they were necessary, and this order was available in every orderly room.

Q You would be the first to agree general that with your wide experience in the forward area close to the battle it is military interests that must be paramount? A. I agree.

Q I suggest to you that in the forward areas close behind the battle front the police and the S.D. could be just as much under your orders as you wanted them to be? A. No, not at all.

Q You mean to tell us seriously that close up behind the battle front there could be a body of men to whom you could not give orders? A. Quite definitely, and a rather large number of formations who had nothing whatsoever to do with me.

Q Close to the battle front? A. That goes so far that even the Air Force sometimes was not put under our command. That is the great lack of co-ordination which was destroyed by Hitler.

Q Did you find it convenient, General, that the S.D. were at hand to do this kind of dirty work? A. Very unpleasant.

Q Did it enable the Army to say they had nothing to do with such matters?

That, General, is the equivalent of having the best of both worlds. A. I rather would have preferred not to have the S.D. at all and to carry on these things myself under my own responsibility in my own clean soldierly way.

(At 11.30 hours the court adjourns)  
(At 11.40 hours the court re-opens)

THE JUDGE ADVOCATE: The court through me have asked quite a few questions. Perhaps it would be proper to ask Dr. Keller first if he would like to put any questions.

COLONEL HALSER: He could not get the name that you asked the witness if he knew - Winkler. I knew what it was, but it sounded to me like Linden.

THE WITNESS: I do not know him personally but I know that he belonged to headquarters of Kesselring and that is what I heard here during the trial.

THE JUDGE ADVOCATE: I was only putting the statement that somebody made.

COLONEL HALSER: I appreciate that.

THE JUDGE ADVOCATE: Would you ask defending counsel to put any questions they wish? Learned counsel have been told that whenever the court put questions they are able to put any question they like arising out of that. May we get it clear that when we invite them next time we are not going to explain it? Counsel realize that it is only out of the questions by the court.

DR. KELLER: (To the witness) You answered to a question of the court that Kesselring told you or had told you that he would see to it that Hitler would agree to a measure in the ratio of one to ten. Did you want to express with that that Kesselring himself told you that or was it only a remark, an unclear statement which wanted to say that H.Q. of Army corps wanted to see to it that this measure would be executed? A. I said he had it told me. I do not know if he personally gave the order to tell me or if his Chief of Staff, Westphal, did it. Kesselring returned only in the evening but he had the possibility and often did it that he inquired from his H.Q. what news had come in. This is the way how this question might have arisen.

Q The fact that Kappler had selected other people not according to your previous agreement has been noticed by everybody. Have you any guesses today how this might have come about.

THE JUDGE ADVOCATE: I am sorry. If that is a correct translation we must have evidence and not guesses. I mean a witness must speak of his own knowledge.

DR. KELLER: (To the witness) You have been asked if you have taken any steps when you heard that Kappler had selected other people than those who should have been selected according to your agreement. Your answer to that question was that you knew, learned about this fact, only at your interrogation in London. If you would have known this fact immediately after the execution would you have taken steps then? A. It is difficult today to answer to this question. I believe I would have done so.

Q Would not the fact that by taking steps against Kappler you would have admitted that you acted against an order from Hitler, would this fact not have deterred you to take any steps? A. Surely I would have spoken about it with Kesselring because he was informed.

Q You stated also today that you spoke with Wolff about the fact that Kappler had shot more persons than would have been necessary according to the order? A. Yes.

Q Do you remember what you said to Wolff? A. I pointed this fact out to Wolff when he was in my office on the day of the burial, immediately after the burial and I explained to him his responsibility for the investigation into that matter.



Q The question was further put to you after you spoke with Kappler what should be done with the corpses which had to be hidden. Was there anything to be kept hidden? A. No, on the contrary it should be done.

Q In the order of the execution in the ratio of one to ten it was explicitly stated, "Carrying out by the S.D.". Would the passing on of the carrying out of the order to the S.D. principally exclude any Army forces were given for the execution? A. No.

THE JUDGE ADVOCATE: I did not understand the last question.

THE INTERPRETER: The question was the sheer fact that the S.D. was ordered to carry out this execution; this sheer fact, was that sufficient to say that members of the Army should take part under no circumstances in these executions. Now comes his answer, he says no.

DR. KELLER: (To the witness) Why did you not put the disposition with these troops? A. Because I am principally of the opinion that it is not a soldier's job to carry out executions.

THE JUDGE ADVOCATE: I am still puzzled by this. I thought we had agreed that at the conference, which was embodied in a written order, the gist of it was, "Shooting, ratio one to ten. Execution of the measures to be by the S.D.". What is the suggestion that it did not exclude military?

THE INTERPRETER: The suggestion of learned counsel is, in spite of the order that the S.D. should carry out these executions, nevertheless the demand or request for Army personnel could be made for executions - "Well, if this request had been made, why did not you put some personnel to their disposal?" and the answer was, "Because principally I was against it that Army personnel should take part in executions."

DR. KELLER: No further questions.

(The accused, Mackensen, leaves the place from which he has given his evidence)

COLONEL BESELTZ is recalled upon his former oath and is further examined by DR. KELLER as follows:

THE JUDGE ADVOCATE: Would you tell the witness that in our procedure when a witness is recalled he is not again sworn but he has still the same obligations to tell the truth, the whole truth and nothing but the truth?

DR. KELLER: (To the witness) Through whom was Kesselring's H.Q. informed about the incident on the 23rd March? A. By a telephone call of General Maelzer to the Army Group H.Q. which I myself accepted.

Q What has been said with this telephone call? A. General Maelzer reported to me big excitement about the outrage which up to this moment had the consequence of 28 death casualties.

Q Did he also report that he had an argument with another person on the scene of the outrage? A. He reported about an argument he had with a representative of the German ambassador, a certain Consul Moelhausen.

Q Was this perhaps the reason for his report? A. Yes, this was the reason because he wanted to report about this argument immediately to Army Group, otherwise he would have reported to the 14th Army.

Q But already previous to the 23rd March 1944 incidents against members of the German armed forces occurred, (a) in Rome, (b) in Italy? A. In Rome a number of incidents had occurred already previously in which also death casualties were involved.

COLONEL HALSE: I do not know if I would save time by saying I do not deny there were other incidents.

THE JUDGE ADVOCATE: Colonel Halse, every time you get up you say you want to save time but it does not save time. The German counsel wants to go into it.

THE WITNESS: Also in the rest of Italy incidents had occurred mainly in the industrial areas, Turin and Milan.

DR. KELLER: (To the witness) Can you give any information about the losses of human lives and military installations which were suffered through these incidents? A. No, I cannot give any numbers. Only that quite a number of death casualties had already occurred.

Q What was Field Marshal Kesselring's point of view regarding these incidents, (a) before 23rd March, (b) when he learned about the incident on the 23rd March? A. The Field Marshal tried to stand to his policy to gain the sympathy of the Italian population, therefore he took only the milder measures which were believed sufficient. From the 23rd March on it was realised by everybody and also by the Field Marshal that a severe action was necessary as it appeared that the mild measures had no success and no effect.

Q Can you state the most important measures which had been taken in order to gain the sympathy of the population of Rome? A. The most important measure seems to me the voluntary statement that Rome should be an open city, which was not asked for and not requested by any Power. The second measure was the care the Field Marshal took in the supply of Rome and the interest he took. He asked for daily reports from the reverends about the state of supply for Rome and about the supply trains which were put at the disposition of Rome even in the days of hard fighting.

Q Up to the 23rd March, had already cities been declared as hospital cities? A. As far as I remember up to this day, already several.

Q What meaning had this declaration as an hospital city? A. It was the intention that by this measure wounded should be out of the area of fighting and connected with this was the desire to keep specially venerable cities out of the area of fighting, as for instance Assisi and Vienna.

Q So this measure would serve not only German purposes? A. No, because deliberately venerable cities were selected to collect there the wounded.

Q The incident of the 23rd March was reported by the Army Group to higher authorities. Has Kesselring's staff been informed what Hitler's demands were as a counter measure? A. Yes.

Q What were these requests for counter measures? A. At the first a very high ratio was demanded for the shooting of hostages. The first ratio was 30 - 50 to one. I cannot state the exact number but it was not less than 30. Moreover, quarters of the town without prior evacuation should have been blown up.

Q What was the point of view which Kesselring's staff took to these measures? A. Everybody declined these requests as absolutely excessive.

Q Was the Field Marshal at that time when Hitler's demands were known in the advance front line position? A. No, he was with a troop on the front line.

Q Have Hitler's requests been communicated to the Supreme Commander of the 14th Army. Yes, we informed the 14th Army of these requests of Hitler's H.Q.

Q Has the Chief of Staff, the Army Group, had communications with the higher Army command, Hitler's H.Q., regarding the milder conditions? A. Not only the Chief of Staff but all our channels. We did that according to orders. We got the order to diminish Hitler's demands.



Q These actions, had they any success and what success had they? A. After many conversations and many dealings, bargainings, the ratio was fixed at one to ten.

THE JUDGE ADVOCATE: All this is on the telephone, is it? It is not meetings?

THE INTERPRETER: No, telephone, direct line from our H.Q. to Hitler's.

DR. KELLER: (To the witness) As an order been given to the Army Group regarding the carrying out of a measure? A. Yes.

Q Do you know the contents of this order? A. Yes.

Q What was the contents? A. The gist of the final order was - I cannot give the wording any more - "Italian hostages in the ratio of one to ten for each German soldier killed have to be shot. Carried out by S.D.".

THE JUDGE ADVOCATE: Just one moment. I make a note and then it gets altered. Have we got all the essential gist of this order?

THE WITNESS: That is a quite clear gist of this order.

DR. KELLER: (To the witness) How do you explain the annex, "Carrying out by S.D."? A. The troops should not be - with the carrying out of such orders quite lawfully, this was the question of the interior security which belonged to the main task of the S.D.

Q Why then had this order not been transmitted by S.S. channels? A. I suppose this happened because the report was given through to higher authority by Army channels and this was done because the incident involved a unit which at that time was under Army command.

Q Was the Field Marshal in his H.Q. when the order arrived? A. Yes, he just had returned.

Q At the moment when Hitler's order arrived was it known at Kesselring's H.Q. that an agreement had been reached between Von Mackensen and Kappler? A. Yes, the agreement with Kappler was known.

Q Hitler's order has been passed on to H.Q. 14th Army. Did the Field Marshal speak to Kappler before passing on this order? A. Yes, a conversation between the Field Marshal and Kappler took place.

Q What was spoken between the Field Marshal and Kappler? It was a short telephone conversation with a content, with a gist, that Kappler offered the Field Marshal a sufficient number of persons sentenced to death to take them for the carrying out of the ordered measure of shooting persons in a ratio of one to ten.

Q Can you still state how this offer of Kappler's came about? A. I cannot state details any more to that.

Q Has a report been rendered regarding the carrying out of Hitler's order? A. Yes.

Q In which form? A. I cannot state that quite exactly. I only remember that the carrying out was reported. I believe a number was not included in the report.

Q From where have you had your knowledge about these facts? A. As the commanding officer of G.S.O.1. I was at the same time the Deputy Chief of Staff and therefore I took part in all more important conferences and moreover I had a possibility to listen in to telephone conversations of Field Marshal Kesselring or the Chief of Staff, Westpahl.

Q Have you been the referent in this case? A No.

COLONEL HALSE: Have you been what?

DR. KELLER: Was this person concerned with this particular case a man, an officer like an adjutant?

THE JUDGE ADVOCATE: Did he use the word "arrested"?

THE INTERPRETER: He used the word "referent".

THE JUDGE ADVOCATE: What is the answer?

THE INTERPRETER: "Was it your particular task, this matter? - answer, no.

DR. KELLER: (to the witness) Could the Field Marshal effect the order that was transmitted by S.S. channels to the S.D.? A. I think radically it is impossible.

Q Would that have been the normal way? A. No.

Q Would there have been any considerations against that? A. No, it was considered if this order should have been transmitted by other channels.

Q I did not understand the answer? A. It was considered if this order should be directed through other channels.

THE PRESIDENT: Does he mean there was some discussion as to what channel the order was to go through?

THE INTERPRETER: That is it exactly.

THE WITNESS: It has been considered at the Army Group H.Q. If Hitler's H.Q. should not be asked to transmit this order by S.S. channels.

DR. KELLER: (To the witness) And why have no steps been taken that this order should go through by S.S. channels or S.D. channels? A. This would have meant that the severity measures would have been carried out. These measures which to get in a milder form was the intention of the 14th Army.

Q Was the police battalion, Dobrick, an Army unit? A. No, it was a police battalion.

Q Was this battalion under the orders of the commander of Rome? A. Only for tactical operational questions.

Q What does that mean, for tactical operational questions? A. The commander of Rome was authorized to issue orders to this battalion, for instance, for the guarding of certain objects or installations in town. For all other measures as for instance disciplinary questions or personnel questions the police authorities alone were responsible.

Q The cave where the 335 Italians have been shot was afterwards blown in as Kappler stated in order to close the entrance. Therefore engineer troops should have been taken. I suppose that engineer troops were detailed for that job who were stationed in the near environs of Rome. Can you give any statements as to what engineer troops might have been taken and and therefore were these engineer troops under the orders of the Army commander or might have been engineer troops under command of the Air Force? A. From the situation at the front at that time I suppose that all engineer troops under the command of 14th Army were at that time at the bridgehead at Nettuno but at the same time was in the environs stationed 11 Air Force Corps which had their own engineers. I believe it possible and probable that these engineers were taken from this corps.

Q If this was the case were these engineers under the orders of the commander of Rome or under the orders of the 14th Army or under the orders of the Army



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Group? A. None of the three but they would have been under the orders of the Air Force which at that time was the 2nd Air Force Fleet.

Q Do you know if prior to the 24th March 1944 Italians in the ratio of one to ten have been shot, (a) on order of the Army Group, (b) on order of the 10th Army, (c) on order of the 14th Army? A. In no case an order of one of the three H.Qs.

Q Would you have known otherwise of this fact? A. Yes.

Q Why? A. Because such an order would have been issued from the Army Group and I would have knowledge about it. The 10th Army, whose Chief of Staff I have been myself later on, never issued such an order. I spoke about it with my I.C. and the 14th Army in case such a shooting would have taken place was bound to report this to Army Group through I.C. channels and I should have knowledge of this because I read the I.C. reports daily.

THE INTERPRETER: I think they are intelligence reports, I.C. I am not sure.

DR. KELLER: (To the witness) What was the opinion about Kappler in Kesselring's staff? A. At that time Kappler was considered to be an absolutely trustworthy and reliable criminal officer. It was never known that he overstepped his powers.

DR. KELLER: No further questions.

(At 12.40 hours the court adjourns)

(At 14.15 hours the court reopens)

P. BRESLITZ again takes his place in the witness stand and is cross-examined by DR. CHRIST as follows:-

Q You told us that Maelzer rang very soon after the explosion; in this conversation between you and General Maelzer did General Maelzer make some particular propositions; I mean detailed propositions, or did he merely request in a more general way that sharp measures should be taken?

A. Maelzer was rather excited and requested that all the block of flats that were in the vicinity of the house from which the bomb was thrown should be blown up after the evacuation of the people had taken place.

Q Why did you think that this blowing up should be quite out of the question?

A. I did not think that it would further our aim of pacification; on the contrary I thought that it would strengthen the resistance movement.

Q You said today that the order of Hitler specified quite clearly that the carrying out of the order should be entrusted to the SD; what do you mean, the execution or carrying out of the order? A. I wanted to say that all the detailed preparation and everything concerning this matter would be put into the hands of the SD; not only the selection of those who should be shot but also the execution itself.

Q What was the order which was issued by Kesselring to Mackensen? A. I can only say again only that the gist of this order was and mainly it stated that for every German killed Italians should be shot in the ratio of one to ten and the execution of this order should be carried out by the SD. I want to stress the fact that in this order which came down from Kesselring or Army Group to 14th Army the word "Italians" was used and not the word "hostages".

THE JUDGE ADVOCATE: I asked this witness most particularly what was the gist of this very message and he told me he had said exactly the gist of it and the note I took was, "Italian hostages in the ratio of one to ten"; does he want to alter that now? A. The first order which came from Hitler's headquarters spoke about hostages and of course it is quite clear for me that in the sense of the word "hostages" it meant Italian hostages and contrary to that the order issued from Army Group to 14th Army did not speak about hostages but only about Italians because otherwise the agreement which was made would have been cancelled by the word "hostages".

Q All I am asking is do you want me to alter my note which I took with great care, "The order to the Army Group was the following which is Italian hostages in the ratio of one to ten for each German soldier killed have to be shot"? A. Yes, I want to change this, not Italian hostages but hostages.

Q It is not in the order to the 14th Army then?

THE INTERPRETER: The first order from Hitler's headquarters did not speak about Italian hostages but only about hostages; the second order from Kesselring to 14th Army did not speak about hostages at all, only about Italians. The word "hostages" was not mentioned.

DR. CHRIST: During the conversation which Kesselring or other departments of Kesselring's headquarters had with Kappler did Kappler mention that Jews had to be shot? A. With no word.

Q Did you learn about that after the shooting? A. Only now during the trial.

Q Were there any restrictions, considerations, against Hitler's orders regarding international law; any doubts about the validity of this order with regard to international law? A. No.



Q Was this mentioned, the doubts, in the conversation with subordinate headquarters, with General Macbensen's or Kaelser's H.Q.? A. I do not think so because we had no doubts.

Q Which were the considerations that the Army Group had regarding the necessity of a severe measure, atonement? A. There were two reasons, first this outrage proved that mild measures of atonement had no success and second the situation at the front, the bridgehead, made it absolutely necessary that Rome should be quiet and calm.

Q Was there added as a further reason the insufficient forces to keep security within Rome? A. I cannot state that any more now; decisive were the first two reasons.

Q What effect had the declaration of Rome as an open city by the field marshal upon operations? A. It brought two very important disadvantages; we could not accommodate any troops in Rome, reserves of the 14th Army which was at Nettuno and Anzio could not be accommodated in Rome on in the immediate vicinity of their divisions so they were very far distant from the places where they were eventually needed. The second disadvantage was there could be no movements of troops including supplies going through Rome. Instead of using four or five bridges over the Tiber within Rome we could use only one which was very much exposed to enemy air attacks.

Q Was it possible to cancel the character of Rome as an open city, particularly after this outrage? A. As the declaration of Rome as an open city was a voluntary one by the field marshal and no mutual agreement we were of opinion that at any time this declaration could be withdrawn.

Q Which consequences for Rome would have arisen from that? A. We could then, as it was operationally important, accommodate troops in Rome, especially the southern parts of Rome, and for the reasons stated before the whole movement and traffic of supplies could have been again directed through Rome and then most probably air attacks would have happened against the bridges in Rome.

Q So tremendous loss of life and cultural values would have occurred out of that? A. Just as in other big cities in the front line.

Q After the landing in Nettuno in January 1944 was Rome then part of the operation area of the 14th Army? A. This area was an operational area but Rome itself as far as I remember came in the area of the 14th Army only at the end of February or the beginning of March; till then it was immediately under the Army Group but already an operational area.

Q Was the leading of the operations against partisans left to the 14th Army? A. The fighting against the partisans, yes.

Q What task remained then for the SD in Rome and in the province of Rome? A. As I stated some days ago the investigation in partisan activities.

Q What is the difference between fighting the partisans and the investigation of partisans? A. The fighting against partisans means the fighting with arms against the enemy, in this case the partisan enemy; the investigation is searching for the brains and leadership of the partisan organizations. On the basis of the investigation results it is possible to lead the fight against the partisans.

Q If I understood you correctly the fighting was the part of the troops, the investigations the task of the SD. A. Yes.

Q Could General Maelzer as commander of Rome order the SD for the investigations in partisan affairs? A. He could order, no; he could express wishes.

Q Why could he not order; Rome was an operational area? A. I explained already some days ago that the SD was never subordinated to the army regardless if within or without an operational area.

Q Had General Maelzer with regard to the SD any authority of supervision, authority to issue orders, authority for disciplinary matters? A. He had no authority for orders in any branch; only for the safeguarding in Rome.

THE JUDGE ADVOCATE: What is that?

THE INTERPRETER: Safeguarding troops in Rome.

THE WITNESS: An example of that is the advancing of the curfew for German soldiers, placing cinemas and theatres out of bounds, free exit only in groups for German soldiers, not singly; only for the security of the troops.

DR. CHRIST: Was General Maelzer not explicitly forbidden any supervision of the SD? A. As I have already stated generally it was forbidden.

Q Which counter-measures were taken by the German commands against these previous incidents? A. The curfew hour for the civil population was advanced, partly streets where German troops accommodations were, were closed for civilian traffic, accommodations where partly also Italian soldiers together with the German soldiers were, and opera and theater performances were played in the afternoon hours or in the early evening hours and for a certain time bicycling was prohibited because some bomb incidents occurred on the part of bicyclists.

Q Was it possible that after the 23rd March 1944 milder measures could have any success in pacifying the population of Rome? A. It was not considered possible any more.

Q After the carrying out of the execution was there calm and tranquility in Rome? A. Yes.

Q Was it to be supposed that Hitler insisted on the carrying out of his order?

THE JUDGE ADVOCATE: I do not understand the question.

DR. CHRIST: Was it to be supposed that Hitler would have insisted on the carrying out of his order, the order to shoot people in the ratio of one to ten, if this order would not have been carried out by his subordinate commands?

THE PRESIDENT: That does not mean anything.

DR. CHRIST: Was it to be supposed that Hitler would insist on the carrying out of his order - the order to shoot Italians in the ratio of one to ten - if this order would not have been carried out by Mackensen or Maelzer?  
A. According to all experiences Hitler would have found another way in order to have his wishes carried out.



- Q Would General Maelzer have been guilty of a military disobedience if he would not have carried out this order and would he have been placed in front of a court martial if he would not have passed on this order?  
A. Yes, he would have been guilty of a military disobedience.
- Q What were then General Maelzer's tasks as Commander of Rome? A. He was the representative of all armed forces with Italian authorities in Rome and the representative at parades, the liaison office of the Wehrmacht to the Italian authorities.
- Q Was his position as Commander of Rome particularly difficult? A. It was considered difficult.
- Q Why? A. Because of the very position in Rome as capital of the country.
- Q Did General Maelzer provide for the supplies of Rome, food supplies?  
A. He took particular care for this question.
- Q Do you know what particular measures he took in this regard? A. Sometimes when meat supplies were insufficient he took particular care to provide meat for Rome and this was handed out especially to the poorer part of the population and not sold on the black market. He took further care to repair damages of war as quickly as possible as, for instance, the water conduit which was once damaged outside of Rome. He took further care for the refugees which came to Rome from outer provinces; there were cook houses for children, the feeding of the children.
- Q Do you know Major Bohm, General Maelzer's 1A, G.S.O.1? A. Yes, I was in contact, in duty contact, for about half a year with him.
- Q What was your opinion of him and his way of working? A. Major Bohm was an elder officer; and was particularly new in his work; he was very ambitious and tried to deal with all measures, if possible, himself; thereby it happened that he dealt with several affairs personally instead of reporting them to General Maelzer and therefore on several occasions passed orders to him without particularly thinking of it to inform General Maelzer.
- Q Was General Maelzer so occupied with his representative task that other tasks remained on Major Bohm's shoulders? A. This high occupation of General Maelzer was one of the reasons to attach an amount to him who had very high power and working ability.
- Q How long do you know General Maelzer? A. Since November 1943.
- Q Have you been a prisoner of war together with him? A. From the first day on.
- Q As, in your opinion, General Maelzer's character changed particularly since that? A. In the very unfavourable conditions at Tennent where they have been first, General Maelzer had gall-stones; his conditions were so bad that he then in January was called to hospital where he remained until the month of August and he had to undergo an operation and for several weeks was in danger of his life; during this time his nerves suffered for this illness and the possibility to concentrate suffered for this illness. I believe that an essential factor in this was that in many months he had no news from his family which was driven away from the eastern part of Germany.

THE JUDGE ADVOCATE: We do not want to restrict Doctor Christ but if he would bring some of this evidence into the picture with what we are concerned with it would help.

DR. CHRIST: I have no further questions.

Cross-examined by COLONEL HALSE:

- Q Colonel, you seem to have been a very busy man listening in to every telephone conversation that Kesselring and the Chief-of-Staff have; you know everything that goes on in Rome and I suppose you know everything that goes on in 14th Army and 10th Army as well, is that so? A. The difference is that it was not my duty to listen in to every conversation; I could listen in to every conversation. There was a light signal so that I knew that a telephone conversation took place and then I decided after listening in for a little while whether it was my duty to continue or not necessarily to do so.
- Q There are one or two things you can help me with. Let me say that I do not deny that everything was done for the population of Rome in the point of view of this case and so far as General Mackensen and General Maelzer are concerned the prosecution accept that they did everything for the benefit of Rome. Now I want to start off with talking to you about this telephone conversation on the 23rd March. You came into the picture first by taking a telephone call from General Maelzer. What time was that? (Answer not interpreted)
- THE JUDGE ADVOCATE: Will you tell the witness that the question was what was the time; if he knows the time will he tell us, if he does not know will he say so.
- THE INTERPRETER: The answer is "I do not know exactly the time but it must have been immediately after the explosion had taken place because I remember that Maelzer was very excited about the interference of the consul and therefore Maelzer rang Kesselring at once so that no false picture should be created in the minds of our headquarters.
- COLONEL HALSE: When I asked you a question like that you could have said "Very soon after the bomb incident" without giving an explanation. Will you answer questions very shortly. At what time did O.K.W. pass on the order "Italians in the ratio of ten to one have got to be shot. Carry out by S.D."? A. I believe there is a misunderstanding because these are two questions which have nothing to do with each other.
- Q I am asking you at what time did your headquarters pass on to 14th Army the order "Italians in the ratio of ten to one are to be shot; S.D. is to carry out the order"? A. In my opinion, about 2200 hours.
- Q What time did Field Marshal Kesselring get back to your headquarters that day? A. About 2000 hours.
- Q That is two hours before the order was issued? A. Approximately.
- Q Your headquarters seem to be very lucky on the telephone; you could just lift up the receiver and speak straight to Hitler? A. I did not say to Hitler, I said to the headquarters of Hitler. We had a direct line of communication with Hitler's headquarters.
- Q Was that passed through O.K.W.? A. Yes.
- Q Did you have to speak to O.K.W. first? A. In exceptional cases the conversation could be transmitted to Hitler himself but I personally do not know about such cases.
- Q Colonel, you said that the order came from O.K.W. did you not; so O.K.W. had got to know about it? A. O.K.W. and Hitler's headquarters is the same.
- Q. O.K.W. was in Berlin and Hitler's headquarters was in the middle of East Prussia? A. That is a mistake of the learned prosecutor; Hitler's headquarters in the east had part of the O.K.W. and these



people were necessary for the prosecution of the war and these officers were always with him be it in East Prussia or be it in Berchtesgaden or wherever it was.

Q I am sure when members of the court and I think about O.K.W. we think about a very big organization like our War Office, whereas you are speaking of a small body of staff who travel about with Hitler himself?

A. In comparison with the O.K.W. in Berlin, Hitler's staff was small but in comparison with our own ideas who were in the fighting line this staff was large enough.

Q I am not going to go into arguments about that; do I understand you to say that it was an O.K.W. decision or a Hitler decision? A. Quite clearly a Hitler decision.

Q So not only have you got to get through to Hitler's headquarters but you have got to get through to the great man himself? A. Yes.

Q And how many times do you say you got through to the great man himself to discuss the killing of 32 German soldiers in Rome? A. I said before that I know of no case when we here in Italy had spoken to Hitler personally.

Q How many times did your headquarters get through to his headquarters on the 23rd March about these 32 soldiers in Rome? A. I am not quite certain about it but I think about ten; I would rather think probably ten conversations had taken place.

Q And as a result of each of these conversations was there some plea that the number of people to be killed should be reduced? A. That is correct.

Q And of course any plea like that that something that Hitler ordered should be reduced would have to go to Hitler, would it not? A. Yes, certainly.

Q Do you really think that Hitler agreed this himself and gradually whittle down his order from the blowing up of the whole quarter of the town and killing one to fifty and down to one to ten? A. The facts speak for themselves.

Q It is far more likely, is it not, that Hitler would simply lose his temper, as he so often did, and say "Kill 50 to 1"? A. Yes, that would have been possible.

Q And the most likely thing to have happened? A. At this time the Field Marshall had the deep confidence of Hitler and that is, in my opinion, the reason that he was influenced by the Field Marshall's request.

Q Do you say that the Field Marshall was making this request? A. No, not he himself personally because he was not present, but we who were his very next staff officers and knew his mentality about these matters very well, spoke in his name.

Q I suppose you told the Field Marshall when he came back from his tour of his battle-field that Hitler originally demanded one to fifty? A. Yes.

Q Was he surprised at that figure? A. Yes.

Q Do you know he has made two statements in this case? A. I have heard about this here.

Q Do you know that he does not say in either of them, he does not mention a figure of one to thirty or one to fifty? A. The learned prosecutor will have the opportunity to ask the Field Marshall himself about this.

- Q I am going to show you something in order to refresh your memory. Just look and see if that is Field Marshal Kesselring's signature first? (handed) A. Yes.
- Q Just listen to this paragraph 6: "Before the issuing of the 'Führer Order', I am quite sure, that conversations were held between my officers (Is, IaT, Io) with the concerned officials of GHQ and the High Command of Army Group 14 (AOK 14 Colonel-General von Mackensen). The contents of these conversations must certainly have been propositions for mitigation of these punitive measures. I come to this opinion of mine because of the ratio of one to ten, whose lowness otherwise would not be understandable". It does not seem to suggest that Field Marshal Kesselring knew anything about fifty to one or thirty to one, does it? A. Yes, but he speaks about the moderation and reduction of this number.
- Q I quite agree he speaks about a moderation but you are the first witness to come to this court and talk about thirty and fifty to one? A. That is so but I am the first to have held these telephone conversations and I am one of these men who are mentioned in paragraph 6.
- Q But you would have told Field Marshal Kesselring that Hitler originally demanded one to fifty, would you not? A. Yes.
- Q And the reduction of one to fifty to one to ten is a very big reduction, is it not? A. What I said is at least thirty but it may have been fifty.
- Q We will leave it at that; I am putting it to you that it would appear from that statement of the Field Marshal's that he had not the first idea how many Hitler had originally demanded? A. It may be that he had forgotten or that he had other reasons not to say so.
- Q You reported this case to O.K.W., did you not? A. Yes.
- Q Why did you report it to O.K.W.? A. Because that was my next Higher Authority.
- Q Did you report it because the argument that Maelzer had had with the consul of the German Embassy or because 32 German policemen had been killed? A. Because 32 German policemen had been killed who were in that time under the command of the German Wehrmacht.
- Q So if any reprisals were to be taken they would be the responsibility of the German Wehrmacht, would they not? A. This depends.
- Q Do you say that these reprisals that were ordered to be carried out were anything but the responsibility of the German Wehrmacht? A. There might be a discussion if this was not the task of the police.
- Q If it is the task of the police it has nothing to do with the S.D., has it? A. According to the chain of command this is one sector.
- Q The S.D. are the Investigation department, are they not? A. No, only in this sector where we co-operate with the S.D.; which other police duties the S.D. had is not known to me.
- Q We know that Keppler's S.D. kommando was an investigations kommando? A. One part of it was an investigation branch and I might point out that had S.S. and police ranks, there were no army officers, and being police ranks it is quite clear that the S.D. and the police -----
- Q What I am suggesting to you is that you reported it to O.K.W. and the orders came down for the shooting through the army channels, therefore it looks as if Hitler intended it to be an army responsibility, does it not? A. We do not draw this conclusion.
- Q You know that Harster has given evidence in this case, do you not? A. Yes.



Q And Harster was Kappler's superior officer? A. Yes.

Q Do you agree with what Harster said that Weelser had authority over Kappler or matters concerning the security of Rome? A. I do not agree with that.

Q You say that what Harster says is wrong? A. Yes, I consider it a mistake.

Q And you consider that Weelser has no power over the S.D. in Rome at all? A. As I have stated already several times, no.

DR. KEILNER: No re-examination.

THE JUDGE ADVOCATE: Do you know an officer called Gref Ingelheim?

A. Yes, I was working together with that officer.

Q And had he got anything to do with this affair? A. I do not think he belonged to my staff at this period.

Q In a statement supplied to the court the witness Kappler says he rang up this officer if he had got word from Major Bohm; do you know anything about that? A. As far as I remember Ingelheim came into my staff only in the beginning of April.

Q You say that it was impossible to do it then? A. As far as I remember I think Kappler must have been mistaken.

Q I want you to tell me again what was the gist of the message which you received from Hitler to the Army Group? A. For every German soldier killed, hostages in the ratio of 1 to 10 will be killed and the carrying out of this order is the task of the S.D.

Q What did you understand by the word "hostages"? A. "Hostages" would be people -----

Q No; you are receiving a most important message from Hitler using the word hostages. I am asking you what you understood at the time when you got the word "hostages"? A. I believe and I give this explanation about the word "hostages" as I thought at that time; people who had been taken as hostages who were threatened to be shot if something should occur. That is my explanation of the word "hostages".

Q I am asking you what meaning you attached to the word "hostages" when you got it in this message; it could not have meant to take people and hold them and shoot them if further incidents occurred, could it; it could not have meant that? A. No, I think, as Hitler proved at several other occasions that he meant that we should take hostages and arrest them and shoot them.

Q You do not mean hostages at all do you; you mean you should just take innocent Romans and make an example of them? A. That is why this order was entirely against our mentality.

Q Are you agreeing with me this far, that you interpreted the order from Hitler that perfectly innocent Romans would be arrested and shot?

A. That is quite correct; that is how we understood that Hitler meant his order.

Q And did you inquire - in all these numerous conversations I should think you went into it in great detail; did you ask who these hostages were to be and what type of person was to be taken? A. I do not remember whether this question was asked but the gist was that those people who I described before, the group of persons who were arrested and who were shot so that further explosions should not occur.

Q But I thought you told us that there had been no reprisals by the military before this time? A. Not in Italy but in other operational theaters there were.

Q Did you not think it was necessary to get some guidance as to what was meant by the word "hostages"? A. No, because it was thought rather dangerous to ask questions from the O.K.W.

Q It is quite clear that a boy of 14½ was not contemplated, I suppose?  
A. Of course, it is quite clear.

Q What was the form of the message that was passed on by the Army Group to 14th Army? A. A telephone conversation and as it was usage in the German Army there was an officer on the other side -----

Q I want to know the gist of the message which was passed on by the Army Group to 14th Army? A. Almost the same which I said was the gist of the order of the O.K.W. to our group but with the only difference that instead of the word "hostages" the word "Italians" was substituted.

Q Will you swear that on your oath? A. Yes.

Q Will you listen; "I received orders to shoot Italians in the ratio of 10 to 1 from Kesselring as hostages, probably before the conference, on the telephone. It was to collect innocent people and shoot them. The annex to the order 'execution of this order not through the Wehrmacht but through the S.D.'". That is the note of the evidence that was given in this court by von Mackensen. I cannot understand that what it means to collect innocent people.

DR. KELLER: I would apply to the court that it should be read out by the shorthand writer.

THE JUDGE ADVOCATE: We will get the shorthand note turned up and come back to it later.

COLONEL HAUSER: Major Reed has got the same note as you: "Kesselring's headquarters ordered ten to one I think by telephone to be shot as hostages, that would have to mean innocent people. The order added that it was to be executed not through the Wehrmacht but by the S.D.".

THE JUDGE ADVOCATE: Assuming that von Mackensen was receiving a message about hostages, that is quite inconsistent with what you are telling us, is it not? A. These statements now are made without any reference to any files but the agreement was quite well known to the Army Group.

Q Just a minute, you have told us in great detail that when the order was passed on to von Mackensen the word hostages was dropped out although you had received it from Hitler? A. Yes, I am quite convinced of this.

Q If von Mackensen has sworn here that the message did contain the word "hostages" there is something very odd about this, is there not?

A. I believe that whatever the word being used the sense of this order and the agreement between Army Group Headquarters and Army 14, headquarters was so clear and so clearly fixed that any mistake in the execution of this order was quite impossible.

Q I will pass on until we get the shorthand notes; is it not extraordinary that in a vital message like this you say the message was passed on without reference to the hostages whereas I say that von Mackensen said in court that it made that very point that there were to be hostages?  
A. Three years have passed since these things have happened and no files are available for us.

Q Would you remember that three years have passed and therefore be very careful what you swear to be the fact if you are not sure.



THE PRESIDENT: The shorthand note in question will be looked up during the interval.

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

THE JUDGE ADVOCATE: Will you tell learned counsel that the passage in the shorthand note as not yet been found but when it is found it will be read. (To the witness) Were you asked to listen to the conversation which you say took place between Kesselring and Kappler? A. No, I believe I was in the office of the Field Marshall whilst this telephone conversation had taken place.

Q Were you not suggesting to the prosecutor a little while ago that you overheard it by listening on some other line or something? A. Firstly I had a telephone in my own room where I could listen in to other conversations of the Field Marshall but, apart from that, in his own office he had a second telephone and it was usual that when he had some telephone conversations we should listen although being in his own room.

Q This is all very interesting but would you tell me whether you listened to this conversation while it took place on another phone? A. I cannot say but I have heard this telephone conversation.

Q You realise this important difference, do you not; if you are merely in the room and not listening you do not hear what the other man at the other end says? A. I am only not certain whether I listened in to this conversation in my office with the earphones or in Field Marshall Kesselring's office but I did listen in with the earphones.

Q Now at long last you say you listened in with the earphones, is that right? A. Yes, that is correct.

Q What did you hear Kappler say? A. I cannot remember all the details as I said before, but the gist of the conversation what Kappler said was that he made the proposition to shoot, that he said that he will shoot people who were already condemned to death. When asked by the Field Marshall whether there was a sufficient number available he said, "Yes".

Q That we know was quite untrue, so Kappler was telling the Field Marshall what was quite untrue? A. That is possible.

Q And is nobody on the General Staff of the Field Marshall to know that a Lieutenant Colonel in the S.S. is telling a pack of lies to the Commander-in-Chief? A. I stressed the fact when I was asked about Kappler's character when up to that moment the Field Marshall had the deepest confidence in Kappler.

Q He had never seen him in his life, had he? A. Yes, he had.

Q Had seen Kappler? A. Yes.

Q Had you seen Kappler? A. Yes.

Q You know, it seems to be quite agreed by everybody at Rome at this time, in the prisons there were only about four or five people under sentence of death? A. That is a fact that I got to know only now during the trial; at that time I was not concerned with it.

Q You told us you knew a good deal that went on in Rome, did you not? A. Concerning my tasks, yes.

Q Do you know Dr. Winden? A. I know only his name.

Q You know the Chief Military Judge of the 14th Army then perhaps? A. I heard this name here during the trial but I do not know him.

- Q Perhaps you knew the Chief Judge of the Army Group then? A. Yes, I have worked with him together.
- Q Who is he? A. General Richter Keller, who is present.
- Q Was he there when all these conversations were going on in the headquarters of Kesselring? A. No, he was stationed a little bit further away from headquarters.
- Q It was not thought worth while to consult the Chief Judge about this complicated matter of international law? A. No, because, as I have said before, we had no doubt about the validity of international law concerning this question. If I have permission I will say why we had no doubt at all.
- Q I only want to know whether he consulted the General Richter. Were the army holding court-martials on Italian subjects in Rome? A. I do not know anything about these matters.
- Q You do not know anything about that? A. I do not know anything about the details of the law or court-martials on a lower level, I mean underneath the level of Army Group.
- Q You have been posing as having a great knowledge of what is going on in Kesselring's command and I am asking you whether you knew that court martials were being held on Italian subjects in Rome? A. I do not know; there was a court at the disposal of General Maellzer but what it was concerned with I do not know.
- Q Was it not very unusual for a Commander-in-Chief to discuss matters such as the way in which Roman inhabitants were to be killed direct with a Lieutenant Colonel of the S.S. rather than going through his superior officer? A. It was unusual but whether Kappler rang the Field Marshal or vice versa I do not know but Kappler's commandant had been at his headquarters at Verona and Kappler was much nearer; it was much easier to reach him.
- Q What was the difficulty to get on to Verona? A. When I explain to the court the chains of command - - -
- Q I do not want that, I want to know what was the physical difficulty of taking up the telephone and ringing up Verona? A. I do not know whether it was tried or not.
- Q Do you not think that General Wolff has a very good ground of complaint against Kesselring that he should have been arranging all these matters with a subordinate without any reference to him at all or to Lieutenant-Colonel Harster? A. I do not think so because it was a direct order emanating from Hitler and those superior officers in this case could not alter anything in this order.
- Q Are you suggesting that there was anything in that order which suggested that Kesselring should give the order to Kappler? A. I said before that I do not know whether the Field Marshal had rang or Kappler had rang the Field Marshal because he wanted to be quite certain that it was an order coming from Hitler himself.
- Q What would you have said if Lieutenant General Harster had passed some instruction to von Mackensen relating to what the Wehrmacht should do without referring it to your headquarters, what would you have done about that? A. That is such an hypothetical case I can hardly imagine it; let us assume it was concerned with a direct order of Hitler's then I can well imagine that this case would have taken place.
- Q You think that General Wolff would have talked to a Lieutenant Colonel of the Wehrmacht staff and cut out the Army commander and the Commander-in-Chief. Do you really say you mean that? A. I would assume that



in such a hypothetical case a Lieutenant Colonel of the army would have acted in the same way as Kappler did. I want to see to make sure by inquiry whether it is a real direct order of Hitler's.

Q You know that Mackensen was making agreements with this Lieutenant Colonel?  
A. I know about that.

Q And Kesselring was seeking his advice and finding out how many people he had and so on? A. I want to stress that fact again and again that I do not know whether the Field Marshal had rang Kappler or vice versa.

Q When the shooting was all over did or did not Kesselring issue notice in the press showing that the execution had taken place? A. No, these communiques were sent directly from O.K.W., in this case I believe O.K.W. stationed at Berlin directly to the Italian press without the knowledge of Field Marshal Kesselring's headquarters or himself.

Q How did Kesselring propose to let the Roman population know that he had taken reprisals against them and what the reprisals would be if any more outrages occurred? A. First of all communiques should have been issued to the papers that the shooting had taken place in this particular case in the ratio of one to ten.

Q Is that what you say happened; on my asking what happened I am asking what steps were taken by Kesselring to bring home to the Roman public that the reprisals had been taken and what would happen presumably if any further incidents occurred? A. Nothing at all because the communique sent by O.K.W. directly was already published; whether the section IC, the intelligence officer, of our headquarters had prepared a communique which was to be issued to the papers I do not know.

Q What did this communique say, the one which was published? A. I do not know exactly the wording of this communique but I do remember the title exactly because we were all rather angry at headquarters about this title which was "Communists, Badoglians". We all being stationed here in Italy, we knew what sort of nonsense this is.

Q Lastly, would you agree with me that the only way you can explain the important part that Kappler took in this case is that Kesselring and von Mackensen had the right to consult him and tell him what to do?  
A. I do not agree with that.

A MEMBER: Did your headquarters give any time by which this execution was to be completed? A. No, because this was contained in the order emanating from O.K.W.; I believe the hour 1900 hours was mentioned.

Q But the learned judge-advocate asked you if there was anything else in the order and you never mentioned timing at all? A. I was asked to give the gist of this order and as the most important gist, these matters which I mentioned before seemed to me different.

Q Do you mean to say that you do not consider it important that you are going to slaughter 300 innocent people within 24 hours. Do you not think that is important? A. The gist of such a measure is always the swiftness with which it is carried out.

Q How many times did you pass orders on to 14th Army about this matter?  
A. I, myself, not at all because I was not concerned with this matter.

Q How many times were orders passed on from Field Marshal Kesselring's headquarters; you have told us that orders were passed on about 2200 hours. You knew about that? A. Whether further orders from the department concerned with this matter IC, the intelligence department - whether further orders were passed on I do not know because these orders were not my affair at all and I could not listen in to it but that the concerned departments of Army Group and 14th Army had had conversations about it I am quite certain.

THE JUDGE ADVOCATE: Who do you say fixed the time limit for the execution?

A. Either Hitler himself or a department in O.K.W. which was concerned, but in my opinion it was Hitler himself.

Q You are still saying now the order you got about 10 o'clock at night had fixed the time limit? A. This order which was mentioned which I said approximately was received about 2200 hours was received by the Chief-of-Staff, General Westphahl, therefore I cannot give quite definite details about the time limit.

Q This is what I am putting to this witness; I call his attention to this order when he gave it, I warned him the court were giving him an opportunity to say the full gist if he remembered it and he did not put in the time; he is now being asked when it happened and who fixed this limit of time, when it was done and who did it. That is all I want to know? A. As I said before I do not know that any more.

Re-examined by DR. KELLER.

Q I refer once again to the order from the Army Group to H.Q. 14th Army. Was the order that Army Group issued to H.Q. 14th Army fixed in writing and written down before it was transmitted? A. In General Headquarters not at all; whether the Intelligence Department 1C had done it I do not know; I rather doubt it.

Q Do you know whether you transmitted by telephone the order to HQ 14th Army? A. I do not know whether it was the Chief-of-Staff or the 1C Intelligence department.

Q Is it possible that when this order was passed on from Army Group to Army at the same time was passed on what had come as an order from the O.K.W. to the Army Group? A. Yes, that is possible.

Q You stated before on the question of the learned judge-advocate that Army H.Q. did not consider it necessary to concern me as the Chief Judge of the Army Group, to question me about the legality from the point of International Law. Why did the staff of the Army Group not consider it necessary to consult me in this question? A. Each senior officer knew that at O.K.W. was a legal department and this legal department was with Hitler's Staff and such a question was considered, as a death sentence was passed on 500 men it has to be understood that the legal department at O.K.W. had been consulted.

Q The agreement which existed between General Mackensen and Kappler was known at Army Group headquarters before the order arrived; this agreement would have meant that it is understood in that case that the agreement would have been fulfilled; it would have meant that only such people are shot whose lives were lost already on base of a sentence of court. Again towards the outer world and towards Higher Authorities towards Hitler the impression is given as if Italians not sentenced Italians would have been shot. Is not the fact that it was not intended to take any reprisals decisive that I was not consulted any more -----

THE PRESIDENT: I do not understand that.

DR. KELLER: Was not the intention to take any reprisals any more than not the decisive factor not to hear me about this question of reprisals or not. Was the fact that Army Group knew that only people should be shot who were sentenced already and no innocent ones the reason or one of the reasons that I have not been consulted with? A. I consider this possible.

DR. CHRIST: No questions.

(Witness withdraws)



ALBERT KESSELRING is called in and, having been duly sworn, is examined by DR. KELLER as follows:

- Q Your name is Albert Kesselring? A. Yes.
- Q And your last rank was General Field Marshal? A. Yes.
- Q Your age is 60? A. Yes.
- Q And you are Commander-in-Chief of the South West and Group C? A. Yes.
- Q You were in Italy from November 1943 until March 1945? A. Yes.
- Q The 14th Army was in your Command in March 1944? A. Yes.
- Q Were there any formations in central Italy in March 1944 which were not under your Command? A. It is possible that in those months formations of the Navy and Air Force did not come under my Command.
- Q I am asking you now as a military expert, as a Commander-in-Chief of German Armies in Italy, to answer the following questions. Concerning the question of reprisals: first a general one, what is your opinion in the question of taking of reprisals; the second part of the question is now concerning this special case; what is your opinion concerning if you agree with the legality of shooting ----

THE PRESIDENT: Could we have a simpler question; this is getting very long.

DR. KELLER: My first question is, do you think that members of occupied countries might be shot as reprisals, do you think it is conceivable under International Law? A. Reprisals in general and also the shooting of members of the occupied country are not prohibited by any International Law and therefore they are allowed. I would like to ask that I think that reprisals as a last resort are permissible.

Q My second question is have you spoken about the reprisals in the form of shooting of members of the occupied country - have you spoken about this possibility either with General Wolff or with Lieutenant General Harster? A. I have spoken with General Wolff and General Harster at Munich; it was about the end of 1943 and it concerned the question of hostages and, of course, we have spoken about the shooting of hostages. General Harster said that it was observed that my troops used the ratio of one to ten in those shootings. I have conversed with General Wolff about this question at a later stage quite frequently.

Q Concerning questions of reprisals nothing was said? A. In that short conference in 1943 at the aerodrome at Munich the question of reprisals if not combined with the question of the taking of hostages was not discussed.

THE JUDGE ADVOCATE: I do not follow that? A. Only if in connection with the taking of hostages.

THE PRESIDENT: That means no other question of reprisals? A. That is all; the question of reprisals was only touched in connection with the question of hostages.

DR. KELLER: Harster said the following thing; headquarters of the S.D. or some headquarters of the S.D. were asked to shoot Italians as an answer for actions that were directed by Italians against members of the German Wehrmacht; these people were to be shot for the purpose that other occurrences should not take place in the future. As Harster knew about these demands he had a conversation with you, Kesselring, but about hostages Harster had not spoken.

THE PRESIDENT: Where is the question?

THE JUDGE ADVOCATE: Colonel Halse, I am leaving it to you to object when you like but as far as I see it is one long series of leading questions.

COLONEL HALSE: I have not objected at present because I appreciate that one has to give a certain amount of latitude. The time will come when I might object. He is merely putting to the witness now a conversation which was held in 1943.

DR. KELLER: I have put to you this conversation; can you remember now what happened during this conversation? A. First I have to say the conference was very short and the gist of this conference was the question of hostages and the ratio of one to ten; the second, I cannot believe it that my formations had made any requests to the S.D. and the reason is because I do not think that my troops had any connections with the S.D. The positions of my troops were all in the south and the S.D.'s position was in the north. The third, this ratio of one to ten was rather surprising to me and when I made further inquiries I was told it had no real significance. General Harster said that in my formations, in my troops, hostages were shot in the ratio of one to ten. I did not believe this and I made inquiries with my troops and not one headquarters of my troops did report to me that this ratio one to ten did really exist. I am not quite sure Harster says he has spoken with me about the question of reprisals as I had no official connections with the S.D. at all.

THE PRESIDENT: I understand the witness is still speaking about the conversation at Munich airfield, is that right? A. What I was mentioning was only concerned with this short conference lasting only a few minutes.

DR. KELLER: Now I am passing on to the question of partisan movements; this question only up to the date of the 23rd March 1944. The 23rd March is the day on which 32 policemen, German policemen, were killed. What was the partisan movement like in Italy from the date that the armistice with the Allies was concluded up to the date of the 23rd March 1944? A. When Italy left the Axis then in Rome and the vicinity of Rome small groups of resistance were built up; partisans were mostly to be found there where escaped prisoners of war were found because they lay the foundation for this movement. Incidents which caused the loss of German soldiers lives were reported to me. Losses of German lives were reported particularly in the region of the Miella mountains and in the mountains north of Rome. Of bigger importance was the case of the Commando troops which formed a part of those resistance groups, but I could not say that in the first half of this year 1944 this partisan movement constituted any serious danger to the German Wehrmacht. I hoped to vanquish those partisan forces through my treatment of these cases; I want to say through my mild treatment of it because through this behaviour of mine I thought to be able to convince the population that the partisans were in the wrong. My ideas to deal with these matters were understood neither by Hitler and Mussolini nor by some of my own subordinate officers; not only they were not understood but certainly they were not established but I was happy to say that particularly in the person of General von Mackensen I found somebody who understood my mentality perfectly.

Q The learned prosecutor told me that he agrees entirely that whatever could be done by the two Commanders-in-Chief for the pacification had been done.

THE JUDGE ADVOCATE: He did not say that; I think he said for the purposes of this case.

COLONEL HALSE: I do not think as a whole it had been done.

THE WITNESS: What is worrying me very much is the following fact that partly I was not understood by those who I mention and often by some of my own officers and again, on the other hand, the fight of the



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pertains even more and more serious and severe and cruel and therefore the waves of hatred became stronger and stronger.

Q Now we are talking about the period after the incident of 23rd.

THE PRESIDENT: I would like you to break off your examination at a convenient moment.

DR. KRIEGER: I think that is the best moment to break off my examination if it pleases the court.

THE PRESIDENT: Major Forest, will you interpret this to the public. The court understands the feelings of certain people at the back of the room but nothing can be allowed in the court room to prevent the members of the court from giving their whole attention to their serious duty of seeing justice done. I realize that amongst those people at the back of the court almost everybody is doing his best or their best to be quite quiet but there are a few individuals who I see have great difficulty in controlling their feelings. I would ask their friends and those standing or sitting near to them to do their best to comfort and control those people because if any people continue to make disturbances, it would be necessary in the interests of justice for their coupons of admission to be withdrawn in future. I should be very reluctant to do that but if necessary I will.

(At 1725 hours the court is adjourned until 1000 hours tomorrow, Tuesday, 26th November, 1946)