

WAB

(1)

PC/G/16/12

E-4(Br)

BR. ~~286~~ 283

TRIAL BY MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS

of

BERNARD VON MACKENSEN

and

KURT MAULZER

on

18th NOVEMBER, 1946

FIRST DAY

I N D E X

| | <u>Page.</u> |
|----------------------------------------|--------------|
| CHARGE SHEET AND PLEAS | 2 |
| OPENING ADDRESS BY COLONEL HALSE | 3 |
| H. KAPPLER | 15 |

7

PROCEEDINGS

of a

MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS

held at

THE UNIVERSITY OF ROME

on

18th NOVEMBER, 1946

upon the trial of

ERICHARD 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. SERAG-MONTEFIORE

Durham Light Infantry.

LIEUTENANT COLONEL D.K. HAYMAN

Lincolns.

LIEUTENANT COLONEL R.W. TYRRELL

Oxf & Bucks.

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

Devons.

JUDGE ADVOCATE

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

FIRST DAY

Monday, 18th November, 1946.

The order convening the Court and the charge-sheet are laid before the court.

The accused are brought before the court.

Colonel R.C. HALSE, O.B.E. Office of the Judge Advocate General, assisted by Major A.E.E. READE, Intelligence Corps, J.A.G's Branch, H.Q. B.A.O.R., appears as Prosecutor and takes his place.

DR. H. KELLER appears as counsel for the accused MACKENSEN and takes his place.

DR. W. CHRIST appears as counsel for the accused MAELZER and takes his place.

At 1000 hours the trial commences.

The order convening the Court is read.

The President, Members and Judge Advocate are duly sworn.

The following interpreters are duly sworn:-

MAJOR P.E. FOREST, Pioneer Corps.
J. KATZ Esquire.
V. CELENTANO, Esquire.

The following shorthand-writers are duly sworn:-

S.S.M. D.F. NOBLE, R.A.S.C.
S.S.M. G.R. MARTIN, R.A.S.C.

THE JUDGE ADVOCATE: The accused, Eberhard von Mackensen and Kurt Maelzer, German nationals in the charge of Commander 56 Rest and Transit Camp pursuant to Regulation 4 of Regulations for the trial of war criminals are charged with: committing a war crime in that they at Rome, Italy, about the 24th March 1944 in violation of the laws and usages of war were concerned in the killing as a reprisal of some 335 Italian nationals in the Ardeatine Caves. How say you Eberhard von Mackensen, do you plead guilty or not guilty to the charge?

THE ACCUSED von MACKENSEN: Not guilty.

THE JUDGE ADVOCATE: And how say you Kurt Maelzer, do you plead guilty or not guilty to the charge?

THE ACCUSED MAELZER: Not guilty.

THE JUDGE ADVOCATE: Do learned counsel for the accused wish to apply to the court for any adjournment on the ground that any of the rules relating to procedure before trial have not been complied with and that they have been prejudiced thereby or that they have not had sufficient time to prepare their defence?

DR. KELLER: On the 13th November when the accused von Mackensen heard about the trial, on this day for the first time I had an opportunity to talk to the accused about the charge with which he is charged and therefore I had not sufficient time to prepare my defence. Nevertheless I do not apply at the present for an adjournment, but I ask for the permission of the court to apply at a later stage if I deem that it should become necessary. One of the reasons I might ask for an adjournment is that the witness Kappler might give some different evidence from what he gave on 23rd March 1944. That is one of the examples. Do the court wish further examples?

THE PRESIDENT: No; if learned counsel ask for an adjournment the court will consider it.

THE JUDGE ADVOCATE: And Dr. Christ?

DR. CHRIST: For the moment I do not apply for an adjournment but I agree entirely with my colleague, Dr. Keller.

THE JUDGE ADVOCATE: The evidence taken at this trial will not be read over as a matter of course after each witness has given his testimony, but learned counsel can apply to the President at any time throughout the trial to have the note read and then, of course, the President will have it done.

COLONEL HALSER: May I please you, sir. I appear on behalf of the prosecution with my learned friend, Major Bende, and the accused Hakenstein is, as you have heard, being defended by Dr. Keller, an officer in the one time German Army, and the accused Halser is being defended by Dr. Christ, also an officer in the one time German Army.

Sir, this trial is a trial of alleged war criminals. The trial is authorized under Royal Prerogative by virtue of a warrant issued by His Majesty in 1945 and promulgated in Army Order 81 of 1945 which authorizes military courts convened by officers who have been given warrants to try persons who are alleged to have committed crimes against the laws and usages of war. The court takes judicial cognizance of the laws and usages of war, and your duty in due course will be to decide whether upon the facts which I lay before you as prosecutor a war crime has been committed and whether these two persons accused before you were the persons who committed it.

In this case the accused, as you will observe from the charge sheet, are not, as is usual in war crimes trials up to the present, under the Royal Warrant, and they are not being charged with committing offences against British nationals or Allied nationals. They are charged with committing offences against Italian subjects, all inhabitants of the city of Rome or at any rate residing in the city of Rome at the time of the alleged crimes either by reason of the fact that they were in prisons there, or because that was their domicile; and His Majesty's Government consider it their duty to arraign these two men upon a charge alleging that they had committed war crimes against Italian people at a time when the Italian Government was a co-belligerent of the Allies.

Sir, the law in this case is the law of England, as it is in all war crimes trials, and under the law of England the onus of proof is upon the prosecution to satisfy you beyond all reasonable doubt that these accused are guilty of the charge as laid. It is not for the accused to prove their innocence, and if at the end of this case you have any reasonable doubt that the case against the accused has not been made out it will be your duty to acquit them. It is my duty as prosecutor in this case to put these facts as plainly as I am able before you. It is not my duty to suggest what sentence should be passed by the court; nor is it my duty to act as is sometimes called as a persecutor. I am a prosecutor on behalf of the convening officer in this case.

THE JUDGE ADVOCATE: Perhaps you would indicate to the court that they are not obliged to acquit or convict both men.

COLONEL HALSER: Although this charge is a joint charge it does not mean to say you are bound to convict both of the accused. You may find that there is evidence against one accused which would warrant you convicting; on the other hand you may find there is no evidence, or not sufficient evidence against the other accused to convict in which case, of course, it would be your duty to convict the one and acquit the other.

This charge - a very simple charge - can be divided into three parts. First of all I have to prove to you, and I have to satisfy you as to the fact that 335 Italian citizens or therabouts were killed in or near Rome on or about 24th March 1944. I venture to think that you will have very little doubt after having heard all the evidence that that was in fact the case. The second part is that I have to satisfy you that this notion of killing the 335 Italians was a reprisal; again I do not think there will be any doubt about that in your minds because the accused have both made statements which I shall refer to later and in those statements they have admitted that the killing was as a reprisal. Then, sir, I have to satisfy you that what happened was a war crime - that the killing of 335 Italians was a war crime, and if I

satisfy you of that, of all those three points, I still have to satisfy you of one other point, that is to say that the accused were concerned in the killing.

As I see the position the facts in this case are not materially in dispute. The accused have admitted that there was the killing and the accused have admitted in their statements that they gave certain orders which resulted in the killing. They set up in their statements what might be, though I shall seek to show you is not, a defence, but I will deal with that later. So much for generalities.

I propose to divide my address into three heads; first of all to deal with the facts of the case, secondly to deal with the law as I see it, and thirdly to show you how the accused by their own statements knit into the picture. In order to be fully in the picture we must go back about nine months from the actual occurrence. The court will remember, and it is a matter of history, that the Fascist Government under Mussolini resigned in July 1943 and another government under the King of Italy and in the Kingdom of Italy was formed. In September 1943 that new government sued for and obtained from the Allies an armistice, and they at the same time asked the Allies, the British and the Americans, who were at that time on the point of invading Italy, for assistance. As soon as the Italian Government, the recognised Italian Government under the reigning sovereign, asked for an armistice and was granted it, it is my submission that the German forces in Italy became de facto occupying forces. In other words they ceased then to be Allies of the Italians and they became the occupiers of Italy which had not then been liberated by the American and British Forces who were continuing their attack.

It is a matter that is well known to everybody in this court that behind the German lines in Italy, and elsewhere, partisan bands were rising and there was undoubtedly in that part of Italy which was occupied by the Germans, which included in March 1944 the City of Rome, a number of partisan bands, and a number of other persons who were wholly dissatisfied with the puppet Republican Government set up by Mussolini and were anxious that their country should be liberated from the German yoke by the Allied forces, and they were only too glad to assist, in what small way they could, in the liberation by attacking the German Forces in occupation.

Under the laws and usages of war I do not suggest that what they did was lawful; it is quite clearly laid down both in the Manual of Military Law and Oppenheim that the occupied power, if they commit crimes against the occupiers, are guilty of a war treason if they are convicted but they must be convicted and if they are convicted they can be punished.

Now we come to the actual facts of this case. On 23rd March 1944 a party of German police were marching down the Via Rosella, and the time of that incident was about 1500 hours, three o'clock in the afternoon. According to the statements of witnesses it could not have been earlier than 2.30, 14.30, and could not have been later than 15.45, 3.45; I am taking the mean and saying 1500 hours. The timing is of some importance in this case as you will see in a moment -- 23rd March at 1500 hours. At that moment a bomb was thrown at this party of police from a house in the road and as a result of that bomb a number of German police were killed and others wounded; on the first count on 23rd March the number was 28 killed; later, as you will hear, that figure rose to 32.

It is now that the accused, Maexler first comes into the picture. He was the Governor of Rome at the time -- the Military Governor -- and according to witnesses whom I shall call before you he was very quickly on the spot, and according to his own statement. According to the witnesses who will give evidence he was anxious to blow up the house from which the bomb was thrown and generally was obviously extremely annoyed about the whole affair, as one might well expect. A number of men, women and children were taken from the houses in the locality, were made to stand with their faces to the wall and their hands above their heads. The houses were being ransacked and the bodies of the Germans and the wounded were being collected. Shots were being fired. An

Italian witness whom I shall call before you will tell you that Maelzer took violent steps against anybody who moved when they had their hands above their heads and were facing the wall, and in fact it so happened that one of the Italian police - he was a collaborator with the Germans - one of the police was in this party and he asked his chief if he could move whereupon Maelzer struck him over the back. That is important in my view to see the attitude of Maelzer from the very outset.

Now another person who was there was Kappler, a German in charge of an Aussekkommando of the Sicherheitspolizei. I think you will come to the conclusion long before the end of this trial that he is a most unpleasant person and I do not think you will pay a great deal of regard to his evidence unless it is corroborated, but I shall, I think, corroborate a lot of his evidence and also shall show you, when dealing with other matters which I shall come to later in my address, that it was against his advantage to give evidence which he made in his statement and to which I am going to refer. He will, of course, be called before you in person.

Now Kappler will tell you of Maelzer's behaviour. At this place, at 1615 about, the other accused in this case comes into the picture, von Mackensen, who was at the time Commander of 14th Army in those area Rome was. Maelzer telephoned von Mackensen and there was a discussion, Maelzer reporting what had happened, von Mackensen asking what was to be done and Maelzer making no suggestions. Mackensen said he must make some suggestion whereupon Maelzer suggested, according to Maelzer's statement, that there should be reprisals similar to those which had taken place at Paris and Nantes and other places. Presumably those were matters which were well known to these two speakers and it was clear what the idea was - that people were to be killed because of this bomb incident.

No instructions were given at that time but later there was another telephone call when von Mackensen asked who was available to be killed as a reprisal. Maelzer replied, according to his own statement, that there were none but he did not suggest that anybody should be arrested as hostages though the SD might have some people in custody in the gaols in Rome for offences against the state of Germany, whereupon - this is an important instruction if you accept the statement of Maelzer - von Mackensen said that only persons in arrest were to be killed - mark the words "in arrest were to be killed" - and hostages were not to be taken. I think "hostages" are used in a very loose way in this conversation because as I see it a hostage is a person who is taken in order to prevent an incident, not somebody who is taken after the incident has occurred. Mackensen then communicated with Keller who, as head of the Aussekkommando of the SD, would know who he had in the gaols.

THE PRESIDENT: ^M With who, who is this?

COLONEL NALSBY: I beg your pardon, Kappler, I am sorry. Maelzer communicated with Kappler to find out who was in the gaols and the reply was that there were about two hundred. There was another telephone conversation between Maelzer and von Mackensen when Maelzer reported to von Mackensen the result of his enquiries and he was told that there would be a decision later.

I have only been able to give you a picture of conversations between Maelzer and von Mackensen from - and I say it quite deliberately - from the Maelzer angle because von Mackensen's statement which he has made is not so detailed as Maelzer's so you are getting, in what I have told you about the telephone conversations, the evidence so far as Maelzer can recollect it.

When the actual order was given for the killing of a number of people is not quite clear. Maelzer says that he did not receive the order from von Mackensen until the next morning, the 24th March. Kappler, on the other hand, says that he has no doubt that the order was received at 2030 hours and he was working through the night to collect the people who were to be killed and to get their names. So far as the actual time is concerned, it may not be very material but I shall call before you, if he is available, Lieut-General Pastor, who was a Lieutenant General of the SS with whom Kappler had a conversation on the evening of the 23rd from which it was quite clear that at that time Kappler had received

his instructions that he was to kill, have shot, a ratio of one to ten and that you will hear from Kappler - how he collected the bodies for that purpose.

Whichever is correct - whether the accused, Maelzer's statement that the orders were given on the 24th or Kappler's statement that they were given on the night of the 23rd - whichever is correct there is no doubt that an order was given by von Mackensen to Maelzer and that Maelzer passed that order on that ten Italians were to be killed for every German policeman who had been killed in the bomb incident. There is no doubt further that the people who were to be killed were to be taken from the gaols of Rome. According to Maelzer, von Mackensen said that 320 were to be killed, that is ten times as many as the number of policemen who eventually died, that the choosing of the victims was a matter for the SD but that these people were to be selected from people who had been arrested and again more than the word "arrested" - for crimes involving death or fifteen years imprisonment; not merely people who had been sentenced to death but people who had been arrested for a crime which might, if they were found guilty, get them a death sentence or imprisonment for fifteen years. Von Mackensen further instructed Maelzer that he was to report progress, in fact to report the result by 1900 hours on the 24th, just over 24 hours after the bomb exploded.

Von Mackensen takes full responsibility for the issuing of that order, according to his statement which I shall place before you, but he says that by ordering the killing of people who were in cells he saved the lives of innocent citizens because those people who were to die, according to his orders, would have died anyhow. It may be German justice that if a man is arrested for an alleged crime that involves the death sentence he will certainly be convicted but it certainly is not British justice, nor is it the justice of any civilized power. That man must stand his trial and if convicted, unless the only punishment is one of death, he might be given an imprisonment and not a death sentence and there is certainly no suggestion that a man who serves fifteen years imprisonment is going to die anyway unless von Mackensen knew that a man who got fifteen years imprisonment from a German court would spend one or two years of that period in a concentration camp and then would die like so many others did in Germany.

I cannot see how von Mackensen can argue that by killing people who had been only arrested for a crime, how he can say that those people would die anyway unless he had a very good insight into the procedure in the German alleged courts. Now von Mackensen is alleged to have told Maelzer that he had nothing to do with the killings, he had only to enquire as to whether the action had been taken in accordance with the orders he had issued. You may think that that is a little strange, for an officer of the Germany Army to tell his subordinate "Oh well, yes, just have them killed; it does not matter what happens, how they get killed, just make certain they have been killed by seven o'clock to-night". Is that the sort of way the officer works in the German Army? I suggest to you that that shows complete disinterest in the whole proceedings so long as he has got his way and has arranged for the men to be killed, as he calls it, as a reprisal.

Now Kappler was given the job, as I told you, of selecting these unfortunate people who were to die. He will give evidence that he went round to gaols and this is what he found - these are the people whom he was able to select; four, only four, who had been condemned to death, seventeen who had been sentenced to long terms of imprisonment, four who had been arrested near the crime, one hundred and seventy six who - I am reading his own words - had been definitely proved to have committed acts according to the current German military laws which called for the death penalty, that is to say, as I understand his statement, they had not been tried, they had merely been arrested and if they had been convicted they might have been given the death penalty. Twenty-two were cases similar to the 176, that is to say 22 men who cases had been considered and were awaiting trial - that makes 223. At that time he had only to account for 280. Now, where was Kappler going to find the others? He went, sir, to the gaols and found there were 57 Jews who had committed no other crime than being Jewish and he added those to his list which made 280. They had not, according to Kappler, committed any crime at all except that they belonged to the Jewish race. Well, we get up to our 280 but four men die so 40 more Italians have to be selected. This time, Kappler will tell you, he went to the Italian police and got them to select and they selected, according to Kappler, in the same way as he, Kappler had selected. It is not clear whether it was the Italian police who were anxious

to get rid of more people or whether it was Kappler who was not doing his work properly - it is a little strange - but it was not 320 people who died on that 24th March but 335. 335 were taken to the Ardeatine cave eventually and shot in the appalling way which I will tell you in a moment. Be that as it may, fifteen at any rate more than was intended were shot because von Mackensen and Maelzer passed on an order and did not ensure that it was carried out properly.

You will remember that I told you that Kappler said that these people were selected according to the same basis as he, Kappler, had selected. I shall call before you one witness at least who was at the gaol who will tell you that quite obviously the selection was completely arbitrary because there were some people who had been sentenced to death by German courts who were not taken and others who had, one who had been acquitted by a German court and who was taken - there is an innocent man if ever there was one who died, and others were taken whose cases had not been investigated nor had they been interrogated by the German authority.

At 1200 hours on the 24th Kappler reported to Maelzer that the arrangements had been made and Maelzer was satisfied except that he was surprised that only four people from the Via Rosella were going to be shot - he thought there should be more. I think I mentioned that of the people in the Via Rosella who were taken to the gaols all the women and children were released in the early hours of the morning of the 24th and the men, with the exception of these four, as I understand it, were released during the afternoon of the 24th and it was only four people who actually lived in the Via Rosella who were shot in connection with this incident.

At this meeting between, or telephone call - I think it was a meeting - between Maelzer and Kappler the question arose as to who was going to do the shooting, which part of the German forces should have the job of killing in cold blood 320 - as they thought - people, or you may think that it was just any old number in excess of 320. The officer commanding the police battalion was asked if he would arrange it because it was his men who had been killed. He was unwilling because of the shortness of time, there were only seven hours left, and because his men would have religious scruples. Maelzer thereupon telephoned 14 Army. Though I do not think he spoke to the accused, von Mackensen, he spoke to a senior staff officer and asked for troops to carry out this shooting. The reply was "Oh no, this is a police case so the police must do their own dirty work and do the shooting". Well, eventually it fell on that part of the German police force who were so good at doing these mass killings, the SD, and Kappler was given the job. Kappler collected all his officers and men and arranged that they should take part in the shooting. He decided that it would be best that they should be shot in a cave for reasons which you will see later, and eventually he chose the Ardeatine cave. He issued the necessary instructions that the persons to be killed were to be collected in the prisons and were to be taken to the cave and at 1400 hours, two hours after the conversation at Maelzer's headquarters, this somewhat depressing party proceeded to move off.

They got to the cave in vehicles and then, as I see the position, five men were taken out of the lorries and their hands were bound behind their backs if they had not already been bound before. Five SS men were detailed to march behind them with their revolvers or sub-machine guns, they were walked to the end of the cave, as far in as they could go, they were then ordered to kneel down and they were shot in the back of the head by these five SS men. When those five SS men came out another five miserable men were marched in. This time the shooting was done by officers and Kappler took part. He took the second party in and he shot one of the men in the back of the head. Now, gentlemen, you can imagine the appalling position in that cave; crowds upon crowds of men marching down in fives, ordered to kneel down as close to the other bodies there as possible so that there would be enough room and then being shot in the back of the head by Kappler and his gang. To show you what type of man Kappler was he will tell you that he found on his return to his headquarters - and I am giving this as an instance because you may think it is amazing that officers of the German Army should allow this sort of thing to be done - a reprisal for the killing of the Wehrmacht personnel - by such a man as Kappler without making certain it was done properly - - - - -

THE PRESIDENT: Not Wehrmacht; they were of the police.

COLONEL HALSE: The police - they were a police battalion --- how they should allow this to happen without making certain that it was done in a decent way. You may think that indicates that they were not concerned in any way about it so long as they got what they wanted - terrorism of the Roman population. Well, Kappler went back to his headquarters and found one of his officers had not fired a shot so he talked to him, in his own statement, "in a cowardly way" and the next time the party of five went in he stood beside him and helped him to shoot into the head of one of these innocent men.

The firing went on until 2030 hours. Meanwhile Kappler had made all necessary arrangements for the Ardeatine cave to be blown in so that nobody could recover the bodies and nobody could see how the executions had been carried out. I shall show you these gruesome pictures of how those bodies were found, the way in which they were piled up in the cave when they were uncovered by order of the Mayor of Rome after Rome was liberated.

Now a report was made at 1900 hours, Kappler to Maelzer, Maelzer to von Neekensen, that the execution, the shooting, was going according to plan. Nobody was told "We are killing fifteen more than you told us" and Maelzer was so disinterested in the whole affair that he did not know until two days afterwards where the execution had taken place, and when a representative of His Holiness the Pope asked for a list of names he was unable to supply them. These are the gruesome details of the massacre in the Ardeatine cave.

With regard to the law there are one or two points I would like to address you on; first of all upon superior orders. I have no doubt that the orders in this case came from the High Command in Berlin but orders which are obviously illegal are, in my submission, no defence to a charge alleging a man has committed a war crime. The court will have in mind the relevant paragraph of the Manual of Military Law, paragraph 443 which is contained in Amendment No. 12 of the Manual which lays down quite clearly that a soldier is not bound to obey an order which is patently illegal and it says this: "Undoubtedly, a court confronted with the plea of superior orders adduced in justification of a war crime is bound to take into consideration the fact that obedience to military orders, not obviously unlawful, is the duty of every member of the armed forces and that the latter cannot, in conditions of war discipline, be expected to weigh scrupulously the legal merits of the orders received. The question, however, is governed by the major principle that members of the armed forces are bound to obey lawful orders only and that they cannot therefore escape liability if, in obedience to a command, they commit acts which both violate unchallenged rules of warfare and outrage the general sentiment of humanity".

THE PRESIDENT: I take it that these references are available to Dr. Keller and Dr. Christ ?

COLONEL HALSE: I have told counsel that I will let them have any document I am reading from to-night. Following on that the German courts themselves, at the War Crime trials at the end of the last war, the 1914-1918 war, decided quite clearly in the case which is known as the Llandovery Castle, a trial which took place at Leipzig, that to obey an illegal order is no defence to a war crime. I read from page 55 of the War Trial Reports which was published by His Majesty's Stationery Office: "The firing on the boats was an offence against the law of nations. In war on land the killing of unarmed enemies is not allowed (compare the Hague regulations as to war on land, para. 23(c), similarly in war at sea, the killing of shipwrecked people, who have taken refuge in life-boats, is forbidden". "Patzig's order does not free the accused from guilt. It is true that according to paragraph 47 of the Military Penal Code, if the execution of an order in the ordinary course of duty involves such a violation of the law as is punishable, the superior officer issuing such an order is alone responsible. According to No. 2, however, the subordinate obeying such an order is liable to punishment, if it was known to him that the order of the superior involved the infringement of civil or military law. This applies in the case of the accused" - and junior officers of a submarine were charged with firing at the life-boats of a ship which the U-boat had sunk and they pleaded that they only did it because their captain ordered them to do it. The Leipzig court held quite clearly that they must have known that that was wrong, it was obviously a wrong order, and that therefore there was no defence to the charge.

Now, passing to reprisals I do not suggest that a belligerent is not entitled to take reprisals. If you will refer to Chapter 14, again of the Manual of Military Law, paragraph 386: "If, contrary to the duty of the inhabitants to remain peaceful, hostile acts are committed by individual inhabitants, a belligerent is justified in requiring the aid of the population to prevent their recurrence and, in serious and urgent cases, in resorting to reprisals". I do not suggest here that the commander of the Rome garrison and the 14th Army commander were not entitled to take some reprisals but I suggest that the reprisal, as I will show you in a minute, must first of all only be after due enquiry has been made with a view to ascertaining whether it is possible to find out the culprits; secondly, that it must be against the locality, not the population as a whole, the locality where the crime was committed and, thirdly, that they must not be excessive.

If I may again refer to Chapter 14 of the Manual, on the first point I referred to, paragraph 456: "An infraction of the laws of war having been definitely established, every effort should first be made to detect and punish the actual offenders. Only if this is impossible should other measures be taken in case the injured belligerent thinks that the facts warrant them". It goes on: "As a rule the injured party would not at once resort to reprisals but would first lodge a complaint" and that is the position in this case. But you will notice that the Manual says quite clearly that you must first make enquiries with a view to seeing whether you can bring the true culprits to justice.

Secondly I say that reprisals should be against the locality concerned. Paragraph 458: "Although collective punishment of the population is forbidden for the acts of individuals for which it cannot be regarded as collectively responsible, it may be necessary to resort to reprisals against a locality or community, for some act committed by its inhabitants, or members who cannot be identified". My submission, therefore, that if after due enquiry, which I think you will be satisfied there could not have been in this case - shooting takes place at 3 o'clock one afternoon, the killing as an alleged reprisal starts at 2 o'clock on the next afternoon, less than 24 hours after the actual incident - first of all then I would submit that the belligerent must make enquiries and secondly, if he fails to find the culprit, he must proceed against the locality where the alleged incident took place. There can be no question that with the exception of the four men who were taken to the prison who were arrested near the scene of this outrage, not one of those 335 Roman citizens was anywhere near Via Rosella on the afternoon of the 23rd March 1944. They could not have been, they were all in gaol. It would be the same as if you had reprisals for an attack made on the police, let us say in the East End, and the police suddenly decided to have a reprisal against the men awaiting trial in Wormwood Scrubs.

The next point is that they must not be excessive. Paragraph 459: "What kinds of acts should be resorted to as reprisals is a matter for the consideration of the injured party. Acts done by way of reprisals must not, however, be excessive, and must not exceed the degree of violation committed by the enemy".

I suggest here it would have been quite feasible before any question of shooting people started, to have made enquiries in the locality with a view to seeing whether anybody could be apprehended and charged with the offence.

Now may I refer to the leading text book on International Law, Oppenheim, Volume 2, the 6th Edition, page 447. Oppenheim is dealing with reprisals which are admissible: "Whereas reprisals in time of peace are admissible for international delinquencies only, reprisals between belligerents are admissible for any and every act of illegitimate warfare, whether it constitutes an international delinquency or not. Thus, the Germans during the Franco-German war frequently, by way of reprisal, bombarded and fired undefended open villages where their soldiers had been treacherously killed by enemy individuals in ambush who did not belong to the armed forces". Well, let us put this case on a par with the incidents of the war in 1870. If Maelzer had decided, as a reprisal, to blow up the house from which this bomb was thrown no-one would say he was not entitled to do it and if, by some mischance, a Roman citizen had been in that house at the time the house was blown then I would be the last to suggest that Maelzer had committed a war crime, or Mackensen for that matter, but I do

7

suggest that he is not entitled to kill 10 Italian subjects because one German subject was killed. "Again, Lord Roberts, during the South African War, ordered by way of reprisal, the destruction of houses and farms in the vicinity of a place where damage was done to the lines of communication. Or, again, the appalling atrocities committed in 1914 during the World War by the German soldiery in Belgium, Germany in so far as she did not deny them altogether, declared to have been necessary as measures of reprisal.

There is nothing in the Hague or Geneva Convention which deals with reprisals and this court must therefore consider all the text books on the subject in order that they may come to the conclusion, as a military court, whether what the accused did - if you find that - was justified as a reprisal. At the conclusion of the war of 1914-18 the Peace Treaty Commission set up a Commission of Responsibility. It was a commission on which all the then allied nationalities were involved and the names of the British members are well known, eminent Justices; Sir Gordon Hewitt, later Lord Hewitt, Lord Chief Justice and Sir Ernest Pollock. At that commission they decided what in their opinion - it was, of course, only their opinion which had not been tested by courts at all - what in their opinion should be war crimes and they headed their list with murder and massacres, systematic terrorism and secondly, with putting hostages to death. Now, what else was this, the Ardeatine cave, than an attempt at terrorizing the Italian population in general and the Roman population in particular. Professor Lauterpacht wrote a long article in the British Year Book of International Law in 1944, if I may read two paragraphs of it which deal with the effect of the operations on reprisals.

They are on page 76 onwards, and I think you will find that they give you great assistance in coming to your conclusion in this case. "A war crime does not necessarily cease to be such for the reason that it is committed under the guise of reprisals. But, as a rule, an act committed in pursuance of reprisals, as limited by international law, cannot properly be treated as a war crime. A tribunal confronted with the plea of reprisals as a justification of the offence will be faced with a task of considerable difficulty. International law regulates, in a necessarily rough and indeterminate manner, the occasions for and the use of reprisals both in peace and in war. It postulates the requirements of a prior attempt at redress by negotiation" - that I think is obviously more in peace. I suggest one could also read in there "attempt at redress by apprehending the criminals themselves" - "of proportionality, of reasonableness, of compliance with fundamental principles of war such as respect for the lives of non-combatants, and of due consideration for the legitimate interests of neutrals. But the law on the subject is necessarily elastic. The element of reprisals may have a significant and perplexing bearing upon the plea of superior orders. It has been shown that the strength of the plea of superior orders is conditioned by the degree of heinousness of the offence and its approximation to a common crime apparently divorced both from belligerent necessity and from elementary considerations of humanity. But the force of this latter consideration may become considerably impaired - though never totally eliminated - when the act has been ordered, or represented to the subordinate as having been ordered in pursuance of reprisals against a similar or identical crime committed by the adversary. The subordinate may be expected when confronted with an order utterly and palpably contemptuous of law and humanity alike, to assert, at the risk of his own life, his own standard of law and morality. This is an exacting though unavoidable test. But no such independence of conviction and action may invariably be expected in cases where the soldier or officer is confronted with a command ordering an act admittedly illegal and cruel but issued as a reprisal against the similarly reprehensible conduct of the adversary. We may attribute to the accused a rudimentary knowledge of the law and an elementary standard of morality, but it may be more difficult to expect him to be in possession of the necessary information to enable him to judge the lawfulness of the retaliatory measures in question in relation to the circumstances alleged to have given rise to them. An example will illustrate the position; No person can be allowed to plead that he was unaware of the prohibition of killing prisoners of war who have surrendered at discretion. No person can be permitted to assert that, while persuaded of the utter illegality of killing prisoners of war, he had no option but to obey an order. But the situation is more complicated when the accused pleads not only an order, but the fact that the order was represented as a reprisal for the killing by the adversary of the prisoners of his own State" - then it is not

material to this case - and finally a sentence on page 77: "While it is imperative that we should bear in mind the limitations upon the prosecution and punishment of war criminals - limitations such as those following from the plea of superior orders, from the controversial character of some of the laws of war, and from the application of reprisals - it is of equal importance that we should not in this matter lose sight of the wood for the trees. These exceptions may make the work of the tribunals more intricate and more responsible, but there is no reason to assume that they will invariably affect the issue. Superior orders may be invoked, uncertainties of the law of war may be relied upon, and reprisals may be cited as an excuse - but that does not mean that when thus appealed to they will confound the ends of justice. They will be subjected to judicial scrutiny. They may be found sufficiently weighty to warrant acquittal; they may be considered in the light of and as having the effect of extenuating circumstances; or they may, upon careful investigation, be brushed aside as a flimsy device to cover the horrors of a war crime. At the same time, it is clear that all these three factors imply a limitation upon the punishment of war crimes which cannot be disregarded consistently with the determination to conduct the trials of war criminals within the limits which law and justice impose". Those are the observations of Professor Lauterpacht, an eminent international lawyer.

(At 1140 hours the court adjourns)
(At 1155 hours the court re-opens)

(The accused are again brought before the court)

COLONEL HALSE: When the court adjourned I was going to get to the law at the present day by referring to the Nuremberg International Military Trial. The court will remember that the tribunal were given a charter under which they had to work and in one moment I will refer to that part of the charter which relates to war crimes. Keeping in date order I read a part of the indictment against the accused at Nuremberg. You will remember it was divided into four counts, the first charge being 'waging aggressive war and crimes against peace'; the third charge 'war crimes' and the fourth count 'crimes against humanity'. Now part of the particulars of the third charge, 'war crimes', include this paragraph: "between March 1944 and April 1945, in Italy, at least 7500 men, women and children, ranging in years from infancy to extreme old age were murdered by the German soldiery at Civitella, in the Ardeatine caves in Rome, and at other places. That count you will see on page 4 of part I of the trial of German major war criminals. That says quite clearly that when the International Military Court at Nuremberg gave their judgment they were called upon to make a finding whether or not those matters were a war crime.

Sir, the judgment given at Nuremberg, covering as it would have to so much if it covered every part of the charge, does not specifically state whether they find any particular part of the indictment a war crime. On the other hand there are parts of the judgment which quite clearly state that the court find it was not a war crime or that it was not a crime against humanity. The judgment, as you are aware, lasted for a day and a half and I would not ask you to read all of it. You may take it from me that there is nothing in the judgment of Nuremberg to show that the court found that the killing of the Italian civilians was not a war crime as charged in count 3 of the indictment.

There are one or two references to massacres, similar to the massacre of the Ardeatine cave, referred to in the judgment. Taking them in chronological order, the Tribunal when referring to war crimes and crimes against humanity at page 16886 said, reciting various war crimes: "The Tribunal proposes, therefore, to deal quite generally with the question of War Crimes, and to refer to them later when examining the responsibility of the individual defendants in relation to them. Prisoners of war were ill-treated and tortured and murdered, not only in defiance of the well established rules of international law, but in complete disregard to the elementary dictates of humanity. Civilian populations in occupied territories suffered the same fate. Whole populations were deported to Germany for the purposes of slave labour upon defence works, armament production and similar tasks connected with the war effort. Hostages were taken in very large numbers from the

civilian populations in all the occupied countries, and were shot as suited the German purpose". On page 16895, again dealing with war crimes it says: "The practice of keeping hostages to prevent and to punish any form of civil disorder was resorted to by the Germans; an order issued by the defendant Keitel on the 16th September 1941 spoke in terms of fifty or a hundred lives from the occupied areas of the Soviet Union for one German life taken. The orders stated that 'it should be remembered that a human life in unsettled countries frequently counts for nothing, and a deterrent effect can be obtained only by unusual severity'. The exact number of persons killed as result of this policy is not known, but large numbers were killed in France and the other occupied territories of the West, while in the East the slaughter was on an even more extensive scale. In addition to the killing of hostages, entire towns were destroyed in some cases; such massacres as those of Oradour-sur-Glane in France and Lidice in Czechoslovakia, both of which were described to the Tribunal in detail, are examples of the organised use of terror by the occupying forces to beat down and destroy all opposition to their rule". No-one can forget the case of Lidice in Czechoslovakia where you will remember the whole village was destroyed and every human killed because Heidrich was shot in the vicinity. Similarly in France a few Germans were killed in the village Oradour-sur-Glane, with the result that the whole of this village was burnt and every inhabitant was killed in the church.

I suggest these are similar, though possibly the number of victims killed are greater, to the Ardeatine cave case, and the judgment of Nuremberg made it quite clear that the whole object was to inflict terror on the population of the occupied country. On page 16925 the Tribunal sets out the charter so far as war crimes are concerned: "War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of, or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property -", and so on. So again the charter expressly says those shall be war crimes, but the Tribunal could well have said that any particular one was a war crime, but the Tribunal have made no such statement and on page 16926 a submission was made by counsel for the defendants "that Germany was no longer bound by the rules of land warfare in many of the territories occupied during the war, because Germany had completely subjugated those countries and incorporated them into the German Reich, a fact which gave Germany authority to deal with the occupied countries as though they were part of Germany. In the view of the Tribunal is it unnecessary in this case to decide whether this doctrine of subjugation, dependent as it is upon military conquest, has any application where the subjugation is the result of the crime of aggressive war. The doctrine was never considered to be applicable so long as there was any army in the field attempting to restore the occupied countries to their true owners, and in this case, therefore, the doctrine could not apply to any territories occupied after the 1st September 1939".

Finally, sir, the Tribunal's observations against the defendant Keitel. Keitel, whom I have referred to before "ordered that attacks on soldiers in the East should be met by putting to death 50 to 100 Communists for one German soldier, with the comment that human life was less than nothing in the East. On 1st October he ordered military commanders always to have hostages to execute when German soldiers were attacked. When Terboven, the Reich Commissioner in Norway, wrote Hitler that Keitel's suggestion that workmen's relatives be held responsible for sabotage, could work only if firing squads were authorised, Keitel wrote on this memorandum in the margin: 'Yes, that is the best'. Again an order was issued which was referred to by the Tribunal that all civilians suspected of offences against troops should be shot without trial. That was in 1941.

The Nuremberg Tribunal does not expressly say that the Ardeatine cave killing was a war crime; it does not say that it was not a war crime. A military court for the trial of war criminals must be well aware of the order of 18th October 1942 issued by Hitler, known as the Fuhrer befehl, which ordered the killing of commandos. Many German soldiers have been convicted for obeying that order and killing commandos. It was clearly

7

stated by Hitler in the order that the order was being issued as a reprisal. The British and American court trying war criminals have accepted that while they accept that a reprisal can be taken, the reprisal must be approximate to the offence, and the court must in this case, as in all other cases in my submission, decide whether or not the reprisal was a lawful one. Did the accused when they gave the orders realise that they were issuing an unlawful order? I think you will be satisfied after hearing their own statement that they realised quite well that this order was not a lawful order to give.

Von Mackensen, as you will hear in a moment, says that he asked Kappler if any of the persons who were to be shot as this reprisal had put in an appeal. Kappler's answer to that was that they had put in an appeal, but that according to the SS rules appeals did not matter very much and they would not be considered anyway. Despite hearing that Von Mackensen never made an enquiry to find out whether those appeals had been dismissed. He allowed those 335 people to be shot knowing that some of them had put in appeals for mercy. In my submission, sir, this complete disregard by the accused for the way in which these men were collected together, selected, killed, shows that they must have been firmly convinced that the killing of a number of people, not matter how, was essential in order that the terror which they wanted to impose on Rome was effected, and they made sure that their troops did not take part in the shooting; they left that to the SS, the black sheep of the Nazi Party.

Again the accused both say that they are good soldiers. I do not suggest they are not good soldiers; they are both regular soldiers, but they say now this was an SS responsibility. If it was an SS responsibility why did Maelzer not say to von Mackensen "Look here, if this is a SS responsibility why do the SS not issue the order for this killing. Why does Wolf, who is head of the SS in Italy, not issue the order for this killing? Why should we soldiers have anything to do with the killing of these hostages as reprisals? If it is an SS matter let the SS give the order". And why could not von Mackensen have gone to Kesselring and said "Why does it not come through SS channels and not through our channels. Why should we have anything to do with this?" Why did they not say as was said on another occasion "We wash our hands of the blood of these innocent victims". I suggest that this was merely again the principle in the German Army of reigning by fear and subjugation of the occupied territory. The Germans acted on that policy wherever they were and wherever they went during this war and this is merely another example of the massacre at Lidice and the killing of 50 Russians for every German who was killed in the Near East, Russian battles.

I told you that I was going to read at the end of my address the statements of the accused to show you how they came into this picture. I think it would be convenient if I read at the same time the affidavits of the persons who took the statements. I understand there is no objection to the affidavits going in under Rule of Procedure 81A. This is the affidavit of Lieutenant Colonel Alexander Paterson Scotland, Intelligence Corps.

(Affidavit of Lieut.Col A.P.Scotland, dated 25th July 1946, is read, marked Exhibit "1", signed by the President and attached to the proceedings)

(Statement of the accused Mackensen, dated 27th June, 1946, and English text is marked Exhibit "2", signed by the President and attached to the proceedings)

(The historical portion of Exhibit "2" is read)

(At 1230 hours the court is closed until 1400 hours)

(The accused are again brought before the court)

COLONEL HALSBY: May it please you. When the court rose for the adjournment I had just finished reading the historical part of von Mackensen's statement. I will now go on with the statement.

(The remainder of the accused Mackensen's statement is read)

7
COLONEL HALSE: The accused Maelzer was interrogated at the Disciplinary Training Centre, Mtonsa. There is an affidavit of Captain Douglas Albert Thorn, Royal Armoured Corps, and an affidavit of Mr. Hans Propper, the officer who took the statement and the person who was the interpreter. I will read, if I may, the affidavit of Captain Thorn.

(Affidavit of Captain D.A. Thorn, dated 18th October,

1946, is read, marked Exhibit "3", signed by the President and attached to the proceedings)

(Statement of the accused Maelzer is read, marked Exhibit "4", signed by the President and attached to the proceedings)

(Affidavit of Hans Propper is read, marked Exhibit "5", signed by the President and attached to the proceedings)

COLONEL HALSE: Those are the statements of the accused taken after caution and I think those quite clearly show to you what views the accused took of this incident. I propose to say nothing further at this stage, but now to call before you the witnesses for the prosecution.

HERBERT KAFFLER is called in, and, having been duly sworn, is examined by COLONEL HULSE as follows:--

- Q Is your name Herbert Kappler ? A. Yes.
- Q Are you held as a prisoner by the British authorities ? A. Yes.
- Q Were you a member of the SS ? A. Yes.
- Q What were your duties at the beginning of 1944 ? A. I was in charge of the detachment of the SD in Rome.
- Q How many men had you in your sussenkommando ? A. About 60.
- Q What were your duties ? A. As I was told by Field Marshall Kesselring my duties were to keep order in the back of the fighting units.
- Q What is your age ? A. 39.
- Q Do you remember a bomb exploding in the Via Rosella ? A. I do.
- Q Was that 23rd March 1944 ? A. Yes.
- Q At what hour ? A. Between 1400 and 1500 hours.
- Q When did you first hear of it ? A. I cannot remember exactly, but approximately about 20 minutes after.
- Q Where were you ? A. In my office.
- Q Where was this ? A. In the Embassy.
- Q What did you do ? A. I collected immediately some of my men who were in the vicinity, and I do not remember whether we went in one or two lorries to the place where the thing was committed.
- Q Did you see anybody on the way ? A. Yes, about 100 or 120 metres before I reached the point I met the then Consul, von Moelhausen.
- Q That is the Consul at the Embassy ? A. That is so.
- Q Are we speaking of the Embassy to the Mussolini Government or the Embassy to the Vatican ? A. I am speaking about the Embassy to the Republic, the Italian Republic, the Republic of Mussolini.
- Q Do you speak English, Kappler ? A. I understand a little bit.
- Q Did the Consul tell you anything when you met him ? A. Yes, he stopped in an excited way my car.
- Q Did he tell you who was at the scene of the incident ? A. He told me that I should see to it that nothing rash should be done because apparently they had the intention to blow up the whole quarter.
- Q Did he say who intended to blow up the whole quarter ? A. I believe he was very excited against General Maelszer.
- Q Is he the accused in the dock ? A. Yes.
- Q Did you then go to the scene of the incident ? A. Yes.
- Q Did you see General Maelszer there ? A. Yes.
- Q Did you have any conversation with him ? A. Yes.

Q Will you tell the court what you said to him and what he said to you ?
A. Of course I cannot remember literally now after two and a half years exactly the words which were spoken between us, but I remember quite exactly the gist of this conversation.

Q What was the gist of the conversation ? A. The General was very depressed; he had tears in his eyes and he showed me the bodies of these Germans who were lying about in a hardly recognizable state. Then I remember that he said also approximately these words that the whole quarter should be blown to pieces, but of course after a few words of conversation the realization of such a plan was excluded.

Q Why was that excluded ? A. I believe that it was quite sufficient that I talked to him in a rather convincing voice, and I said, "I do not think that is really necessary and apart from that I do not think this practicable."

Q What action was being taken by other people in the neighbourhood ? A. Do you mean from our soldiers ?

Q Yes ? A. Some action was taken already before I arrived.

Q What was that action ? A. The search for the culprits and the searching of the houses in the vicinity.

Q Had an Italian citizens or Roman citizens been arrested ? A. Yes, Italian citizens were already under arrest and they were being arrested during the time.

Q Where were they being put ? A. They were put near the railings of the Barberini Palace which lies in the Della Quattro Fontane.

Q With their hands up and faces to the wall ? A. Hands up, yes, but I do not remember whether they were facing the wall.

Q Did you have any other conversation with Maelzer ? A. I do not remember whether I still had a further conversation there and then with him.

Q Did you understand who had given the order for the searching of the houses ? A. I do not know who gave this order, but when I arrived I carried this order out.

Q Was Oberfuehrer Dollmann present ? A. Yes.

Q Did you later see Maelzer in his office ? A. Yes, I went to see him.

Q He was the commandant of Rome, was he not ? A. Yes, he was commandant of the open city of Rome.

Q At what time was that ? A. About 1630 hours; maybe a little bit later.

Q Did you hear Maelzer having a conversation on the telephone ? A. Yes.

Q Who was that with ? A. With HQ 14. Army Group, and I believe with von Mackensen.

Q You only heard the Maelzer end of the conversation ? A. Yes, but I do not know whether I paid particular attention at that time to this conversation; as a matter of fact, I do not think so.

Q Can you remember anything about that conversation ? A. I got the receiver after Maelzer finished his conversation and from my conversation with Mackensen I could draw some conclusions about which matters the previous conversation was held.

Q What was your conversation with von Mackensen ? A. Again, I can only give the gist, but a very exact gist.

Q Had you met von Mackensen before ? A. I do not think so.

Q How did you know it was von Mackensen on the other end of the telephone ?
A. I do not know; either Mackensen himself said that Mackensen was his name or maybe Meisler told me so.

Q Tell us what the conversation was about ? A. The question was what sort of reprisal actions should be taken for the outrage which was committed in the Via Rosella.

Q Yes ? A. Mackensen and myself -- both of us were convinced that from higher authority an order will be issued that Italian citizens in the ratio from one to 10 would have to be shot as a reprisal, and the result of our conversation was the following: If it will remain the responsibility of Army number 14, i.e., General von Mackensen to see about these reprisals then he would issue the order that the ratio should be one to 10 of those who had to be shot, and that would be also the number which would be published, but in reality it would be my task to shoot only so many -- only so many people should be shot as are worthy of death.

THE PRESIDENT: Did he say "my task would be" or did he not ? A. Yes, my task, my duty. Concerning the conversation between Mackensen and myself about the words "worthy of death" I would like to give an explanation to the court.

THE JUDGE ADVOCATE: I am not getting a very good picture of this conversation. He says he is talking to von Mackensen on the phone, and then he said the result was that if it remained on Mackensen to take reprisal action it would be a shooting in the ratio of one to 10, and that would also be the number of the publication, but in reality it would be "my task to shoot only so many as were worthy of death". Whose task?

THE INTERPRETER: Kappeler's task.

COLONEL HALSE: Why do you say "my task" ? A. At this moment it was not really the question of the execution itself; it was the question, to say it in a trivial way, to provide the lists, the nominal roll, of those who had to be executed.

Q Do I understand you to say that it was your duty to find the bodies who were to be shot ? A. That is so.

Q And that though there would be publication that the shooting was 10 to one and the order was shooting of 10 to one, less than 10 to one would in fact be shot ? A. Provided that it would remain the responsibility of von Mackensen to issue the order for reprisal.

THE JUDGE ADVOCATE: Do I gather that at this time von Mackensen was simply saying, "If I get certain orders you will do certain things". A. That is so.

COLONEL HALSE: You wanted to explain the word you used "worth of death". Will you explain that very shortly ? A. So that Italian authorities should not be mixed in the shooting of hostages it was the usage that only such people should be shot who either were condemned to death or who were awaiting a condemnation to death.

THE JUDGE ADVOCATE: I am still getting no picture. Does the witness mean that had been the practice or that was to be done in this case ? A. The usage, the practice.

COLONEL HALSE: Do you mean that it was the practice in the past only to kill far reprisals people who had been sentenced to death or who had been charged with an offense which involved the death sentence ? A. In those cases where I had to choose the victims, yes.

Q So this is not the first experience you have had of reprisals ? A. No, it is not.

Q What was the ratio of reprisals in other cases you had to deal with?
A. Always one to 10.

Q Did you always shoot one to 10? A. Yes, because it was always a number which could easily be reached at without taking innocent people.

Q Do you mean by innocent people those who were not in jail? A. No, more.

THE PRESIDENT: I do not understand that? A. In my opinion if somebody is in prison he is still not guilty.

COLONEL HALSE: So you did not take any of those? A. Yes, as far as they were condemned to death or were expecting the death sentence.

Q How could anybody expect the death sentence unless he had been convicted?
A. If I may give an example. If a member of an organization which was hostile to our forces at that time, if such a member was found with a weapon in his hands then it was the usage that such a man would be convicted and condemned to death.

Q And would you take such a man as being one worthy of death before he had been tried by a court? A. If I had the order to shoot people in the ratio of one to 10 then I would have taken such people, so as to avoid to take other Italians who were less guilty.

Q This policy of taking one to 10 of people who were in jail; was that well-known in the German Army in Italy? A. I do not know, but in my circles where we had to deal with them it was known.

THE PRESIDENT: That means in the SD? A. No, what I mean is in the region of Rome; whether it was known to the whole army in Italy I do not know but in the region of Rome it was well-known.

COLONEL HALSE: During your conversation with Mackensen did you discuss the question of people who had not been tried as people being worthy of death? A. I believe I have spoken with him about it because of the high number of victims which was asked for. Whether this ratio of 32 ----

Q Do you mean you made it clear to Mackensen that you would have to include in your number people who had not yet been tried? A. Whether I did this with these words I do not know but I believe that Mackensen himself asked me whether we shall have enough people available because of this high number required.

Q What did you tell him when he asked you that? A. I said before that I believe that this conversation was held, or this question was asked. Whether this question was really raised in this rather short conversation, and if the question was raised whether it was answered I really do not remember. The result of the conversation was what I have said already before.

THE JUDGE ADVOCATE: It just does not make any sense at all to my mind. What he said was, "I believe I spoke to von Mackensen about the high number and I believe Mackensen asked me if we should have enough available because of the large number of people involved." The question asked him, and what he might apply his mind to, is what does he say he answered to that question that the senior officer asked him? A. I said that I do not remember really this question of von Mackensen, but that I assume, that I believe that he asked me this question and that is the reason that I cannot really say exactly what I might have answered to such a question.

COLONEL HALSE: Passing from there, did you do anything after your telephone conversation with Mackensen? A. I believe I went back to my office.

Q When did you next hear anything of this incident? A. It is quite natural

of course, that almost continuous conversations had taken place between the various offices and particularly, almost exclusively, dealing with this incident.

Q Do you remember any further telephone calls with instructions coming from Haelser's headquarters? A. Yes, I do.

Q Who did that telephone call come from? A. I believe to remember surely from Major Pohn.

Q Was he the 1A? A. Yes.

Q At what time was that, about? A. At approximately 1900 hours, perhaps 2000 hours.

Q What did Pohn tell you? A. Pohn issued an order to me.

Q What was the order? A. The order was 10 times the number of the victims have to be shot within 24 hours.

Q Did Pohn tell you who that order came from? A. He surely said so and I believe to remember now that he said from Army headquarters.

Q Do you mean 1A Army? A. No, Army Group 'C'.

Q That is Kesselring's headquarters? A. Yes.

Q If you refer to him again will you refer to him as OHSW.

THE PRESIDENT: What does OHSW mean?

COLONEL HALSE: Ober Befehls-haber South West.

THE PRESIDENT: That is his headquarters? A. That is Kesselring's headquarters.

COLONEL HALSE: OAK 1A is Hackensen. (To the witness) As a result of this order which you got, did you have any other telephone conversations? A. Yes.

Q With whom did you speak? A. I telephoned with General Harster who was in charge of the secret police.

Q Did you tell him what orders you had got? A. Yes, I recollect exactly the contents of this telephone conversation.

Q Whose duty was it now to select the unfortunate victims? A. Exactly it was the duty of the person who got the order.

Q Who was that? A. In my opinion the German Commander of the City of Rome.

Q Who, in fact, did do the getting of the names? A. Partly myself.

THE JUDGE ADVOCATE: I do not follow this at all. I understand that a verbal conversation over the telephone comes from Kesselring's headquarters saying that 10 times the number of victims have got to be shot within 24 hours. Who is that order to?

COLONEL HALSE: Pohn is 1A to Haelser.

THE JUDGE ADVOCATE: Who has this order come to?

COLONEL HALSE: I understand that Pohn received the order from Kesselring's headquarters.

THE JUDGE ADVOCATE: I appreciate that. When an order is given somebody must be the recipient of the order to carry it out. I would like to know who was given the order to carry out -- Kesselring's order.

7

COLONEL HALSE: When you had the telephone conversation with Bohm was the order given to you to put into execution? A. No.

Q Why was the order given to you? A. As I have mentioned before it was the usage that not just any Italian citizen was taken as a victim.

Q Kappler, do you say the order was given to you to carry out? A. The order for the shooting in this moment not.

Q Was the order that OBSEW had said the ratio of 10 to one would be shot within 24 hours handed to you for executive action. In other words had you got to do anything on that order? A. Yes.

Q What had you got to do? A. I had, if I may say so, to choose death worthy persons and to draw up the nominal roll.

Q So you had an executive function in this matter? A. Not a function which came out normally by habit which I took over when the previous cases -- it seemed more humane to me to shoot, as I used to do it, to choose so-called death worthy, instead of choosing other people which might have been done if another command had to deal with the matter.

Q At any rate, Kappler, you did the selection this time? A. Yes, in the numerical limitation as I have told it before.

Q First of all what happened to the people who were taken to prison from the scene of the bombing; first of all, women and children? A. Women and children were handed over by my personal order to the Italian police with an instruction to take care of them and to release them afterwards.

Q When is afterwards? A. I believed they were released during the same day, but at the latest the following morning.

Q The 23rd or the 24th? A. Women and children on the 23rd.

Q Now the men who were captured? A. The captured men were released, on my explicit order, on the morning of the 24th, with one exception.

Q Who gave you the order to do that, or did you do it on your own initiative? A. I did it on my own initiative.

Q Did you ever tell Maessler or Mackensen that you had done so? A. Surely to General Maessler; General Mackensen, I do not believe so.

Q You had to get the names during the night, had you not, because the execution had to be finished by 7 o'clock on the 24th? A. Yes.

Q How did you collect the names of the people who were to be killed, very shortly? A. I cannot recollect now the numbers, but I can give the groups without numbers. Firstly, some prisoners who were already sentenced to death.

Q How many of those were there? A. In prison one and a half years ago I had a reconstruction of the figures but it was taken away from me and now after two years and a half I cannot recollect the figures. I can give the figure roughly.

Q Give the figure roughly; first of all, how many condemned to death? A. Three or five.

Q Let us put it down to the maximum of five. How many people had you selected who were arrested near the scene of the incident? A. Two; at the most four but I believe two.

Q What is the next number? What about people who had been sentenced to a long term of imprisonment? A. A decision on that was given by the superior Army Judge.

Q That is not the question I asked you. I asked you how many were selected of people who had been sentenced to long terms of hard labour? A. It might have been 15 or 20.

Q They, of course, were not certain of death? A. No.

Q How many cases were there, according to your records, when men might be found guilty of a crime involving the death penalty? A. It was either 176 or 167 but I believe it was 176.

Q Was there any other type of case?

THE JUDGE ADVOCATE: I am not clear on that type at all. Does that mean people who committed a serious offence, or people who were bound to be sentenced to death?

COLONEL HALSE: Do you mean that these 176 were charged with serious offences or that there was evidence available which would warrant them being charged with a serious offence involving the death sentence? A. I have not understood.

Q Of these 176 were they charged with an offence involving the death sentence, or was there evidence against them available in the files which would justify them being charged with an offence, involving the death penalty? A. My reply is yes, because either it was this way or the other.

THE PRESIDENT: You mean the total was made up of both categories? A. Yes.

COLONEL HALSE: Was there another class of people that you selected?

A. Which I selected, not, but there were two or three other groups which were finally put on the list, but I did not select the names.

Q I am not talking of the people who were selected by the Italian police; I am talking of the ones that you selected when the number of victims was 23? A. Yes.

Q According to my figures now you have given us 205? A. The 57 Jews which were at the hands of the SD, who according to orders should have been sent to Mauthausen, were put on the list.

Q Were they deserving of death? A. No.

Q Why did you put them on the list? A. They were put on the list because somebody had to be put on the list and because I had to draw up the list from these people which I had at my disposition in the jail.

Q Did you tell anybody in the Army that you had added 57 Jews to your list. When I refer to the Army I mean Maerker and his Staff or Mackensen and his Staff? A. It may be that I mentioned it in a conversation which I had on the following day with General Maerker, but I am not sure.

Q Did you have to render a return of how you had made up the figures? A. To a military HQ, not.

Q To whom? A. It was not requested that I should render the return, but I did it on my own initiative to Hqs. According to orders I had to submit the list to General Maerker, but I took it again with me.

Q Did you tell him then how the list was made up? A. Perhaps at this moment I did not.

Q That is to say the majority of the people on the list had not been sentenced to death? A. Yes.

THE PRESIDENT: He said he was ordered to take the list to Maerker later?

COLONEL HALSE: He said next day at 12 o'clock when I raised the question of

of the Jews earlier. Then you remember he told Maelzer that the majority of the people were not sentenced to death.

THE INTERPRETER: "It happened on the next day and I took this nominal roll with me."

THE WITNESS: I know sure that General Maelzer did not check this list and did not look through it.

COLONEL HALSE: One more question of how you reached the figure of 260 which you were working on at that moment. You have given us at a maximum 205, plus the 57 Jews, making a total of 262. Do you remember how the other 18 were made up?

THE JUDGE ADVOCATE: Before he put the Jews on he knew there were 32 deaths?

COLONEL HALSE: I think he says 28.

THE JUDGE ADVOCATE: What does he say in his statement?

COLONEL HALSE: When you added the 57 Jews was that when the victims were 32 or 28? A. 28.

Q So now when there were 28 policemen killed we have got to 262 victims; how did you collect the other 18? A. I have stated already before that the figures which I can give today are very approximate only. In the interrogation of 15th August 1945 I made an exact statement of the figures.

Q All I want to know is this: the maximum number of people who had been sentenced to death by courts who were on this list was five, was it not? A. At the utmost 12.

THE PRESIDENT: I thought he said three to five just now? A. But I stated exactly out of my memory today. I can give the figures only very roughly in 10s; if the difference is 10 up and 10 down

COLONEL HALSE: Perhaps you will, during the adjournment, write down how you got to the 280 and let us see it when you come back? A. Would it be possible to bring this tomorrow; I have in the jail a piece of paper where it is written down.

THE PRESIDENT: That is to refresh his memory?

COLONEL HALSE: I was going to give him the chance now to do the mathematical calculations. In his evidence he said 12. I will not press it.

THE PRESIDENT: That is all you want to know.

COLONEL HALSE: That is all I want to know.

(at 1550 hours the court is adjourned until 1610 hours)

COLONEL HALSE: Kappler, how did you get the names of these 200-odd people who were in prison? A. I gave orders in the evening and also during the night to the other officers dealing with this matter to provide me with suitable names, and these proposals from the various offices were handed into me at the same time with the files concerning the persons, and by studying the files and sometimes even making personal investigations with the people concerned, after having done this I made the decisions to the best of my ability and knowledge.

Q Are these the sort of documents you saw? (handed) A. No, they are not.

Q Do you know what those are? A. These are only index cards concerning prisoners and have nothing to do with this matter at all.

Q You got these names then from your own officers; what about the court-martial at Rome, did they give any information? A. Yes.

Q And who gave you those names ? A. The president of the court-martial in Rome, Dr. Winden.

Q Were there any other courts you had to go to to get the names ? A. No, no other courts.

Q So it was prisoners of the SD and prisoners of the Army Court-martial in Rome who supplied the names ? A. Yes, and the Italian police.

Q Passing to 24th March, you then heard that four more police had died, did you not ? A. That is so.

Q You had to find another 40 people ? A. 50.

Q Why 50 ? A. On the day before there were 280.

Q And then four more died, so it should then be 320 ? A. As far as I remember not 32 but 33 were killed.

Q So you looked for 50 more bodies; 50 more victims ? A. Yes.

Q How did you get those; your cupboard was bare was it not ? A. Yes, that is so.

Q Where did you get them from ? A. I went to the Italian police.

Q Did you give them any instructions as to how the names were to be selected ? A. I did not give them any orders or instructions, but I told the chief of the Questura to see and select those people according to the same ideas as I selected mine. He was the chief of the police.

Q Was that Cerutti ? A. Cerutti.

THE JUDGE ADVOCATE: When it says Ceruso, who is that.

COLONEL HAISE: When it says Ceruso who does that mean ? A. Ceruso, he was chief of the Questura.

Q Is that the police as well ? A. Ceruso was chief of the Questura, and the Questura was a branch of the police, the regional branch, and Ceruso was subordinated to the deputy chief of the police at that time named Cerutti.

Q The Italians selected their bodies, did they ? A. Their duty was to select 50.

Q According to the instructions which you had given them, that is to say the people must be deserving of death ? A. That is so.

Q Did you concern yourself to find out whether the people whose names you had been given were worthy of death ? A. No, concerning those 50 I did not make any investigations. I left the responsibility for the names of those 50 to the Italian authorities. At the beginning of my conversations with them I asked them whether out of the big number of prisoners available they could provide 50 according to these ideas I set out to them.

Q But you did not mind who they produced, is that right ? A. I could not have any influence on it and did not want to have any influence on this.

THE JUDGE ADVOCATE: Would you ask what sort of crime the Italians had committed ?

COLONEL HAISE: The Italians I am talking about now.

THE JUDGE ADVOCATE: The 50. I understand the other who committed offences against the German state. What are these that the Italians had supposed to have committed.

COLONEL HALSE: What crimes had these people whom the Italians held committed or were alleged to have committed? A. I do not know all the details but I do remember some particulars concerning these 50.

Q Let us hear of some of them? A. I remember one case; a Lieutenant in the public security who had been alleged to have committed espionage on behalf of the Allies whilst being a member of the public security.

Q Any other cases? A. And other examples were members of the resistance movement who were arrested by the Italian police on their own initiative because of the possession of arms, or similar crimes.

Q Did you know that one of the people who was shot had been acquitted by a court? A. No, I hear this for the first time today.

Q I want to come to a conversation that you had with Maelzer on the telephone, or was it personally on the 24th? I think it was a conversation, a visit? A. Yes, a visit.

Q What time was the visit? A. Approximately 12 o'clock.

Q What did you tell Maelzer? A. That I had prepared with great pains this nominal roll and that I had got it with me.

Q Did you tell him how the nominal roll was made up? A. I know for certain that I mentioned that the Italian police had to provide about 50 because those 50 were not fixed nominally; they were only fixed as a number, but not the names of the 50, because the 50 were only provided for later by the Italian police. But I do not think that I gave any details concerning the other groups.

Q Did he ask how the people were made and whether they were all death worthy? A. I believe that General Maelzer said "You yourself must take the responsibility for it".

Q Take the responsibility for what? A. For this nominal roll which I brought to him for that purpose. As I said before, I cannot remember of course, every word but I do accede to the possibility that General Maelzer did ask that question but I cannot be sure.

Q Did he ask any questions about how many people from the Via Rosella were being shot? A. Yes, I do remember quite clearly that that was one of the questions. That is one of the few things which I remember quite clearly and definitely.

Q Instead of talking about it so many let us hear what it was he said? A. General Maelzer asked me what happened to those people who were arrested at the place where the crime was committed and I told him also how many out of those were to be on the nominal roll, and how many and for which reasons were released.

Q Did he say anything about that, because you only told him there were four or five going to be shot, did you not? A. Maybe only two; I believe General Maelzer was surprised about the low number of these people. Yes, but that is quite clear because everybody was who is not a professional policeman imagines that on the place of a crime, where it is committed, a bigger number of criminals should be found, but, of course, for a professional policeman it is not the case.

Q However, you made it quite clear to him that there were only a very few people from the Via Rosella being shot? A. Yes, I did and I gave the reasons for it.

Q Did you have any other conversations with Maelzer as to the number of people that you had available yourself and could produce? A. I believe this was the only conversation I had; I cannot remember now any other.

Q You do not remember an occasion of 200 being mentioned? A. I do not know

of such a case.

- Q During this discussion at midday was there some discussion to to who was to do the shooting? A. Yes.
- Q Who was it suggested should do the shooting first? A. I believe this was not a suggestion; it was understood as natural that the shooting should be done by the unit concerned, which means the unit that suffered the victims.
- Q That was the police battalion under Dobrick? A. Both the Third Battalion and the 11th Regiment under the leadership of Major Dobrick.
- Q Were you present when he was asked by Maelzer if he would do the shooting? A. Yes.
- Q Did he say he would do it? A. Yes, first.

THE PRESIDENT: That he would do it? A. Yes.

COLONEL HALSE: And afterwards; you say first he would do it. Afterwards was some objection made? A. There was an objection made with regard to the technical possibilities of the carrying out of this order due to the short time available.

- Q Who raised the objection? A. Dobrick.
- Q Did he say any other reason, other than the shortness of time? A. No, he did not give any other reason. It seems I was not well understood.
- Q Go on, explain? A. He first was quite willing to take over this duty but when during the conversation it came up that due to the shortage of time the shooting, technically, could not be carried out as it was normally he mentioned that he could not require his men to do that.
- Q What do you mean by that; is it that you mean that it would have to be a rush job and he could not do proper firing squads? A. No.
- Q What were the technical difficulties? A. Major Dobrick saw the technical difficulty in the point that he could not put 10 men in front of two or three victims at eight or 10 metres. To do this it would have required 40 or 45 hours to carry out the shooting.
- Q That is exactly what I asked you; I do not know if the interpreter got it wrong. I asked you, was it because they could not have proper firing squads? A. I misunderstood the question. That was the difficulty.
- Q Maelzer having failed to get Dobrick to carry the baby, who did he go to next? A. After General Maelzer and myself did not succeed to convince Major Dobrick to take over the job General Maelzer applied to the 14th Army Corps.
- Q It is not the Army Corps; I think it is 14 Army.

THE INTERPRETER: 14 Army.

COLONEL HALSE: Who did he ask for there? A. Colonel Hauser, Chief of Staff.

- Q Did he ask for troops? A. He declared that Major Dobrick would not take over the job and asked that a unit of 14 Army should be detailed for this shooting.
- Q Did he say how many men were wanted? A. I believe not.
- Q What was General Hauser's answer to the request for troops? A. General Maelzer communicated Colonel Hauser's answer, after he had put down the receiver, to me literally: "The police is concerned; the police is to do the job."

- 7
- Q Who did that fall on? A. There were only two police departments in Rome, the SD, the Security Police, and the police for maintaining order. The police for maintaining order could not take over the job and General Maelzer agreed to the objections and reasons of Major Dobrick and then mentioned: "So it will remain on you".
- Q Now the answer could very simply have been to my question: "I had to do it". Did you discuss with General Maelzer how the shooting was to be carried out; "yes" or "no"? A. I believe, no.
- Q Did you say that you had only got 60 men to shoot 330 people? A. It may be anyhow General Maelzer knew of the strength of my unit.
- Q Did you say to General Maelzer: "I shall not be able to do it by the time limit"? A. No, I did not say that.
- Q Did he point out that you had not got very long? A. It was agreed that it had to be carried out within one afternoon.
- Q Now, then, you had got the job. Did you see a communique that was going to be put out about this shooting? A. I did not do it but a communique was issued.
- Q I did not ask you if you did it; I asked you if you saw a communique which was going to be published. A. Yes, I have seen one.
- Q What did that communique say? A. This communique said that 320 Badoglio and Communist elements have been shot as an atonement for the vile crime committed in Via Rosella.
- Q That was before the shooting took place, was not it? A. When I heard about it for the first time it was before the shooting.
- Q But you knew, of course, that there were going to be 330 shot, did not you? A. In that moment when I heard about it there were only 320.
- Q Did Maelzer know before the shooting took place that there were 330? A. I do not know that.
- Q Were there 330 names on the list that you gave to Maelzer? A. No, there were 280.
- Q How did you carry out this shooting - let me try to make it short? A. The shooting was carried out in groups of five.
- Q Did you tell your officers and men how to go about it? A. Yes.
- Q All your officers and men had to take part, did they not? A. Yes.
- Q Did you select a place for the execution? A. I had the place selected by one of my officers.
- Q That was a cave, was it not? A. Yes.
- Q Known as the Ardeatine Cave? A. Yes.
- Q Did you have a party at the prisons to get the men on to the lorries? A. My prison?
- Q At the prisons, all the prisons? A. One of my officers was detailed for the transport.
- Q How were the people to be taken out - with their hands tied behind their backs? A. With their hands bound, yes.

Q I think the transports moved off, the first one at 2 o'clock? A. Approximately 2 o'clock, yes.

Q And were you at the cave to meet the first party that arrived? A. Yes.

Q Did you have a list to check off the men as they came into the cave to be shot? A. I personally not, but one of my officers was detailed to do that.

Q Did he have the list of the whole 280 and 50? A. Only 280; the list of Italian prisoners were still missing.

Q When the trucks arrived five people were taken out at a time, were they not? A. Yes.

Q What happened then, did they march in the cave? A. Yes, always in groups of five with five of my own men.

Q What were your men armed with? A. With their own weapons, the sub-machine guns.

Q When they got to the end of the cave had you given orders as to what they were to do, how they were to be shot? A. I had given an order that they were to be shot in the back of the head.

Q Were they to be standing, sitting, or what? A. Kneeling.

Q At what range were your men to fire? A. On a very short range without putting the arms on the victim's body.

Q Did you have any doctor there to see that the person was dead? A. There was no medical officer but a medical orderly of my H.Q.

Q Please answer my question. Did you have a doctor at the cave to make certain if the people who were shot were dead? A. No.

Q The first party were shot by men of your unit were they not? A. Yes.

Q And the second party of five, did you assist in the shooting? A. On the second or the third.

Q And you took the men up to the end of the cave; you marched the men up? A. Yes.

Q You ordered them to kneel down? A. No.

Q Who ordered them to kneel down? A. One of the officers.

Q And then you fired ^{your} shot? A. Always five men on order fired their shot.

Q One shot into each body? A. Yes.

Q Did you satisfy yourself that this man that you shot in cold blood was dead? A. As far as is possible for an unqualified man, yes.

Q Having done your shooting, what did you do? Did you leave the cave or stay in it? A. No, I returned to my office.

Q Did you see that the lists were being checked properly? A. Yes, I did convince myself that this was done.

Q Had the 50 names arrived from the Italians? A. Only much later.

Q Did you make any arrangements about the cave -----

THE JUDGE ADVOCATE: I am not clear; were some Italians shot before the list arrived?

COL. HALSE: (To the witness) Were any of the persons from the Italian prisons shot before the list arrived? A. I do not know, but I do not think so.

THE JUDGE ADVOCATE: You must surely remember. Even if it is a long time ago you surely must remember whether you checked off the Italians and saw that the right Italian was shot before he was executed? A. It was the duty of another officer Hauptsturmführer Brinke, to check these lists and as he did it in the other cases I must assume that he did the same thing in the case of the Italians.

COL. HALSE: You do not think that an Italian would be shot without his name appearing on a list? A. I cannot imagine how really it could have happened.

Q What had you decided to do with the cave where these unfortunate people had met their deaths, or might have met their deaths - you did not know whether they had or not? A. I wanted to blow up this cave in a distance of about 20 metres from the corpses and that is also what happened.

Q Did you tell anybody you were going to do that? A. I did.

Q Who did you tell? A. One of my officers named Kuhle who did it with the engineers together.

Q I put my question badly, I am sorry. What I meant was did you tell Maelzer or von Mackensen that you were going to blow up the tunnel? A. I do not think so but "to blow up" is not the right expression - "to blow in".

Q When you got back to your office did you go back to the cave again later? A. Yes, I went for a second time.

Q And you found then that one of your officers was not quite so cold blooded as the rest, did not you? A. Yes.

Q That was Hauptsturmführer Wetjen? A. Yes.

Q What did you do with him? A. I spoke with him as a friend, as a comrade.

Q Then what did you do, having spoken to him as a friend and a comrade? A. I stood near him and whilst he was firing I was firing myself at the side.

Q You went in with one of the parties of five? A. Yes.

Q Did you have to send somebody for Caruso's list of names? A. Yes, because it was getting darker and darker, so I had to send another officer named Tunath.

Q And did he get the list? A. After having returned to my office I had to 'phone up again but after this telephone conversation he did finally get the list.

Q At what time would that be? A. Well, it was the end of March, about half an hour before dusk.

Q When did you leave the cave finally? A. I do not remember exactly but it might have been an hour before dusk.

Q When did the executions finish, at what time? A. At dusk.

Q What time was dusk, do you remember? A. I am under oath and I really cannot say at what time it was.

Q Well now, was there any communication from Maelzer's headquarters? A. Yes.

Q When was this? A. When I returned to my office.

Q For the first time or the second time? A. The second time.

Q So that would be after 7 o'clock? A. Yes, approximately after 7 o'clock.

Q But you said that the report had to be in at 7 o'clock. A. It was not an order

7

that the report had to be in at 7 o'clock or 1900 hours. The order was that the execution had to be finished within 24 hours which meant, in reality, before dark.

Q Did you report to Maelzer that the execution had been completed? A. Not to Maelzer but to Major Dobrik.

Q That is his la? A. That is so.

THE PRESIDENT: Which means --?

THE INTERPRETER: Intelligence officer.

COL. HALSE: GSO.I.

THE PRESIDENT: Taciturn, operation?

THE WITNESS: Operation.

COL. HALSE: At what time did you report to Bohm?

THE PRESIDENT: He has already said that.

THE WITNESS: After having finished at dusk, after seven.

COL. HALSE: The report was sent in after the execution was completely over? A. The report was given by telephone, not in writing.

Q When did you first know that 335 people had been killed? A. On the next morning.

Q Who reported to you? A. Capt. Priebke.

Q He was the man who was checking off the names against the list, was he? A. That is correct.

Q So, on your reckoning, it was five more than you arranged and, on the ten to one ratio, it was fifteen more than those ordered by higher authority? A. I do not understand this.

Q You say you selected 280 and 50 from the Italians? A. Yes.

Q The order that you say was issued was a ratio of ten to one? A. Yes.

Q There were 32 policemen killed? A. 33.

Q Well, anyway there were five more than your figure of ten to one? A. I heard even six more.

Q 336, you heard? A. That is so.

Q Did you make any enquiries as to how these six unfortunates got into the vans? A. Yes.

Q What was the result of your enquiry? A. The Italians provided a nominal roll obtaining 56 instead of 50 and this nominal roll was not numbered - there was no sequence, 1, 2, 3, 4 to 50.

Q And nobody counted to see whether there were 50, 56 or 100? A. Yes, that was missed to to so.

Q And did you tell Maelzer that six more people had been killed than he ordered? A. I do not think so.

Q Did you tell anybody else in authority that six more people had been killed than you were ordered to kill? A. To my own higher authority I did report this fact.

Q Who was that, Dollman? A. Hauster.

7

Q Did Dollman have anything to do with this shooting in the Argentine Cave? A. No.

(At 1705 hours the Court adjourns
until 1000 hours to-morrow morning,
Tuesday, 19th November, 1946)

—oo—