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TRIAL BY MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS

BERNHARD VON MACKENSEN

and

KURT MAELZER

21ST NOVEMBER, 1946

FOURTH DAY

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PROCEEDINGS

of a

MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS

held at

THE UNIVERSITY OF ROME

on

21ST NOVEMBER, 1946

upon the trial of

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

ORDERS BY:

LIEUTENANT GENERAL SIR JOHN HARDING.

PRESIDENT

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

MEMBERS

LIEUTENANT COLONEL E.C. SEBAG-MONTEPIORE

Durham Light Infantry.

LIEUTENANT COLONEL D.K. HAYMAN

Lincolns.

LIEUTENANT COLONEL R.W. TYRRELL

Oxf. and Bucks.

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

Devons.

JUDGE ADVOCATE

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

FOURTH DAY

Thursday, 21st November, 1946.

(At 10.00 hours the Court re-assembles pursuant to the adjournment, the same President, members and Judge Advocate being present)

(The accused are again brought before the Court)

DE PANTAZZA BONA is called in and, having been duly sworn, is examined by MAJOR REASE as follows:

MAJOR REASE: It was thought yesterday that this witness was not to be called but as she is available to-day, we are calling her. (To the witness) What is your full name? A. De Pantazza Bona.

Q And do you live at 34, Via Bolzano, Rome? A. Yes, I live in Rome, Via Bolzano 34.

Q And do you speak German? A. I do not speak German very well. I understand it well; I speak it rather well.

Q In April 1944 were you arrested by the Germans for aiding Ozeds who escaped from the German Army? A. Yes.

Q Were you taken to the Via Tasso prison? A. Yes.

Q And whilst there you were employed as an interpreter in the prison office? A. I was compelled to offer my duties as an interpreter.

Q Were part of your duties filling in record cards relating to prisoners who arrived in the prison or were discharged from the prison? A. Yes.

Q Will you look at the cards in this folder? (Handed) Are those Via Via Tasso prison record cards? A. Yes.

Q Have you seen any of those particular cards before? A. Most of these are similar; especially the green ones are similar to those I have already seen. I do not remember whether they are the same.

Q Do some of those cards have a red cross on them? A. Yes.

Q What do those red crosses mean? A. Nobody ever explained to me but I understand it means "Death".

(Photo of record cards is marked Exhibit 9, signed by the President and attached to the proceedings)

MAJOR REASE: I think all of them show that the prisoners were dead at the end of March, on 24th March.

THE PRESIDENT: In the witnesses answer to the question, "What did the red crosses mean?"; had she finished the sentence when it was interpreted?

THE INTERPRETER: Yes, she said, "Nobody explained it to me thoroughly but I understand it meant "Dead", that the man with the red cross is dead.

THE JUDGE ADVOCATE: Would you ask the learned counsel if they would like to look at it now? They could, of course, examine it later if they wish. (Handed) Will you tell the learned counsel there is no hurry? He rather thinks we are hurrying him, I think.

MAJOR READE: (To the witness) When you were employed in the prison record office did you notice that one bundle of cards was kept separate from the others? A. The cards were divided into two groups.

Q Did you peruse both groups of cards? A. Yes, I have seen both groups of cards.

Q Was one group the ordinary record of the people in the prison? A. Yes, all those who were in Via Tasso.

Q And what was the other group of cards? A. The other group were concerned with those persons who had been in Via Tasso and either had been released or taken to another prison.

Q Did you find the records of the persons who were removed from the Via Tasso on the 24th March? A. On the 24th March?

MAJOR READE: (To the interpreter) You mis-translated my question. I did not say on the 24th did you find the records, I said did you find the records of the people who were removed from the prison on the 24th March.

THE WITNESS: Some of the cards in the column said "Released", the date 24th March.

MAJOR READE: (To the witness) Were you able to identify any of those particular cards in the folder that you looked at just now? A. I have not identified any of those cards of the 24th March. Two years have elapsed but they are similar to those.

Cross-examined by DOCTOR KELLER

Q Have you been asked in this question before? A. Which question?

Q Have you been interrogated on the 17th September 1945 in Rome? A. Yes.

Q Has your statement at that time been written down?

THE INTERPRETER: The witness before said he did not remember exactly the date.

THE PRESIDENT: What is the answer to the next question, "Was it written down?"

THE WITNESS: I do not remember because I have been interrogated on several occasions. If this occasion which I am asked now concerns the Police Office of Via Quintino Sella I may say that I did not sign that statement.

DR. KELLER: May I ask the learned prosecutor to give me the original of the deposition of this lady; the deposition which was written on 17th September 1945? (Handed).

THE WITNESS: That is my handwriting and I have signed that.

DR. KELLER: (to the witness) In this statement you said, "I am a student of fine letters and speak German fluently"? A. I really am a student of letters but at the present moment I do not speak German fluently, perhaps because I am also studying English and when I speak German I make a lot of mistakes; I mix German and English words.

Q You have stated today, "I have been compelled to work as interpreter? A. Yes.

Q Had you not had a friendship with a captain of this H.Q.? A. It was not I, it was my sister who had been arrested with me.

Q You have stated before Captain Wolf became your friend, yours and your sister's, particularly your sister's? A. Yes, it was a friendship of my sister. Therefore I happened to know this man and of course he became my friend since he was the friend of my sister.

Q Did not this captain allow you and your sister to go home every evening?
A. Yes.

Q Did you not sometimes have dinner or lunch in the officers' mess of Via Tasso?
A. As an interpreter they had granted us to dine with the officers or after the officers had dined in the same dining room.

Q How did it happen that you came at that time into the prison?
A. I had helped some Czech deserters and one of these was arrested; he gave my name; he had given it to a boy.

Q Have on these cards which you have seen just before been stated the reasons for which the single persons had been brought into the prison?
A. Yes, the cards which I saw in Via Tasso and there was written the reasons why those persons had been arrested. On these ones that I have just seen I have looked carefully. I do not know whether on these is written the reason.

DR. KELLER: May I ask the court to be good enough to let me look into the cards once more? (Handed) (Handed to the witness).

THE WITNESS: The reason has been stated on these cards.

DR. KELLER: (To the witness) Do you know that the offences which are stated on these cards are all punishable with the death sentence?
A. I do not know which crimes deserve the death penalty.

DR. KELLER: No further questions.

DR. CHRIST: No questions.

MAJOR READE: No re-examination.

THE PRESIDENT: Do you know who put those red crosses on the cards?
A. No, I could not say this because I found those red crosses already on the cards when I got them into my hands for the first time.

(The witness withdraws)

DR. UGO SORRENTINO is called in and, having been duly sworn, is examined by COLONEL HALSE as follows:

Q Are you Dr. Ugo Sorrentino?
A. Yes.

Q What is your present address?
A. Roma, Via Circonvallazione Clodia, 68.

Q In 1944 were you the Technical Director of the Superior Scientific School of Police?
A. Yes.

Q And have you been engaged in that type of police work for 31 years?
A. Yes.

Q In July 1944 were you present at the exhumation of the Ardentine Caves?
A. Not all of them, part of it.

Q In order to identify the bodies which were recovered from the caves were certain particulars asked for from possible next of kin?
A. Yes.

Q With that information and other card information did you start identifying the bodies recovered with those of the possible victims?
A. Yes.

Q How many bodies were recovered from the Ardentine Caves?
A. 335.

Q As a result of the information which you had from the cards and other places were you able to identify a number of the bodies?
A. Yes, 322.

Q There are still 13 bodies unidentified?
A. 13 bodies not identified.

Q Will you look at the typewritten list and will you say if this is a list showing the body numbers as you marked them and the names of the persons whom you identified? (Harred) A. This list has been made by me; some of the names have been handwritten by myself.

(List of names is marked Exhibit 10,
signed by the President and attached
to the proceedings)

COLONEL HALSE: Perhaps before the General looks at it I might ask one more question which might clear up a point? On that list are there still 13 corpse numbers without a name against them? A. Yes, 13 bodies not identified.

Cross-examined by DR. KELLER

Q At this cave explosions or bombings-in have been carried out by German engineer troops? A. I do not know about this.

Q Have there been found traces on the bodies which show that attempts were made to blow up the whole cave in order to wipe out the traces of the crimes? A. Not on the bodies.

DR. CHRIST: No questions.

THE PRESIDENT: You have been engaged in legal medicine work for some time, have you? A. Particularly in those cases of legal medicine which is interesting for police work.

Q For how long? A. Since I left school, round about 30 years ago.

Q Now, although on this list there are 13 unidentified corpses have you any doubt as to the correctness of the total number of bodies? A. No doubt at all.

THE JUDGE ADVOCATE: Was it any part of your duty to try and ascertain how in each case these people had died? A. It did not belong to the orbit of my duties. I had to identify the people and that was all.

Q Did you have an opportunity of seeing this cave before it was opened up?

A. I have seen for the first time when those exhumation works have started; I mean July 1944.

Q In what part of the cave had the explosion taken place? A. I believe that these explosions have taken place where the bodies were lying.

A MEMBER OF THE COURT: Do you know where these people resided before they were shot? A. After the identification had taken place, yes, but not before; I did not know before where they resided.

Q Were they all Roman citizens? A. There were very many Roman citizens but quite a number also came from somewhere else.

THE JUDGE ADVOCATE: There was supposed to be a number of Jews shot in that cave? A. Quite a number of Jews.

Q Did you find out where they had come from after the exhumation? A. The greater part came from Rome.

Q But when a Jew had been in custody did you just treat his address as being where he had been kept in custody or did you ascertain where he had been living prior to the time the Germans had arrested him? A. I know only about their addresses after the identification; what happened before the Germans came, I do not know.

Q But the addresses you got for the Jews, was it merely a prison address or had you got their private address, where they were living before? A. No; where

he lived before he was arrested, I do not know.

Q As a result of your inquiries can you tell the court where these Jews had come from on the 24th March before they were all shot in the cave? A. Either from the prison in the Via Tasso or from the prison Regina Coeli.

THE JUDGE ADVOCATE: Colonel Halse, what the court are interested in, perhaps more interested in than anything else, is the question of these Jews, and we do not seem to have got any picture as to where they came from, whether on this list there are Jews or on these cards there are Jews or anything about them.

COLONEL HALSE: I am calling the next witness who was in gaol where they were.

THE JUDGE ADVOCATE: That will clear it up.

COLONEL HALSE: I hope so.

DR. KELLER: (To the witness) On the question of the learned Judge Advocate where the explosions had taken place you answered they had taken place on the spots where the bodies were. To my question put to you somewhat earlier you replied, "I could not see any traces of the explosions on the bodies". Is it correct if I suppose that the explosions had been at such a distance from the bodies that the bodies were not afflicted by them? A. I cannot give a clear explanation of this subject, at any rate it might be my personal opinion or other people's opinions.

(The witness withdraws)

ELEONORA LAVAGNINO is called in and, having been duly sworn, is examined by COLONEL HALSE as follows:

Q Is your name Eleonora Lavagnino? A. Eleonora Lavagnino, yes.

Q And what is your address? A. Via Cosseria, 5, Rome.

Q Are you a lawyer by profession? A. Yes I am.

Q Were you on 15th March 1944 arrested by the Germans? A. Yes.

Q Were you put into the third wing at the Regina Coeli prison? A. Third wing, cell number 298.

Q Were there in that prison a number of Jews? A. On the 24th March there were 66 Jews.

Q Were they all males, or some females and children? A. Male, female and children.

Q Did you know where any of those Jews lived before they were put in prison? A. Some of them, yes.

Q Were they all Roman Jews or did some of them come from other parts of Italy? A. Some of them also were foreigners, Poles or Germans.

THE JUDGE ADVOCATE: I want to get this quite clear. Is she saying that some of the Jews who were shot came from Poland or Germany?

THE INTERPRETER: That is right, yes.

COLONEL HALSE: I do not think she is saying that because I have not asked her the question.

THE JUDGE ADVOCATE: She said there were 66 Jews in the wing, male, female and children and your case is that 57 Jews were taken, is it? Will you make it clear what you are talking about? We will not bother with Jews we are not interested in.

COLONEL HAUKE: (To the witness) Of the Jews that were in the prison were a number taken away on the 24th March by the Stcherhetsdienst? A. 66. I have counted them the moment they were called because they had divided the Jews from the rest and they were exactly under me.

Q Were all those Jews who were taken away on the 24th March males? A. All males.

Q So the females and Jews were in addition to the 66 Jews that you were speaking of earlier? A. I have said men, females and children; the men were taken away and left their wives and the children under the age of 15.

Q And it was the 66 who were taken away by the S.D. on the 24th March? A. Yes, they were taken by the S.S. and not by the S.D.

THE JUDGE ADVOCATE: Before we go on, the court are not clear. First of all, as I understand it, she said that in this wing there were 66 Jews which included males, females and children. She then says later that Jews and others were separated, that 66 were taken away by the S.S., and they were all males. Now, that does not make it very clear to the court.

COLONEL HAUKE: I quite agree. I am going to try to clear it up. (To the witness) May I go back to the morning of 24th March 1944? How many Jews were there in the third wing of the prison, males, females and children? A. I do not know exactly the number. All the men were taken away and they were 66.

Q Now I am speaking of the 66 Jews who were taken away. Can you tell the court how many of those Jews were Italian Jews? A. About 50.

Q Of those 50 Jews how many were Roman Jews and how many came from other parts of Italy? A. I believe they were all Romans. All had been arrested a few days before.

Q Of those Jews of whom we have been speaking do you know how many lived in the vicinity of Via Rosella? A. No, but they had been in prison also previous to the date of 24th March.

Q Do you know whether any of those Jews did not live in the area of Via Rosella? A. You mean people that had come previous to the date who resided in Piazza Viatilla?

Q And how far is that from the Via Rosella? A. About five kilometres.

Q Were there any others? I do not want you to mention names? A. Yes, for instance all those who had been arrested in the vicinity of Campo Del Fiori.

Q And how far is the Campo Del Fiori from the Via Rosella? A. About 5 kilometres.

Q Did you see a number of people who were not Jews being taken away on the 24th March? A. Yes.

Q I am not going to ask you to give any names but you have looked at a list and I will ask you to look at it again and say whether the Jews whom you knew which were taken out that day and the other persons whom you knew that were taken out from the prison that day are on that list. Will you look at that list now and answer that question? (Exhibit 10 handed) Perhaps you will just answer the question "Yes" or "No" and I do not want any names? A. Yes.

Q On that list is there the name of one man whom you knew was acquitted by a German court-martial shortly before the 24th March? A. Yes.

Q Have you got the order of his acquittal? A. Yes.

COLONEL HALSE: This is the order of acquittal from a German court-martial of one of the persons who was taken out of the prison on the 24th March and whose name appears on the list of persons whose bodies were found in the Ardeatine Caves.

THE JUDGE ADVOCATE: I am not clear. Is there more than one name on it; is there not a number on that list?

COLONEL HALSE: (To the witness) Would you give the court the number on this list which relates to the man who was acquitted by the German court? A. 316.

Q Now the name on the list here and on the judgment of the court do not agree; there is a mis-spelling. A. The name I have given, this man was submitted to a trial under another name. When he was tried this person had a false name.

Q But are you quite satisfied that the person named in that judgment and the person number 316 are the same person? A. Yes.

(The judgment of the court-martial is read)

THE JUDGE ADVOCATE: What was the charge? Are you only giving us a bit of the document or all of it? A. Surely it must say of what charge the man has been acquitted in a normal document?

THE INTERPRETER: It says only those who have been found guilty and there are two persons because of possession of arms that they have been found guilty and were sentenced to three years imprisonment and then it says the accused B, P and C are acquitted, so I suppose for the same.

THE PRESIDENT: Pietro Paulucci is one of those?

THE INTERPRETER: Yes, who has been acquitted.

COLONEL HALSE: (To the witness) Was the man who was acquitted on the same charge as the two persons who were convicted? A. No.

Q On what charge was he before the court? A. The Germans made a search in the house of Filippo Lala, a student who was accused of being a Communist.

Q Perhaps you would answer my question. I am asking you upon what charge this man appeared before the German court-martial? A. To have been in possession of arms and to make Communist propaganda.

Q There were two people convicted; were they taken away on the 24th March by the S.S.? A. No, they were not.

(At 11.45 hours the court adjourns)
(At 12.00 hours the court re-opens)

THE JUDGE ADVOCATE: This is the document you wished to have exhibited, is it?

COLONEL HALSE: It is.

THE JUDGE ADVOCATE: And have the defence had a chance to see it?

COLONEL HALSE: They have.

DR. KEILER: I cannot agree to this document as being a right document because the confirmation of the convening authority is missing on this sentence.

THE PRESIDENT: I suppose it becomes an exhibit, is that right?

THE JUDGE ADVOCATE: Yes, it becomes an exhibit and then he can cross-examine on it.

(Court-martial order is marked Exhibit 11,
signed by the President and attached to
the proceedings)

COLONEL HALSE: (To the witness) Do you know any people in the prison with you who had been sentenced to death by a German court? A. Just one, Geswundo.

Q Was he taken out of prison on the 24th March? A. Yes.

Q What about Morosini? A. He had already been sentenced but he was shot only on the 9th or 10th April.

Q So he was sentenced to death before the 24th March? A. Before.

Q And he was not taken out with the others on the 24th March? A. No, and not even another one who was with him, Arculio.

Q Was Arculio sentenced to death before 24th March 1944? A. Yes, and he did not go out with the people on the 24th March.

Q How many people did you see go out on the 24th March? A. I did not see that with my eyes myself because at the moment they were going out they had shut the cells. I may say that when they were called they were 192.

Q And you did not see those again after the 24th March? A. No.

Q And their names appear on the list which is Exhibit 10 in this case? A. Yes.

Q What sort of age were those people who were taken out? A. The youngest was 14½ years old.

Q And the oldest? A. And the oldest was over 70.

Q Were all of them fit people? A. Yes, with the exception of two Jews who were feeling bad when they were called.

Q May I have list number 9? (Handed) Will you look at this list, these cards which were cards of the prisoners in the prison? Have you seen cards like those before? A. Yes, the third wing.

Q Will you look at the particular card which is open? Do you speak German or read it? A. No, a little, I can read a little.

Q In the first column do you see why that person was held in prison? A. A Jew.

COLONEL HALSE: There are a number in there. I did not want to go through them. I could give the court a list of numbers but they are not in numerical order.

THE JUDGE ADVOCATE: The reason given is just the word "Jew", is it?

COLONEL HALSE: Yes. (To the witness) I have marked some more here whereas you will see the word "Jew" is marked at the bottom; do you see it? A. Yes.

Q Do you see any crime shown against those people as a reason for them being held in custody? A. Yes, there is written something but I do not understand it at the minute.

Q Is it in German "Deportation to Germany"? A. Yes, perhaps.

Q Or K.L., Konzentration Lager? A. Yes.

DR. KIELER: No questions.

Cross-examined by DR. CHRIST

Q Have you been interrogated in that matter already before? A. I made a

statement for the Italian Security Police

- Q Was this on the 31st August 1945 in Rome? A. Yes, in Rome; the date I do not remember.
- Q Did you confirm on that occasion the correctness of your statement by your own signature? A. Yes.
- Q What were the reasons for you being taken in arrest? A. I was accused of espionage.
- Q Have you been a member of the illegal resistance movement? A. Yes, I was under the orders of the Party of Action.
- Q Did you support Allied, British, Ps.O.W.? A. Yes.
- Q Was this the reason for your being arrested? A. This was.
- Q I put to you your different changing statements. Do you know that on the 21st September 1946 you have been interrogated again? A. By the Allies?
- Q Yes? A. Yes.
- Q Did you also on that occasion confirm the correctness of your statement by your signature? A. Yes.
- Q I put to you the last sentence of your statement of 21st September 1946. You stated then, "I would also stress that some prisoners remained in the prison although they had been already sentenced to death, among these 'blank' were not included in the number". In the evidence you gave today in court on the first question of the learned prosecutor you answered, "I knew only one who was already sentenced to death"? A. No, just one who was included in the list and had previously been sentenced to death, that is to say, a certain Gesmundo.
- Q Do you know also that an acquittal by a German court is only lawful if it is confirmed by the convening authority? A. I do not know; I simply know that when they were acquitted they remained in the prison for another 15 or 20 days.
- Q Do you know what were the particular charges of these 192 people who were taken away? A. Particular charges I cannot say; the Jews were simply Jews.
- Q Were amongst these also such who were members of the resistance movement? A. Yes.
- Q I am now relating to the statement of the witness regarding the age of the people taken away. Also here I put to you the different statement which you have made before in writing. In your statement of 31st August 1945 you said, "The oldest of the prisoners in my opinion might have been about 80". Today you state the oldest person was above 70. In your statement of the 31st August you say the youngest was about 14 years? A. Yes.
- Q Today you stated to the questions of the learned prosecutor 14½ years. You furthermore stated that children less than 15 years of age remained behind? A. May I speak?

THE PRESIDENT: Yes.

THE WITNESS: To speak the truth when the S.S. arrived with the list the name of the youngest Di Consiglio did not appear on the list but since these Di Consiglio's were all in one cell they were taken downstairs. When they had the nominal roll called they asked if all of them had been called out. The youngest Di Consiglio stepped forward and he was added to the list.

DR. CHRIST: Regarding the sentence which you have seen before, did you see

yourself the confirmation of this sentence? A. All what I have seen is there.

Q Do you know if the trial against this acquitted person was continued? A. I do not know, perhaps it appears from the file.

THE JUDGE ADVOCATE: I do not understand learned counsel's questions. Is he speaking about the man who was shot on the 24th?

THE INTERPRETER: The man who was acquitted.

THE JUDGE ADVOCATE: Which was shot on the 24th. Do they try people in their absence in the German Army?

DR. CHRIST: Yes, there are some cases where in absence trials take place in certain circumstances. (To the witness) Can you state why this man ran under a wrong name? A. Yes, he was a liaison officer for the partisan movement but he had not been tried for that reason.

(The witness withdraws)

COLONEL HALSE: I assume that the court will adjourn now but there is one witness here if you want to know further information about the Jews who was secretary of the Ardeatine Caves Committee and he has investigated the matter at some length and he can tell you all their addresses, and tell you how many Jews in fact met their deaths and whether they were all Italians or not. If the court would like him called I will call him after the adjournment.

THE PRESIDENT: The answer is yes.

(At 12.35 hours the court adjourns)

(At 1415 hours the court reopens)

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

- Q May I have your full name ? A, Ptefmo Lidonnici.
- Q What is your address ? A. Via Napoleon Ezerzo, 10.
- Q Is that in Rome ? A. Rome.
- Q Are you the secretary of the Ardeatine Caves Committee ? A. I am the general secretary of the Committee for the Families of the Martyred.
- Q Can you tell the court how many of the deceased were Jews ? A. They were 72.
- Q Do you know the nationality of those Jews ? A. Some of those, yes; some of them, no.
- Q Can you say how many of them were of Italian nationality ? A. Yes.
- Q How many ? A. About 60.
- Q Do you know what nationality the other were ? A. I have here what I received from the Jewish community.
- Q Will you tell us the nationality and the number ? A. One from Poland.
- Q The next country ? A. Russia, one; one from Germany; for the others nationality is unknown.
- Q Do you know whether any of the Jews who were Italian nationals lived outside Rome before they were taken prisoner by the Germans ? A. Three.
- Q Can you say how many of them lived in the near vicinity of the Via Rosella ? A. No.
- Q Can you say from your records how many of the Jews were taken from Via Tasso ? and how many were taken from Regina Coeli ? A. I cannot state these numbers exactly because I have not recorded them but from the individual cards we can make account of how many were taken out of the Via Tasso and how many from Regina Coeli.
- Q How long would it take you to get that information ? A. A very short time. It is very easy; I look at the cards and then I will have it.

Cross-examined by DR. KELLER

- Q Have investigations been made to establish if all of these Jews or at least part of them were members of the Resistance Movement ? A. No.
- Q Do you mean to say that these investigations were not made or that there were no members of the Resistance Movement ? A. There was no members of the Resistance Movement among those Jews.

DR. KELLER: I ask the court to see these prison record cards on which, as far as I remember, the reason for the arrest of these Jews was stated.
(exhibited 9 handed)

DR. KELLER: No further questions.

DR. CHRIST: No questions.

THE JUDGE ADVOCATE: I am only speaking about the Jews that were killed on 24th March. Had they been arrested at various times or had they been rounded up in a considerable number and put in prison? A. A part of them were arrested before and part only in the night from the 23d to 24th.

Q Do you mean that up to the night 23rd/24th some of these Jews were not in custody at all? A. No.

Q You know that the bomb was thrown in the Via Rosella on the afternoon of 23rd March? A. Yes, I know.

Q And you saying that some of these Jews were arrested after that? A. Yes, after this bomb act.

Q How many do you say were arrested? A. I cannot say this.

Q Is it a matter of one or ten, or what? A. It is only a question of very few because nearly all the others were already in prison before.

Q Is it a fact that if a number of these Jews had not been shot on 24th March that they would have gone to Germany, is that right? A. Some of them were shot but a great number, and I speak about thousands, were sent to concentration camps in Germany.

Q I have told you I am only speaking about Jews which were shot. I want to know whether any of the Jews who were shot would have gone to Germany to a concentration camp. Do you know that or not? A. I cannot answer this question.

Q I suppose that a number of relatives were left in Rome after these men had been shot, is that right? A. That is correct.

Q Do you know whether the German authorities sent any information to the relatives in regard to what had happened to their menfolk or not? A. Generally they sent the usual letter, "Gestorben", which means dead -- the German word -- the usual letter which was always sent was, as I suppose, in this case also sent to the families.

Q Just a notification that the man was dead, was it? A. That is all, a small notification with the words; and sometimes they state that in the prison, let us say, Via Tasso, you may fetch his personal belongings.

Q What I wanted to know was whether you can tell us whether in this case of any of these 320 men such a notification was or was not sent? A. I cannot say this.

COLONEL HALSE: I was not quite certain; I think that last question was not properly translated; I do not think the 320 was mentioned.

THE JUDGE ADVOCATE: I was asking the general question whether any of the relatives of those shot were notified? A. Only after having requested some sort of notification did we receive it because the murderers generally did not send it.

Q I do not think the witness quite appreciates what I am asking him. Did he then or his committee or somebody else, whoever it may be, approach the German authorities and ask what happened to these people and did they get an answer? A. That is correct; after our request we did get these notifications. I, in the case of my own son, on the 15th April and in the case of my nephew on 5th May.

Q Do I gather that your son was shot in the cave? A. That is correct.

Q What explanation was given to you by the military authorities for the shooting of your son; you said you had some answer? A. No reason was given.

Q What did they tell you about your son? A. They quoted the name and said

on the date of the 24th March, dead.

Q Did they tell you why he had died or where he had died ? A. Not a word about it.

Q Did you then know that there were all these dead bodies in the Ardeantine Caves in April ? A. Yes, I knew it.

Q Was it known generally through Rome that these executions had taken place in these caves then ? A. That is correct.

Q When did that come to your knowledge; the earliest time that it came to your knowledge ? A. On 15th April.

Q If you had wished to go and see the spot where your son had been shot could you have got there or was the whole of the cave blocked up ? A. No, it was quite impossible because it was too dangerous. These murderers had put some cordons round this place so as to be able to see whoever approached this place so as to be able to take actions against them.

A MEMBER: How far is your house from the Via Rosella where the bomb was dropped ? A. It is far away; about four or five kilometres.

Q Where was your son living when he was arrested ? A. He lived with me at the same address as I.

COLONEL HALSE: Will you look at page 4 of exhibit 7 (handed) A. This is the type of letter that the murderers used to send.

THE PRESIDENT: This is exhibit 7 of which we were working on page 5.

COLONEL HALSE: Yes, that is similar to the document that this witness received when he asked for information.

THE PRESIDENT: There are two lines of German which the interpreter might interpret.

THE INTERPRETER: "Antonio Guistiniani died on 24th March 1944. His personal belongings which are left here can be fetched at the offices of the German Sicherheitspolizei in Via Tasso 155", and it is signed by Donizlatt, SS captain; date 12 April 1944.

THE INTERPRETER: The witness would like to make a declaration. He will speak very shortly.

THE WITNESS: I would like to apply to the court that they should see the Ardeatine Caves so that they should see for themselves and make up their minds by seeing the place where all that has been done.

THE PRESIDENT: Is that all ?

THE WITNESS: That is all, in the name of all the families who are here.

THE INTERPRETER: I forgot to mention that the bodies are still there.

(The witness withdraws)

COLONEL HALSE: General Presti is here. I do not propose to call him unless the defence or the court wish him here.

DR. CHRIST: I do not wish to call him.

THE JUDGE ADVOCATE: Did you not open some of this evidence ?

COLONEL HALSE: I did, but I do not think it carries the case any further.

THE JUDGE ADVOCATE: But if you opened the case have you not got to support it ? It is entirely a matter for you.

COLONEL HALSE: I do not want to take the time of the court any longer.
I do not think it will help the court one way or the other.

DR. KELLER: I do not wish to call this witness.

(The court confer)

THE PRESIDENT: The court has considered this and does not require the attendance of this witness.

COLONEL HALSER: That is the case for the prosecution.

THE JUDGE ADVOCATE: I would now ask the accused and their learned counsel to listen very carefully to what I have to say on behalf of the court. I am going to assume that neither of you know what your rights are in regard to your defence at this court and consequently I will endeavour to explain them to you as clearly as I can.

If you wish you can take the oath on the Bible and go into the witness box and tell your story on oath like all the witnesses for the prosecution have done. If you do that naturally the court will attach weight to what you swore to be the truth, and I think it will also follow that you will be asked questions like the witnesses for the prosecution have in order that the court may determine whether your story is an accurate one or not. Whether you avail yourself of that opportunity or not is entirely for you to choose, and no doubt in doing so you will be guided by the advice you will receive from your learned counsel.

If you do not wish to give evidence on oath you can make a statement yourself from the dock setting out what your story is, but if you do that our rules do not allow us to invite you to take the oath or to ask you any questions. I think your common sense will tell you that if you make a statement not on oath which is not tested by questions it will not carry so much weight with the court as if you gave evidence on oath and were subjected to testing by questions.

Whether you make a statement or give evidence on oath or not, you will in any event be allowed to call any witnesses you want on your behalf. Further, in due course at the end of the evidence your learned counsel in each case will be allowed to make an address on your behalf generally on the whole case.

Von Mackensen, are you quite clear as to what I have told you?

THE ACCUSED MACKENSEN: Quite clear.

THE JUDGE ADVOCATE: And Maelzer?

THE ACCUSED MAELZER: As well.

THE JUDGE ADVOCATE: Have you had an opportunity in the light of what I have told you to consult with your learned counsel?

THE ACCUSED MACKENSEN: I have.

THE JUDGE ADVOCATE: Now it is my duty to put formal questions to you, and will you please answer them individually. Do you, von Mackensen, apply to give evidence yourself as a witness on oath?

THE ACCUSED MACKENSEN: Yes.

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

THE ACCUSED MACKENSEN: Yes.

THE JUDGE ADVOCATE: Will they be witnesses as to fact or merely as to character?

THE ACCUSED MACKENSEN: Witnesses as to facts and affidavits concerning character.

THE JUDGE ADVOCATE: I will put the same questions to you, Maelzer. Do you apply to give evidence yourself as a witness on oath?

THE ACCUSED MAELZER: I apply to give evidence under oath.

THE JUDGE ADVOCATE: Do you intend to call witnesses as to fact in addition to any as to character? A

THE ACCUSED MAELZER: Yes.

THE JUDGE ADVOCATE: I think this is really more for learned counsel. In view of the course you are taking I must tell you that if you wish you may make an opening address in each case outlining what your case will be. After the whole of the evidence you will then have another opportunity of addressing the court when you will be allowed to say anything you like generally on the case, and in our procedure if a defense calls evidence as to fact in addition to the accused learned counsel addresses the court before the prosecutor, or, in other words, the prosecutor addresses the court after you have completed your final address.

Have I made myself clear to learned counsel or is there anything they would ask me now at this stage which is not clear to them.

DR. KELLER: It is quite clear to me.

DR. CHRIST: It is clear to me.

THE JUDGE ADVOCATE: I think the practice at military courts, at any rate so far as we are concerned, has been very elastic. The court always try to make it as easy as possible for German learned counsel and my experience is that counsel do not always want to do the same thing. In the case of a non-English speaking German counsel it may be that you would like your opening address translated phrase by phrase or it may be that you have written down in German and then it could be read by the interpreter from the German text, or alternatively, I suppose, you could write it in German and have it translated into a written English document. Which course do you wish to take?

DR. KELLER: In this speech I will address the court phrase by phrase, but for the final speech we could talk about later.

THE JUDGE ADVOCATE: There is just one other matter, that is that, of course, we do not take the cases together. One must be taken first. It is a matter for you to decide but I gather you would like to proceed with the case of Von Mackensen first, is that right?

THE INTERPRETER: That is correct.

DR. KELLER: May it please the court. My first application would be that the defence should be allowed to start their work tomorrow morning. We, the defending counsel, are over-tired and the reasons for it are the following. Since we are living the lives of prisoners-of-war we are not accustomed any more to proper mental training or mental work. We had, quite a number of nights before the trial, started work through the nights, and since the first day of the trial I may say that we were working through all nights; last night, for instance to mention an example, I worked until 2 o'clock in the morning and not even with light. We had only a hurricane lamp and, of course, the whole atmosphere and the very great differences between our jurisprudence and the English one is adding to our own difficulties. Quite apart from the fact that we are over-tired I think it would be much better for the defence if they could start and do their work without too quick an interruption.

THE JUDGE ADVOCATE: Is learned counsel really saying that he is asking the court if they would adjourn until 10 o'clock tomorrow when the defence will commence with the opening address, is that right?

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DR. KELLER: Yes.

THE PRESIDENT: As we are already well advanced in the afternoon the court agrees to the request of counsel for the defence.

DR. KELLER: I thank the President and the court.

THE PRESIDENT: The court will adjourn until 10 o'clock tomorrow morning.

(At 1530 hours the court is adjourned until 1000 hours tomorrow, Friday, 22nd November, 1946.)