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TRIAL BY MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS

of

BERNHARD VON MACKENSEN

and

KURT MAELZER

on

22ND NOVEMBER, 1946

FIFTH DAY

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PROCEEDINGS

of a

MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS

held at

THE UNIVERSITY OF ROME

on

22ND NOVEMBER, 1946

upon the trial of

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

ORDERS BY:

LIEUTENANT GENERAL SIR JOHN HARDEN.

PRESIDENT

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

MEMBERS

LIEUTENANT COLONEL E.C. SEBAG-MONTEFIORE

Durham Light Infantry.

LIEUTENANT COLONEL D.K. HAYMAN

Lincolns.

LIEUTENANT COLONEL R.W. TYRRELL

Oxf. and Bucks.

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

Devons.

JUDGE ADVOCATE

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



FIFTH DAY

Friday, 22nd 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)

DR. KELLER: May it please the court. The prosecution have shown through their witnesses that on 24th March 1944, 335 men were shot in the caves, in the Ardennine Caves, near Rome as a reprisal, shot through an *Assenkommando*, through a detachment of the S.D. of Rome. The defence admit this and the defence admit also that both accused have passed on an order, an order that Italians should be shot in the ratio of one to ten, but the defence and also the accused themselves are deeply moved by the fact that this order was carried out in a not responsible way and by its carrying out a terrible crime had been committed. The accused could not know that such a crime will be committed and the accused turned their heads away from this crime with bitterness and with contempt, and the same are we doing, we, the defending counsel. Nobody can try to defend such a clear cut outrage against the laws of humanity, against the laws and usages of war which are recognised amongst all civilised nations, and nobody can try to defend such a deed committed against the conscience of the whole world.

The accused would like to make it quite clear to the court that they did not participate in this deed in a guilty way. What they have done originated only out of their worries for the restoration of tranquillity, order and discipline; it did not originate out of any urge to kill or any overlooking of the importance of human lives, any overlooking of the importance of human sentiments.

Now I am coming to the more detailed defence of my client, General Oberst von Mackensen. After the conclusion of the amity between the Allies and Italy, from this date on until the 23rd March 1944, incidents occurred in the whole of Italy, particularly in Rome; incidents originating from Italian partisans of quite different shade, for instance, belonging to the supporters of Badoglio or members of the Communist party or others. Even the learned prosecutor said that these incidents were against International Law. These incidents cost the lives of German soldiers in an increasing way and caused damage in a general way to the German troops. The German military command in Italy tried in various ways to see that the Italians, but particularly the people of Rome, should cease with these illegal acts.

After the grave incident of 23rd March 1944, in Rome when 32 German soldiers were killed and approximately 80 wounded - I mean to say in reality almost the whole company was wiped out - Hitler issued an order asking for the most severe reprisals by shooting of hostages in the ratio of at least one to twenty or through the blowing up of a whole quarter of the city without previous evacuation of the people of that quarter.

The high command of the Army Group 'C' and also Colonel-General von Mackensen and Commander-in-Chief of the 14th Army thought that some sort of punitive measures were necessary particularly with a view that the whole of Italy, but mainly Rome, should be pacified. Rome would lie in the vicinity of the then existing front line; Rome with millions of its inhabitants was a particular danger through the insecurity which reigned within its walls, a danger for the nearer and nearer lying front line. It was the day of the 23rd March 1944, when Hitler's demands, Hitler's original demands, were decreased from one to twenty, decreased to the ratio of one to ten, but Field Marshal Kesselring and also Colonel-General von Mackensen were in complete agreement that this order should not be carried out, under no circumstances should innocent people be shot, but after careful consideration they were convinced that only the ratio of one to ten promised any success,



and they were convinced that this action was in accordance with International Law. General von Mackensen's ideas were the following:-

(a) The bomb outrage of the 23rd March 1944 and also the numerous previous incidents which occurred constituted an illegal act of the enemy. This was considered even by the learned prosecutor.

(b) For more than three months it was tried without any success to safeguard security of Rome and to see that through the application of mild measures the Jews and usages of was should be safeguarded.

(c) During all the previous incidents only after long investigations and then even was it only partly possible to find the real perpetrators and after having found them to see that they were punished, and after the incident of the 23rd March 1944, one had to - it was quite clear that even after the 23rd March 1944, the investigations would not result in a short time in a positive way, so therefore the punishment of the real culprits could not be put into effect and through this punishment therefore no clear deterrent could be found. This incident was a very grave one and at that time the mentality of the partisans was such that only a very quick and a very drastic action could have slightest success.

(d) To occupy Rome was impossible because through this Rome's character of an open city would have disappeared and therefore it might have been destroyed by Allied air attacks.

(e) The original idea of General Keitel's to blow up the whole quarter of the Via Rosella was not feasible because it would have had a result which was not desired at all, it would have given more and more incentive to the enemy and it would have convinced the Jews and more acts should be committed of an illegal nature. Apart from that the German Foreign Office representative in Rome put in a very energetic protest against this idea. That is the reason why only the shooting could produce some sort of success.

(f) The shooting of inhabitants as a last resort is admissible according to International Law.

(g) The ratio of one to ten was with regard to the degree of victims which were caused by the actions of the partisans in Rome and Italy in the period of more than three months. This ratio of one to ten compared with the victims does not seem to be exorbitant, excessive. Nevertheless, Colonel-General von Mackensen decided from the beginning out of humane reasons to try to find the possibility which excluded the shooting of innocent people. This decision led to the agreement with the leader of the S.D. detachment in Rome, this agreement which said that only such persons should be shot whose mentality had something to do with the circle of the perpetrators of the incident in the Via Rosella and also of this, who because of their legal activities, were doomed to death.

If no sufficient numbers of people were available to fulfill the ratio of one to ten then only less people should be shot, but the command given in the papers and also the reports to higher authorities should contain that in the shooting the ratio of one to ten was maintained as a reprisal. Through this Mackensen tried to cancel the severity of this order. The execution should have had only a flimsy form of reprisal but its effect should be the same which a real reprisal could have had. This leader of the S.D. Detachment, Kappler, seemed to be a level headed man during this conference and as a matter of fact the idea originated from him. Colonel-General von Mackensen therefore had no particular reason to doubt Kappler or to see that he should be supervised in a particular way and apart from that the chain of command and the chain of orders between the Wehrmacht and the S.D. made it impossible that the S.D. which received an order from Hitler should be supervised in a particular way in the execution of this order and apart from that the higher superior officer of Kappler in Italy, I speak about General Wolff, came in the morning hours of 24th March 1944 to Rome.



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The reasons for this were the complex questions originating out of the incident of the 23rd March 1944. This came out in the evidence which was given by witness Hardster. I have to test my defence to refer to the affidavits of General Herz and Colonel Helmreich and of Lieutenant-Colonel Cuddeira and Lieutenant-General Sehlmann. Then my witnesses will be Colonel Beelitz, the accused Colonel-General von Mackensen, Field-Marshal Kesselring and Major-General Hauser. Then I am speaking in my defence about Article 46 of the Hague Convention and of paragraph 33, 452 - 461 of the Manual of Military Law, and apart from that I myself shall go into the witness box. The reasons why I shall go into the witness box is the following, (1) The confirmation of death sentence lay the obligation to the Commanders-in-Chief that they had to investigate whether in each single case a plea for mitigation or for clemency was admissible and if the answer of these investigations for pleas of clemency was in the negative then those applications for clemency need not to receive any answer. Through this order it was declared that the proclamation in the execution of death sentences should be avoided otherwise the execution of death sentences would have had no deterrent at all. The Judge of Army Group 'C' did not agree to the fact that prisoners who were sentenced to long terms of imprisonment should be included into the number of those on the 24th March 1944.

THE JUDGE ADVOCATE: Dr. Keller, I think I should tell you that you can call your witnesses in any order you like but if you call the accused after you call your other witnesses you, as a lawyer, will appreciate that he will have heard what evidence they give. That may, in certain circumstances, detract from the weight the court would give to the accused's evidence. On the other hand if you call him first you will appreciate that he will then be giving evidence without any knowledge of what the other witnesses are going to say and in those circumstances it probably carries more weight than in the other way. Is that clear to you?

DR. KELLER: I have understood and I would like to say one or two words. My idea was first to call witness Beelitz as the first witness in the defence because I was of the opinion that the president and the members of the court should know about the whole organization and about the chain of command which reigned in Italy. If I have the possibility - I, of course, do not know exactly how the British law reacts in this way - but if I have the possibility I would like to call Beelitz as my first witness and ask him only about things concerning the S.S. and the S.D. and everything else in relation to the action and to the deed itself on the 23rd I shall only ask when I put the accused, defendant General von Mackensen, into the witness box. I was told that from the moment my client was in the witness box I am not allowed to talk to him any more during the time that he is giving evidence and I would like to tell the court that I certainly shall not do this.

THE JUDGE ADVOCATE: I think we can shorten this. I have told learned counsel that he can call witnesses as he likes and there is certainly no objection to him calling the colonel first.

DR. KELLER: I would like to know whether it is admissible that I ask the first witness, Beelitz, only about these questions which I intimated to the court about the organization of the S.D. and S.S., then discuss him, then call my client to go into the witness box, and recall Beelitz for other questions or is it necessary that I go with Beelitz through all the questions which I have to ask?

THE JUDGE ADVOCATE: I think the best thing is to leave it to learned counsel. He has the discretion as to what he likes to do. If he wants to call Beelitz first, call him first, and he could put any questions he likes. Would you make it plain to him that the court are not dictating to him in any way? All I was trying to was point out that it might be a matter of comment that the accused had heard the previous witnesses but will you



make it clear that he can call his witnesses as he likes and ask them any questions he likes.

DR. KELLER: I call Beelitz.

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

- Q Your name is Friedrich Beelitz? A. Yes.
- Q In March 1944 you were in Kesselring's staff? A. Yes.
- Q From what time to what time have you been in that staff? A. From the 1st December 1943 to the 26th November 1944.
- Q From the 26th November till the conclusion of the armistice you have been Chief of Staff of the 10th German Army in Italy? A. Yes.
- Q What were your duties in Kesselring's staff? A. I had to deal with operations and organisation.
- Q Can you give information to the president and the court regarding the chain of command and subordinations in Italy? A. Yes.
- Q Did you prepare a sketch which shows all the necessary as I asked you to do? A. Yes.
- Q Are these exhibits duplicates of this sketch? A. Yes.

DR. KELLER: I would like to put it in to the court.

(Two sketches showing chain of command  
are together marked Exhibit 12, signed  
by the President and attached to the  
proceedings)

THE PRESIDENT: Just one moment, I have got two different ones. Which is the one you are talking about?

DR. KELLER: There are two different. It is meant that they are different.

COLONEL HALSE: Has the court got a copy that I could see?

THE JUDGE ADVOCATE: Will everybody keep quiet for a moment while I sort this out?

THE PRESIDENT: What we have got is a table showing the chain of command from the leader and Supreme Commander of the Armed Forces in the home territory and in Italy - I think it is the same as that picture. (Indicating blackboard) Is that right?

DR. KELLER: That is correct.

THE PRESIDENT: The second is headed "Organisation of Command" and it shows down one side from the Supreme Commander through Army, Corps, Division and on the other side the command of the S.S. and Police and that is the same as this diagram is it? (Indicating blackboard)

DR. KELLER: That is correct.

THE PRESIDENT: That is what the two sketches are.

COLONEL HALSE: If I may be allowed to say something at this moment, I agree with it and I think it correctly gives the organisation as I understand it.



THE JUDGE ADVOCATE: I do not think it helps you know, Colonel Halse, to say that because it puzzles learned counsel. If you do not cross-examine, well and good, but I think he must prove this.

COLONEL HALSE: I do this to make it short.

THE JUDGE ADVOCATE: I do not think it will make it short; I think it would be better if you do not cross-examine on it.

COLONEL HALSE: Very well, I say that.

DR. KELLER: (to the witness) I ask you to give the proper explanations to the president and the court. A. (with the aid of the blackboard) In Italy there were four chains of command parallel and equal in their rights and authorities. First, Supreme Commander South West, Field Marshal Kesselring. His task was the military command and leadership of operations. He was subordinate to the Supreme Commander of the Army, of the Wehrmacht. At his side were the Field H.Q. with the same powers of command, the General of the German Army in Italy, General Tuseo. His task was a representation of Army interests with Italy's government. Also he was subordinate to the Supreme Commander of the Land Forces in Germany. The third power of command, again with equal powers was a Supreme Leader of the S.S. and Police Forces, Obergruppenfuhrer Wolff. His tasks were the interior security, the control of the population, the safeguarding of military installations against partisans without the area of operations, outside the area of operations. He was subordinate to the Reich Leader of the S.S., Himmler. The fourth authority was the representative of the German government in Italy, Ambassador Dr. Rahn. He had representation of all consular, political, economical and propaganda affairs with Mussolini's Government. He was subordinate to the Foreign Secretary, Von Ribbentrop. Only Field Marshal Kesselring was supreme in the powers. He was the senior to the three others. Only in questions of general policy of warfare was he authorized to issue directives to the other two authorities.

Q What does it mean "to give directives"? A. He could suggest things but could not order them. This table here (indicating second plan) shows the chain of command in Italy, one side between the military commands under Supreme Commander South West and the Supreme S.S. and Police Leader Wolff and subordinate H.Qs. To mention it shortly under the Supreme Commander South West the different Army detachments, Von Tengen, one 10th Army and 14th Army, Von Mackensen. Subordinate to the 14th Army a corps of general commands and divisions in the front line and immediately under the command of the Army, the German Commander of the city of Rome, Haelser. In the section of the Supreme Leader of the S.S. and Police there were a number of H.Qs. of which I want to mention only the most important, the commander of the Security Police and the S.D., Security Service, Gruppenfuhrer Harster, the commander of the police in maintaining order, the commander of the Waffen S.S. and a number of higher S.S. and Police Leaders, altogether five. Under the command of the S.D., Harster, were a number of so called S.D. Aussesternungs under the leadership of Kappler. Between the Army commands and the S.S. and police commands was no authority to issue orders. Only the local H.Q. were asked to co-operate. Therefore, Supreme Commander South West was in co-operation with Wolff and the German commander of Rome was in co-operation with the leader of the S.D. Aussesternung Rane, Kappler, but these questions of co-operation were allowed to extend only on affairs of operations against partisans and resistance movements. Therefore, the Army H.Q. has to put its requests and questions to the S.D. H.Q. on the way how these requests were carried out. He had not only no influence but on an order given from the Reich, it was strictly forbidden. Only the S.D. H.Q. was responsible for the carrying out of these measures. In this respect there was no difference between S.D. H.Qs. within or without the operational area.

THE PRESIDENT: Just a minute; one word on there has not been translator, "Aussesternung".



THE INTERPRETER: This means an outpost, a sub unit, a detachment.

THE PRESIDENT: Is it local?

THE WITNESS: Local sub units or detachments.

THE PRESIDENT: I want to be sure of the translation. Note 3 on the left of this diagram reads in English, "But only in questions of the general police of operations". Does that mean general policy?

THE INTERPRETER: I am sorry, it is my mistake. "Policy" it should be.

THE PRESIDENT: One other question. On this diagram the reference to Rome, Kappler is shown slightly downwards from the German commander of Rome. On that copy it is shown upwards. Is the intention that it should really be straight across?

THE WITNESS: Parallel; no bearing about it.

DR. KELLER: (To the witness) Can you give an explanation for the sense of what you showed through this diagram at a time when the German people fought almost the last battle, why that is?

THE JUDGE ADVOCATE: You mean how important it was, this organization, for the German people?

THE INTERPRETER: I think the sense is why the organization was built up in this way as explained.

THE WITNESS: The explanation is only a purely political one and with the permission of the court I would like to add a few words to explain this.

THE PRESIDENT: Only if it is in answer to the Herr Doctor's question.

DR. KELLER: (To the witness) Is the reason for this regulation the fight between the Leader of the S.S. against the Supreme Commander of the Army?  
A. Yes.

Q What was the deepest reason for this fight? A. Two things. One Himmler's distrust of the General Staff and Himmler's hatred against all military leaders.

Q Why was this distrust; what was the reason for this distrust? A. The General Staff had still the old traditional ideas and could not agree with everything which was brought forward in Hitler's movement.

Q Can you give an example of the tension which existed between S.S. and Army, a case in which you were involved yourself? A. Yes.

Q Tell this case? A. At approximately the same time as this bomb incident that in Rome occurred the separation should be drawn up between operations against partisans for the Army within the operational area and for Wolff outside the operational area. An order was drafted which was passed on to Obergruppenfuhrer Wolff to which he agreed. His operational area was rather restricted by reason of the small forces at his disposition. A few days later Obergruppenfuhrer Wolff came again to us in the presence of my specialist. He accused me that I had drafted this regulation only out of my hatred against the S.S. It pointed out to me that during the war a record was kept for each of us officers of the General Staff regarding all our actions. Afterwards we should have to respond for all these, our actions. The reason for that was the Reich Leader of the S.S. did not agree with the restriction of his area.

Q Was it possible to bring a member of the S.S. or of the police forces who was not a member of the S.S. before an Army court? I mean to say of course the Armed Forces, the land forces, Air Force or Marines? A. No.



Q Why not? A. There were separate courts for S.S. and Police units but they were not under the authority of the Army.

Q Do you know of any case from the year 1939, a case where an Army officer or a high ranking S.S. officer and another German were accused to have murdered 13 Polish prostitutes under the influence of drink? A. Yes.

Q What happened to the Army officer? A. The Army officer came in front of a court-martial and was sentenced to death.

Q What happened to the higher ranking S.S. officer? A. The Army requested the same for him but the authority was denied to it to bring him in front of a court-martial.

Q Did the Army succeed to bring this man to trial? A. No.

Q Do you remember exactly that this happened in the year 1939 shortly after the end of the Polish campaign? A. Yes.

Q Do you know of an order of Hitler's for the year 1942 giving out instructions for the fighting against partisans? A. Yes.

Q Were in this order instructions given regarding the behaviour of superior officers towards the inferiors if it is overstepped in the matter against the partisans? A. Yes.

Q And what was the wording of this regulation? A. A superior was not allowed to put on an officer or a man who overstepped his powers in a fight against partisans.

Q Were in this order also measures given against such a superior officer who dared to take action against the subordinate officer or man overstepping his powers in the fight against partisans? A. Yes.

Q In your opinion, had it any sense to take action or make a report against an S.S. officer or man who overstepped his powers fighting against the partisans? A. I am sorry, no.

Q Why not? A. Because to my knowledge in no case was there any success to bring these people to punishment.

DR. KELLER: I have finished with the first part of my questions.

THE INTERPRETER: What he meant is this part which he wants to ask this witness now before putting Mackensen into the witness box.

THE PRESIDENT: Then he has finished with the witness box?

THE INTERPRETER: For the moment, yes.

THE JUDGE ADVOCATE: Will he go on? He can examine him on anything he likes now.

THE INTERPRETER: He does not want to ask him now.

THE JUDGE ADVOCATE: We do not want to have to call witnesses again. We only call witnesses once for examination-in-chief. Will you tell counsel he can go on and ask this witness anything he likes.

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

DR. KELLER: May it please the court. I understood that the learned Judge-advocate general gave me the right to interrupt the examination of my first witness, Beeltz, and I would like to call Beeltz after having called



the defendant General von Mackensen, after my client has said what he has to say about this thing, and I would like to have the president's permission to do so because under all costs I would like to avoid that the court should gain the impression that my client wishes to hear what the other witness has to say before he himself gives evidence.

THE PRESIDENT: That is agreed to.

COLONEL HALSER: There are points already given by this witness in his evidence which I am afraid I cannot agree to and I want to cross-examine him on those points which may be of importance, before I hear the evidence of Mackensen. He has given evidence with regard to the affair of October 1942. For instance he has spoken of the S.S. on which I would like to cross-examine him.

THE PRESIDENT: The prosecutor wishes to cross-examine on that part of the evidence already heard by this witness.

DR. KELLER: I am perfectly agreeable.

Cross-examined by COLONEL HALSER:

Q What was the Army's view of the S.S.?

THE JUDGE ADVOCATE: Well, Colonel Halser, I am sorry to interrupt you but this is quite unusual procedure. I would have thought that we ought to offer the other learned counsel the opportunity to question the witness on this part of the case on behalf of Kessler.

THE PRESIDENT: Does it matter which order?

THE JUDGE ADVOCATE: Yes, we must keep to the order.

COLONEL HALSER: I find it most difficult because I do want to ask this witness many questions and as he has been into the box I want to ask this witness the questions before the accused goes into the box.

THE JUDGE ADVOCATE: As we have agreed to take this part of the case I suggest that we ask the other learned counsel whether he wants to cross-examine this witness on this part of the case before the prosecutor cross-examines.

Cross-examined by DR. CHRISTI:

Q Has the commander of the city of Rome authority to give orders to the S.D. regarding the measures of punishment meted out to members of the resistance movement? A. No, he had no authority to do so.

Q Had the commander of the city of Rome any influence on the way in which Kappler conducted the investigations in the resistance movement? A. As I have stated already before he could express his wishes but he had no authority to influence the way of carrying out the actions and he was not allowed to do so.

Q Had the commander of the city of Rome authority to issue orders to Kappler in any area of operations, and in which? A. Only, as a commander of the Army, in questions of Army discipline for the Army which was within his area as for instance putting certain localities out of bounds and the issuing of orders for curfew.

Q Was the relation between commander of Rome and Kappler principally based only on co-operation? A. Exclusively.

Q Could the commander of Rome issue instructions to Kappler, that means to say, give orders? A. No, as I have said before, not even instructions. He could express only his wishes and bring forward his requests.



Cross-examined by COLONEL HALSE:

Q Perhaps you will tell me what the views of the Army were with regard to the S.S.? A. All those who had inside knowledge they were against the S.S.

Q Do you mean they would have nothing to do with the S.S.? A. They wanted to have nothing to do with the organization but I do not want to say this about the singular individuals.

THE PRESIDENT: What does that mean?

THE INTERPRETER: I am against the organization as such but I would like to say this about the single members of this organization.

COLONEL HALSE: (To the witness) You mean that some of the members were decent people? A. Yes, I experienced that during the war in battle especially with the Waffen S.S.

Q But the Waffen S.S. was quite a different thing from the S.D.? A. Yes, it was another branch.

Q Let us talk about the Allgemeine S.S. only? A. Yes, over there the same is to say with regard to the Waffen S.S.; there were great differences.

Q As a whole the Allgemeine S.S. were bullies? A. I have no knowledge about that and I do not think so. The General S.S. had no influence any more. The influence was all in the hands of these last two branches mentioned.

Q I see, the S.D.? A. Particularly the S.D.

Q The S.D. were bullies, were not they? A. I am sorry to say that I heard about many things which admit this judgment.

Q You heard about those during the war? A. Some of them during the last years of the war.

Q They were completely ruthless when making investigations? A. I have no inside knowledge about this as this part of actions was absolutely without my personal duties.

Q Do you say then that you had nothing to do with the S.D.? A. I personally, the conference jobs and duties I carried out during the war, had nothing to do with the S.D.

Q Had you had something to do with the Waffen S.S.? A. In territorial questions, yes.

Q Now, Rome was in the 14th Army area, was not it? A. In the month of March, yes.

Q 1943? A. Yes, 1944.

Q And in the Army area the S.S. were under command for operations were not they? A. I want to differentiate between the Waffen S.S. and the S.D. The Waffen S.S. was for operational tasks in the front line under the Army command, the S.D. not.

Q Would it be correct to say that Kappler was not subordinate to, but had to co-operate with the commander of Rome? A. Only in the before mentioned tasks of investigations into partisan affairs, investigations only in fighting against partisans.

Q And that he was obliged to accept special tasks from the commander of Rome? A. No, in normal cases not, as I have explained before. There could be one exception.

Q What was that? A. In the case that an order of the Leader is passed on to



the S.D. command through the channels of the commander of Rome.

Q Your Commander-in-Chief does not seem to agree with you? A. I do not know who is meant by this Commander-in-Chief.

Q I mean Kesselring. A. I do not know that he had any other opinion in this time.

Q But I have just been reading out to you statements signed by Kesselring?

A. A Field Marshal might error in minor details; for these questions he has a specialist at hand.

Q Do not you think he would think rather carefully before signing a document when he was being interrogated in respect of war crimes? A. I believe he did, but there are an immense number of tasks which a Supreme Commander naturally had to carry out. It might happen that he may error in details. Therefore, I do not exclude the possibility of errors on Kesselring's side.

Q Do you say that Kesselring had no contact with Kappler at all? A. No, in no way; I do not want to say that.

Q What would you like to say? A. The Field Marshal's residence at that time was at Monte Serratto in the vicinity of Rome. In Rome was Kappler as an S.D. detachment or outpost. Normally Kesselring's H.Q. was in co-operation with Wolff. He, at this time, had his residence at Verona Organo and therefore Kappler was a kind of liaison officer, a local representative of his superior officer at Kesselring's H.Q., especially at that time when Rome was in Kesselring's area.

Q And that is an explanation why Kappler got in touch with Kesselring about this incident I suppose? A. Yes, this was still a tradition from the time when Rome was under Kesselring's direct orders. The change over of Rome to the area of the 14th Army happened only shortly before the end of February.

Q But there is no contact, according to your plan, between Kappler and Mackensen?

DR. KELLER: The witness mentioned the changing over took place at the end of February or the beginning of March.

COLONEL HALSE: (To the witness) But there was no official contact in your plan between Mackensen and Kappler. That is so, is not it? A. Radically he could have had contact but in Rome resided the commander, the right of a divisional commander who was a representative of the High Command of the 14th Army, so that local affairs first time were dealt with in this level.

Q What you are trying to say then is that Kappler could get in touch direct with Mackensen or with Kesselring?

THE JUDGE ADVOCATE: I thought he said, if I understood what he was saying, that so far as Rome was concerned, local affairs, Mackensen was the representative of Mackensen and Kappler and Mackensen could get together.

COLONEL HALSE: I am putting to him that he was speaking to Kesselring at this time?

THE JUDGE ADVOCATE: I do not want to put you off but I thought you were summing up what the witness had said.

COLONEL HALSE: (To the witness) Did you know anything about this incident in Rome? A. Yes.

DR. KELLER: I believe that this touches matters which I was not asking the witness in the first part of my examination.

THE JUDGE ADVOCATE: I think you will have to keep your cross-examination as far as you can to organization. You have a further chance to cross-examine him.



COLONEL HALSB: I appreciate that sir, but I am in difficulty. I wanted to get a lot of information from this witness for my cross-examination of the accused.

THE JUDGE ADVOCATE: But I do not think it would be right to let you cross-examine on matters which have not been touched upon by the counsel in examination-in-chief.

COLONEL HALSB: I hope that the defending counsel appreciates that I am entitled to cross-examine at large at a later date and not only on the questions he has asked.

THE JUDGE ADVOCATE: He understands that; I made it quite clear. I perhaps unfortunately but I thought it was my duty to do so, pointed out that there might be some comment if in dealing with matters of fact the accused heard what the witness said in court. Upon that counsel very frankly said, "I do not want that to happen and if it is a question of facts I want the accused to tell his story unaided by anything he has heard". We are trying to preserve that right for him; we cannot do anything else. It may be difficult for you but I think the court would ask you now to cross-examine on organization and learned counsel knows perfectly well that later on you will cross-examine on anything.

COLONEL HALSB: (To the witness) I may have misunderstood you but did I misunderstand you to say that the commander of Rome had no powers to interfere with punishments inflicted by the S.D. on partisans? A. Yes, I wanted to say that.

Q Do I understand from that that the S.D. had powers of inflicting punishments on partisans? A. I do not know that; I have no knowledge about the instructions for duties of the S.D.

Q But surely the answer you gave to Oberst Christ indicated that you must have known that the S.D. had powers of punishment? A. I heard about it that the S.D. did mete out punishments, but on what basis they did it I do not know.

Q Do you say that the commander of Rome could not inquire into the conduct of the S.D. in Rome? A. He was not allowed to do so.

Q And that the S.D. could take people out and shoot them without any trial and the commander of Rome could not do anything about it? A. Yes.

Q And that was a well known fact? A. Yes.

Q You had to be rather careful as to what powers you gave to the S.D. in that case then, had not you? A. We were not at all able to give powers to the S.D. as my previous explanations pointed out.

Q I will deal with the other point later because it has not been dealt with yes. Tell me this; do you know if Wolff issued orders for reprisals in Italy? A. At this period I cannot tell. Afterwards an agreement was came to between the various H.Q.s. regarding the safeguarding of acts of reprisal and punishment.

Q You say you do not know if Wolff gave orders for reprisals? A. He could not issue orders to us. If he issued orders to the S.D., I do not know.

Q The Army could issue orders to the S.D. for carrying out reprisals? A. The Army could not do so as I explained previously.

Q The orders could be passed on from Hitler could not they? A. Yes, as Hitler's order.

Q I quite agree, as Fuhrerbefehl. As Fuhrerbefehl they could be passed on through the Army to the S.D.? A. Not "they could be passed on"; they had to be passed on.



THE JUDGE ADVOCATE: I do not follow that question. How do you mean "they could be passed on"?

COLONEL HALSE: He said "they had to be passed on", so an order issued by Hitler through the Army had to be passed to the S.D. for action.

THE JUDGE ADVOCATE: I thought the Fuhrerbefehl was an order from Hitler?

COLONEL HALSE: The Fuhrerbefehl in this question is the order which is said to have been issued by Hitler for the killing of these men, the JSD, and I am putting to him that if an order of that sort is passed through Army channels the Army could do it?

THE JUDGE ADVOCATE: But does he understand the question?

COLONEL HALSE: (To the witness) You appreciate that I am asking you about the orders to take orders about reprisals and particularly the Ardennes Case?

A. Yes.

Q And your answer to my question was that if the Fuhrer issued an order and it was passed through military channels the S.D. must obey the order of the military; is that right? A. Yes, if it was Fuhrerbefehl, an order by the leader, the generals did not matter nor the S.D.

Q Now you spoke of the Fuhrerbefehl of the 18th October 1942? A. Yes.

Q That is what we know as the Kommando order? A. No, I think it is another one. I cannot state exactly if it was the date of the 18th October. I think the 18th October was the Kommando order which I know from newspapers but this order I am referring to is approximately the same time of Autumn, 1942.

Q You will take it from me that they were both issued on the same date and the one referred to the other? A. I take it you have the necessary material. I have not got it so I accept that.

Q That order, the Kommando order, said that everybody on Kommando operations was to be killed to the last man, did not it? A. Should have been killed, yes.

Q Either by not taking them prisoners or by handing them over to the S.D.? A. Yes.

Q The other order of the same date referred to reprisals, did not it? A. The expression "reprisals" is not wide enough; it was an order about fighting against armed bands or partisans.

DR. KELLER: The order I was referring to when asking Beeltje about it was issued in December 1942 and contained only an order concerning activities against partisans and not about reprisals?

COLONEL HALSE: (To the witness) I am asking you about the order of October 1942. That referred to reprisals, did not it, or do not you remember?

A. I know from October the so called Kommando order and I know the second order to which the General Richter is referring. The date of which after four years I cannot state exactly.

Q That is not the answer to my question. I am asking you whether those orders refer to the fact that they were issued as reprisals? A. No, in the moment I have not in mind.

COLONEL HALSE: That is all I have got on this part of it.

THE JUDGE ADVOCATE: Does learned counsel want to re-examine on this part of the case.



Re-examined by DR. KELLER:

Q The learned prosecutor has asked you if the S.D. men were ruthless in carrying out investigations. Do you remember a conversation the subject of which was the methods of carrying out investigations? The conversation took place in the Field Marshal's mess. A. Yes, I remember that.

Q Please report in short sentences the contents of this conversation? A. Regarding a conference Kappler was the Field Marshal's guest for supper. We came on the topic of the methods of interrogating people under arrest. At this time as Kappler pointed out an order had been issued regarding more severe interrogations. Kappler mentioned this order because he, as an experienced criminalist, refused this order. His opinion was that it was just for a criminal officer to bring the accused or the person under arrest by means of superior mental powers to confess an offense but not through any physical acts.

THE INTERPRETER: Not to confess an offense but to get a confession out of the accused.

THE PRESIDENT: To extract a confession?

THE INTERPRETER: Yes.

DR. KELLER: (To the witness) You have been asked furthermore if the commander of Rome had the powers to avoid that Kappler took people out of the prison of Rome and shoot them. You answered to this question "yes". Up to the 23rd March 1944 was there in your opinion any reason to accuse that Kappler would take out people from prison and shoot them without proper reason? A. No.

Q What was the opinion about Kappler on Kesselring's staff up to the 23rd March 1944, or better to say up to the moment when his outrages were known? A. Kappler was kept to be a particularly trustworthy and experienced criminalist. No cases were known that he overstepped his powers in these matters. The military commands had to co-operate with him, that is to say any matters of investigation. He had given excellent services and he succeeded in giving us all the opinion that with him we had to do with one of the few honest and decent men within the S.D. who honestly wanted to co-operate with the Wehrmacht. Therefore, he had the complete trust of the Field Marshal.

DR. KELLER: No further questions.

THE PRESIDENT: Would the witness say when this meeting where Kappler was the guest of the Field Marshal took place approximately?

THE WITNESS: I can only say approximately in the first part of 1944 and I remember it was at his H.Q. in Monte Seratto in the vicinity of Rome.

A MEMBER OF THE COURT: On the other side of that board you show in the side showing Hitler at the top in column 3 and you show the S.S. had no jurisdiction within 30 kilometres of the coastal zone right at the bottom with the remarks? A. Inside the operational area it was of course the Wehrmacht who had the duties and outside the operational area within the perimeter of 30 kilometres because there were some possibilities of landing operations and only in the matters of partisan activities, only in that, the fighting of partisans, the Army had its command.

Q Because Rome is within 30 kilometres of the coast, is not it? A. Not only that, but Rome lay within the operational area.

Q Then the S.D. still operated in Rome, despite that? A. In Rome, as capital of the country, yes.

THE PRESIDENT: I want to be quite clear about his previous answer. It was



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that Rome lay within the operational area of the Army; is that right?

THE WITNESS: Of the 14th Army, but I would like to stress that the S.D. although being in Rome, and although Rome was within the operational area was not subordinate to the Army.

THE PRESIDENT: The court has finished with this witness for the time being. There will be more questions from the court at a later date.

DR. KELLER: I ask you whether I can ask a question arising out of your own questions?

THE PRESIDENT: Yes.

DR. KELLER: (To the witness) Are all these peculiar regulations which we are talking about just now arising out of the fact that Rome was declared an open city? A. That is what I meant when I said it was a capital of Italy.

(The witness withdraws)

(At 12.40 hours the court adjourns)



(At 1430 hours the court re-opens)

DR. KELLER: I call my client, von Mackensen.

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

- Q Your name is Eberhard von Mackensen ? A. Yes.
- Q You are a soldier in the Wehrmacht and your last rank was Colonel General ?  
A. Yes.
- Q Your age ? A. 57.
- Q And the Prussian Field Marshall Mackensen, was he your father ? A. Yes.
- Q And in Rome was there an ambassador who had the same name, von Mackensen ?  
Was he a relative of yours ? A. He is my brother.
- Q Were you the C in C of 14 Army ? A. Yes.
- Q When was it ? A. From 17th November 1943 until 6th June 1944.
- Q Were you still working as a soldier after 6th June 1944 ? A. On 6th June  
I was transferred on the reserve list of officers, OKH, Oberkommando, high  
command of the Army and then I ceased to do front line duties.
- Q You looked very different in former times, General Oberst. What is it ?  
You look much older today and somehow shrunk. What is it ? I have got  
a photo here which is signed "von Mackensen". Will you please look at it and  
say whether it is your photo ? A. It is my photo; it is my paybook but  
I would like to put it in as an exhibit to the court.

(Photograph of the accused Mackensen is marked  
exhibit 13)

THE PRESIDENT: Do you want to put in the whole book ?

THE INTERPRETER: The General Richter would like to have this pay book  
returned because it is the only document which the accused has.

THE JUDGE ADVOCATE: Will you ask learned counsel if they will be satisfied  
if the court look at the photograph and form their own impression and  
hand it back without making an exhibit of it.

DR. KELLER: That is correct and thank you very much.

THE JUDGE ADVOCATE: We will now delete exhibit 13.

DR. KELLER: Were you ill or what is the reason for this very great change  
in your appearance ? A. No, I was not ill but in March 1946 I was  
transferred to a POW camp where I lost weight; within three months I lost  
60 pounds in weight. That is, I suppose, the exterior reason for the  
change in my appearance.

Q And the inner reason ? A. The inner reason is because after this period  
when I lost these 60 pounds I was transferred to a POW cage in London,  
and that is where I was first interrogated with regard to the charge I am  
charged with, and since then I am suffering very deeply because of the  
fact that how was it possible that anybody could believe that I myself  
could be concerned with such a crime which had been committed here.

Q Did you see to it that in those armies which were commanded by you the laws and usages of war should be respected; can you name an instance of what you yourself personally have done to further this? A. I can only say that also in the 1st Army, the 1st Armoured Army, Panzer Army, and also in the 14th Army in Italy I published from time to time orders of the day where I pointed out these things; first example. Then we had some regulations concerning the behaviour of troops, and there was an annex which contained in a rather short form an extract of the laws and regulations of land warfare and again and again these regulations were pointed out to the troops concerned.

Q And did you see to it also that undue severity or harshness against the inhabitants of the country where you were should be avoided? A. Yes, because of first all those orders of the day which I mentioned before, second these instructions which were issued and third that any crimes if they were of a heavy nature were punished with a court martial, if they were of a lighter nature they were dealt with in a summary disciplinary way.

Q And were the sentences which were passed by courts martial if it was thought that they would instruct them, would be of instructive value to the troops, were they published in some way? A. Sentences were published through orders of the day.

Q I would like to point out that now I shall refer to two different orders, one the Kommissar order, an order concerning the kommissars, and two, an order concerning commandos. To make it quite clear to the court when I state the orders concerning the kommissars I mean the region kommissars and second I mean the order concerning commandos. Did you know this order concerning the kommissars? A. Yes.

Q What was your position in 1941; I believe it was 1941 when this order was issued; what was your position then? A. At that time, 1941, I was General commandant of the 3rd Panzer Corps.

Q When you were commanding the 3rd Armoured Corps - I speak about 1941 - did you receive this order concerning the kommissars? A. I did.

Q And what did you do with this order? A. I kept this order without passing it on.

Q Why did you not pass it on, or why did you keep it? A. Because in my opinion it did not conform with the demands of international law.

THE JUDGE ADVOCATE: I think the court ought to know what the order was.

THE PRESIDENT: Whose order is it; is it the Fuhrerbefehl? What was it by?

THE INTERPRETER: Dr. Keller will deal with it.

DR. KELLER: You were, of course, aware what it meant for you, this not passing on an order which was issued by the supreme commander of all the German Armies; I mean, of course, Hitler? A. Yes, I was quite aware of this.

Q Can you tell me whether in the trial at Nuremburg your behaviour concerning this order was mentioned and if so by whom? A. I understand that my 1st Ordnance Officer, Major Guderian, furnished the Nuremburg Trial with an affidavit. This affidavit said that I did not pass this order on.

THE INTERPRETER: Dr. Keller says the defence would like to point out to this court that they tried to get a copy of this affidavit made out by Major Guderian but until now they were not successful.

DR. KELLER: Now I am referring to the kommando befehl. A. I cannot remember that I read it at any time.



THE PRESIDENT: This is the command order ?

DR. KELLER: The command order. (To the witness) But did you hear about the contents of this command order ? A. I got to know of it only by hearsay because when it was published I believe in October 1942 I was stationed in Russia at the Caucasus and when I was transferred to Italy then, of course, there was no talk about this order any more.

Q When was the 14th Army transferred to Central Italy ? A. A few days after the landing of the Allies which took place at Nettuno; I do not remember the exact date but I believe it must have been about the 22nd or 23rd of January.

Q Was the commander of Rome under your orders and if so from which period on ? A. In the beginning he was not under my orders; I suppose so as to let myself be concentrated entirely on the affairs of the landing of the enemy. Later on he came under my command; I cannot remember exactly the date but at the earliest about the 1st March and at the latest about eight or ten days before the bomb outrage took place.

Q What rank of command in an army formation was corresponding to the rank of command of the Commander of the City of Rome ? A. Divisional commander.

Q Is it usual in the German Army to keep supervision for carrying out of orders on a divisional commander; is that necessary ? A. No.

Q Had you prior to the 23rd March 1943 any reason to change from this normal practice in regard to General Maelzer ? A. No.

Q I forgot to put one question; who was commander of the city of Rome ? A. General Maelzer.

Q Do you know if prior to the 23rd March 1944 outrages against members of the Wehrmacht occurred; I asked the first time with regard to the city of Rome ? A. Now during the trial I could remember several such cases; during my interrogation in London I could not recollect these cases but I ask you to take into consideration that at that moment I was physically and mentally not in good condition.

Q Please tell us what you have in your memory; I do not want to hear that what you heard hear in the trial. A. Now I remember those outrages which were here quoted, one against the Hotel Flora and the second which was mentioned concerning the cinema and the third outrage, the bomb outrage, by a cyclist but for instance the outrage which occurred at Pinchio Bridge escapes my memory.

Q What sort of outrages did you mention just now, bomb outrages or others ? A. Outrages against members of the German Army. How they were carried out - whether with bombs or otherwise - I do not know.

Q Do you know whether before the date of the 23rd March - I am speaking now outside of Rome - any other outrage occurred against members of the German Wehrmacht or against army installations ? A. Yes, I know.

Q Could you give us any example or could you say something in a general way ? A. I am here under oath and I cannot say really in any particular details because I cannot remember exactly.

Q Do you know the number or can you say what was the number of the victims of these outrages; I mean in Rome and also outside ? A. To be quite frank I cannot.

Q Do you know whether before 23rd March the German authorities did try to persuade the Italian population to desist from further incidents which caused damage and loss of lives of members of the German Army ? A. Yes, those warnings were issued by the H.Q. of Field Marshall Kesselring.



- Q What sort of warnings were they ? A. Mostly these warnings were issued, mostly in the form of articles which were published by the papers; I do not mean very big communiques or articles of any length but rather small notices and the contents of those notices were that the Italian population was made aware that it was in their own interest to keep order and discipline, but there is a Colonel or maybe Lieutenant-Colonel Zolling who worked at Field Marshall Kesselring's Headquarters and could give the court more details about this.
- Q Could you say whether there was some particular care taken in the supply of food-stuffs to the Italian population, to the population of Rome ? A. Yes.
- Q What sort of measures were taken ? A. I can give two examples to the court, first the supply of a number of trucks to bring those supplies of food-stuffs into the vicinity and secondly the supply of pontoon bridges over the Tiber and both these facts were combined with the unfortunate loss of soldiers of my army. Both these examples caused a lot of difficulties to my troops because the amount of available motor transport decreased from day to day because of the bombing of the enemy.
- Q How did you stand with the question of petrol ? A. The question of petrol caused us a lot of trouble.
- Q Who were more in danger, those troops who were concerned with those pontoon bridges or those troops who were concerned with the supply of trucks ? A. At first those troops working at the pontoon bridges were in a lesser degree threatened but later on when recognised by enemy aircraft then of course they were bombed mercilessly.
- Q Has Rome been declared an open city ? A. Yes.
- Q When approximately ? A. I do not know really but I think that it must have occurred before my transfer to this theatre of war.
- Q What is the reason in your opinion that Rome had been declared an open city ? A. I think the reason was to try to safeguard Rome for a centre of culture, to safeguard it for future generations.
- Q And was it expected that the population of Rome would understand this reason ? A. It was expected and I believe at that time the population of Rome understood it quite well.
- Q And this measure; in your opinion was it of some advantage to the interests of the 14th Army ? A. It is quite clear that it was of a great disadvantage to the command; I mean to myself.
- Q Why ? A. I already spoke to the court about the lack of motor transport and also fuel - petrol. First because of this we had to avoid the very good roads of Rome or leading to Rome and had to take secondary or third class roads. We lost through this (a) fuel, (b) motor transport, and (c) time; that is reason number one. Second because on the 4th June when we left Rome we left it without putting up any fight to defend it. We, or rather I, could have done it in a different way. We could have done it in the way that Vienna was defended or Budapest or Berlin and then Rome would look like these three cities which I mentioned before.
- Q Do you know whether before the 23rd March 1944 any measures were taken to safeguard lives of German troops in Rome ? A. Yes.
- Q Could you give us some example of this ? A. Three examples, early curfew, second earlier beginning of entertainments, cinemas, theatres and so on, then prohibition to use bicycles and a few more of these measures.
- Q Now I am arriving to the date of the 23rd March; who was the first to report to you about this bomb outrage on the 23rd March ? A. As far as I remember my chief of staff, Hauser.



- Q Do you remember when this happened and what he said to you? A. I think it must have been an hour or maybe two hours after the incident occurred; of course I cannot say at quite exactly when it happened.
- Q Were you told at that time that you suffered losses and what losses were suffered? A. Whether I heard it at that very first report I do not remember but very soon I did hear that the number of the victims was twenty-eight fatal casualties and a big number of wounded.
- Q Do you know approximately the number of those wounded? A. I do not know whether at that time the number wounded was reported to me but in my memory I have always the number eighty wounded. Later on of course a few of those died so that the number had increased.
- Q Did the commander of Rome at a later stage report to you personally concerning the incident? A. I am not quite certain about this but I should rather think he did so and I think on the telephone.
- Q Has the outrage been reported to the Army Group Kesselring? A. This I understand most probably by my chief of staff but it is sure that it has been reported.
- Q Had these outrages against members of the German Army including that of the 23rd March in Rome any influence on the conditions at the front? A. Yes.
- Q And why? A. Because the front line was only twenty kilometres distant from the million of inhabitants and a restless Rome would have had the consequence that it would have been impossible to keep the front. My only memory was to keep that spot of the landing at Nettuno encircled and stationary and the last line of my artillery was here on the airfield of Rome which to the court is most probably known.
- Q Have I understood you rightly that with restless Rome the fulfilment of your task to keep the front the spearhead at Nettuno as small as possible would have been impossible? A. Yes.
- Q Did you consider it possible that other attacks against members of the German Army in Rome would occur? A. Yes, in the case that on this outrage of the 23rd March not such measures would be taken and menace for the population of Rome in order to keep them calm in the future.
- Q You did not consider that with lighter measures you could have had any success? A. I am sorry to say no.

THE PRESIDENT: Did he say, "I am sorry to say no" or, "I am certain"?

THE INTERPRETER: Sorry.

DR. KELLER: I apologise if sometimes a leading question might creep through my interrogation and I will see to it it will not happen again.

THE JUDGE ADVOCATE: Tell him not to worry and that Colonel Halse will get up and object if he goes too far.

DR. KELLER: What measures had you at your disposal to reach success in the pacification of the town? A. Do you mean what other measures than this could be applied? It could have been taken into consideration the burning down of this quarter of the city as was suggested to me by the Fuhrer, by Hitler.

Q Why did you not apply this measure? A. Because I considered such a measure inhuman and did not believe that it would have had the same effect as other measures; it had only created new resistance and new hatred among the population.



Q Would it not have been possible to say, "well Romans, if you want to have a battle within the walls of Rome we withdraw the declaration of Rome as an open city"; what do you say to that suggestion? A. It would not have had the necessary effect and would have had as a consequence the destruction of Rome.

Q So in your opinion what was the only measure to be taken into consideration?  
A. In my opinion the only measure to be taken into consideration was the shooting of people who had a mental contact with the resistance movement.

Q So at first you thought it necessary that persons should be shot? A. Yes.

Q But you say it should be in connection with the actual fact? A. Yes.

Q So innocent people should not have been shot? A. In no circumstances.

Q Had you a conference with General Maelzer after the outrage about what should be done? A. In the afternoon after the outrage I had a conference in my office.

Q To this I will refer later. Had you not before a telephone conversation with Maelzer? A. I believe, I believe I mentioned that before.

Q Is it possible that you asked him during this conversation what suggestions he could make, what could be done? A. It is possible.

Q Is it possible that you have told him that he must not under any circumstances take any steps which you do not approve? A. I consider this very probable if I spoke to him on the telephone.

Q General Maelzer in his previous statement said on your demand to make suggestions he pointed to cases which happened before in Paris, Brussels and Nantes; can you remember that? A. I can remember that about this question was spoken during the conversation.

Q General Maelzer stated previously that during this telephone conversation in his office Kappler was present and asked that he afterwards could speak to Von Mackensen on the telephone. Can you remember that you spoke to Kappler on the telephone? A. I cannot remember a telephone conversation with Kappler; I can only remember that Kappler came into my office.

Q I now refer to the conversation in your office which you mentioned just now. Who partook of this conference? A. At this conversation took part my chief of staff General Hausler, Kappler, the army judge Steigertal and myself. These are the persons which I can remember quite sure that they were present.

Q When did this conference take place? A. This conference took place on the 23rd March 1944, at the earliest at 1730 hours, at the latest at 1930 hours.

Q How did this conversation come about? A. The reason for this conference was that I had a number of telephone calls by my chief of staff, by General Maelzer, and it might be also by Kappler and I personally decided that these questions could not be dealt with over the telephone and I requested these persons in my office to talk matters over calmly.

Q Has a suggestion been made during this conference and by whom? A. During this conference Kappler made the suggestion that for the persons to be shot in a ratio of ten to one, people should be taken whom he had under arrest and who are sentenced by a trial to death in a court.

THE JUDGE ADVOCATE: What is that last bit?

THE INTERPRETER: Who had been sentenced by a proper court.

THE WITNESS: It was his suggestion that in case he would not have sufficient people under arrest who are already sentenced to death to shoot less, to shoot only that number of persons who actually were properly sentenced to death and to report to



higher authority the full number.

Q It seemed you forgot to mention something. If you say he should shoot less and report a higher number it was necessary that first about the number of people to be shot should have been spoken. A. I believe I have mentioned the ratio of one to ten so about the number of people to be shot has been spoken.

Q Two or three days ago you heard from the witness Harster what had been agreed upon the aerodrome in Munich between Wolff and Harster and the Field Marshall. Did he perhaps refer to this conversation? A. I cannot recollect that; it is possible.

THE JUDGE ADVOCATE: I am sorry, I have not got the last bit; who was supposed to have referred to what? The conversation I understood with Kesselring at Munich was with Harster. What is supposed to have been mentioned at this conversation?

DR. KELLER: The conference had the gist that if reprisals had to be taken and if people had to be shot then those should be taken and shot who were already condemned, who had been previously condemned to death.

THE JUDGE ADVOCATE: I have got all that but I do not understand why the agreement which had been made, I understood, between Harster and Kesselring was referred to here when Harster was not there nor Kesselring. I do not follow.

DR. KELLER: My question was if Kappler mentioned during this conference that this, his suggestion, to shoot only persons condemned to death was according to an agreement which was made to previously between Kesselring, Wolff and Harster at the airfield in Munich. A. My reply to that was, I think, I consider it possible but I cannot remember it.

Q When this conference took place how many German policemen were dead? A. As far as I remember at that moment of the conversation it was already thirty-two but I cannot state that on oath, only as far as I remember.

Q If thirty-two Germans were dead the consequence would have been that 320 Italians sentenced to death should have been taken for shooting? A. Yes.

Q Had you no doubt about it that really such a number of people condemned to death was available? A. It is understood that I had this doubt and therefore I asked Kappler the following question: "How is it that you have so many persons sentenced to death in your prisons?"

Q What was Kappler's reply? A. He explained that this is a big and densely populated area.

Q Did he state any other reason; did he not give any other explanation for this high number? A. He gave another reason that so far he did not execute these persons because he was still in need of them to find out more of their connections within the network of his investigations.

Q Did you ask if there were any pleas for mercy? A. I explicitly asked him if there were any pleas for mercy pending by these persons and his reply was that in some cases pleas for mercy were pending but that they would not be dealt with.

Q Did this not seem peculiar to you, that pleas for mercy by the persons sentenced to death should not be dealt with? A. This did not seem peculiar to me. As commander in chief of the army I was the convening authority for courts martial and courts which issued death sentences and in this capacity I knew in which way pleas for mercy were dealt with by the army.

Q Can you still remember today in which cases you, as commander in chief of the army, did not deal with a plea for mercy by a person sentenced to death? A. As far as I remember such pleas for mercy were dealt with by three army judges and if the sentence was passed for confirmation to the commander in chief of the army the opinion of these three army judges was given and said if a plea for mercy was otherwise or not. As far as I remember it was so that if this recommendation was negative the execution could be ordered by the commander in chief.

THE JUDGE ADVOCATE: I do not think the witness has answered the question. He was asked whether he did not think it was peculiar that Kappler should be telling him that pleas of mercy were not attended to; that was the original question and then we went of into how courts martial were directed. Would he answer the question?

DR. KELLER: My question was if it did not appear peculiar to you that Kappler told you that whenever some pleas for mercy were pending these would not be dealt with. I shall form my question a different way. What was the reason that it did not seem peculiar to you that pleas for mercy which were handed in by persons sentenced to death were not dealt with? A. From my knowledge as commander in chief of an army and as such a convening authority for courts that in our army procedure pleas for mercy were dealt with.

Q As commander in chief of an army were you authorized to confirm death sentences? A. Yes..

Q As commander in chief of an army were you authorized to order the execution of a death sentence confirmed by you? A. Yes.



Q Was it admissible that you have to carry out the death sentence if a plea for mercy was pending? A. In my memory I was authorized to do so if the recommendation which always had to be given by official channels was negative for the accused sentenced person; as far as I remember that.

Q You mean to say that in that case you were entitled to have the death sentence carried out whenever a plea for mercy was pending? A. Yes.

THE JUDGE ADVOCATE: It is clear to me what he says happened in a court-martial but I thought they were talking about matters which had nothing to do with the army but to do with Keppeler's plea. I think he was being asked if he did not think it was odd that Keppeler said the plea for mercy would not be dealt with. I think he is trying to say that even in the German Army somebody could be executed if the three military judges said there is nothing in it; then the execution would go forward.

DR. KESLER: What was the result of the conference which you had with Keppeler in the presence of your Chief-of-Staff and of the Army Judge?

A. The final result was that people should be shot in a ratio of one to ten but only such persons who were already properly sentenced to death and less should be shot if you, Keppeler, have not the necessary number, which you tell me now, in your prisons available. In this case you will report to me and I to Higher Authority the full number, but between us it is understood that less people are shot. It is quite clear that a lesser number should be shot, and this result was exactly according to the suggestion which Keppeler made to me.

Q Did the ratio of one to ten not appear too high to you; yes or no?

A. No.

Q Why not? A. Because the measure could have success only if it was a severe drastic measure, otherwise the measure would have no success at all and I underline this as the condition which Keppeler had suggested to me. That is to say that as a consequence of the bomb outrage not one person more would have found his death as would have found his death any how.

Q At the moment of this conference had you already contacted the Army people that is to say, Keessling's Command, and were you informed already by the Army Group what were Hitler's demands as a reprisal in that case? A. Several times.

Q And what was told to you to be Hitler's demand?

THE JUDGE ADVOCATE: I want to get this clear. He said "several times"; does he mean he had been told Hitler's demand before or is all this happening between 4 o'clock and 7 o'clock on this day? A. Several times on this day we are talking about; yes, before the conference on this particular day we are talking about, not always through my sometimes through the Chief-of-Staff and so on.

Q That he had already been told two or three times about Hitler's demand? A. That is correct.

THE PRESIDENT: I am still not clear. You said on this day; several times on this same day? A. That is correct.

COLUMEL HANSEN: Before the conference?

THE JUDGE ADVOCATE: The only thing I was trying to get clear was this. We understood that this conference took place between 5.30 and 7.30 the same night. I do not understand whether, in that short space of time, he had received two or three times information about Hitler's demand; I do not appreciate whether Hitler had been informed about this or not. I want this cleared up.

COLONEL HANSE: I just wanted to make certain it was before the conference.

THE WITNESS: As far as I remember I knew about Hitler's demand already before the conference had taken place.

THE JUDGE ADVOCATE: That does not help me; what I want to know, is whether in fact, Hitler had been communicated with and made demands in respect of this particular incident or a general demand about twenty lives to one or what?

DR. KILLER: Do you know if the bomb outrage of 23rd March 1944 was reported by the Army Group Kesselring to Hitler's H.Q.; did you hear about that?

A. I consider that as absolutely certain.

Q Have you been told what measure Hitler was demanding for this outrage?

A. Yes.

Q What was the measure; have several measures been demanded by Hitler or only one? A. Several.

Q Have these several demands been told at the same time or first a more severe one, afterwards the milder one? A. First the more severe one, afterwards the milder one.

Q As far as you remember what was the severest of Hitler's demands? A. The first demand, which was brought to me was burning down the whole quarter with everything living in it; that means without evacuating it before. The second demand was most probably decreased under the influence of his environs to the death of one to twenty. I want to point out that these first two demands were given to me already at the time of the conference but the events are now three years ago and I cannot guarantee completely that it was like that but I have it in my memory like that, that I knew it already before.

Q Is it possible that you did know already before the conference of the severest demand and that during the conference you heard about the milder demand? A. It is possible; I cannot recollect.

Q What was your point of view to these demands? A. I refused both demands without any comment.

Q You said what the result of this conference in your office was. What did the Army Judge do in this affair? A. I had called the Army Judge with the intention in order that he should advise me about the legal points in order to avoid that any measures would be ordered that are not according to International Law.

Q Was the Army Judge the right person for answering these questions? A. I would not know who else should be the right person.

Q Did you ask his opinion, his judgement? A. Yes, I did.

Q It might seem peculiar that on the big distance between Italy and Hitler's H.Q. which at that time, as far as I remember, was in East Prussia, connections and contact was possible so quickly. Can you tell me if it was possible to have the quickest connection with Hitler's H.Q.? A. Kesselring's H.Q. had a direct line to Hitler's H.Q.; you only had to take up the receiver and had connection with Hitler's H.Q. and at that time the connections very rarely were interrupted.

Q How I am coming to the execution of the reprisals against the Italians. Did you receive an order which asked for the shooting of Italians in the ratio of one to ten? A. Yes.

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



- Q Do you remember the date when you received this order? A. I do not remember really, quite exactly; I should rather think it was on the phone before the conference started but, of course, I cannot be quite sure about that.
- Q What were the contents of this order? A. I cannot remember, of course, the exact wording of this order particularly as it came on the phone, but the gist of it was, as I said before, that Italians in the ratio of one to ten must be shot as hostages.
- Q As hostages you say? A. Yes, as hostages I repeat.
- Q What do you mean this word as hostages? A. That would have meant that I should have had to collect innocent people and then shoot those".
- Q Was there an annex to this order concerning the execution of it? A. Yes.
- Q What was it? A. "Execution of this order not through the Wehrmacht but through the S.D."
- Q Is it possible that this last sentence was only "Execution carry out through S.D."? A. Yes; that, of course, is possible.
- Q And did you pass on this order to somebody else? A. This order was written down by this High Army Judge himself because, as I said before, I received it only through the phone. This, as far as I remember, this Army Judge after having formulated it in writing, took it down himself to the Commander's office or Commandateur in Rome; I signed it.

THE JUDGE ADVOCATE: Do you mean Maelzer's office; where did you take it?  
A. To Maelzer's office.

- DR. KELLER: Could you say what were the contents of this order which you passed on? A. Of course I cannot remember the wording but the gist must have been as I said before, shooting has to be in the ratio of one to ten and the execution of this measure by the S.D., but I think that this document must still be available somewhere in the files.
- Q Did you say in this order also the circle from which this number one to ten should be chosen? A. I am almost certain that this order also said that only those people should be taken who were in the custody of Kappler and also previously sentenced to death.
- Q And you had no qualms at all to issue this order? A. No, because it was a Fuhrer order, Hitler's order, and it was my duty to pass it on to the S.D.
- Q Was this the only reason that you passed on this order? A. At the moment I would not know about another reason. The main reason that this *conditio sine qua non* should be really maintained, first that only those should be taken who had been condemned to death previously; and second, only the numbers should be taken who were available; and I took it upon myself to send to High Authority a false report, a false return.

THE JUDGE ADVOCATE: Who do you mean by Higher Authority? A. I mean Higher Authority even above Kesselring; I mean Hitler.

- DR. KELLER: May I take it that you wanted to say the following; may I put it in these words then; you passed this order on, firstly because you got it yourself from Higher Authority; and secondly, after your conference, and may I say your agreement with Kappler, you had no qualms about the contents and the legality of this order? A. That is correct; that is the reason.

Q Did you hear something before the 320 victims were shot on the 24th March 1944 about the difficulties which Kappler is alleged to have had to find this big number of victims? A. I remember that my Chief-of-Staff, General Hauser came to me and said something to me about Kappler having had some difficulties about the numbers of victims but these difficulties were overcome and I suppose Kappler had in the meantime a conversation with Harster but I do not know about the other difficulties.

Q Maelzer said in his statement that you rang him on the phone on the morning of the 24th March and that you told him that you received an order of Hitler purporting to ask for the execution of Italians in the ratio of one to ten? A. I do not remember this conversation; however, I think it is well possible that I had this conversation. I imagine Maelzer rang me and I told him: "Well these are Hitler's orders and you yourself have nothing to do with it because Hitler ordered that the S.D. should be responsible for the execution of this order".

THE JUDGE ADVOCATE: Is this what he says he did do or did not or possibly?

THE INTERPRETER: "Possibly; I do not remember the conversation but it may be that Maelzer rang me on the morning and I told him about Hitler's order and I told him at the same time that he, Maelzer, had nothing to do with it because it was ordered to be done by the S.D.".

THE WITNESS: I cannot remember but it may well be, and I think it may be possible or probable.

DR. KELLER: Do you remember whether your order which you passed on had also some remark or a similar remark on the execution of this order has to be supervised.

THE JUDGE ADVOCATE: The witness has been asked a number of times to say what was in the order. He told us his recollection of this order. What is now being suggested?

THE INTERPRETER: That the execution of this order has to be supervised.

THE WITNESS: I am almost sure that no such remark was in the order because such a remark would have been quite superfluous because the execution of the order was to be the duty of the S.D. so why should I put in such a request for supervision.

THE JUDGE ADVOCATE: You are speaking about the order which the Military Judge took down and which you yourself signed? A. Yes.

DR. KELLER: Did you receive a report "Request carried out; order has been carried out"? A. Yes, certainly.

Q Do you still remember the wording of this report? A. As far as I remember I found a piece of paper on my table put there by my Chief-of-Staff showing the result of a telephone conversation; only a few words saying "Order carried out"; certainly I cannot remember anything else.

Q Do you know where this execution had been carried out and when? A. No, I did not know anything about it until the 27th June 1946 when I was first interrogated about this matter in London. The only thing which I knew until then was that the order had been carried out and I assumed in the way as we agreed upon previously with one exception, with the exception that the number of victims was higher, 320 to mean 330 or 335; that is the only exception.

THE JUDGE ADVOCATE: I do not understand; he said he knew nothing about this execution, where it had taken place or when until June 1946. Then what is he saying?



THE INTERPRETER: That nothing had been changed except the higher number; instead of 320, 335 had been shot.

THE JUDGE ADVOCATE: When did you know that? A. As far as I remember I knew it when my own soldiers were buried; when the burying took place of those killed - the Germans.

Q That does not make sense, does it. I thought you said "I knew nothing about when this execution took place or how it took place until 1946 with one exception, that I knew instead of 320 people being shot as I thought would have been, 335 had been shot". I asked when you knew the 335 had been shot.

THE INTERPRETER: The answer is when he was present at the burial of the 32 Germans; then he heard that 335 were killed.

THE JUDGE ADVOCATE: So at the burial of the Germans you then discovered that 335 Italians were killed? A. That is correct.

DR. KELLER: Who told you this? A. I cannot say who told me; I think during the burial ceremony somebody told me and I spoke immediately afterwards with General Wolff about it.

Q Did you hear about the blowing in of the caves? A. I can only say again, until the 27th June 1946 when Colonel Scotland interrogated me about this affair I did not know anything about any of the gruesome details of this affair.

Q Did you issue an order already prior to the 23rd March 1944 to shoot Italians as reprisals? A. No; this is the only affair of this kind.

Q You did not issue any order to shoot Italians as a reprisal? A. No.

Q Have you been at the burial of the German police soldiers? A. Yes.

Q Who spoke at the tomb, the grave? A. Wolff.

Q Do you remember what has been said? A. I do remember that Wolff addressed the dead who were laid over the graves that measures had been already taken to atone for what had been done against them but more severe measures were to follow.

Q As you just said that some reprisals had been already taken; you quoted General Wolff's words and you said that he said that even more and more stringent measures would be taken in the future. When you talk about Wolff and about his stringent measures for the future, do you mean to say that still in sequence with events from the 23rd March? A. No, I mean that as a reprisal for this outrage which occurred on the 23rd March and not for future outrages. That is the reason that he spoke to those soldiers who were lying in front of him; the dead German policemen.

(At 1645 hours the court is adjourned until  
1000 hours tomorrow, Saturday, 23rd November, 1946)