

XII. JUDGMENT

Military Tribunal I was established on 25 October 1946 under General Orders No. 68 issued by command of the United States Military Government for Germany. It was the first of several military tribunals constituted in the United States Zone of Occupation pursuant to Military Government Ordinance No. 7, for the trial of offenses recognized as crimes by Law No. 10 of the Control Council for Germany.

By the terms of the order which established the Tribunal and designated the undersigned as members thereof, Military Tribunal I was ordered to convene at Nuernberg, Germany, to hear such cases as might be filed by the Chief of Counsel for War Crimes or his duly designated representative.

On 25 October 1946 the Chief of Counsel for War Crimes lodged an indictment against the defendants named in the caption above in the Office of the Secretary General of Military Tribunal at the Palace of Justice, Nuernberg, Germany. A copy of the indictment in the German language was served on each defendant on 5 November 1946. Military Tribunal I arraigned the defendants on 21 November 1946, each defendant entering a plea of "not guilty" to all the charges preferred against him.

The presentation of evidence to sustain the charges contained in the indictment was begun by the prosecution on 9 December 1946. At the conclusion of the prosecution's case in chief the defendants began the presentation of their evidence. All evidence in the case was concluded on 3 July 1947. During the week beginning 14 July 1947 the Tribunal heard arguments by counsel for the prosecution and defense. The personal statements of the defendants were heard on 19 July 1947 on which date the case was finally concluded.

The trial was conducted in two languages—English and German. It consumed 139 trial days, including 6 days allocated for final arguments and the personal statements of the defendants. During the 133 trial days used for the presentation of evidence 32 witnesses gave oral evidence for the prosecution and 53 witnesses, including the 23 defendants, gave oral evidence for the defense. In addition, the prosecution put in evidence as exhibits a total of 570 affidavits, reports, and documents; the defense put in a total number of 901—making a grand total of 1,471 documents received in evidence.

Copies of all exhibits tendered by the prosecution in their case in chief were furnished in the German language to the defendants prior to the time of the reception of the exhibits in evidence.

Each defendant was represented at the arraignment and trial by counsel of his own selection.

Whenever possible, all applications by defense counsel for the procuring of the personal attendance of persons who made affidavits in behalf of the prosecution were granted and the persons brought to Nuernberg for interrogation or cross-examination by defense counsel. Throughout the trial great latitude in presenting evidence was allowed defense counsel, even to the point at times of receiving in evidence certain matters of but scant probative value.

All of these steps were taken by the Tribunal in order to allow each defendant to present his defense completely, in accordance with the spirit and intent of Military Government Ordinance No. 7 which provides that a defendant shall have the right to be represented by counsel, to cross-examine prosecution witnesses, and to offer in the case all evidence deemed to have probative value.

The evidence has now been submitted, final arguments of counsel have been concluded, and the Tribunal has heard personal statements from each of the defendants. All that remains to be accomplished in the case is the rendition of judgment and the imposition of sentence.

THE JURISDICTION OF THE TRIBUNAL

The jurisdiction and powers of this Tribunal are fixed and determined by Law No. 10 of the Control Council for Germany. The pertinent portions of the Law with which we are concerned provide as follows:

ARTICLE II

"1. Each of the following acts is recognized as a crime:

* * * * *

"(b) *War Crimes.* Atrocities or offenses against persons or property constituting violations of the laws or customs of war, including but not limited to, murder, ill-treatment or deportation to slave labor or for any other purpose, of civilian population from occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

“(c) *Crimes against Humanity*. Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.

“(d) Membership in categories of a criminal group or organization declared criminal by the International Military Tribunal.

“2. Any person without regard to nationality or the capacity in which he acted is deemed to have committed a crime as defined in * * * this Article, if he (a) was a principal or (b) was an accessory to the commission of any such crime or ordered or abetted the same or (c) took a consenting part therein or (d) was connected with plans or enterprises involving its commission or (e) was a member of any organization or group connected with the commission of any such crime * * *.

* * * * *

“4. (a) The official position of any person, whether as Head of State or as a responsible official in a Government Department, does not free him from responsibility for a crime or entitle him to mitigation of punishment.

(b) The fact that any person acted pursuant to the order of his Government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation.”

The indictment in the case at bar is filed pursuant to these provisions.

THE CHARGE

The indictment is framed in four counts.

COUNT ONE—*The Common Design or Conspiracy*. The first count of the indictment charges that the defendants, acting pursuant to a common design, unlawfully, wilfully, and knowingly did conspire and agree together to commit war crimes and crimes against humanity, as defined in Control Council Law No. 10.

During the course of the trial the defendants challenged the first count of the indictment, alleging as grounds for their motion the fact that under the basic law the Tribunal did not have juris-

diction to try the crime of conspiracy considered as a separate substantive offense. The motion was set down for argument and duly argued by counsel for the prosecution and the defense. Thereafter, in one of its trial sessions the Tribunal granted the motion. That this judgment may be complete, the ruling made at that time is incorporated in this judgment. The order which was entered on the motion is as follows:

"It is the ruling of this Tribunal that neither the Charter of the International Military Tribunal nor Control Council Law No. 10 has defined conspiracy to commit a war crime or crime against humanity as a separate substantive crime; therefore, this Tribunal has no jurisdiction to try any defendant upon a charge of conspiracy considered as a separate substantive offense.

"Count I of the indictment, in addition to the separate charge of conspiracy, also alleges unlawful participation in the formulation and execution of plans to commit war crimes and crimes against humanity which actually involved the commission of such crimes. We, therefore, cannot properly strike the whole of count I from the indictment, but, insofar as count I charges the commission of the alleged crime of conspiracy as a separate substantive offense, distinct from any war crime or crime against humanity, the Tribunal will disregard that charge.

"This ruling must not be construed as limiting the force or effect of Article 2, paragraph 2 of Control Council Law No. 10, or as denying to either prosecution or defense the right to offer in evidence any facts or circumstances occurring either before or after September 1939, if such facts or circumstances tend to prove or to disprove the commission by any defendant of war crimes or crimes against humanity as defined in Control Council Law No. 10."

COUNTS TWO AND THREE—*War Crimes and Crimes against Humanity*. The second and third counts of the indictment charge the commission of war crimes and crimes against humanity. The counts are identical in content, except for the fact that in count two the acts which are made the basis for the charges are alleged to have been committed on "civilians and members of the armed forces [of nations] then at war with the German Reich [* * *] in the exercise of belligerent control", whereas in count three the criminal acts are alleged to have been committed against "German civilians and nationals of other countries." With this distinction observed, both counts will be treated as one and discussed together.

Counts two and three allege, in substance, that between September 1939 and April 1945 all of the defendants "were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving medical experiments without the subjects' consent * * * in the course of which experiments the defendants committed murders, brutalities, cruelties, tortures, atrocities, and other inhuman acts." It is averred that "such experiments included, but were not limited to" the following:

"(A) *High-Altitude Experiments.* From about March 1942 to about August 1942 experiments were conducted at the Dachau concentration camp, for the benefit of the German Air Force, to investigate the limits of human endurance and existence at extremely high altitudes. The experiments were carried out in a low-pressure chamber in which the atmospheric conditions and pressures prevailing at high altitude (up to 68,000 feet) could be duplicated. The experimental subjects were placed in the low-pressure chamber and thereafter the simulated altitude therein was raised. Many victims died as a result of these experiments and others suffered grave injury, torture, and ill-treatment. The defendants Karl Brandt, Handloser, Schroeder, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Sievers, Ruff, Romberg, Becker-Freyseng, and Weltz are charged with special responsibility for and participation in these crimes.

"(B) *Freezing Experiments.* From about August 1942 to about May 1943 experiments were conducted at the Dachau concentration camp, primarily for the benefit of the German Air Force, to investigate the most effective means of treating persons who had been severely chilled or frozen. In one series of experiments the subjects were forced to remain in a tank of ice water for periods up to 3 hours. Extreme rigor developed in a short time. Numerous victims died in the course of these experiments. After the survivors were severely chilled, re-warming was attempted by various means. In another series of experiments, the subjects were kept naked outdoors for many hours at temperatures below freezing. * * * The defendants Karl Brandt, Handloser, Schroeder, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Sievers, Becker-Freyseng, and Weltz are charged with special responsibility for and participation in these crimes.

"(C) *Malaria Experiments.* From about February 1942 to about April 1945 experiments were conducted at the Dachau concentration camp in order to investigate immunization for and treatment of malaria. Healthy concentration camp inmates were infected by mosquitoes or by injections of extracts of the

mucous glands of mosquitoes. After having contracted malaria the subjects were treated with various drugs to test their relative efficacy. Over 1,000 involuntary subjects were used in these experiments. Many of the victims died and others suffered severe pain and permanent disability. The defendants Karl Brandt, Handloser, Rostock, Gebhardt, Blome, Rudolf Brandt, Mrugowsky, Poppendick, and Sievers are charged with special responsibility for and participation in these crimes.

"(D) *Lost (Mustard) Gas Experiments*. At various times between September 1939 and April 1945 experiments were conducted at Sachsenhausen, Natzweiler, and other concentration camps for the benefit of the German Armed Forces to investigate the most effective treatment of wounds caused by Lost gas. Lost is a poison gas which is commonly known as mustard gas. Wounds deliberately inflicted on the subjects were infected with Lost. Some of the subjects died as a result of these experiments and others suffered intense pain and injury. The defendants Karl Brandt, Handloser, Blome, Rostock, Gebhardt, Rudolf Brandt, and Sievers are charged with special responsibility for and participation in these crimes.

"(E) *Sulfanilamide Experiments*. From about July 1942 to about September 1943 experiments to investigate the effectiveness of sulfanilamide were conducted at the Ravensbrueck concentration camp for the benefit of the German Armed Forces. Wounds deliberately inflicted on the experimental subjects were infected with bacteria such as streptococcus, gas gangrene, and tetanus. Circulation of blood was interrupted by tying off blood vessels at both ends of the wound to create a condition similar to that of a battlefield wound. Infection was aggravated by forcing wood shavings and ground glass into the wounds. The infection was treated with sulfanilamide and other drugs to determine their effectiveness. Some subjects died as a result of these experiments and others suffered serious injury and intense agony. The defendants Karl Brandt, Handloser, Rostock, Schroeder, Genzken, Gebhardt, Blome, Rudolf Brandt, Mrugowsky, Poppendick, Becker-Freyseng, Oberheuser, and Fischer are charged with special responsibility for and participation in these crimes.

"(F) *Bone, Muscle, and Nerve Regeneration and Bone Transplantation Experiments*. From about September 1942 to about December 1943 experiments were conducted at the Ravensbrueck concentration camp, for the benefit of the German Armed Forces, to study bone, muscle, and nerve regeneration, and bone transplantation from one person to another. Sections of bones, muscles, and nerves were removed from the subjects. As a re-

sult of these operations, many victims suffered intense agony, mutilation, and permanent disability. The defendants Karl Brandt, Handloser, Rostock, Gebhardt, Rudolf Brandt, Oberheuser, and Fischer are charged with special responsibility for and participation in these crimes.

"(G) *Sea-Water Experiments*. From about July 1944 to about September 1944 experiments were conducted at the Dachau Concentration camp, for the benefit of the German Air Force and Navy, to study various methods of making sea water drinkable. The subjects were deprived of all food and given only chemically processed sea water. Such experiments caused great pain and suffering and resulted in serious bodily injury to the victims. The defendants Karl Brandt, Handloser, Rostock, Schroeder, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Sievers, Becker-Freyseng, Schaefer, and Beiglboeck are charged with special responsibility for and participation in these crimes.

"(H) *Epidemic Jaundice Experiments*. From about June 1943 to about January 1945 experiments were conducted at the Sachsenhausen and Natzweiler concentration camps, for the benefit of the German Armed Forces, to investigate the causes of, and inoculations against, epidemic jaundice. Experimental subjects were deliberately infected with epidemic jaundice, some of whom died as a result, and others were caused great pain and suffering. The defendants Karl Brandt, Handloser, Rostock, Schroeder, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Sievers, Rose, and Becker-Freyseng are charged with special responsibility for and participation in these crimes.

"(I) *Sterilization Experiments*. From about March 1941 to about January 1945 sterilization experiments were conducted at the Auschwitz and Ravensbrueck concentration camps, and other places. The purpose of these experiments was to develop a method of sterilization which would be suitable for sterilizing millions of people with a minimum of time and effort. These experiments were conducted by means of X-ray, surgery, and various drugs. Thousands of victims were sterilized and thereby suffered great mental and physical anguish. The defendants Karl Brandt, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Brack, Pokorny, and Oberheuser are charged with special responsibility for and participation in these crimes.

"(J) *Spotted Fever (Fleckfieber)* Experiments*. From about December 1941 to about February 1945 experiments were conducted at the Buchenwald and Natzweiler concentration camps, for the benefit of the German Armed Forces, to investigate the effectiveness of spotted fever and other vaccines. At Buchen-

* A more correct translation is typhus, see vol. I, p. 18.

wald, numerous healthy inmates were deliberately infected with spotted fever virus in order to keep the virus alive; over 90 percent of the victims died as a result. Other healthy inmates were used to determine the effectiveness of different spotted fever vaccines and of various chemical substances. In the course of these experiments 75 percent of the selected number of inmates were vaccinated with one of the vaccines or nourished with one of the chemical substances and, after a period of 3 to 4 weeks, were infected with spotted fever germs. The remaining 25 percent were infected without any previous protection in order to compare the effectiveness of the vaccines and the chemical substances. As a result, hundreds of the persons experimented upon died. Experiments with yellow fever, smallpox, typhus, paratyphus A and B, cholera, and diphtheria were also conducted. Similar experiments with like results were conducted at Natzweiler concentration camp. The defendants Karl Brandt, Handloser, Rostock, Schroeder, Genzken, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Sievers, Rose, Becker-Freyseng, and Hoven are charged with special responsibility for and participation in these crimes.

“(K) *Experiments with Poison.* In or about December 1943 and in or about October 1944 experiments were conducted at the Buchenwald concentration camp to investigate the effect of various poisons upon human beings. The poisons were secretly administered to experimental subjects in their food. The victims died as a result of the poison or were killed immediately in order to permit autopsies. In or about September 1944 experimental subjects were shot with poison bullets and suffered torture and death. The defendants Genzken, Gebhardt, Mrugowsky, and Poppendick are charged with special responsibility for and participation in these crimes.

“(L) *Incendiary Bomb Experiments.* From about November 1943 to about January 1944 experiments were conducted at the Buchenwald concentration camp to test the effect of various pharmaceutical preparations on phosphorus burns. These burns were inflicted on experimental subjects with phosphorus matter taken from incendiary bombs, and caused severe pain, suffering, and serious bodily injury. The defendants Genzken, Gebhardt, Mrugowsky, and Poppendick are charged with special responsibility for and participation in these crimes.”

In addition to the medical experiments, the nature and purpose of which have been outlined as alleged, certain of the defendants are charged with criminal activities involving murder, torture, and ill-treatment of non-German nationals as follows:

"7. Between June 1943 and September 1944 the defendants Rudolf Brandt and Sievers * * * were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving the murder of civilians and members of the armed forces of nations then at war with the German Reich and who were in the custody of the German Reich in exercise of belligerent control. One hundred twelve Jews were selected for the purpose of completing a skeleton collection for the Reich University of Strasbourg. Their photographs and anthropological measurements were taken. Then they were killed. Thereafter, comparison tests, anatomical research, studies regarding race, pathological features of the body, form and size of the brain, and other tests were made. The bodies were sent to Strasbourg and defleshed.

"8. Between May 1942 and January 1944 * the defendants Blome and Rudolf Brandt * * * were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving the murder and mistreatment of tens of thousands of Polish nationals who were civilians and members of the armed forces of a nation then at war with the German Reich and who were in the custody of the German Reich in exercise of belligerent control. These people were alleged to be infected with incurable tuberculosis. On the ground of insuring the health and welfare of Germans in Poland, many tubercular Poles were ruthlessly exterminated while others were isolated in death camps with inadequate medical facilities.

"9. Between September 1939 and April 1945 the defendants Karl Brandt, Blome, Brack, and Hoven * * * were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving the execution of the so-called 'euthanasia' program of the German Reich in the course of which the defendants herein murdered hundreds of thousands of human beings, including nationals of German-occupied countries. This program involved the systematic and secret execution of the aged, insane, incurably ill, of deformed children, and other persons, by gas, lethal injections, and divers other means in nursing homes, hospitals, and asylums. Such persons were regarded as 'useless eaters' and a burden to the German war machine. The relatives of these victims were informed that they died from natural causes, such as heart failure. German doctors involved in the 'euthanasia'

* Indictment originally read "January 1943" but was amended by a motion filed with the Secretary General. See Arraignment, vol. I, p. 22.

program were also sent to the eastern occupied countries to assist in the mass extermination of Jews."

Counts two and three of the indictment conclude with the averment that the crimes and atrocities which have been delineated "constitute violations of international conventions * * *, the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all civilized nations, the internal penal laws of the countries in which such crimes were committed, and of Article II of Control Council Law No. 10."

COUNT FOUR—*Membership in Criminal Organization*: The fourth count of the indictment alleges that the defendants Karl Brandt, Genzken, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Sievers, Brack, Hoven, and Fischer are guilty of membership in an organization declared to be criminal by the International Military Tribunal, in that each of these named defendants was a member of the SCHUTZSTAFFELN DER NATIONAL SOZIALISTISCHEN DEUTSCHEN ARBEITERPARTEI (commonly known as the SS) after 1 September 1939, in violation of paragraph 1 (d) Article II of Control Council Law No. 10.

Before turning our attention to the evidence in the case we shall state the law announced by the International Military Tribunal with reference to membership in an organization declared criminal by the Tribunal:

"In dealing with the SS the Tribunal includes all persons who had been officially accepted as members of the SS including the members of the Allgemeine SS, members of the Waffen SS, members of the SS Totenkopf Verbaende, and the members of any of the different police forces who were members of the SS. The Tribunal does not include the so-called riding units * * *.

"The Tribunal declares to be criminal within the meaning of the Charter the group composed of those persons who had been officially accepted as members of the SS as enumerated in the preceding paragraph who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes, excluding, however, those who were drafted into membership by the State in such a way as to give them no choice in the matter, and who had committed no such crimes. The basis of this finding is the participation of the organization in war crimes and crimes against humanity connected with the war; this group declared criminal cannot include, therefore, persons who

had ceased to belong to the organizations enumerated in the preceding paragraph prior to 1 September 1939."

THE PROOF AS TO WAR CRIMES AND CRIMES AGAINST HUMANITY

Judged by any standard of proof the record clearly shows the commission of war crimes and crimes against humanity substantially as alleged in counts two and three of the indictment. Beginning with the outbreak of World War II criminal medical experiments on non-German nationals, both prisoners of war and civilians, including Jews and "asocial" persons, were carried out on a large scale in Germany and the occupied countries. These experiments were not the isolated and casual acts of individual doctors and scientists working solely on their own responsibility, but were the product of coordinated policy-making and planning at high governmental, military, and Nazi Party levels, conducted as an integral part of the total war effort. They were ordered, sanctioned, permitted, or approved by persons in positions of authority who under all principles of law were under the duty to know about these things and to take steps to terminate or prevent them.

PERMISSIBLE MEDICAL EXPERIMENTS

The great weight of the evidence before us is to the effect that certain types of medical experiments on human beings, when kept within reasonably well-defined bounds, conform to the ethics of the medical profession generally. The protagonists of the practice of human experimentation justify their views on the basis that such experiments yield results for the good of society that are unprocurable by other methods or means of study. All agree, however, that certain basic principles must be observed in order to satisfy moral, ethical and legal concepts:

1. The voluntary consent of the human subject is absolutely essential.

This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should

be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.

The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.

2. The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature.

3. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment.

4. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.

5. No experiment should be conducted where there is an *a priori* reason to believe that death or disabling injury will occur; except, perhaps, in those experiments where the experimental physicians also serve as subjects.

6. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.

7. Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.

8. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.

9. During the course of the experiment the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.

10. During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has probably cause to believe, in the exercise of the good faith, superior skill and careful judgment required of him that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.

Of the ten principles which have been enumerated our judicial concern, of course, is with those requirements which are purely

legal in nature—or which at least are so clearly related to matters legal that they assist us in determining criminal culpability and punishment. To go beyond that point would lead us into a field that would be beyond our sphere of competence. However, the point need not be labored. We find from the evidence that in the medical experiments which have been proved, these ten principles were much more frequently honored in their breach than in their observance. Many of the concentration camp inmates who were the victims of these atrocities were citizens of countries other than the German Reich. They were non-German nationals, including Jews and “asocial persons”, both prisoners of war and civilians, who had been imprisoned and forced to submit to these tortures and barbarities without so much as a semblance of trial. In every single instance appearing in the record, subjects were used who did not consent to the experiments; indeed, as to some of the experiments, it is not even contended by the defendants that the subjects occupied the status of volunteers. In no case was the experimental subject at liberty of his own free choice to withdraw from any experiment. In many cases experiments were performed by unqualified persons; were conducted at random for no adequate scientific reason, and under revolting physical conditions. All of the experiments were conducted with unnecessary suffering and injury and but very little, if any, precautions were taken to protect or safeguard the human subjects from the possibilities of injury, disability, or death. In every one of the experiments the subjects experienced extreme pain or torture, and in most of them they suffered permanent injury, mutilation, or death, either as a direct result of the experiments or because of lack of adequate follow-up care.

Obviously all of these experiments involving brutalities, tortures, disabling injury, and death were performed in complete disregard of international conventions, the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all civilized nations, and Control Council Law No. 10. Manifestly human experiments under such conditions are contrary to “the principles of the law of nations as they result from the usages established among civilized peoples, from the laws of humanity, and from the dictates of public conscience.”

Whether any of the defendants in the dock are guilty of these atrocities is, of course, another question.

Under the Anglo-Saxon system of jurisprudence every defendant in a criminal case is presumed to be innocent of an offense charged until the prosecution, by competent, credible proof, has shown his guilt to the exclusion of every reasonable doubt. And this presumption abides with a defendant through each stage of

his trial until such degree of proof has been adduced. A "reasonable doubt" as the name implies is one conformable to reason—a doubt which a reasonable man would entertain. Stated differently, it is that state of a case which, after a full and complete comparison and consideration of all the evidence, would leave an unbiased, unprejudiced, reflective person, charged with the responsibility for decision, in the state of mind that he could not say that he felt an abiding conviction amounting to a moral certainty of the truth of the charge.

If any of the defendants are to be found guilty under counts two or three of the indictment it must be because the evidence has shown beyond a reasonable doubt that such defendant, without regard to nationality or the capacity in which he acted, participated as a principal in, accessory to, ordered, abetted, took a consenting part in, or was connected with plans or enterprises involving the commission of at least some of the medical experiments and other atrocities which are the subject matter of these counts. Under no other circumstances may he be convicted.

Before examining the evidence to which we must look in order to determine individual culpability, a brief statement concerning some of the official agencies of the German Government and Nazi Party which will be referred to in this judgment seems desirable.

THE MEDICAL SERVICE IN GERMANY

Adolf Hitler was the head of the Nazi Party, the German Government, and the German Armed Forces. His title as Chief of the Government was "Reich Chancellor". As Supreme Leader of the National Socialist German Workers' Party, commonly called the NSDAP or Nazi Party, his title was "Fuehrer". As head of Germany's armed military might he was "Supreme Commander in Chief of the German Armed Forces [Supreme Commander of the German Armed Forces], or Wehrmacht".

The staff through which Hitler controlled the German Armed Forces was known as the "Supreme Command of the Wehrmacht" (OKW). The chief of this staff was Field Marshal Wilhelm Keitel.

Under the Supreme Command of the Wehrmacht were the Supreme [High] Commands of the Army, Navy, and Air Force. The Supreme [High] Command of the Navy (OKM) was headed by Grand Admiral Karl Doenitz. The Supreme [High] Command of the Army (OKH) was headed by Field Marshal Walter von Brauchitsch until December 1941, and thereafter by Hitler himself. The Supreme [High] Command of the Air Force (OKL) was headed by Reich Marshal Hermann Goering.

Each of the three branches of the Wehrmacht maintained its own medical service.

Army Medical Service. The defendant Handloser was the head of the Army Medical Service from 1 January 1941 to 1 September 1944. While in this position he served in two capacities, namely; as Army Medical Inspector and as Army [Heeres] Physician. These positions required the maintenance of two departments, each separate from the other. At one time or another there were subordinated to Handloser in these official capacities the following officers, among others: Generalarzt Professor Schreiber and Professor Rostock; Oberstabsaerzte Drs. Scholz, Eyer, Bernhard Schmidt and Craemer; Oberstabsaerzte Professor Gutzeit and Professor Wirth; Stabsarzt Professor Klieve and Professor Kilian, and Stabsarzt Dr. Dohmen. Under his supervision in either or both of his official capacities were the Military Medical Academy, the Typhus and Virus Institute of the OKH at Cracow [Krakow] and Lemberg [Lvov], and the Medical School for Mountain Troops at St. Johann.

Luftwaffe Medical Service. From the beginning of the war until 1 January 1944 Hippke was Chief of the Medical Service of the Luftwaffe. On that date the defendant Schroeder succeeded Hippke and remained in that position until the end of the war.

Subordinated to Schroeder as Chief of the Medical Service of the Luftwaffe were the following defendants: Rose, who was consulting medical officer on hygiene and tropical medicine; Weltz, who was chief of the Institute for Aviation Medicine in Munich; Becker-Freyseng, a consultant for aviation medicine in Schroeder's office; Ruff, the chief of the Institute for Aviation Medicine in the German Experimental Institute for Aviation in Berlin; Romberg, Ruff's chief assistant, who toward the end of the war attained the position of a department head at the Institute; Schaefer, who, in the summer of 1942, was assigned to the staff of the Research Institute for Aviation Medicine in Berlin to do research work on the problem of sea emergency; and Beiglboeck, a Luftwaffe officer who performed medical experiments on concentration camp inmates at Dachau in July 1944 for the purpose of determining the potability of processed sea water.

Under Schroeder's jurisdiction as Chief of the Luftwaffe Medical Service was the Medical Academy of the Luftwaffe at Berlin.

SS Medical Service. One of the most important branches of the Nazi Party was the Schutzstaffel of the NSDAP, commonly known as the SS. Heinrich Himmler was chief of the SS with the title of Reichsfuehrer SS, and on his personal staff, serving in various and sundry official capacities was the defendant Rudolf Brandt.

The SS maintained its own medical service headed by a certain Dr. Grawitz, who held the position of Reich Physician SS and Police.

Medical Service of the Waffen SS. The SS branch of the Nazi Party, in turn, was divided into several components, of which one of the most important was the Waffen, or Armed, SS. The Waffen SS was formed into military units and fought at the front with units of the Wehrmacht. Such medical units of the Waffen SS as were assigned to the field, became subordinated to the Medical Service of the Army, which was supervised by Handloser.

The Chief of the Waffen SS Medical Service was the defendant Genzken. His immediate superior was Reich Physician SS and Police Grawitz.

Six other defendants in the dock were members of the Medical Service of the SS, under Grawitz, namely; Gebhardt, who in 1940 became surgical adviser to the Waffen SS and who in August 1943 created and took over the position of chief clinical officer of the Reich Physician SS and Police; Mrugowsky, who became Chief of the Hygiene Institute of the Waffen SS under Genzken in November 1940, and when the Institute was taken from Genzken's supervision on 1 September 1943 and placed under direct subordination to Grawitz, remained as chief; Poppendick, who in 1941 was appointed Chief Physician of the Main Race and Settlement Office in Berlin and who in 1943 also became chief of the personal staff of the Reich Physician SS and Police; Hoven, who from the beginning of 1941 until July 1942, served as the assistant, and from then to September 1943, as chief physician at the Buchenwald concentration camp; Fischer, an assistant physician to the defendant Gebhardt; and finally the defendant Oberheuser, who in December 1940 became a physician at the Ravensbrueck concentration camp, and thereafter, from June 1943 until the end of the war, served as an assistant physician under the defendant Gebhardt at Hohenlychen.

Civilian Medical Service. Throughout the war the Civilian Medical Services of the Reich were headed by a certain Dr. Leonardo Conti. Conti had two principal capacities (1) he was the State Secretary for Health in the Ministry of the Interior of the Government; in this capacity he was a German civil servant subordinated to the Minister of the Interior—first Wilhelm Frick and later, Heinrich Himmler; (2) he was the Reich Health Leader of the Nazi Party; in this capacity he was subordinated to the Nazi Party Chancellery, the Chief of which was Martin Bormann. In his capacity as Reich Health Leader, Conti had as his deputy the defendant Blome.

Reorganization of Wehrmacht Medical Service. In 1942 a re-

organization of the various medical services of the Wehrmacht was effected. By a Fuehrer decree of 28 July 1942, Handloser became Chief of the Medical Services of the Wehrmacht, while at the same time retaining his position as Chief Physician of the Army and Army Medical Inspector. Under the decree referred to, Handloser was given power and authority to supervise and coordinate "all tasks common to the Medical Services of the Wehrmacht, the Waffen SS and the organizations and units subordinate or attached to the Wehrmacht." He was also commanded "to represent the Wehrmacht before the civilian authorities in all common medical problems arising in the various branches of the Wehrmacht, the Waffen SS and organizations and units subordinate or attached to the Wehrmacht" and "to protect the interests of the Wehrmacht in all medical measures taken by the civilian authorities."

Handloser thus became supreme medical leader in the military field, as was Conti in the civilian health and medical service.

By a subsequent Fuehrer decree of 7 August 1944 Handloser was relieved of his duties as Chief Physician of the Army and Army Medical Inspector, but retained his position as Chief of the Wehrmacht Medical Service.

By the decree of 28 July 1942 pursuant to which Handloser became Chief of the Medical Services of the Wehrmacht, the defendant Karl Brandt became empowered, subordinate only to, and receiving instructions directly from, Hitler "to carry out special tasks and negotiations to readjust the requirements for doctors, hospitals, medical supplies, etc., between the military and the civilian sectors of the Health and Medical Services." The decree also directed that Brandt "is to be kept informed about the fundamental events in the Medical Service of the Wehrmacht and in the Civilian Health Service" and "is authorized to intervene in a responsible manner."

A subsequent decree issued 5 September 1943 extended the powers of the defendant Karl Brandt by providing: "The plenipotentiary for the Medical and Health Services * * * is charged with centrally coordinating and directing the problems and activities of the entire Medical and Health Service according to instructions. In this sense this order applies also to the field of medical science and research, as well as to the organizational institutions concerned with the manufacture and distribution of medical material. The plenipotentiary for the Medical and Health services is authorized to appoint and commission special deputies for this sphere of action."

By a later decree of 25 August 1944 Karl Brandt was made

Reich Commissioner for Sanitation and Health for the duration of the war; the decree providing:

"In this capacity his office ranks as highest Reich Authority" and he is "authorized to issue instructions to the offices and organizations of the State, Party, and Wehrmacht which are concerned with the problems of the medical and health services."

Thus, by this series of decrees, the defendant Karl Brandt, within this sphere of competence, became the supreme medical authority of the Reich subordinate to no one but Hitler.

Three of the defendants are not physicians.

The first is the defendant Brack who became subordinated to Bouhler at the time the latter was appointed Chief of the Chancellery of the Fuehrer, in 1934, and remained with Bouhler throughout the war.

The second is the defendant Rudolf Brandt who, from the time he joined the staff of Himmler in 1933, served for a twelve-year period in varying capacities. At first Rudolf Brandt was a mere clerk in the staff of the Reichsfuehrer SS but by 1936 had risen to chief of the personal staff of Himmler. In 1938 or 1939 he became Himmler's liaison officer to the Ministry of the Interior and particularly to the Office of the Secretary of the Interior. When Himmler became Minister of the Interior in 1943 Rudolf Brandt became Chief of the Ministerial Office; when Himmler became President of the Ahnenerbe Society, Rudolf Brandt became liaison officer between Himmler and the Reich Secretary of the Ahnenerbe Society, defendant Wolfram Sievers.

The third is the defendant Sievers, who was a member of Himmler's personal staff and Reich Business Manager of the Ahnenerbe Society from 1 July 1935 until the end of the war.

THE AHNENERBE SOCIETY

The Ahnenerbe Society, of which Sievers was Reich Business Manager, was in existence as an independent entity as early as 1933. On 1 July 1935 the Ahnenerbe became duly registered as an organization to conduct or further "research on the locality, mind, deeds and heritage of the Northern race of Indo-Germans and to pass on the results of this research to the people in an interesting manner." On 1 January 1942 the Society became part of the personal staff of the Reichsfuehrer SS and thereby a section of the SS. Its management was composed of Heinrich Himmler as President, Professor Dr. Wuest, Rector of the University of Munich, as Curator, and the defendant Sievers as Reich Business Manager. Subsequently, during the same year, the Institute of

Military Scientific Research was established as a part of the Ahnenerbe. Its purposes are defined in a letter written by Himmler to Sievers, which directed the following with reference to the Ahnenerbe:

- "1. To establish an Institute for Military Scientific Research.
2. To support in every possible way the research carried out by SS Hauptsturmfuehrer Professor Dr. Hirt and to promote all corresponding research and undertakings.
3. To make available the required apparatus, equipment, accessories and assistants, or to procure them.
4. To make use of the facilities available in Dachau.
5. To contact the Chief of the SS Economic and Administrative Main Office with regards to the costs which can be borne by the Waffen SS."

In its judgment, the International Military Tribunal made the following findings of fact with reference to the Ahnenerbe:

"Also attached to the SS main offices was a research foundation known as the Experiments Ahnenerbe. The scientists attached to this organization are stated to have been mainly honorary members of the SS. During the war an institute for military scientific research became attached to the Ahnenerbe which conducted extensive experiments involving the use of living human beings. An employee of this institute was a certain Dr. Rascher, who conducted these experiments with the full knowledge of the Ahnenerbe, which were subsidized and under the patronage of the Reichsfuehrer SS who was a trustee of the foundation."*

We shall now discuss the evidence as it pertains to the cases of the individual defendants.

The evidence conclusively shows that the German word "*Fleck-fieber*" which is translated in the indictment as "spotted fever" is more correctly translated by "typhus." This is admitted, and in this judgment, in accord with the evidence, we use the word typhus instead of "spotted fever."

KARL BRANDT

The defendant Karl Brandt is charged with special responsibility for, and participation in, Freezing, Malaria, Lost Gas, Sulfanilamide, Bone, Muscle and Nerve Regeneration and Bone

* Trial of the Major War Criminals, vol. I, p. 269, Nuernberg, 1947.

Transplantation, Sea-Water, Epidemic Jaundice, Sterilization, and Typhus Experiments, as alleged under counts two and three of the indictment. He is also charged in counts two and three with criminality in connection with the planning and carrying out of the Euthanasia Program of the German Reich. Under count four of the indictment he is charged with membership in the SS, an organization declared criminal by the judgment of the International Military Tribunal.

Karl Brandt was born 8 January 1904 at Muehlhausen, Alsace, then a portion of Germany, studied medicine, and passed his medical examination in 1928. He joined the National Socialist Party in January 1932, and became a member of the SA in 1933. He became a member of the Allgemeine SS in July 1934 and was appointed Untersturmfuehrer on the day he joined that organization. During the summer of 1934 he became Hitler's "Escort Physician"—as he describes the office.

He was promoted to the grade of Obersturmfuehrer in the Allgemeine SS on 1 January 1935, and in 1938 was classed as deferred in order that in case of war he might be free to serve on the staff of the Reich Chancellery in Hitler's headquarters. During the month of April 1939 Karl Brandt was promoted to the rank of Obersturmbannfuehrer in the Allgemeine SS. In 1940 he was transferred from the Allgemeine SS to the Waffen SS, in which commissions were equivalent to those of the army. On 30 January 1943 he received a grade equivalent to that of major general in the Waffen SS, and on 20 April 1944 was promoted to the grade of lieutenant general in that organization. Having at some previous date been relieved as Hitler's escort physician, he was again appointed as such in the fall of 1944. On 16 April 1945 he was arrested by the Gestapo, and the next day was condemned to death by a court at Berlin. He was released from arrest by order of the provisional government under Doenitz on 2 May 1945. On 23 May 1945 he was placed under arrest by the British authorities.

By decree bearing date 28 July 1942, signed by Hitler, Keitel, and Lammers, Karl Brandt was invested with high authority over the medical services, military and civilian, in Germany. Paragraphs 3 and 4 of this decree, referring to Karl Brandt, read as follows:

"3. I empower Professor Dr. Karl Brandt, subordinate only to me personally and receiving his instructions directly from me, to carry out special tasks and negotiations to readjust the requirements for doctors, hospitals, medical supplies, etc., between the military and the civilian sectors of the Health and Medical Services.

"4. My plenipotentiary for Health and Medical Services is to be kept informed about the fundamental events in the Medical Service of the Wehrmacht and in the Civilian Health Service. He is authorized to intervene in a responsible manner."

By decree bearing date 5 September 1943, signed by Hitler and Lammers, Brandt's authority was strengthened. This decree reads as follows:

"In amplification of my decree concerning the Medical and Health Services of 28 July 1942 (RGBL. I, P. 515) I order:

"The plenipotentiary for the Medical and Health Services, General Commissioner Professor Dr. med. Brandt, is charged with centrally coordinating and directing the problems and activities of the entire Medical and Health Services according to instructions. In this sense this order applies also to the field of medical science and research, as well as to the organizational institutions concerned with the manufacture and distribution of medical material.

"The plenipotentiary for the Medical and Health Services is authorized to appoint and commission special deputies for his spheres of action."

By further decree bearing date 25 August 1944, signed by Hitler, Lammers, Bormann, and Keitel, Karl Brandt received further authority. This decree reads:

"I hereby appoint the General Commissioner for Medical and Health matters, Professor Dr. Brandt, Reich Commissioner for Sanitation and Health [Reich Commissioner for Medical and Health Services] as well, for the duration of this war. In this capacity his office ranks as highest Reich authority.

"The Reich Commissioner for Medical and Health Services is authorized to issue instructions to the offices and organizations of the State, Party, and Wehrmacht, which are concerned with the problems of the Medical and Health Services."

Prosecution Exhibit 445, a letter bearing date at Munich, 9 January 1943, signed by Conti and marked "Strictly Confidential" directed to the Leaders of Public Health Gau Offices of the National Socialist German Workers' Party, refers to a decree of the Fuehrer on "Suspending the Pledge to Secrecy in Special Cases." The letter continues:

"For your strictly confidential information I am sending attached Fuehrer decree and the circular letter I am writing on that subject to the heads of the medical chambers."

Another portion of the exhibit consists of a copy of Conti's letter, also bearing date 9 January 1943, to the heads of the medical chambers, and reads as follows:

"Strictly Confidential.

"Subject: Fuehrer decree on suspension of pledge to secrecy in special cases.

"Gentlemen:

"I am sending you enclosed a Fuehrer decree which I received from Professor Dr. Brandt.

"Communications having bearing on the Fuehrer decree should be directed to the following address: Professor Doctor Karl Brandt, Personal Attention, Berlin W8, Reich Chancellory.

"It is left to the discretion of the physician who is handling the case whether he wishes to acquaint the patient with the information himself."

Hitler's decree, bearing date 23 December 1942, reads as follows:

"I not only relieve physicians, medical practitioners and dentists of their pledge to secrecy towards my Commissioner General Professor Dr. med. Karl Brandt, but I place upon them the binding obligation to advise him—for my own information—immediately after a final diagnosis has established a serious disease, or a disease of ill-boding character, with a personality holding a leading position or a position of responsibility in the State, the Party, the Wehrmacht, in industry, and so forth."

Concerning this matter Karl Brandt testified that the decree "in special cases" relieved German physicians from one of the generally accepted principles of medical practice.

From the year 1942 to the end of the war Karl Brandt was a member of the Reich Research Council and was also a member of the Presidential Council of that body.

Karl Brandt, then, finally reached a position authorizing him to issue instructions to all the medical services of the State, Party, and Wehrmacht concerning medical problems (Hitler Decree bearing date 25 August 1944). The above decrees of Hitler disclose his great reliance upon Karl Brandt and the high degree of personal and professional confidence which Hitler reposed in him.

It may be noted that by the service regulation governing the Chief of the Medical Services of the Wehrmacht, issued by Keitel 7 August 1944, the chief of those medical services was required

to pay due regard to the general rules of the Fuehrer's Commissioner General for Medical and Health Departments. The regulation contained the following:

"3. The Chief of the Medical Services of the Wehrmacht will inform the Fuehrer's Commissioner General about basic events in the field of the Medical Services of the Wehrmacht."

By a pre-trial affidavit made by the defendant Handloser and put in evidence by the prosecution, Handloser makes the statement that Karl Brandt was his "immediate superior in medical affairs."

SULFANILAMIDE EXPERIMENTS

Certain sulfanilamide experiments were conducted at Ravensbrueck for a period of about a year prior to August 1943. These experiments were carried on by the defendants Gebhardt, Fischer, and Oberheuser—Gebhardt being in charge of the project. At the Third Meeting of the Consulting Physicians of the Wehrmacht held at the Military Medical Academy in Berlin from 24 to 26 May 1943, Gebhardt and Fischer made a complete report concerning these experiments. Karl Brandt was present and heard the reports. Gebhardt testified that he made a full statement concerning what he had done, stating that experiments had been carried out on human beings. The evidence is convincing that statements were also made that the persons experimented upon were concentration camp inmates. It was stated that 75 persons had been experimented upon, that the subjects had been deliberately infected, and that different drugs had been used in treating the infections to determine their respective efficacy. It was also stated that three of the subjects died. It nowhere appears that Karl Brandt made any objection to such experiments or that he made any investigation whatever concerning the experiments reported upon, or to gain any information as to whether other human subjects would be subjected to experiments in the future. Had he made the slightest investigation he could have ascertained that such experiments were being conducted on non-German nationals, without their consent, and in flagrant disregard of their personal rights; and that such experiments were planned for the future.

In the medical field Karl Brandt held a position of the highest rank directly under Hitler. He was in a position to intervene with authority on all medical matters; indeed, it appears that such was his positive duty. It does not appear that at any time he took any steps to check medical experiments upon human subjects. During

the war he visited several concentration camps. Occupying the position he did, and being a physician of ability and experience, the duty rested upon him to make some adequate investigation concerning the medical experiments which he knew had been, were being, and doubtless would continue to be, conducted in the concentration camps.

EPIDEMIC JAUNDICE EXPERIMENTS

Karl Brandt is charged with criminal responsibility for experiments conducted for the purpose of discovering an effective vaccine to bring about immunity from epidemic jaundice. Grawitz, by letter dated 1 June 1943, wrote Himmler stating that Karl Brandt had requested his assistance in the matter of research on the causes of epidemic jaundice. Grawitz stated that Karl Brandt had interested himself in this research and desired that prisoners be placed at his disposal. The letter further stated that up to that date experiments had been made only on animals, but that it had become necessary to pursue the matter further by inoculating human beings with virus cultures. The letter stated that deaths must be anticipated, and that eight prisoners who had been condemned to death were needed for the experiments at the hospital of the concentration camp at Sachsenhausen. Under date of 16 June 1943 Himmler acknowledged the letter from Grawitz and directed that eight criminals in Auschwitz, Jews of the Polish Resistance Movement condemned to death, should be used for experiments which should be conducted by Dr. Dohmen at Sachsenhausen. Karl Brandt's knowledge of experiments on non-German nationals is clearly shown by the foregoing.

LOST (MUSTARD) GAS EXPERIMENTS

It is clear from the record that experiments with Lost gas were conducted on concentration camp inmates throughout the period covered by the indictment. The evidence is that over 200 concentration camp inmates, Russians, Poles, Czechs, and Germans, were used as experimental subjects. At least 50 of these subjects, most of whom were nonvolunteers, died as a direct or indirect result of the treatment received.

Karl Brandt knew of the fact that such experiments were being conducted. The evidence is to the effect that he knew of Lost gas experiments conducted by Bickenbach at Strasbourg during the fall of 1943, in which Russian prisoners were apparently used as subjects, some of whom died.

A letter written by the defendant Sievers to the defendant Rudolf Brandt, dated 11 April 1944, points to the fact that Karl

Brandt knew of still other such experiments. The letter states, that in accordance with instructions he, Sievers, had contacted Karl Brandt, at Beelitz, and had reported to him concerning the activities of a certain Dr. Hirt, who the evidence shows had been experimenting with Lost gas upon concentration camp inmates at Natzweiler. In the letter, Sievers states, further, that Karl Brandt had told him that he would be in Strasbourg in April and would then discuss details with Dr. Hirt.

Knowledge of the conduct of at least some of the experiments was confirmed by Karl Brandt when he testified in his own behalf. He stated that pursuant to competent authority he had engaged in studies concerning defense measures against poison gas. He admitted receiving a report from Hirt, and that one reading the report could reach the conclusion that human beings had been experimented upon in connection with injuries from Lost gas.

FREEZING, MALARIA, BONE, MUSCLE AND NERVE REGENERATION AND BONE TRANS- PLANTATION, SEA-WATER, STERILIZATION, AND TYPUS EXPERIMENTS

The evidence does not show beyond a reasonable doubt that Karl Brandt is criminally responsible on account of the experiments with which he is charged under these specifications.

The defendant Karl Brandt certainly knew that medical experiments were carried out in concentration camps upon human subjects, that the experiments caused suffering, injury, and death. By letter bearing date 26 January 1943 Karl Brandt wrote to Wolff at the Fuehrer's (Hitler's) headquarters asking if it were possible to carry out "nutritional experiments" in concentration camps. The nature of the desired experiments does not appear, nor does the evidence show whether or not such experiments were ever made. The letter, however, indicates Brandt's knowledge of the fact that human subjects could be made available for experimentation.

Defendant Rudolf Brandt, by letter dated 4 September 1944, wrote Baumert, evidently a member of Himmler's staff, stating that Karl Brandt had telephoned and requested that Himmler direct that 10 prisoners from Oranienburg should be made available as of the next day for two days to test a certain drug. The letter stated that the prisoners would not be injured by the test.

It appears from an official note filed by Kliewe of the Army Medical Inspectorate, dated 23 February 1944, referring to a conversation with the defendant Blome on that date, that experiments concerning biological warfare connected with plant parasites, etc., had been made; that up to that date no experiments

had been conducted in the field of human medicine; but that such experiments were necessary and were in contemplation. The memorandum continues:

“Field Marshal Keitel has given permission to build; Reichsfuehrer SS and Generalarzt Professor Brandt have assured him of vast support. By request of Field Marshal Keitel the armed forces are not to have a responsible share in the experiments, since experiments will also be conducted on human beings.”

It is significant that Hitler's Chief of Staff should deem it advisable to direct that the Wehrmacht should have nothing to do with experiments on human subjects.

EUTHANASIA

Defendant Karl Brandt is charged under counts two and three of the indictment with criminal activities in connection with the euthanasia program of the German Reich, in the course of which thousands of human beings, including nationals of German occupied countries, were killed between 1 September 1939 and April 1945.

On his own letterhead Hitler, at Berlin, 1 September 1939, signed a secret order reading as follows:

“Reichsleiter Bouhler and Dr. Brandt, M.D., are charged with the responsibility of enlarging the authority of certain physicians to be designated by name in such a manner that persons who, according to human judgment, are incurable can, upon a most careful diagnosis of their condition of sickness, be accorded a mercy death.”

Bouhler was holding a high office in the NSDAP. He was not a physician.

The foregoing order was not based on any previously existing German law; and the only authority for the execution of euthanasia was the secret order issued by Hitler.

The evidence shows that Bouhler and Karl Brandt, who were jointly charged with the administration of euthanasia, entered upon the duties assigned them in connection with the setting up of processes for carrying out the order. A budget was adopted; the method of determining candidates for euthanasia was established; a patients' transport corporation was organized to convey the selected patients to the gassing chambers. Questionnaires were prepared which were forwarded to the heads of mental institutions, one questionnaire to be accomplished concerning each inmate and then returned to the Ministry of the Interior. At the

Ministry the completed questionnaires were examined by so-called experts, who registered their professional opinions thereon, returned them to the appropriate office for final examination, and orders were issued for those patients who by this process were finally selected for extermination. Thereafter the condemned patients were gathered at collection points, from whence they were transported to euthanasia stations and killed by gassing.

Utmost secrecy was demanded of the executioners throughout the entire procedure. Persons actively concerned in the program were required to subscribe a written oath of secrecy and were warned that violation of that oath would result in most serious personal consequences. The consent of the relatives of the "incurables" was not even obtained; the question of secrecy being deemed so important.

Shortly after the commencement of operations for the disposal of "incurables", the program was extended to Jews, and then to concentration camp inmates. In this latter phase of the program, prisoners deemed by the examining doctors to be unfit or useless for labor were ruthlessly weeded out and sent to the extermination stations in great numbers.

Karl Brandt maintains that he is not implicated in the extermination of Jews or of concentration camp inmates; that his official responsibility for euthanasia ceased at the close of the summer of 1941, at which time euthanasia procedures against "incurables" were terminated by order of Hitler.

It is difficult to believe this assertion, but even if it be true, we cannot understand how this fact would aid the defendant. The evidence is conclusive that almost at the outset of the program non-German nationals were selected for euthanasia and exterminated. Needless to say, these persons did not voluntarily consent to become the subjects of this procedure.

Karl Brandt admits that after he had disposed of the medical decisions required to be made by him with regard to the initial program which he maintains was valid, he did not follow the program further but left the administrative details of execution to Bouhler. If this be true, his failure to follow up a program for which he was charged with special responsibility constituted the gravest breach of duty. A discharge of that duty would have easily revealed what now is so manifestly evident from the record; that whatever may have been the original aim of the program, its purposes were prostituted by men for whom Brandt was responsible, and great numbers of non-German nationals were exterminated under its authority.

We have no doubt but that Karl Brandt—as he himself testified—is a sincere believer in the administration of euthanasia to per-

sons hopelessly ill, whose lives are burdensome to themselves and an expense to the state or to their families. The abstract proposition of whether or not euthanasia is justified in certain cases of the class referred to is no concern of this Tribunal. Whether or not a state may validly enact legislation which imposes euthanasia upon certain classes of its citizens is likewise a question which does not enter into the issues. Assuming that it may do so, the Family of Nations is not obligated to give recognition to such legislation when it manifestly gives legality to plain murder and torture of defenseless and powerless human beings of other nations.

The evidence is conclusive that persons were included in the program who were non-German nationals. The dereliction of the defendant Brandt contributed to their extermination. That is enough to require this Tribunal to find that he is criminally responsible in the program.

We find that Karl Brandt was responsible for, aided and abetted, took a consenting part in, and was connected with plans and enterprises involving medical experiments conducted on non-German nationals against their consent, and in other atrocities, in the course of which murders, brutalities, cruelties, tortures and other inhumane acts were committed. To the extent that these criminal acts did not constitute war crimes they constituted crimes against humanity.

MEMBERSHIP IN CRIMINAL ORGANIZATION

Under count four of the indictment Karl Brandt is charged with being a member of an organization declared criminal by the judgment of the International Military Tribunal, namely, the SS. The evidence shows that Karl Brandt became a member of the SS in July 1934 and remained in this organization at least until April 1945. As a member of the SS he was criminally implicated in the commission of war crimes and crimes against humanity, as charged under counts two and three of the indictment.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Karl Brandt guilty, under counts two, three, and four, of the indictment.

HANDLOSER

Under counts two and three of the indictment the defendant Handloser is charged with special responsibility for, and participation in, High-Altitude, Freezing, Malaria, Lost (Mustard) Gas,

Sulfanilamide, Bone, Muscle and Nerve Regeneration and Bone Transplantation, Sea-Water, Epidemic Jaundice, and Typhus Experiments.

The charge of participation in the high-altitude experiments has been abandoned by the prosecution, and hence will not be considered further.

Handloser was a professional soldier, having been commissioned in the Medical Department of the German Army in 1910. During the First World War he rose to the position of commanding officer of a division medical unit, and on 1 September 1939 he was appointed Chief Medical Officer of the 14th German Army. After service in the field, on 6 November 1940 he was appointed Deputy Army Medical Inspector. He became Army Medical Inspector on 1 January 1941, and the following April was given the additional appointment of Chief Medical Officer of the field forces, holding both positions until 28 July 1942, when he became Chief of the Wehrmacht Medical Service. He retained also his other appointment and performed the duties of both positions. He was retained in his position as Chief of the Wehrmacht Medical Service on 1 September 1944, but relieved of the duties pertaining to the other office which he had theretofore held, he having exercised the functions of both offices until the date last mentioned. His professional career is more particularly described above.

Handloser states that prior to his last appointment in 1944 he was authorized to issue "instructions," but not orders—testifying that after his latest appointment he had authority to issue orders to the chiefs of the medical services of all branches of the Wehrmacht. He also had jurisdiction over scientific medical institutes, etc., as designated by the service regulations promulgated at the time of his last appointment. While the chief medical officers of the army, navy, and Luftwaffe were under their appropriate military superiors, Handloser had authority to coordinate the activities of all the Wehrmacht medical services and to establish their coordinated action. As to the Waffen SS, his authority extended only to such units of that organization as were attached to and made part of the Wehrmacht.

Handloser testified that the utilization of medical material and personnel were, insofar as the Wehrmacht was concerned, within his jurisdiction after the entry of the decree of 28 July 1942, and that upon occasion he called meetings of the chief medical officers of the Wehrmacht and specialists in appropriate fields of medicine, in an effort to avoid duplication of certain research problems in connection with malaria, typhus, paratyphus, and cholera.

As Army Medical Inspector he was also *ex officio* president of

the Scientific Senate, but testified that this body did not meet after 1942. As an army physician he denied any special knowledge concerning scientific problems peculiarly affecting the navy or the Luftwaffe; but on an organization chart prepared by him and received in evidence as Prosecution Exhibit 9 he is shown as subordinated to Karl Brandt and as Chief of the Medical Service of the Wehrmacht occupying the position of superior over the Army Medical Service and the chiefs of the Medical Services of the Navy and Luftwaffe and certain other subordinate agencies pertaining to the Wehrmacht. The chart also indicates his authority over the Chief of the Medical Office [Service] of the Waffen SS and components of the Waffen SS when attached to the Wehrmacht.

It appears that Handloser had much to do in connection with the calling of meetings of the "Consulting Physicians"; that he designated some of the subjects to be discussed at these meetings; and that his subordinate, Schreiber, arranged the details.

At the Second Meeting of Consulting Surgeons held 30 November to 3 December 1942 at the Military Medical Academy, he addressed those present (referring to the meeting as "This Second Work Conference East"), observing that representatives of the three branches of the Wehrmacht, of the Waffen SS and Police, of the Labor Service, and the Organization Todt, were also present. He called attention to the presence of Conti, Head of the Medical Services in the Civilian Sector.

At the Fourth Meeting of Consulting Physicians held at Hohenlychen, 16 to 18 May 1944, Karl Brandt—in addressing the meeting—said that Handloser, a soldier and a physician, was "responsible for the use and the performance of our medical officers".

Schreiber, until 30 May 1943 a close subordinate of Handloser in his capacity of Army Medical Inspector, was a member of the Reich Research Council, paying particular regard to the control of epidemics as his special field. Schreiber frequently reported to Handloser, with whom he had worked for some years.

FREEZING EXPERIMENTS

Professor Dr. Holzloehner, who with Drs. Finke and Rascher performed freezing experiments on concentration camp inmates at Dachau, made reports on at least two occasions to groups of army physicians concerning cold and freezing problems. The first such report was made at a meeting held on 26 to 27 October 1942, which was called to consider problems concerning cold. Schreiber, who held a responsible position under Handloser from 1 April 1942 to 31 May 1943, was present at this meeting, as was Craemer, head of the Mountain Medical School of the army at

St. Johann, which was also under Handloser's jurisdiction. During the meeting and after Holzloehner had made his report, Rascher also made statements before the meeting concerning these experiments, from which it was obvious that statements contained in the reports were based upon observations made by experimenting on human beings. From the two reports it was clear that concentration camp inmates had been experimented upon and that some deaths had resulted.

Holzloehner was invited to lecture again upon this subject at the Second Meeting of the Consulting Physicians of the Wehrmacht, held 30 November to 3 December 1942, at the Military Medical Academy at Berlin. Handloser heard this talk by Holzloehner and testified that the matter of cold and freezing was one of the most important problems to the army.

We think it manifestly clear from the evidence dealing with freezing that Handloser had actual knowledge that such experiments had been conducted upon inmates at Dachau concentration camp, during the course of which suffering and deaths had resulted to the experimental subjects.

SULFANILAMIDE EXPERIMENTS

Handloser is charged with participation in the sulfanilamide experiments conducted by the defendant Gebhardt. These experiments were conducted at Ravensbrueck concentration camp during a period extending from 20 July 1942 to August 1943 upon concentration camp inmates without their consent. While these experiments were still in progress Gebhardt was invited to present a report on his research findings at the Third Meeting of the Consulting Physicians held on 18 and 19 May 1943, at the Military Medical Academy in Berlin. Handloser was present at that meeting; in fact, he had addressed the meeting prior to Gebhardt's giving his report.

As stated elsewhere, Gebhardt made a frank and candid report of what he had been doing at Ravensbrueck; honestly telling the group that his experimental subjects were not volunteers but were concentration camp inmates condemned to death, who had been given the hope of reduction of sentence should they survive the experiments. By means of charts to illustrate his lecture, he made it clear that deaths had occurred among the human subjects. When on the witness stand, the defendant Gebhardt testified that prior to the meeting of consulting physicians he had discussed with either Schreiber or the defendant Rostock the subject matter of the lecture to be given, and that at that time Schreiber had stated that he had received data concerning the experiments through official channels.

At that time Schreiber was a direct subordinate of the defendant Handloser, and we think it may be fairly assumed that Schreiber's knowledge was the knowledge of Handloser. However, be that as it may, the evidence is clear that Handloser heard the lecture by Gebhardt, as well as a subsequent lecture on the same subject matter given by the defendant Fischer. There can be no question, therefore, but that when Handloser came away from the meeting he was fully informed of the fact that medical experiments were being conducted in Ravensbrueck concentration camp with inmates who were nonvolunteers. Moreover, he knew that deaths had occurred among the experimental subjects.

After the meeting of consulting physicians had ended, Gebhardt returned to Ravensbrueck and conducted several more series of sulfanilamide experiments. The subjects used for the later experiments were Polish women who had been condemned to Ravensbrueck without trial, and who did not give their consent to act as experimental subjects. Three of these were killed by the experiments.

TYPHUS EXPERIMENTS

Under counts two and three of the indictment Handloser is charged with special responsibility for, and participation in, typhus experiments conducted in the Buchenwald concentration camp which were supervised by a certain Dr. Ding, and like experiments conducted in the Natzweiler concentration camp by a certain Dr. Haagen. As shown elsewhere in the judgment, these experiments were unlawful and resulted in deaths of non-German nationals.

There can be no question but that in 1941 typhus was a potential menace to the German Army and to many German civilians. The use of an adequate typhus vaccine was therefore a matter of prime importance. The distribution of vaccines to the Wehrmacht was within the control of Handloser. In the exercise of his functions he was also interested in typhus vaccine production.

The Typhus and Virus Institutes of the OKH at Cracow [Krakow] and Lemberg [Lvov] were engaged in the production of the Weigl vaccine from the intestines of lice. This vaccine was thought to be effective, but the production procedure was complicated and expensive; hence, sufficient quantities of this vaccine could not be furnished. Another vaccine—the so-called Cox-Haagen-Gildemeister vaccine, produced from egg-yolk cultures—could be quickly produced in large quantities, but its protective qualities had not been sufficiently demonstrated.

Evidence is before the Tribunal that the general problem was discussed at a meeting held in Berlin, 29 December 1941, at-

tended by Dr. Bieber of the Ministry of Interior; Gildemeister; Dr. Scholz, a subordinate of Handloser; two physicians of the "governing body of the Government General"; and three representatives of the Behring Works. It is stated in the minutes of this conference that—

"The vaccine which is presently being produced by the Behring Works from chicken eggs shall be tested for its effectiveness in an experiment."

For the purpose above referred to, Dr. Demnitz of the Behring Works would contact Dr. Mrugowsky. The minutes of the meeting were prepared by Bieber, under date 4 January 1942.

A copy of the minutes of the meeting last referred to was forwarded to the Army Medical Inspectorate at Berlin. It thus appears that a representative of Handloser's office, Scholz, attended the meeting, and that a copy of the minutes was forwarded to the Army Medical Inspectorate.

There is also evidence that on the same day a conference was held between the defendant Handloser, Conti of the Ministry of Interior, Reiter of the Health Department of the Reich, Gildemeister of the Robert Koch Institute, and the defendant Mrugowsky, at which time it was decided to establish a research station at Buchenwald concentration camp to test the efficacy of the egg-yolk, and other vaccines on concentration camp inmates. As a result of the conference an experimental station was established at Buchenwald under the direction of Dr. Ding, with the defendant Hoven acting as his deputy.

Inasmuch as some of this information comes from Prosecution Exhibit 287, referred to as the "Ding Diary", a discussion of the document is now appropriate.

Dr. Ding (who later changed his name to Schuler) was a very ambitious man who was apparently willing to engage in any professional activity which he thought might further his medical career. He gladly seized upon the opportunity to conduct experiments on concentration camp inmates in connection with the vaccine study.

Every German officer holding a position comparable to that held by Dr. Ding was required to keep a journal or diary showing his official activities. It appears that Ding kept two diaries. Ding's personal diary containing official and personal entries and work reports has disappeared; his official log or journal concerning his work at Buchenwald is the document in evidence. This diary was kept by one Eugen Kogon, an inmate at Buchenwald. He made the actual entries and Ding verified and signed them.

Kogon, an Austrian subject, testified for the prosecution. We

learn from his testimony that he was a former newspaper editor and held other highly responsible positions. He was sent by the German authorities to Buchenwald in 1939 as a political prisoner. In April 1943 he was assigned to Ding as a clerk or assistant. For many months prior to that time, however, he had been on extremely friendly terms with Ding and as a consequence was completely familiar with Ding's operations. Indeed, so close was the attachment that during the first half of the year 1942 Ding had dictated the first portion of the diary which is in evidence, and Kogon had transcribed it. After officially becoming Ding's assistant in 1943 all correspondence of every nature with which Ding was concerned passed through the hands of Kogon.

The diary came into Kogon's possession at the breaking up of the camp, and remained in his possession, as he testified, until he delivered it to the Office of Chief of Counsel for War Crimes at Nuernberg.

It is manifest that the entries in the diary were often not made on the day they bear date; but this does not mean that it has no probative value. Almost every entry in the diary is personally signed by Ding. Time and again the entries in the diary have been corroborated by other credible evidence. The defendants themselves who were familiar with operations at Buchenwald have confirmed the entries in important essential particulars. We consider the diary as constituting evidence of considerable probative value, and shall give to the entries such consideration as under all circumstances they are entitled to receive.

The first entry in the Ding diary, under date of 29 December 1941, reads as follows:

"Conference between Army Sanitation Inspection [Inspector], General Chief Surgeon Professor Dr. Handloser; State Secretary for the Department of Health of the Reich, SS Gruppenfuehrer Dr. Conti; President Professor Reiter of the Health Department of the Reich; President Professor Gildemeister of the Robert Koch Institute (Reich Institution to Combat Contagious Diseases) and SS Standartenfuehrer and Lecturer (Dozent) Dr. Mrugowsky of the Institute of Hygiene, Waffen SS, Berlin.

"It has been established that the need exists, to test the efficiency of, and resistance of the human body to, the typhus serum extracted from egg yolks. Since tests on animals are not of sufficient value, tests on human beings must be carried out."

This entry preceded by only a few days the actual commencement of the experiments on concentration camp inmates to determine the efficiency of the egg-yolk vaccine.

It seems certain that the foregoing entry in the Ding diary was written or rewritten at some date later than that which it bears, but the entry may be accepted as evidence of probative value to the fact that it was agreed by some persons in authority that experiments with vaccine prepared from egg yolks be made on concentration camp inmates at Buchenwald. The next entry in the diary bears date 2 January 1942, and reads as follows:

"The concentration camp Buchenwald is chosen for testing the typhus serums. SS Hauptsturmfuehrer Ding is charged with these tests."

Handloser testified that many conferences concerning typhus vaccine took place and that he was interested in the testing of chicken-egg vaccine "on a sufficient number of persons in a certain vicinity, that is, within an area where typhus had already occurred or there was imminent danger existing." He also testified that during the summer of 1941 he met Mrugowsky, who was recommended to him by Schreiber, Handloser's subordinate. He also testified that he discussed the matter of the chicken-egg vaccines with Gildemeister and Conti. Handloser testified that he was present at many conferences, both at the front and in rear echelons, where such matters were discussed. Mrugowsky, in a letter dated 5 May 1942, reported to Eyer (who was a subordinate of Handloser) of the Typhus and Vaccine Institute of the High Command at Cracow [Krakow], describing the results of the first series of experiments carried out in Buchenwald. The experiments covered both the Weigl and egg-yolk vaccines. This report called attention to the fact that two experimental subjects had died.

An entry in the Ding diary dated 8 February 1943 states that Dr. Eyer and Dr. Schmidt, a hygienist on the staff of the Medical Inspectorate, visited the Typhus and Virus Institute at Buchenwald. Schmidt, a subordinate of Handloser from 1942 until August 1944, stated that he and Eyer had visited Buchenwald. He testified that his visit was concerned only with yellow fever vaccine tests which were being carried out at that station. This statement by the witness is not convincing. From the Ding diary it appears that infected lice were received by Ding prior to 30 November 1942. If this is correct, these lice could have come only from an institute under control of the army over which Handloser had jurisdiction.

Ding reported on his activities at the meeting of the Consulting Surgeons of the Wehrmacht held in May 1943 in Berlin. Handloser was present at that meeting but may not have heard the report, the report having been made to the hygiene section,

which was presided over by Schreiber, Handloser's subordinate. Defendant Rose, having heard the report, openly objected to the character of the experiments carried out at Buchenwald. Schreiber, then, had full knowledge of the nature of the experiments there carried on. Rose's vigorous objection was doubtless a subject of general interest.

Handloser testified that on at least two occasions he discussed with Mrugowsky matters connected with vaccines against typhoid, typhus and other diseases. He stated that he was unable to fix the dates of these conferences.

The entries in the Ding diary clearly indicate an effective liaison between the Army Medical Inspectorate and the experiments which Ding was conducting at Buchenwald. There is also credible evidence that the Inspectorate was informed of medical research carried on by the Luftwaffe. The experiments at Buchenwald continued after Handloser had gained actual knowledge of the fact that concentration camp inmates had been killed at Dachau as the result of freezing; and that inmates at Ravensbrueck had died as victims of the sulfanilamide experiments conducted by Gebhardt and Fischer. Yet with this knowledge Handloser in his superior medical position made no effort to investigate the situation of the human subjects or to exercise any proper degree of control over those conducting experiments within his field of authority and competence.

Had the slightest inquiry been made the facts would have revealed that in vaccine experiments already conducted at Buchenwald, deaths had occurred—both as a result of artificial infections by the lice which had been imported from the Typhus and Virus Institute of the OKH at Cracow [Krakow] or Lemberg [Lvov], or from infections by a virulent virus given to subjects after they had first been vaccinated with either the Weigl, Cox-Haagen-Gildemeister, or other vaccines, whose efficacy was being tested. Had this step been taken, and had Handloser exercised his authority, later deaths would have been prevented in these particular experiments which were originally set in motion through the offices of the Medical Inspectorate and which were being conducted for the benefit of the German armed forces.

These deaths not only occurred with German nationals, but also among non-German nationals who had not consented to becoming experimental subjects.

OTHER EXPERIMENTS

The defendant Handloser is also charged with special responsibility for, and participation in, Malaria, Lost Gas, Bone, Muscle and Nerve Regeneration and Bone Transplantation, Sea-Water,

and Epidemic Jaundice Experiments. In our view the evidence is insufficient to show any criminal connection of the defendant Handloser with regard to these experiments.

The law of war imposes on a military officer in a position of command an affirmative duty to take such steps as are within his power and appropriate to the circumstances to control those under his command for the prevention of acts which are violations of the law of war. The reason for the rule is plain and understandable. As is pointed out in a decision rendered by the Supreme Court of the United States, entitled *Application of Yamashita*, 66 Supreme Court [Reporter] 340-347, 1946—

“It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders or efforts of their commander would almost certainly result in violations which it is the purpose of the law of war to prevent. Its purpose to protect civilian populations and prisoners of war from brutality would largely be defeated if the commander of an invading army could with impunity neglect to take reasonable measures for their protection. Hence the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates.”

What has been said in this decision applies peculiarly to the case of Handloser.

In connection with Handloser's responsibility for unlawful experiments upon human beings, the evidence is conclusive that with knowledge of the frequent use of non-German nationals as human experimental subjects, he failed to exercise any proper degree of control over those subordinated to him who were implicated in medical experiments coming within his official sphere of competence. This was a duty which clearly devolved upon him by virtue of his official position. Had he exercised his responsibility, great numbers of non-German nationals would have been saved from murder. To the extent that the crimes committed by or under his authority were not war crimes they were crimes against humanity.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Siegfried Handloser guilty under counts two and three of the indictment.

ROSTOCK

The defendant Rostock is charged under counts two and three of the indictment with special responsibility for, and participation in, Malaria, Lost (Mustard) Gas, Sulfanilamide, Bone, Muscle and Nerve Regeneration and Bone Transplantation, Sea-Water, Epidemic Jaundice, and Spotted Fever Experiments.

Rostock was a physician of recognized ability. From 1933 to 1941 he occupied successively the positions of senior surgeon of the Surgical Clinic in Berlin, Professor of Surgery of the University of Berlin, and Deputy Director of the University Clinic. In 1941 he was appointed Director of the Surgical Clinic, and in 1942 he became Dean of the Medical Faculty of the University of Berlin. Prior to the war he had joined the NSDAP, and in 1939 he was assigned to military duty as a consulting surgeon. In 1942 he was appointed consulting surgeon to the Army Medical Inspectorate and was subordinate to the Military Medical Academy in Berlin. He attained the rank of brigadier general, medical department (reserve). In 1943 he was appointed Chief of the Office for Medical Science and Research, a department under the supervision of defendant Karl Brandt, in which position Rostock remained until the end of the war. From the time he received the last-mentioned appointment, Rostock acted as Brandt's deputy on the Reich Research Council.

As Karl Brandt's deputy Rostock was his agent in the field of medical science and research—Rostock being charged with the duty of coordinating and directing problems and activities concerning the medical health service insofar as science and research were concerned. Rostock was informed concerning medical research conducted by the several branches of the Wehrmacht. As head of the Office for Science and Research, he assigned research problems and designated some as "urgent". It was his duty to avoid duplication of work in scientific research and to decide whether or not a suggested problem was worthy of a research assignment. It is clear that Rostock and Karl Brandt were intimate friends of years standing.

The prosecution does not contend that Rostock personally participated in criminal experiments. It vigorously argues, however, that—with full knowledge that concentration camp inmates were being experimented upon—he continued to function upon research assignments concerning scientific investigations, the result of which would probably further experiments upon human beings. The prosecution then argues that his knowledge concerning these matters, considered together with the position of authority which he occupied in connection with scientific research and the

fact that he failed to exercise his authority in an attempt to stop or check criminal experiments, renders him guilty as charged.

In this connection the prosecution relies upon its Exhibit 457, a document which bears date at Berlin, 14 September 1944. It is headed, "Commissioner for Medical and Health Matters," followed by "The Delegate for Science and Research." Below appears:

"List of medical institutes working on problems of research which were designated as urgent by the discussion on research on 26 August 1944 in Beelitz.

"(Summary according to the 650 orders for research submitted to us.)"

The document then contains a list of research assignments numbered "1" to "45." Numbers 42 and 44 read as follows:

"Strasbourg

"42. Hygiene Institute (Haagen) virus research

* * * * *

"44. Anatomical Institute (Hirt) Chemical warfare agents."

The document bears Rostock's signature. Five of the problems concern hepatitis research, and three, virus research.

It appears from the evidence that Rostock's duties included the avoidance of duplication in the distribution of assignments for medical research. If the head of the medical department of a branch of the Wehrmacht assigned to some particular physician or institute a particular scientific or medical problem, a copy of the assignment would be forwarded to Rostock, who would then coordinate the matter by ascertaining whether or not that assignment was being worked on by some other agency or whether it would lead to worthwhile results. Who classified as "urgent" the 45 of the 650 orders for research does not appear; but it may be assumed that Rostock approved that classification.

Doubtless Rostock knew that experiments on concentration camp inmates were being conducted. He presided over the meeting of surgeons held in May 1943, and there heard statements that experimental subjects had been artificially infected. Doubtless he knew that the experiments were dangerous and that further experiments would probably be conducted. However, it does not appear that either Rostock or any subordinate of his directed the work done on any assignment concerning criminal experiments. Certain of these experiments were classified as

"urgent" at a "discussion on research" as above set forth. Nothing in the designation of any such assignment as appears in Prosecution Exhibit 457 contains on its face anything more than a matter of proper scientific investigation.

The record does not show that the position held by Rostock vested in him any authority whatsoever other than as above stated. No experiments were conducted by any person or organization which was to the least extent under Rostock's control or direction.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Paul Rostock is not guilty as charged under the indictment, and directs that he be released from custody under the indictment when this Tribunal presently adjourns.

SCHROEDER

The defendant Schroeder is charged under counts two and three of the indictment with special responsibility for, and participation in, High-Altitude, Freezing, Sulfanilamide, Sea-Water, Epidemic Jaundice, Typhus and other vaccines, and Gas Experiments. The prosecution has abandoned the charge that he participated in the sulfanilamide experiments and hence that subject will not be considered further.

The defendant served as a medical officer with the infantry during the First World War. In the period prior to 1931 he was attached as medical officer to a number of military units. On 1 January 1931 he was transferred to the Army Medical Inspectorate as a consultant (Referent) on hospital matters and therapeutics with the rank of Oberstabsarzt (major). In 1935 Schroeder became chief of staff to Generalarzt Hippke in the newly established Medical Department of the Reich Ministry for Aviation. He retained this position after Hippke was made Inspector of the Medical Service of the Luftwaffe in 1937. In February 1940 Schroeder was appointed air fleet physician for Air Fleet II with the rank of Generalstabsarzt (major general). On 1 January 1944 he replaced Hippke as Chief of the Medical Service of the Luftwaffe. Simultaneously he was promoted to Generaloberstabsarzt (lieutenant general), which was the highest rank obtainable in the medical services. As Chief of the Medical Service of the Luftwaffe, all medical officers of the German Air Force were subordinated directly or indirectly to Schroeder. After he became Chief of the Medical Service of the Luftwaffe his immediate superior was Handloser, who was Chief of the Medical Service of the Wehrmacht.

HIGH-ALTITUDE EXPERIMENTS

These experiments were performed at Dachau concentration camp for the benefit of the Luftwaffe during the year 1942. Details of the experiments are discussed in other portions of this judgment.

During the period from 1941 to the end of 1943 the defendant Schroeder, in his position as air fleet physician of Air Fleet II, was in the operational zone of Air Fleet II, which comprised the Mediterranean area. He did not become Chief of the Medical Service of the Luftwaffe until 1 January 1944. There is no evidence that while air fleet physician he exercised or could have exercised any control over experiments then being conducted for the benefit of the Luftwaffe.

EPIDEMIC JAUNDICE EXPERIMENTS

Schreiber, a member of Handloser's staff, who presided over a conference held in Breslau in June 1944 for the purpose of coordinating jaundice research, assigned groups of physicians to work together on jaundice problems. Dohmen, Gutzeit, and Haagen were assigned to one of these groups. On 27 June 1944 Haagen, a Luftwaffe officer, wrote his collaborator Kalk, a consultant to Schroeder, asking, "Could you in your official position take the necessary steps to obtain the required experimental subjects?"

The record shows that Haagen subsequently conducted epidemic jaundice experiments on prisoners at Natzweiler concentration camp. There is no evidence, however, to establish Schroeder's criminal connection with these experiments. At most, all that can be said for this evidence is that Schroeder may have gained knowledge of the experiments through Kalk, a member of his staff—but even that fact has not been made plain.

FREEZING EXPERIMENTS

Freezing experiments were carried out at Dachau concentration camp for the benefit of the Luftwaffe, during the year 1942. Details of these experiments are discussed elsewhere in this judgment.

It is conclusively shown from the evidence dealing with freezing that as early as the year 1943 Schroeder had actual knowledge that such experiments had been conducted upon inmates at Dachau concentration camp, during the course of which suffering and deaths had resulted to the experimental subjects.

TYPHUS EXPERIMENTS

Experiments in connection with typhus were conducted at Schirmeck and Natzweiler concentration camps during the years 1942, 1943, and 1944. The details of these experiments are discussed elsewhere in this judgment.

The experiments were carried out by a Luftwaffe medical officer, Professor Dr. Haagen. As a medical officer of the Luftwaffe he was subject to Schroeder's orders after the latter became Chief of the Medical Service of the Luftwaffe. The office of Schroeder issued and approved the research assignments pursuant to which these experiments were carried out. It provided the funds for the research. One of the chief collaborators in the program was the defendant Rose, consultant to the Chief of the Medical Service of the Luftwaffe.

Correspondence was carried on between Haagen and the Chief of Staff for the defendant Schroeder with reference to whether a typhus epidemic prevailing at Natzweiler was connected in any manner with the vaccine research then being conducted. The office of the Chief of the Medical Service of the Luftwaffe received reports on the experiments from which it could be clearly perceived that typhus vaccine experiments were being performed on concentration camp inmates.

While the experiments were in progress, Schroeder admits having visited Haagen at Strasbourg, but denies that he talked with Haagen about the experiments. The defendant's assertion that the experiments were not discussed does not carry conviction.

As has been pointed out in this judgment, the law of war imposes on a military officer in a position of command an affirmative duty to take such steps as are within his power and appropriate to the circumstances to control those under his command for the prevention of acts which are violations of the law of war.

This rule is applicable to the case of Schroeder. At the time he became Chief of the Medical Service of the Luftwaffe, Schroeder knew of the fact that freezing experiments for the benefit of the Luftwaffe had been carried out at Dachau concentration camp by Luftwaffe medical officers. He knew that through these experiments injury and death had resulted to the experimental subjects. He also knew that during the years 1942 and 1943, typhus vaccine research had been carried out by the Luftwaffe officer, Haagen, for the benefit of the Luftwaffe Medical Service, at Natzweiler and Schirmeck concentration camps—and had he taken the trouble to inquire, he could have known that deaths had occurred as a result of these experiments.

With all this knowledge, or means of knowledge, before him as commanding officer, he blindly approved a continuation of typhus research by Haagen, supported the program, and was furnished reports of its progress, without so much as taking one step to determine the circumstances under which the research had been or was being carried on, to lay down rules for the conduct of present or future research by his subordinates, or to prescribe the conditions under which the concentration camp inmates could be used as experimental subjects.

As was the case with reference to the freezing experiments at Dachau, non-German nationals were used as experimental subjects, none gave their consent, and many suffered injury and death as a result of the experiments.

GAS EXPERIMENTS

Experiments with various types of poison gas were performed by Luftwaffe Officer Haagen and a Professor Dr. Hirt in the Natzweiler concentration camp. They began in November 1942 and were conducted through the summer of 1944. During this period a great many concentration camp inmates of Russian, Polish, and Czech nationality were experimented on with gas, at least 50 of whom died. A certain Oberarzt Wimmer, a staff physician of the Luftwaffe worked with Hirt on the gas experiments throughout the period.

We discussed the duty which rests upon a commanding officer to take appropriate measures to control his subordinates, in dealing with the case of Handloser. We shall not repeat what we said there. Had Schroeder adopted the measures which the law of war imposes upon one in position of command to prevent the actions of his subordinates amounting to violations of the law of war, the deaths of the non-German nationals involved in the gas experiments might well have been prevented.

SEA-WATER EXPERIMENTS

Sea-water experiments were conducted on inmates of Dachau concentration camp during the late spring and summer of 1944. The defendant Schroeder openly admits that these experiments were conducted by his authority. When on the witness stand he related the circumstances under which these experiments were initiated and carried through to completion.

As related by Schroeder the experiment on making sea water drinkable was a problem of great importance. Two methods were available in Germany, each of which to some extent had been previously tried, both on animal and on human subjects. These

were known as the Schaefer and the Berkatit processes. Use of the Schaefer method on sea water produced a satisfactory liquid essentially the same in its effects and potable qualities as ordinary pure drinking water. The Schaefer process, however, called for quantities of silver, which were thought to be unavailable. Use of the Berka process, however, resulted merely in changing the taste of sea water, thus making it more palatable, without at the same time doing away with danger to health and life which always results from consuming considerable quantities of untreated sea water. Materials were available for the Berka process, but Schroeder did not feel that it could be adopted until more was known of the method. At Schroeder's direction, the defendant Becker-Freyseng arranged for a conference to be held at the German Air Ministry in May 1944 to discuss the problem. Present at the conference, among others, were Berka and the defendants Becker-Freyseng and Schaefer.

There is no doubt that the conference was well informed, and discussed all current data upon the subject. Such fact appears from the minutes of the meeting, in which it is stated:

"* * * Captain (med.) Dr. Becker-Freyseng reported on the clinical experiments conducted by Colonel (med.) Dr. von Sirany, and came to the final conclusion that he did not consider them as being unobjectionable and conclusive enough for a final decision. The Chief of the Medical Service is convinced that, if the Berka method is used, damage to health has to be expected not later than 6 days after taking Berkatit, which damage will result in permanent injuries to health and—according to the opinion of N.C.O. (med.) Dr. Schaefer—will finally result in death after not later than 12 days. External symptoms are to be expected such as dehydration, diarrhea, convulsions, hallucinations, and finally death."

It was concluded at this meeting that it would be necessary to perform further sea-water experiments upon human beings in order to determine definitely whether or not the Berkatit method of treating sea water could be safely employed and used in connection with the German war effort. These experiments were planned to be carried on in group series, each of which would require six days, and would be made upon human beings in this order: one group would be supplied only with Berkatit-treated sea water; a second group would receive only ordinary drinking water; a third group would receive no water of any kind; the fourth group was to be given such water as was generally provided in emergency sea-distress kits, then used by German military personnel.

In addition to the first experiment it was agreed that a second experiment should be conducted. The notes of the meeting which deal with the second experimental series read as follows:

"Persons nourished with sea water and Berkatit, and as diet also the emergency sea rations.

"Duration of experiments—12 days.

"Since in the opinion of the Chief of the Medical Service, permanent injuries to health, that is, the death of the experimental subjects, has to be expected, as experimental subjects such persons should be used as will be put at the disposal by the Reichsfuehrer SS."

On 7 June 1944 Schroeder wrote to Himmler through Grawitz asking for concentration camp inmates to be used as subjects in the sea-water experiments, which letter reads in part as follows:

"Highly Respected Reich Minister:

"Earlier already you made it possible for the Luftwaffe to settle urgent medical matters through experiments on human beings. Today again, I stand before a decision which, after numerous experiments on animals as well as human experiments on voluntary experimental subjects, demands a final solution. The Luftwaffe has simultaneously developed two methods for making sea water potable. The one method, developed by a medical officer, removes the salt from the sea water and transforms it into real drinking water; the second method, suggested by an engineer, leaves the salt content unchanged, and only removes the unpleasant taste from the sea water. The latter method in contrast to the first, requires no critical raw material. From the medical point of view this method must be viewed critically, as the administration of concentrated salt solutions can produce severe symptoms of poisoning.

"As the experiments on human beings could thus far only be carried out for a period of four days, and as practical demands require a remedy for those who are in distress at sea up to 12 days, appropriate experiments are necessary.

"Required are 40 healthy test subjects, who must be available for 4 whole weeks. As it is known from previous experiments that necessary laboratories exist in the concentration camp Dachau, this camp would be very suitable * * *"

Various other parties took part in correspondence upon this application, one of the writers suggesting that Jews or persons held in quarantine be used as experimental subjects. Another correspondent nominated asocial gypsy half-breeds as candidates for

the treatment. Herr Himmler decided that gypsies, plus three others for control purposes, should be utilized.

In fairness to the defendant it should be stated that he contests the translation of the second sentence in the first paragraph of the letter written by him to Himmler, which the prosecution interprets as meaning that experiments could no longer be conducted on voluntary subjects, and that the words "demands a final solution" meant that involuntary subjects in concentration camps should be employed. Regardless of whether or not the letter quoted by us is a correct translation of the German original, the evidence shows that within a month after the letter was sent to Himmler through Grawitz, sea-water experiments were commenced at Dachau by the defendant Beiglboeck.

The method by which the experimental subjects were chosen is not known to the defendant Schroeder. As he explained from the witness stand with reference to his letter and the subsequent procedure, "I sent it away only after I had consulted [about] the possibility of the experiment with Grawitz, and after I had informed him how the whole thing was thought [of] by us, so that he could pass on this information to Himmler in case it became necessary. Then this letter was sent off, and after possibly four weeks when Beiglboeck had arrived at Dachau—in the meantime, he was given an opportunity to carry out this work. Whatever lay in between that, how in the administrative way this was organized, we never learned * * * it was an inter-office affair * * *. We only saw the initial point and the end point of this route."

Thus began another experiment conducted under the auspices of the defendant Schroeder, wherein the initiator of the experiment failed to exercise the personal duty of determining that only consenting human subjects would be used, but left that responsibility to others. Again is demonstrated the case of an officer in a position of superior command who authorizes the performance of experiments by his subordinates while failing to take efforts to prescribe the conditions which will insure the conduct of the experiments within legally permissible limits.

The evidence shows conclusively that gypsies of various nationalities were used as experimental subjects. Former inmates of Auschwitz concentration camp were tricked into coming to Dachau with the promise that they were to be used as members of a labor battalion. When they arrived at Dachau they were assigned to the sea-water experimental station without their consent. During the course of the experiment many of them suffered intense physical and mental anguish.

The Tribunal finds that the defendant Schroeder was respon-

sible for, aided and abetted, and took a consenting part in, medical experiments performed on non-German nationals against their consent; in the course of which experiments deaths, brutalities, cruelties, tortures, and other inhuman acts were committed on the experimental subjects. To the extent that these experiments did not constitute war crimes they constitute crimes against humanity.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Oskar Schroeder guilty under counts two and three of the indictment.

GENZKEN

The defendant Genzken is charged under counts two and three of the indictment with special responsibility for, and participation in, Sulfanilamide, Spotted Fever, Poison, and Incendiary Bomb Experiments. The prosecution has abandoned the two latter charges and hence they will not be considered further. The defendant is also charged under count four of the indictment with membership, after 1 September 1939, in an organization declared criminal by the judgment of the International Military Tribunal—namely, the SS.

Genzken was commissioned in the Medical Service of the German Navy in 1912 and served through the First World War in that capacity. From 1919 to 1934, he engaged in the private practice of medicine. He joined the NSDAP in 1926, and in October 1934 he was again commissioned as a reserve officer of the naval medical department. On 1 March 1936 he was transferred to the medical department of the SS, with the rank of major, and assigned to the medical department of a branch of the SS, which in the summer of 1940 became the Waffen SS. He served as chief surgeon of the SS hospital in Berlin, and was director of the department charged with supplying medical equipment and with the supervision of medical personnel in concentration camps. He was also medical supervisor to Eicke, the head of all the concentration camps, which were within Genzken's jurisdiction insofar as medical matters were concerned. In May 1940, Genzken was appointed Chief of the Medical Office of the Waffen SS with the rank of senior colonel, Grawitz being his medical superior. He retained this position until the close of the war. In 1942 he was designated as Chief of the Medical Service of the Waffen SS, Division D of the SS Operational Headquarters. On 30 January 1943 he was appointed Gruppenfuehrer and Generalleutnant in the Waffen SS.

SULFANILAMIDE EXPERIMENTS

The sulfanilamide experiments referred to in the indictment were conducted by the defendants Gebhardt, Fischer, and Oberheuser at Ravensbrueck concentration camp between 20 July 1942 and August 1943. During this period of time, four of the medical branches of the Waffen SS were under Genzken, including Office XVI, Hygiene, of which the defendant Mrugowsky was chief.

It is submitted by the prosecution that the evidence proves Mrugowsky to have given support and assistance to these experiments, and that, consequently, Genzken becomes criminally liable because of the position of command he held over Mrugowsky. It is also urged that because Genzken attended the meeting in Berlin at which Gebhardt and Fischer gave their lecture on the experiments, this likewise shows criminal connection.

That Mrugowsky rendered assistance to Gebhardt in the sulfanilamide experiments at Ravensbrueck is clearly proved. Mrugowsky put his laboratory and co-workers at Gebhardt's disposal. He furnished the bacterial cultures for the infections. He conferred with Gebhardt about the medical problems involved. It was on the suggestion of Mrugowsky's office that wood shavings and ground glass were placed in artificially inflicted wounds made on the subjects so that battlefield wounds would be more closely simulated. It also appears that Blumenreuter, who was the chief of Office XV under Genzken's direction, may have furthered the experiments by furnishing surgical instruments and medicines to Gebhardt.

The Tribunal finds that Genzken was not present at the Berlin meeting.

Although Mrugowsky and Blumenreuter may have aided Gebhardt in his experiments, the prosecution has failed to show that it was done with Genzken's direction or knowledge.

The prosecution, therefore, has failed to sustain the burden with regard to this particular specification.

TYPHUS EXPERIMENTS

The series of experiments which are the subject of this specification were conducted at Buchenwald concentration camp and began in January 1942. SS Hauptsturmfuehrer Dr. Ding, who was attached to the Hygiene Institute of the Waffen SS, was in charge of these experiments—with the defendant Hoven serving as his deputy.

Until 1 September 1943 both Mrugowsky, the Chief of the Hygiene Institute, and Ding, were subordinate to Genzken. Until

the date last mentioned the chain of military command in the field of hygiene and research was as follows: Himmler-Grawitz-Genzken-Mrugowsky-Ding.

Prior to 1939 Ding had been camp physician at Buchenwald, and as such was subordinate to Genzken. During the early months of the war Genzken served as an army surgeon in the field, Ding being his adjutant. During the fall of 1941 Ding returned to Buchenwald and Genzken to his office at Berlin. During their service in the field Genzken and Ding had become warm personal friends. Ding was attached to the Hygiene Institute of the Waffen SS and was engaged in typhus research for the Institute. Genzken testified that Mrugowsky and the Hygiene Institute were in his chain of command prior to 31 August 1943. He further testified that after the date last mentioned his office had nothing to do with Ding save to provide money for Ding's expenses, there being no other budget from which money was available. Mrugowsky testified that Genzken was his superior officer until 1 September 1943, and knew that the Hygiene Institute was working on the problem of providing an efficient vaccine against typhus. It is admitted that Ding was carrying out medical experiments on concentration camp inmates in order to determine the effect of various typhus vaccines.

It is not contended that such experiments were not carried out. In the course of these experiments two buildings or "blocks" were used. The experiments were conducted in Block 46, and when satisfactory vaccine was decided upon, Block 50 was used for the preparation of vaccines.

During the course of the experiments with vaccines in March 1942, Ding himself contracted typhus. Genzken testified that he was aware of the fact that concentration camp inmates were subjected to experiments, but stated that he was not advised as to the method of experimentation.

It is clear that the experiments necessary to decide upon a satisfactory vaccine preceded by a considerable period the production of the vaccine. Genzken testified that vaccine production began in December 1943, that the production establishment only moved into Block 50 in the middle of August, and that when production actually began "this establishment had already come under the agency of Grawitz and it was not subordinated any more" to him.

Under date of 9 January 1943 the Ding diary contains a lengthy entry stating that by Genzken's order the typhus research station became the "Department of Typhus and Virus Research," that Dr. Ding would be head of this department, and that during his absence defendant Hoven would act in his place. The entry further

stated that Ding was appointed chief department head for special missions in hygiene, etc. The Ding diary is discussed elsewhere in this judgment. Considering the demonstrated desire of Ding for his personal aggrandizement, this entry is not entitled to entire credit, as written. It refers to Genzken as "Major General"—which rank he did not receive until a few weeks after 9 January 1943. The entry, however, has some probative value upon the question of Ding's status during the year 1943.

Genzken testified that he "approved" the establishment of Ding's department for vaccine research. He also testified that his department furnished necessary funds from its budget for Ding's investigations.

From the evidence it appears that prior to 1 September 1943, Mrugowsky reported regularly to Genzken, on an average of once per week, either orally or in writing.

Under date 5 May 1942, Mrugowsky signed a written report upon the subject, "Testing Typhus Vaccines." This report went to six different offices: the first copy, to Conti; the second copy, to Grawitz; and the third copy, to Genzken. The report commences: "The tests of four typhus vaccines made by us on human subjects at the instigation of the Reich Health Leader Dr. Conti had the following results * * *". It is stated that the mortality of victims of typhus during an epidemic "was around 30 percent" and that "during the same epidemic four groups of experimental subjects were vaccinated with one each" of the four types of vaccine described in the beginning of the report.

"The experimental subjects were mostly in their twenties and thirties. Care was taken when selecting them that they did not come from typhus districts and also to ensure an interval of four to six weeks between the protective vaccination and the outbreak of the clinical symptoms of the disease. According to experience this period is imperative to achieve immunity."

The effects of the four vaccines tested were described as follows. The report on the Weigl vaccine states that "nobody died". The report on the Gildemeister and Haagen vaccine also states that no deaths occurred. The report on the Behring-Normal vaccine states that one person died. The experiment with the Behring-Strong vaccine reports one death.

The last paragraph of the report states: "In the last two groups the symptoms were considerably stronger than in the first groups * * *. No difference between the two vaccines of the Behring Works was observed. The attending physicians stated that the general picture of the disease in group four was rather more severe compared with that of the patients of group three."

In a summation, Mrugowsky recommended the use of a vaccine

"produced according to the chicken egg process, which, in its immunization effect, is equal to the vaccine after Weigl."

"The effectiveness of protection depends on the method used in making the vaccine."

Of course, experiments with vaccines, conducted because of the urgent need for the discovery of a protective vaccine, would lead to scant results unless the subjects vaccinated were subsequently in some manner effectively exposed to typhus, thereby demonstrating the effectiveness or noneffectiveness of the vaccination. While Mrugowsky's report, above referred to, makes no reference to an artificial infection, it does state without further explanation that two deaths occurred, and in the last paragraph, quoted above, compares the severity of "the diseased" between groups three and four.

On cross-examination Mrugowsky testified that Dr. Ding was to lecture at a meeting of consulting surgeons in the spring of 1943, and that the witness informed Genzken concerning "the intended amount of vaccines to be produced by the SS." Mrugowsky testified that he gave Genzken this information for three reasons: first, that Genzken had to be advised of the fact that Ding, as a member of the Waffen SS, was to give a lecture to the surgeons; second, that Genzken should be informed concerning "the effectiveness of a number of vaccines to be used for troops"; third, that Genzken should know when he could expect the first production of vaccines for the SS and the amounts he could count on for each month. Mrugowsky further testified:

"The conference with Dr. Genzken was extremely brief. As far as I remember we were standing close to his desk. I told him that the various vaccines which I mentioned to him had a different effect; I told him that the effect varied as to the length of the temperature and a reduction of fatalities; and I told him that after having vaccinated the entire SS we could count on some protective effect for all soldiers. On that occasion I showed him a few charts which Ding had handed over to me at that time, the same charts which Ding reproduced in his paper, and I used these charts in order to explain the effectiveness of the vaccines to him.

Q. "The mortality figures and the temperature figures could be derived from these charts, couldn't they?"

A. "Yes. If I remember correctly, on the heading of these charts the information was given what the day of the infection was. This entire conference was very brief and it is quite possible that Dr. Genzken—who was only concerned with the most important points which he had to know—it is quite possible that

he overlooked that. I had no cause to point it out to him in particular since I was not reporting to him about Ding's series of experiments but was only reporting to him about the protective value of various vaccines which he, as medical chief, had to know. These were two completely different points of view."

The Tribunal is convinced that prior to 1 September 1943, Genzken knew the nature and scope of the activities of his subordinates, Mrugowsky and Ding, in the field of typhus research; yet he did nothing to insure that such research would be conducted within permissible legal limits. He knew that concentration camp inmates were being subjected to cruel medical experiments in the course of which deaths were occurring; yet he took no steps to ascertain the status of the subjects or the circumstances under which they were being sent to the experimental block. Had he made the slightest inquiry he would have discovered that many of the human subjects used were non-German nationals who had not given their consent to the experiments.

As the Tribunal has already pointed out in this judgment, "the duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs, or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity."

We find that Genzken, in his official capacity, was responsible for, aided and abetted the typhus experiments, performed on non-German nationals against their consent, in the course of which deaths occurred as a result of the treatment received. To the extent that these experiments did not constitute war crimes they constituted crimes against humanity.

MEMBERSHIP IN CRIMINAL ORGANIZATION

Under count four of the indictment Genzken is charged with being a member of an organization declared criminal by the judgment of the International Military Tribunal, namely, the SS. The evidence shows that Genzken became a member of the SS on 1 March 1936 and voluntarily remained in that organization until the end of the war. As a high-ranking member of the Medical Service of the Waffen SS he was criminally implicated in the commission of war crimes and crimes against humanity, as charged under counts two and three of the indictment.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Karl Genzken guilty, under counts two, three, and four of the indictment.

GEBHARDT

The defendant Gebhardt is charged under counts two and three of the indictment with special responsibility for, and participation in, High-Altitude, Freezing, Malaria, Lost Gas, Sulfanilamide, Bone, Muscle and Nerve Regeneration and Bone Transplantation, Sea-Water, Epidemic Jaundice, Sterilization, Typhus, Poison, and Incendiary Bomb Experiments.

The defendant Gebhardt held positions of great power and responsibility in the Medical Service of the SS in Nazi Germany. He joined the NSDAP in 1933 and the SS at least as early as 1935. He took part in the Nazi Putsch of 1923, which aimed at the overthrow of the so-called Weimar Republic, the democratic government of Germany, being then a member of the illegal Free Corps, "Bund Oberland." When, in 1933, the hospital at Hohenlychen was founded, Gebhardt was appointed chief physician of this institution. In 1938 he became the attending physician to Himmler. He was also personal physician to Himmler and his family. In 1940 Gebhardt was appointed consulting surgeon of the Waffen SS and, in 1943, chief clinical officer (Oberster Kliniker) of the Reich Physician SS and Police, Grawitz. In the Allgemeine SS Gebhardt attained the rank of a Gruppenfuehrer (major general), and in the Waffen SS the rank of major general in the reserve.

SULFANILAMIDE EXPERIMENTS

The purpose for which these experiments were undertaken is defined in counts two and three of the indictment.

In the Ravensbrueck concentration camp during a period from 20 July 1942 until August 1943, the defendant Gebhardt, aided by defendants Fischer and Oberheuser, performed such experiments upon human subjects without their consent. Gebhardt personally requested Heinrich Himmler's permission to carry out these experiments, and attempts to assume full responsibility for them and for any consequences resulting therefrom. He himself personally carried out the initial operations.

While it is not deemed strictly necessary in this judgment to describe in any detail the procedure followed in performing these experiments, a brief statement will now be made thereon. The first experimental subjects consisted of 15 male concentration camp inmates used during preliminary experiments in July 1942, but later 60 Polish women, who were experimented on in 5 groups of 12 subjects each.

In the first series of experiments the healthy subjects were infected with various bacteria, but resulting infections were not thereafter considered sufficiently serious to furnish an answer to

the problem sought to be solved and further experiments were then undertaken.

Dr. Gebhardt has admitted that in the second series of experiments three of the subjects died as a result of the treatment received. All of these subjects were persons who had been selected by the concentration camp authorities and who were not consulted as to their consent or willingness to participate. Notwithstanding this, however, the experimental subjects protested against experiments both orally and in writing, stating that they would have preferred death to continued experiments, since they were convinced that they would die in any event.

An examination of the evidence presented to this Tribunal in connection with sulfanilamide experiments performed upon unwilling and nonconsenting concentration camp inmates indicates conclusively, that participating human subjects were used under duress and coercion in experiments performed upon their bodies; that persons acting as subjects incurred and suffered physical torture and the risk of death; that in the experiments here discussed at least five deaths of subjects were caused therefrom.

It is claimed by Dr. Gebhardt that all of the non-German experimental subjects were selected from inmates of concentration camps, former members of the Polish Resistance Movement, who had previously been condemned to death and were in any event marked for legal execution. This is not recognized as a valid defense to the charge of the indictment.

The Polish women who were used in the experiments had not given their consent to become experimental subjects. That fact was known to Gebhardt. The evidence conclusively shows that they had been confined at Ravensbrueck without so much as a semblance of trial. That fact could have been known to Gebhardt had he made the slightest inquiry of them concerning their status. Moreover, assuming for the moment that they had been condemned to death for acts considered hostile to the German forces in the occupied territory of Poland, these persons still were entitled to the protection of the laws of civilized nations. While under certain specific conditions the rules of land warfare may recognize the validity of an execution of spies, war rebels, or other resistance workers, it does not under any circumstances countenance the infliction of death or other punishment by maiming or torture.

BONE, MUSCLE AND NERVE REGENERATION AND BONE TRANSPLANTATION EXPERIMENTS

These experiments were carried out in Ravensbrueck concentration camp during the same time, and on the same group of

Polish women used in the sulfanilamide experiments. Upon these Polish inmates three kinds of bone operations were performed—artificially induced fractures, bone transplantations, bone splints—the conditions of the operations being specially created in each particular case. Some girls were required to submit to operations several times. In one instance small pieces of fibula were taken out; in another instance the periosteum of the leg was removed. Cases occurred where subjects were experimented on by deliberately fracturing their limbs in several places and testing the effect of certain treatments. In at least one case bone incisions were performed on a subject six different times. In another case the shoulder blade of a subject was removed.

Further recital of these activities is as unnecessary as were the operations themselves. The testimony heard and exhibits filed and examined by the Tribunal conclusively sustain the allegations of the indictment with reference to the experiments mentioned therein.

SEPSIS (PHLEGMON) EXPERIMENTS

A witness whose testimony must be accepted as credible testified concerning these experiments in which concentration camp inmates were used without their consent and were thereafter infected with pus. He testified as to at least two series of experiments which resulted fatally for 12 of the subjects.

The prosecution claims, and it is likely that these biochemical experiments which were performed in the Dachau concentration camp were complementary to and formed parts of the sulfanilamide experiments in Ravensbrueck. The evidence, however, is not sufficient to establish the criminal connection of Gebhardt with these experiments.

SEA-WATER EXPERIMENTS

Dr. Gebhardt's position, which has been mentioned in this judgment as that of an official and personal associate of Heinrich Himmler—part of whose duties concerned concentration camp medical experiments, was partially defined by an order issued by Himmler 15 May 1944 directing that an opinion from Gebhardt would be required before any experiments thereafter could be carried out on such human subjects. This order stated that all medical experiments to be carried out at the concentration camps had to have Himmler's personal approval. It appears, however, that while the application for permission to carry out experiments involving human subjects was required to be obtained from Himmler—yet before such application could be examined, a crit-

ical opinion of the chief clinical officer of the SS, Dr. Gebhardt, concerning its technical aspects was required to accompany it. Complying with this order Gebhardt, in reference to sea-water experiments, wrote—

“I deem it absolutely right to support the Luftwaffe in every way and to place a general physician of the Waffen SS at disposal to supervise the experiments.”

This alone is deemed to be sufficient to show that Dr. Gebhardt knew about, and approved, the performance of the sea-water experiments as charged in the indictment.

STERILIZATION EXPERIMENTS

Details of the sterilization experiments will be dealt with elsewhere in this judgment; and it is unnecessary to repeat them here, except to the extent necessary to inquire the part, if any, taken by Gebhardt therein.

On 7 and 8 July 1942 a conference took place between Himmler, Gebhardt, SS Brigadefuehrer Gluecks, and SS Brigadefuehrer Clauberg, to discuss the sterilization of Jewesses. Dr. Clauberg was promised that the Auschwitz concentration camp would be placed at his disposal for experiments on human beings and animals, and he was requested to discover by means of fundamental experiments a method of sterilizing persons without their knowledge. During the course of the conference, Himmler called the special attention of all present “to the fact that the matter involved was most secret and should be discussed only with the officers in charge and that the persons present at the experiments or discussions had to pledge secrecy.”

From this evidence it is apparent that Gebhardt was present at the initial meeting which launched at least one phase of the sterilization program in the concentration camps, and thus had knowledge and gave at least passive approval to the program.

HIGH-ALTITUDE, FREEZING, MALARIA, LOST GAS, EPIDEMIC JAUNDICE, TYPHUS, POISON, AND INCENDIARY BOMB EXPERIMENTS

Details as to the origin of and procedure followed in these experiments are discussed elsewhere in this judgment, and will not be repeated. Our only concern is to determine to what extent, if any, the defendant Gebhardt took part in the experiments.

In these enterprises the defendant seems not to have taken any active part, as he did in the sulfanilamide experiments and in other programs. It may be argued that his close connection with Heinrich Himmler creates a presumption that these experiments were conducted with Gebhardt's knowledge and approval.

Be that as it may, no sufficient evidence to that effect has been presented, and a mere presumption is not enough in this case to convict the defendant.

Attention has been given to the brief filed by counsel for the defendant Gebhardt. For the most part it is unnecessary to discuss the theories presented in this brief, for the reason that the main reliance of the defense seems to be that in his connection with the experiments charged in the indictment, Dr. Gebhardt acted as a soldier in the execution of orders from an authorized superior. We cannot see the applicability of the doctrine of superior orders as a defense to the charges contained in the indictment. Such doctrine has never been held applicable to a case where the one to whom the order is given has free latitude of decision whether to accept the order or reject it. Such was the situation with reference to Gebhardt. The record makes it manifestly plain that he was not ordered to perform the experiments, but that he sought the opportunity to do so. Particularly is this true with reference to the sulfanilamide experiments: Gebhardt, in effect, took them away from Grawitz to demonstrate that certain surgical procedures advocated by him at the bedside of the mortally wounded Heydrich at Prague in May of 1942 were scientifically and surgically superior to the methods of treatment proposed by Dr. Morell, Hitler's personal physician. The doctrine, therefore, is not applicable. But even if it were, the fact of such orders could merely be considered, under Control Council Law No. 10, as palliating punishment.

Another argument presented in briefs of counsel attempts to ground itself upon the debatable proposition that in the broad interest of alleviating human suffering, a state may legally provide for medical experiments to be carried out on prisoners condemned to death without their consent, even though such experiments may involve great suffering or death for the experimental subject. Whatever may be the right of a state with reference to its own citizens, it is certain that such legislation may not be extended so as to permit the practice upon nationals of other countries who, held in the most abject servitude, are subjected to experiments without their consent and under the most brutal and senseless conditions.

We find that Gebhardt, in his official capacity, was responsible for, aided and abetted, and took a consenting part in medical experiments performed on non-German nationals against their consent; in the course of which deaths, maiming, and other inhuman treatment resulted to the experimental subjects. To the extent that these experiments did not constitute war crimes they constituted crimes against humanity.

MEMBERSHIP IN CRIMINAL ORGANIZATION

Under count four of the indictment Gebhardt is charged with being a member of an organization declared criminal by the judgment of the International Military Tribunal, namely the SS. The evidence shows that Gebhardt became a member of the SS at least as early as 1933 and voluntarily remained in that organization until the end of the war. As one of the most influential members of the Medical Service of the Waffen SS he was criminally implicated in the commission of war crimes and crimes against humanity as charged under counts two and three of the indictment.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Karl Gebhardt guilty under counts two, three and four of the indictment.

BLOME

The defendant Blome is charged under counts two and three of the indictment with personal responsibility for, and participation in Malaria, Lost Gas, and Sulfanilamide Experiments, the extermination of tubercular Poles, and the execution of the Euthanasia Program. Proof has also been adduced for the purpose of showing that he participated in the freezing bacteriological warfare, and blood coagulation experiments.

The charge with reference to sulfanilamide experiments has been abandoned by the prosecution and hence will not be considered further.

The defendant Blome studied medicine at Goettingen and received his medical degree in 1920. From 1924 to 1934 he engaged in private practice. In the latter year he was summoned to Berlin where, in 1935, he reorganized the German medical educational system. He also acted as adjutant in the central office of the German Red Cross and as business manager of the German Physicians' Association, which position he held until the end of World War II. In 1938 he became President of the Bureau of the Academy for International Medical Education. From 1939 on Blome acted as deputy for Dr. Leonardo Conti who was leader of the German Physicians' Association, Head of the Main Office for Public Health of the Party, and Leader of the National Socialist Physicians' Association. In 1941 he became a member of the Reich Research Council, and in 1943 was appointed Plenipotentiary for Cancer Research, connected with the research commission for protection against biological warfare.

Blome joined the SA in 1931 and became the chief medical officer of the SA in the province of Mecklenburg. In 1934 he was appointed a province office leader, and in the SA he attained a rank equivalent to that of major general. In 1943 he was awarded the highest decoration of the Nazi Party.

As Plenipotentiary for Cancer Research, it was his duty to determine which research problems should be studied and to assign such problems to scientists best fitted to investigate them.

FREEZING EXPERIMENTS

The prosecution argues that Blome is criminally responsible for participation in the freezing experiments as charged in the indictment. In the subparagraph which particularly refers to freezing, Blome is not named among the defendants charged with special responsibility for the experiments. Moreover, the record does not contain evidence which shows beyond a reasonable doubt that Blome bore any responsible part in the conduct of the freezing experiments.

MALARIA EXPERIMENTS

The evidence is insufficient to disclose any criminal responsibility of the defendant in connection with the malaria experiments.

LOST GAS EXPERIMENTS

The evidence is insufficient to disclose any criminal responsibility of the defendant in connection with these experiments.

EXTERMINATION OF TUBERCULAR POLES

The basis for the prosecution's case against the defendant in this regard is to be found in a series of letters with reference to the tuberculosis menace in the Reichsgau Wartheland, which had been overrun by the German Reich and settled by its citizens.

During the year 1941 the German Government began a program of extermination of the Jewish population of the eastern occupied territories. On 1 May 1942 Greiser, the German Military Governor of Reichsgau Wartheland, wrote Himmler advising him that "as to the 100,000 Jews in the district, the 'special treatment' approved by Himmler was about completed." The letter then continued:

"* * * I ask you for permission to rescue the district immediately, after the measures taken against the Jews, from a

menace which is increasing week by week, and use the existing and efficient special commandos for that purpose.

"There are about 230,000 people of Polish nationality in my district who were diagnosed to suffer from tuberculosis. The number * * * infected with open tuberculosis is estimated at about 35,000. This fact has led in an increasingly frightening measure to the infection of Germans who came to the Warthegau perfectly healthy * * *. A considerable number of well known leading men, especially of the police, have been infected lately and are not available for the war effort * * *. The ever increasing risks were also recognized and appreciated by the deputy of the Reich Leader for Public Health, Comrade Professor Dr. Blome * * * .

"Though in Germany proper it is not possible to take appropriate draconic steps against this public plague, I think I could take responsibility * * * to have cases of open tuberculosis exterminated among the Polish race here in the Warthegau. Of course, only a Pole should be handed over for such an action who is not only suffering from open tuberculosis, but whose incurability is proved and certified by a public health officer.

"Considering the urgency of this project I ask for your approval in principle as soon as possible. This would enable us to make the preparations with all necessary precautions now to get the action against the Poles suffering from open tuberculosis under way, while the action against the Jews is in its closing stages.

"Heil Hitler!

"GREISER"

Two days later Koppe, the police leader on Greiser's staff, wrote to Rudolf Brandt restating Greiser's proposal and urging Brandt to call the matter to Himmler's attention. Brandt promptly acknowledged the letter, advising Koppe that the proposal had been referred to the Chief of the Security Police for opinion, but that the final decision would rest with Hitler.

On 9 June 1942 the Chief of the Security Police rendered his opinion to Himmler: "I have no scruples against having the protectorate members and stateless persons of the Polish race * * * who are afflicted with open tuberculosis, submitted to the special treatment in the sense of the proposal of Gau Leader Greiser. * * * The individual measures, though, will first have to be discussed thoroughly with the Security Police, in order to carry out the execution with the least possible attraction of attention." The opinions thus rendered undoubtedly received the full ap-

proval of Himmler, for on 27 June 1942 Rudolf Brandt passed on to Greiser a letter from Himmler containing the following decision:

"Dear Comrade Greiser:

"I have no objection to having protectorate people and stateless persons of Polish origin who live within the territory of the Warthegau and are infected with tuberculosis handed over for special treatment as you suggest; as long as their disease is incurable * * *. I would like to request, however, to discuss the individual measures in detail with the Security Police first, in order to assure inconspicuous accomplishment of the task * * *.

[Signed] "H. HIMMLER"

The Himmler letter was acknowledged by Greiser on 21 November 1942, Greiser advising Himmler that in pursuance of the permission given him to apply "special treatment" to tubercular Poles he had made arrangements for an X-ray examination of all people in the territory, but that now that "special treatment" had been approved, Blome, Deputy Chief of the Public Health Office of the NSDAP was raising objections to its execution. A copy of Blome's letter to Greiser was enclosed for Himmler's information.

Blome's letter to Greiser is dated 18 November 1942. It opens by recalling various conversations between the writer and Greiser concerning the campaign against tuberculosis in the Warthegau, and then proceeds to consider the matter in detail; the letter proceeding:

"With the settlement of Germans in all parts of the Gau, an enormous danger has arisen for them * * *. What goes for the Warthegau [* * *] also holds true for the other annexed territories * * *.

"Therefore, something basic must be done soon. One must decide the most efficient way in which this can be done. There are three ways to be taken into consideration:

- "1. Special treatment of the seriously ill persons,
- "2. Most rigorous isolation of the seriously ill persons,
- "3. Creation of a reservation for all TB patients.

"For the planning, attention must be paid to different points of view of a practical, political and psychological nature. Considering it most soberly, the simplest way would be the following: Aided by the X-ray battalion, we could reach the entire population, German and Polish, of the Gau during the first half of 1943. As to the Germans, the treatment and isolation is to

be prepared and carried out according to the regulations of Tuberculosis Relief. The approximately 35,000 Poles who are incurable and infectious will be 'specially treated'. All other Polish consumptives will be subjected to an appropriate cure in order to save them for work and to avoid their causing contagion."

Blome then proceeds, stating that he has made arrangements for commencement of the "radical procedure", but suggests that some assurance should be procured that Hitler would agree to the project. The letter then goes on to say—

"I could imagine that the Fuehrer, having some time ago stopped the program in the insane asylums, might at this moment consider a 'special treatment' of the incurably sick as unsuitable and irresponsible from a political point of view. As regards the Euthanasia Program it was a question of people of German nationality afflicted with hereditary diseases. Now it is a question of infected sick people of a subjugated nation."

Blome then voices the opinion that if the program is put into execution, it cannot be kept secret and will be made the basis for much adverse and harmful propaganda both at home and abroad. He suggests accordingly that before the program is commenced all points of view should again be presented to Hitler.

Continuing, Blome writes that if Hitler should forbid the radical proposal suggested by Greiser, three other solutions were open (1) consumptives and incurables could be isolated with their relatives; (2) all infectious consumptives might be strictly isolated in nursing establishments; (3) the consumptives might be resettled in a particular area. If the latter plan were adopted, the sick could reach the assigned territory on foot, and thus save the costs of transportation.

Blome's letter finally concludes—

"After a proper examination of all these considerations and circumstances, the creation of a reservation, such as the reservations for lepers, seems to be the most practicable solution. Such a reservation should be able to be created in the shortest time by means of the necessary settlement. Within the reservation one could easily set up conditions for the strict isolation of the strongly contagious.

"Even the case of the German consumptives represents an extremely difficult problem for the Gau. But this cannot be overcome, unless the problem of the Polish consumptives is solved at the same time."

The evidence shows that the letter from Greiser to Himmler, with Blome's suggestions enclosed, was acknowledged by Himmler on 3 December 1942 with the following final decision:

"Dear Party Comrade Greiser:

"I have received your letter of 21 November 1942. I, too, believe that it would be better to take into consideration the misgivings set forth by Party Member Dr. Blome. In my opinion it is impossible to proceed with the sick persons in the manner intended, especially since, as you have informed me, it will be possible to exploit the practical results of the tests only in six months.

"I suggest you look for a suitable area to which the incurable consumptives can be sent. Besides the incurables, other patients with less severe cases of tuberculosis could quite well be put into this territory, too. This action would also, of course, have to be exploited with the appropriate form of propaganda.

"Before writing you this letter I again thoroughly thought over whether the original idea could not in some way be carried out. However, I am convinced now that it is better to proceed the other way."

The prosecution maintains that this series of letters which have been referred to establishes the criminal participation of the defendant Blome in the extermination of tubercular Poles. We cannot follow the argument. It is probable that the proposal to isolate tubercular Poles, as suggested by Blome and approved by Himmler, was at least partially carried out; although the record discloses but little with reference to what actually transpired. It may be that in the course of such a program Poles may have died as the result of being uprooted from their homes and sent to isolation stations; but the record contains no direct credible evidence upon the subject. Blome explained from the witness stand his letter to Greiser by saying that it was written in order to prevent the extermination program of tubercular Poles from being put into execution. Certainly, his letter indicates on its face that he opposed the "special treatment" suggested by Greiser.

We cannot say, therefore, that the explanation offered is wholly without substance. It at least raises a reasonable doubt in our minds concerning the matter. Blome knew Hitler and Himmler. He well knew that any objections to "special treatment" based on moral or humanitarian grounds would make but small impact upon the minds of men like these Nazi leaders. He knew, moreover, that before Greiser's proposal for extermination would be abandoned a plan which appeared to be better must be suggested.

If viewed from the standpoint of factual and psychological considerations, it cannot be held that the letter was not well-worded when considered as an attempt to put an end to the plan originally adopted, and to bring the substitution of another plan not so drastic. Whatever may have been its purpose, the record shows that, in this particular, the letter did in fact divert Himmler from his original program and that as a result thereof the extermination plan was abandoned.

EUTHANASIA PROGRAM

Blome is charged with criminal responsibility in connection with the Euthanasia Program, but we are of opinion that the evidence is insufficient to sustain the charge.

BACTERIOLOGICAL WARFARE

The prosecution contends that the evidence in the case established Blome's guilt in connection with research concerning different forms of bacteriological warfare. Blome, who was plenipotentiary for cancer research in the Reich Research Council, admits that the problem of cancer research was allied with the research commission for protection against biological warfare. He admits further, that he was placed in charge of an institute near Poznan in which the problems of biological warfare were to be investigated, but states that the work being done at the Poznan institute was interrupted in March 1945 by the advance of the Russian army.

This latter fact seems to be confirmed by the evidence. In this connection Schreiber appeared as a witness before the International Military Tribunal. His testimony given there has been received in evidence before this Tribunal. From the testimony it appears that Blome visited Schreiber at the Military Medical Academy, Berlin, during March 1945 and stated to him that he, Blome, had abandoned his institute in Poznan due to the advance of the Russians, but before leaving had attempted to destroy his installations as he feared that the Russians might discover that preparations had been made in the institute for experiments on human beings.

Counsel for the prosecution has brought to our judicial notice a finding by the International Military Tribunal in its judgment wherein it is found that—

“In July 1943 experimental work was begun in preparation for a campaign of bacteriological warfare; Soviet prisoners of war were used in the medical experiments, which more often

than not proved fatal." (See *"Trial of the Major War Criminals"*, Vol. I, p. 231.)

It is submitted by the prosecution that this finding of the International Military Tribunal, when considered in connection with other evidence in the case, requires this Tribunal to find the defendant Blome guilty under the indictment.

The suggestion is not tenable. It may well be that defendant Blome was preparing to experiment upon human beings in connection with bacteriological warfare, but the record fails to disclose that fact, or that he ever actually conducted experiments. The charge of the prosecution on this item is not sustained.

POLYGAL EXPERIMENTS

The prosecution has introduced evidence which suggests that Blome may be criminally responsible for polygal experiments conducted by Rascher at Dachau, in which Russian prisoners of war were used as experimental subjects. In our view the evidence does no more than raise a strong suspicion; it does not sustain the charge beyond a reasonable doubt.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Kurt Blome not guilty as charged under the indictment and directs that he be released from custody under the indictment when this Tribunal presently adjourns.

RUDOLF BRANDT

Under counts two and three of the indictment the defendant Rudolf Brandt is charged with special responsibility for, and participation in, High-Altitude, Freezing, Malaria, Lost Gas, Sulfanilamide, Bone, Muscle and Nerve Regeneration and Bone Transplantation, Sea Water, Epidemic Jaundice, Sterilization, and Typhus Experiments. He is also charged under these counts with criminal responsibility for the murder of 112 Jews for the purpose of completing a Skeleton Collection for the Reich University of Strasbourg, for the murder and ill-treatment of tubercular Poles, and for the Euthanasia Program carried out by the German Reich.

Under count four of the indictment he is charged with membership in an organization declared criminal by the judgment of the International Military Tribunal.

The prosecution has abandoned the charge of participation in

the bone, muscle and nerve regeneration and bone transplantation experiment; hence, it will not be considered further.

The defendant Rudolf Brandt joined the Nazi Party in 1932. He was commissioned a second lieutenant in the SS in 1935. In approximately ten years he rose to the rank of SS colonel. He is one of the three defendants in the case who is not a physician.

From the commencement of his career in the Nazi organization until his capture by the Allied Forces in 1945 he was directly subordinate to and closely associated with the leader of the SS, Heinrich Himmler, and he had full knowledge of his chief's personal and official interests and activities.

To Himmler, Rudolf Brandt was first of all an important and trusted clerical assistant. The record shows him to have been an unusually proficient stenographer. That is the road by which he finally arrived at a position of considerable power and authority as personal Referent on Himmler's Personal Staff, Ministerial Counsellor in the Ministry of the Interior, and a member of the Ahnenerbe. Acting for Himmler during his absences, Rudolf Brandt, in these positions, had a tremendous opportunity to and did exercise personal judgment and discretion in many serious and important matters.

HIGH-ALTITUDE EXPERIMENTS

These experiments extended from March to August 1942. Their details are dealt with elsewhere in this judgment. A portion of the evidence in this specification consists of correspondence between the defendant Rudolf Brandt and various others in the German military service who were personally engaged in, or were closely connected with, the physical details of the experiments performed. The correspondence just previously mentioned was admitted in evidence, is well authenticated, and even standing alone, without additional oral testimony—of which there was also plenty—is deemed amply sufficient to disclose beyond reasonable doubt that except for the sanction and diligent cooperation of the defendant Rudolf Brandt, or someone occupying his position, the high-altitude experiments mentioned in the indictment could not have been conducted.

Taken altogether, the evidence on this item discloses that during the period between March and August 1942, certain medical experiments were conducted at the Dachau concentration camp in Germany for the benefit of the German Air Force, to determine the limits of human endurance and existence at extremely high altitudes. Various human beings, unwillingly, and entirely without their consent, were required and compelled to, and did participate in the aforesaid experiments as subjects thereof. The

said nonconsenting subjects were prisoners of war, German civilians and civilians from German occupied territory, whose exact citizenship, in many cases, could not be ascertained. Among the experimental subjects there were numerous deaths, estimated by witnesses at 70 or 80, resulting directly from compulsory participation in the experiments. Exact data on the total fatalities cannot be stated, but there is convincing evidence that during the last day's operation of the high-altitude experiments, five participating and nonconsenting subjects died as the result thereof. The greater number of the experimental subjects suffered grave injury, torture and ill-treatment.

FREEZING EXPERIMENTS

In this experiment, or series of experiments, Rudolf Brandt is established as an intermediary and necessary aid between Heinrich Himmler, who authorized the work to be done, and those who were appointed by him actually to perform the ruthless task. Evidence is conclusive that Rudolf Brandt at all times knew exactly what experimental processes would be carried out. He knew that the procedure followed was to select from the inmates at Dachau such human subjects as were considered most suitable for experimental purposes. He knew that no consent was ever deemed necessary from the persons upon whom the experiments were to be performed. He knew that among the experimental subjects were non-German nationals, including civilians and prisoners of war.

The exact number of deaths cannot be ascertained from the evidence, but that fatalities occurred among the experimental subjects has been proved beyond a reasonable doubt.

LOST (MUSTARD) GAS EXPERIMENTS

On this specification, an affidavit of the defendant Rudolf Brandt which is confirmed by other evidence reads substantially as follows:

"Towards the end of the year 1939, experiments were conducted at the Sachsenhausen concentration camp on persons who were certainly not all volunteers, in order to ascertain the efficacy of the different treatment of wounds inflicted by Lost gas. Lost is a poisonous gas which produces injurious effects on the epidermis. I think it is generally known as mustard gas. * * * Therefore, experiments were conducted on inmates of concentration camps. As far as I understand, the experiments consisted of inflicting wounds upon various parts of the bodies

of the experimental subjects and infecting them thereafter with Lost. Various methods of treatment were applied in order to determine the most effective one * * * .

"In the second half of 1942, Hirt (Dr. August Hirt) together with * * * who served in the Luftwaffe, initiated experiments on inmates of the Natzweiler concentration camp. The inmates for these as well as other experiments were simply chosen by Pohl's office, the Economic and Administrative Main Office, WVHA. In order to be employed for such purposes, the experiments on human subjects with Lost gas had been carried on during the years 1943 and 1944 in the Sachsenhausen concentration camp as well as in the Natzweiler concentration camp. The result was that some of the inmates died."

In the course of the gas experiments above referred to, testimony in the record discloses that a considerable amount of correspondence was carried on by persons concerned (except the experimental subjects themselves), and it appears that some, at least, of this was referred to Rudolf Brandt for action, upon which he personally intervened sufficiently to associate himself actively with the conduct of the work being done. And so he must be regarded as criminally responsible.

STERILIZATION EXPERIMENTS

Rudolf Brandt is charged, as in the indictment set forth, with special responsibility under the above heading. The means by which sterilization experiments or processes were to be made or utilized included X-ray treatment, surgery, and drugs.

No specific instances of any drug being actually used have been clearly shown by oral testimony, or exhibits herein submitted in evidence. In reference to the X-ray and surgery methods of sterilization, however, Rudolf Brandt is shown by the evidence to have taken a moving part in the preparation of plans, and in their execution, sufficient to justify the Tribunal in finding his criminal connection therewith. An affidavit executed by the defendant Rudolf Brandt reads as follows:

"Himmler was extremely interested in the development of a cheap, rapid sterilization method which could be used against enemies of Germany, such as the Russians, Poles, and Jews. One hoped thereby not only to defeat the enemy, but to exterminate him. The capacity for work of the sterilized persons could be exploited by Germany, while the danger of propagation would be eliminated. This mass sterilization was part of Himmler's racial theory; particular time and care were devoted to these sterilization experiments."

We learn from the record that persons subjected to treatment were "young, well-built inmates of concentration camps who were in the best of health, and these were Poles, Russians, French, and prisoners of war."

It goes without saying that the work done in conformity with the plans of Himmler, substantially aided by the cooperation of Rudolf Brandt, brought maiming and suffering to great numbers of people.

TYPHUS EXPERIMENTS

Medical experiments ostensibly conducted to benefit Germany in the prevention of typhus fever were carried on in the Natzweiler concentration camp beginning with the year 1942. The details of these experiments have been dealt with elsewhere in this judgment.

In the evidence it is proved that not less than 50 experimental subjects died as a direct result of their participation in these typhus experiments. Persons of all nationalities were used as subjects. Regarding these enterprises, Rudolf Brandt, in his own affidavit, admits that these experimental subjects did not volunteer but were conscripted and compelled to serve without their consent being sought or given.

Inasmuch as information on the typhus experiments, both before and after their performance, was furnished, as a matter of course, to Himmler through Brandt, the defendant's full knowledge of them is regarded as definitely proven.

Here, again, the managing hand of the defendant is shown. The smooth operation of these experiments is demonstrated to have been contingent upon the diligence with which Rudolf Brandt arranged for the supply of quotas of suitable human experimental material to the physicians at the scene of the experiment.

In view of these proven facts, the defendant Rudolf Brandt must be held and considered as one of the defendants responsible for performance of illegal medical experiments where deaths resulted to the nonconsenting human subjects.

SKELETON COLLECTION

In response to a request by Rudolf Brandt, on 9 February 1942 the defendant Sievers, business manager of the Ahnenerbe, submitted to him certain data on the alleged desirability of securing a Jewish skeleton collection for the Reich University of Strasbourg. The report furnished to the defendant Brandt contained among other things the following:

"By procuring the skulls of the Jewish Bolshevik Commissars, who personified a repulsive yet characteristic humanity, we have the opportunity of obtaining tangible scientific evidence. The actual obtaining and collecting of these skulls without difficulty could be best accomplished by a directive issued to the Wehrmacht in the future to immediately turn over alive all Jewish Bolshevik Commissars to the field police."

On 27 February 1942, Rudolf Brandt informed defendant Sievers that Himmler would support the enterprise and would place everything necessary at his disposal; and that Sievers should report again in connection with the undertaking.

Testimony and exhibits placed before this Court are abundantly sufficient to show that the plan mentioned was actually put into operation; that not less than 86 people were murdered for the sole purpose of obtaining their skeletons. Much more could be said in reference to this revolting topic, but it would add nothing to the judgment. The fact that Rudolf Brandt showed an initial interest and collaborated in the undertaking is enough to require a finding that he is guilty of murder in connection with the program.

MALARIA, SEA-WATER, AND EPIDEMIC JAUNDICE EXPERIMENTS; AND THE CHARGE OF THE MURDER AND MISTREATMENT OF POLES

It appears to be well established that Himmler sponsored, supported, furthered or initiated each of these enterprises. Doubtless Brandt knew what was going on, and perhaps he helped in the program. The evidence is not sufficient, however, to justify such a finding.

The Tribunal finds that the defendant Rudolf Brandt was an accessory to, ordered, abetted, took a consenting part in, was knowingly connected with plans and enterprises involving, and was a member of an organization or group connected with, the commission of medical experiments on non-German nationals, without their consent, in the course of which experiments murders, brutalities, cruelties, tortures, atrocities, and other inhuman acts were committed; and the murder of no less than 86 non-German Jews for a skeleton collection. To the extent that these crimes were not war crimes they were crimes against humanity.

MEMBERSHIP IN CRIMINAL ORGANIZATION

Under count four of the indictment Rudolf Brandt is charged with being a member of an organization declared criminal by the judgment of the International Military Tribunal, namely, the SS.

The evidence shows that Rudolf Brandt became a member of the SS in 1933, and remained in this organization until the end of the war. As a member of the SS he was criminally implicated in the commission of war crimes and crimes against humanity, as charged under counts two and three of the indictment.

An extremely persuasive and interesting brief on behalf of the defendant Rudolf Brandt, filed by his attorney, has received careful attention by this Tribunal. Therein it is urged that Rudolf Brandt's position under Heinrich Himmler was one of such subordination, his personal character so essentially mild, and he was so dominated by his chief, that the full significance of the crimes in which he became engulfed came to him with a shock only when he went to trial. This plea is offered in mitigation of appalling offenses in which the defendant Brandt is said to have played only an unassuming role.

If it be thought for even a moment that the part played by Rudolf Brandt was relatively unimportant when compared with the enormity of the charges proved by the evidence, let it be said that every Himmler must have his Brandt else the plans of a master criminal would never be put into execution.

The Tribunal, therefore, cannot accept the thesis.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Rudolf Brandt is guilty under counts two, three and four of the indictment.

MRUGOWSKY

The defendant is charged under counts two and three of the indictment with special responsibility for, and participation in, Freezing, Malaria, Sulfanilamide, Typhus, Poison, Epidemic Jaundice, and Incendiary Bomb Experiments. Charges were made concerning certain other medical experiments, but they have been abandoned by the prosecution.

Mrugowsky joined the NSDAP in 1930 and the SS in 1931. He ultimately rose to the rank of senior colonel in the Waffen SS.

In 1938 Mrugowsky became a member of the staff of the SS medical office, as hygienist. At the beginning of 1939 he founded the Hygiene Bacteriological Testing Station of the SS in Berlin, whose purpose was to combat epidemics in the SS garrison troops of the Waffen SS. In 1940 the station was enlarged and renamed the "Hygiene Institute of the Waffen SS." Mrugowsky became

its chief and at the same time Chief of the Office for Hygiene in the Medical Service of the Waffen SS under Genzken.

In his dual capacity Mrugowsky was answerable to Genzken in all questions concerning epidemic control and hygiene in the Waffen SS, but as Chief of the Hygiene Institute, was military superior and commander of the Institute and its affiliated institutions with power to issue orders.

The Medical Service of the Waffen SS was reorganized on 1 September 1943. Mrugowsky and the Hygiene Institute were transferred from under Genzken and became directly subordinated to Grawitz as Reich Physician SS and Police. By this transfer Mrugowsky became chief hygienist under Grawitz, but remained Chief of the Hygiene Institute.

TYPHUS AND OTHER VACCINE EXPERIMENTS

The details concerning the vaccine experiments conducted at Buchenwald concentration camp have been related elsewhere in this judgment and hence the details need no further discussion.

As pointed out in the case against Handloser, there is evidence in the record that on 29 December 1941 a conference was held in Berlin attended by Mrugowsky at which the decision was reached to begin research tests at Buchenwald to determine the efficacy of egg yolk, and other vaccines as protection against typhus. As a result of the conference, such an experimental station was established at Buchenwald under the direction of Dr. Ding with the defendant Hoven acting as his deputy.

Except for a few tests conducted early in 1942, all experiments were carried out in Block 46—so-called clinical block of the station. In the autumn of 1943 a vaccine production department was established in Block 50 and this also came under the supervision of Dr. Ding-Schuler.

It would burden this judgment unnecessarily to narrate in detail the various tests and experiments carried out by Ding at Buchenwald as a result of the decisions reached at higher levels. All of them conformed to a more or less uniform pattern, with certain groups of inmates being inoculated with vaccines, other groups (known as control groups) being given no immunization, and finally both groups being artificially infected with a virulent virus, and the results noted upon the experimental subjects.

We learn from the Ding diary, the authenticity and reliability of which has been discussed at length in other portions of the judgment, the methods employed, and the results obtained in at least some of the experiments.

For example: In "Typhus vaccination material research series I", which began on 6 January 1942, 135 inmates were vaccinated

with Weigl, Cox-Haagen-Gildemeister, Behring-Normal, or Behring-Strong, vaccines; 10 persons were used for control. On 3 March 1942 all test subjects, including control persons, were artificially infected with virulent virus of *Rickettsia-Provazeki* furnished by the Robert Koch Institute. Five deaths occurred; three in the control group and two among the vaccinated subjects.

In "Typhus vaccine, research series II", from 19 August to 4 September 1942, 40 persons were vaccinated with two different vaccines; 19 persons were used for control. Subsequently all were artificially infected with virulent virus; four deaths among the control persons occurred.

The entries in the diary concerning "Typhus vaccine experimental series VII" read as follows:

"28 May 43-18 June 1943: Carrying out of typhus vaccination for immunization with the following vaccine (1) 20 persons with vaccine 'Asid', (2) 20 persons with vaccine 'Asid Adsorbat', (3) 20 persons with vaccine 'Weigl' of the Institute for Typhus and Virus Research of the High Command, Army (OKH) Krakow (Eyer) * * *. All experimental persons got very serious typhus. 7 Sept. 43: Chart and case history completed. The experimental series was concluded. 53 deaths (18 with 'Asid') (18 with 'Asid Adsorbat') (9 with 'Weigl') (8 control) 9 Sep. 43: Charts and case histories delivered to Berlin. Dr. Ding, SS Sturmbannfuehrer."

Concerning "Typhus vaccine experimental series VIII" began on 8 March 1944 the following entry appears in the diary:

"Suggested by Colonel M.C. of the Air Corps, Professor Rose (Oberstarzt) the vaccine 'Kopenhagen' (Ipsen-Murine-vaccine), produced from mouse liver by the national serum institute in Copenhagen, was tested for its compatibility on humans. 20 persons were vaccinated for immunization by intramuscular injection * * *, 10 persons were contemplated for control and comparison. 4 of the 30 persons were eliminated *before* the start of the artificial injection because of intermittent sickness * * *. The remaining experimental persons were infected on 16 April 44 by subcutaneous injection of 1/20 cc. typhus sick fresh blood * * *. The following fell sick: 17 persons immunized: 9 medium, 8 seriously; 9 persons control, 2 medium, 7 seriously * * *. 2 June 44: The experimental series was concluded. 13 June 44: Chart and case history completed and sent to Berlin. 6 deaths (3 Kopenhagen) (3 control). Dr. Ding."

"Typhus vaccine experimental series IX" began on 17 July

1944. Twenty persons were immunized with the vaccine "Weimar" produced by the department for Typhus and Virus Research of the Hygiene Institute of the Waffen SS; and for comparison, another group of 20 persons were immunized with vaccine "Weigl" produced from lice by the Army High Command (OKH) in Cracow [Krakow]. Still another group of 20 persons were used for the control group. On 6 September 1944 the 60 experimental persons were infected with fresh blood "sick with typhus" which was injected into the upper arm. As a result, all experimental persons became sick, some seriously. The narration of this experimental series closes with the cryptic report: "4 Nov 44: Chart and case history completed, 24 deaths (5 'Weigl') (19 Control). Dr. Schuler."

These entries are but few of the many which we have taken at random from the Ding diary, dealing with the sordid murders of defenseless victims in the name of Nazi medical science. Many more could be set forth if time and space permitted. An analysis of the Ding diary discloses that no less than 729 concentration camp inmates were experimented on with typhus, at least 154 of whom died. And this toll of death takes no account of the certain demise of scores of so-called "passage" persons who were artificially infected with typhus for the sole purpose of having at hand an ever-ready supply of fresh blood "sick with typhus" to be used to infect the experimental subjects.

There is some evidence to the effect that the camp inmates used as subjects in the first series submitted to being used as experimental subjects after being told that the experiments were harmless and that additional food would be given to volunteers. But these victims were not informed that they would be artificially infected with a highly virulent virus nor that they might die as a result. Certainly no one would seriously suggest that under the circumstances these men gave their legal consent to act as subjects. One does not ordinarily consent to be the special object of a murder, and if one did, such consent would not absolve his slayer.

Later, when news of what was happening in Block 46 became generally known in the camp, it was no longer possible to delude the inmates into offering themselves as victims. Thereupon, the shabby pretense of seeking volunteers was dropped and the experimental subjects were taken arbitrarily from a list of inmates prepared by the camp administration.

Other experiments were also carried out in Block 46 of Buchenwald to test typhoid, para-typhoid A and B, and yellow fever.

As in the typhus experiments, nonconsenting human subjects were used, including not only German criminal prisoners but also

Poles, Russians, and Frenchmen, both civilians and prisoners of war.

In all the typhus experiments, death resulted to many experimental subjects. As to each of these experiments the evidence is overwhelming that they were carried out by Ding under the orders or authority of the defendant Mrugowsky.

POISON EXPERIMENTS

On 11 September 1944 Mrugowsky, Ding, and a certain Dr. Widmann carried out an experiment with aconitin nitrate projectiles in the Sachenshausen concentration camp. Details of the experiment are fully explained by a "Top Secret" report of the sordid affair in a letter written by the defendant Mrugowsky to the Criminological Institute, Berlin. The letter follows:

"Subject: Experiments with aconitin nitrate projectiles.

To the Criminological Institute
Attn: Dr. Widmann
Berlin

"In the presence of SS Strumbannfuehrer Dr. Ding, Dr. Widmann, and the undersigned, experiments with aconitin nitrate projectiles were conducted on 11 September 1944 on 5 persons who had been condemned to death. The projectiles in question were of a 7.65-mm caliber, filled with crystalized poison. The experimental subjects, in a lying position, were each shot in the upper part of the left thigh. The thighs of two of them were cleanly shot through. Even afterwards, no effect of the poison was to be observed. These two experimental subjects were therefore exempted.

"The entrance of the projectile did not show any peculiarities. Evidently, the arteria femolaries of one of the subjects was injured. A light stream of blood issued from the wound. But the bleeding stopped after a short time. The loss of blood was estimated as having been at the most $\frac{3}{4}$ of a liter, and consequently was on no account fatal.

"The symptoms of the condemned three showed a surprising similarity. At first no peculiarities appeared. After 20-25 minutes a motor agitation and a slight ptialism set in but stopped again. After 40 to 45 minutes a stronger salivation set in. The poisoned persons swallowed repeatedly, but later the flow of saliva became so strong that it could not even be overcome by swallowing. Foamy saliva flowed from their mouths. Then choking and vomiting set in.

"After 58 minutes the pulse of two of them could no longer

be felt. The third had a pulse rate of 76. After 65 minutes his blood pressure was 90/60. The sounds were extremely low. A reduction of blood pressure was evident.

"During the first hour of the experiment the pupils did not show any changes. After 78 minutes the pupils of all three showed a medium dilation together with a retarded light reaction. Simultaneously, maximum respiration with heavy breathing inhalations set in. This subsided after a few minutes. The pupils contracted again and their reaction improved. After 65 minutes the patellar and achilles tendon reflexes of the poisoned subjects were negative. The abdominal reflexes of two of them were also negative. The upper abdominal reflexes of the third were still positive, while the lower were negative. After approximately 90 minutes, one of the subjects again started breathing heavily, this was accompanied by an increasing motor unrest. Then the heavy breathing changed into a flat, accelerated respiration, accompanied by extreme nausea. One of the poisoned persons tried in vain to vomit. To do so he introduced four fingers of his hand up to the knuckles into his throat, but nevertheless could not vomit. His face was flushed.

"The other two experimental subjects had already early shown a pale face. The other symptoms were the same. The motor unrest increased so much that the persons flung themselves up, then down, rolled their eyes, and made meaningless motions with their hands and arms. Finally the agitation subsided, the pupils dilated to the maximum, and the condemned lay motionless. Masseter spasms and urination were observed in one case. Death occurred 121, 123 and 129 minutes after entry of the projectile.

"Summary. The projectiles filled with approximately 38 mg. of aconitin nitrate in solid form had, in spite of only insignificant injuries, a deadly effect after two hours. Poisoning showed 20 to 25 minutes after injury. The main reactions were: salivation, alteration of the pupils, negative tendon reflexes, motor unrest, and extreme nausea.

"MRUGOWSKY

"SS Lecturer Oberfuehrer and Office Chief."

The defendant attempts to meet this charge with the defense that the subjects used in this experiment were persons who had been condemned to death and that he, Mrugowsky, had been appointed as their legal executioner.

One need but read the letter introduced in evidence to arrive at the conclusion that the defense has no validity. This was not a legal execution carried out in conformance with the laws and

rules of war, but a criminal medical experiment wherein wounds were inflicted on prisoners with the sole end in view of determining the effectiveness of poisoned bullets as a means of taking life. The hapless victims of this dastardly torture were Russian prisoners of war, entitled to the protection afforded by the laws of civilized nations. As has been said, in substance, in this judgment: While under certain specific conditions the rules of land warfare may recognize the validity of an execution by shooting, it will not under any circumstances countenance the infliction of death by maiming or torture.

SULFANILAMIDE EXPERIMENTS

That Mrugowsky rendered assistance to Gebhardt in the sulfanilamide experiments at Ravensbrueck is plainly shown by the record. Mrugowsky put his laboratory and co-workers at Gebhardt's disposal. He furnished the cultures for the infections. It was on the suggestion of Mrugowsky's office that wood shavings and ground glass were placed in the wounds of the subjects so that battlefield wounds would be more closely simulated.

GAS OEDEMA EXPERIMENTS

Toward the end of 1942 a conference was held in the Military Medical Academy, Berlin, to discuss the effects of gas oedema serum on wounded persons. During the conference, several cases were reported in which wounded soldiers who had received gas oedema serum injections in large quantities suddenly died without apparent reason. Mrugowsky, who participated in the conference, expressed the possibility that perhaps the deaths had been due to the phenol content of the serum. As a step toward solving the problem Mrugowsky ordered Dr. Ding-Schuler, his subordinate, to take part in a euthanasia killing with phenol and to report on the results in detail.

In pursuance of the order given, Dr. Ding and the defendant Hoven killed some of the concentration camp inmates at Buchenwald with phenol injections and Ding reported his findings to his superior officer, Mrugowsky, as required by the order.

FREEZING, INCENDIARY BOMB, AND EPIDEMIC JAUNDICE EXPERIMENTS

As to these items the Tribunal is of the view that the evidence is insufficient to sustain the charges.

It has been proved beyond a reasonable doubt that the defendant Mrugowsky was a principal in, accessory to, ordered, abetted, took a consenting part in, and was knowingly connected with

plans and enterprises involving medical experiments on non-German nationals, without their consent, in the course of which experiments, murders, brutalities, cruelties, tortures, atrocities, and other inhuman acts were committed. To the extent that these crimes were not war crimes they were crimes against humanity.

COUNT FOUR

Under count four of the indictment, the defendant is charged with being a member of an organization declared criminal by the International Military Tribunal, namely, the SS.

The evidence proves that Mrugowsky joined the NSDAP in 1930 and voluntarily became a member of the Waffen SS in 1931. He remained in these organizations throughout the war. As a member of the Waffen SS, he was criminally implicated in the commission of war crimes and crimes against humanity as discussed in this judgment.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Joachim Mrugowsky is guilty under counts two, three, and four of the indictment.

POPPENDICK

The defendant Poppendick is charged under counts two and three of the indictment with personal responsibility for, and participation in, High-Altitude, Freezing, Malaria, Sulfanilamide, Sea-Water, Epidemic Jaundice, Sterilization, Typhus, and Poison experiments. He is charged under count four with being a member of an organization declared criminal by the judgment of the International Military Tribunal.

The charges with reference to high-altitude and poison experiments have been abandoned by the prosecution and hence will not be considered further.

Poppendick studied medicine at several German universities from 1921 to 1926 and passed his state examination in December of the latter year. He joined the NSDAP on 1 March 1932 and the SS on 1 July following. He rose to the rank of lieutenant colonel in the SS and to the rank of senior colonel in the Waffen SS. He was also a member of a Nazi Physicians' Association. In August 1935 he was appointed as a physician in the Main Race and Settlement Office in Berlin and became chief physician of that office in 1941. He held the latter appointment until the fall of 1944.

From 1 September 1939 until sometime in 1941, Poppendick was on active duty in the army as a surgeon. During the latter year he resumed his duties with the Race and Settlement Office in Berlin. Between 1939 and 1943, he performed some duties as a member of the staff of the Reich Physician SS and Police, Dr. Grawitz, taking care of special assignments.

In the fall of 1943 Poppendick was made Chief of the Personal Office of Grawitz, which position he retained until the end of the war.

FREEZING EXPERIMENTS

The evidence is that Poppendick gained knowledge of the freezing experiments conducted by Rascher at Dachau, as the result of a conference held between Rascher, Grawitz, and Poppendick on 13 January 1943 for the purpose of discussing certain phases of the research. The evidence does not prove beyond a reasonable doubt that Poppendick was criminally connected with these experiments.

MALARIA EXPERIMENTS

The prosecution contends that Poppendick is criminally responsible for the malaria experiments conducted by Dr. Schilling at Dachau. Dr. Ploetner was engaged in the malaria experiments as a subordinate of Schilling. Sievers' Diary, which is in evidence, contains a notation that on 23 May 1944 Grawitz, Poppendick, Ploetner, and Sievers held a conference, which had probably been arranged by Poppendick three days previously by telephone. The subject of the conference is not disclosed by the diary entry, but it appears elsewhere in the diary that on 31 May 1944 Grawitz sanctioned Ploetner's collaboration with Schilling.

Poppendick testified as a witness on his own behalf that he had heard that Schilling was carrying on special investigations at Dachau concerning immunity from malaria. He stated further that his knowledge of the nature of the investigations went no further. The record does not contradict his testimony.

The Tribunal finds that the evidence does not disclose beyond a reasonable doubt that Poppendick was criminally connected with the malaria experiments.

SULFANILAMIDE EXPERIMENTS

Poppendick attended the Third Meeting of Consulting Surgeons at the Military Medical Academy, Berlin, and heard lectures by Gebhardt and Fischer concerning the sulfanilamide experiments, which have been discussed elsewhere in this judgment. Under

date of 7 September 1942 he signed a certificate to a true copy of a report, concerning sulfanilamide experiments which had been conducted at Ravensbrueck, made by Gebhardt to Grawitz. Grawitz forwarded the report, or a certified copy thereof, to Himmler.

We are of the opinion that Poppendick had knowledge of the criminal nature of the experiments conducted by Gebhardt and Fischer at Ravensbrueck, but the defendant's criminal connection with any such experiments has not been proved by the evidence.

SEA-WATER EXPERIMENTS

The evidence does not disclose beyond a reasonable doubt that Poppendick was criminally implicated in these experiments.

EPIDEMIC JAUNDICE EXPERIMENTS

The evidence does not disclose beyond a reasonable doubt that Poppendick was criminally implicated in these experiments.

STERILIZATION EXPERIMENTS

Poppendick was Chief Physician of the Main Race and Settlement Office. The judgment of the International Military Tribunal found that this office was "active in carrying out schemes for Germanization of occupied territories according to the racial principles of the Nazi Party and were involved in the deportation of Jews and other foreign nationals." (*See the "Trial of the Major War Criminals," Vol. 1, p. 270.*)

Testifying before this Tribunal, Poppendick stated that the Nazi racial policy was twofold in aspect; one policy being positive, the other, negative in character. The positive policy included many matters, one being the encouragement of German families to produce more children. The negative policy concerned the sterilization and extermination of non-Aryans as well as other measures to reduce the non-Aryan population. According to Poppendick's testimony, he was not concerned with the execution of negative, but only with positive measures.

By letter dated 29 May 1941 Grawitz wrote to Himmler concerning a conference held on 27 May 1941 at which Dr. Clauberg was present, and discussed his "new method of sterilization of inferior women without an operation."

Poppendick by letter dated 4 June 1941, which referred to a previous telephone conversation with Grawitz, wrote Rudolf Brandt stating that he was enclosing "the list of physicians who are prepared to perform the treatment of sterility" as requested

by Himmler. The list referred to is evidently the same as was contained in a letter from Grawitz to Himmler, dated 30 May 1941, which stated: "In the following, I submit a list of specialists in charge of the treatment of sterility in women according to the method of Professor Clauberg."

It is shown by the evidence that Clauberg later carried out sterilization experiments on Jewesses at Auschwitz. Similar experiments were carried out in other concentration camps by SS doctors who were subordinate to Grawitz. It is evident that Poppendick knew of these sterilization experiments, although it is not shown that he was criminally connected with them.

TYPHUS EXPERIMENTS

It is not clear from the evidence that Poppendick was criminally connected with, or had knowledge of, the nature of the typhus experiments at Buchenwald, or the type of subjects upon which they were conducted.

INCENDIARY BOMB EXPERIMENTS

There is some evidence in the record to the effect that after incendiary bomb experiments were completed at Buchenwald, reports of the experiments were forwarded to Poppendick and Mrugowsky. It is evident that through the reports Poppendick gained knowledge of the nature of the experiments, but the record fails to show criminal responsibility of the defendant in connection therewith.

PHLEGMON EXPERIMENTS

The evidence clearly proves Poppendick's knowledge of these experiments, but it fails to show the defendant's criminal connection therewith.

POLYGAL EXPERIMENTS

The record does not show Poppendick's knowledge of or connection with these experiments.

HORMONE EXPERIMENTS

The prosecution contends that the evidence shows Poppendick's criminal responsibility in connection with a series of experiments conducted at Buchenwald by Dr. Varnet, a Danish physician who claimed to have discovered a method of curing homosexuality by transplantation of an artificial gland.

Under date 15 July 1944, Poppendick wrote to Dr. Ding at the concentration camp Buchenwald as follows:

"By request of the Reichsfuehrer SS the Danish doctor SS Sturmbannfuehrer Dr. Varnet has been given opportunity to continue his hormone research with the SS, particularly the development of his artificial gland. The Reichsfuehrer SS anticipates certain results from the treatment of homosexuals with Varnet's artificial gland. The technical preparations have come to such a point that experiments on human beings can be started within a reasonable space of time.

"As SS Standartenfuehrer Dr. Lolling informed me, the concentration camp Weimar-Buchenwald has been directed to make available 5 prisoners for SS Sturmbannfuehrer Varnet's experiments. These prisoners will be made available to SS Sturmbannfuehrer Varnet by the camp physician at any time.

"SS Sturmbannfuehrer Varnet intends to go to Buchenwald shortly in order to make certain necessary preliminary tests on these prisoners. In case there will be special laboratory tests, you are requested to assist Varnet within the scope of your possibilities.

"Particulars on Varnet's research were sent today to the camp physician of Weimar-Buchenwald for his information."

There is evidence that during the summer of 1944 Dr. Varnet conducted the experiments referred to in Poppendick's letter. However, the nationality of the prisoners used for the experiments is not shown, nor has it been proved beyond a reasonable doubt that the experiments were harmful or caused death, or injury to the experimental subjects.

We have given careful consideration to the evidence concerning the charges made by the prosecution against the defendant Poppendick. Certainly the evidence raises a strong suspicion that he was involved in the experiments. He at least had notice of them and of their consequences. He knew also that they were being carried on by the SS, of which he was and remained a member.

But this Tribunal, however, cannot convict upon mere suspicion; evidence beyond a reasonable doubt is necessary. The evidence is insufficient to sustain guilt under counts two and three of the indictment.

MEMBERSHIP IN A CRIMINAL ORGANIZATION

The defendant Poppendick is charged with membership in an organization declared criminal by the judgment of the International Military Tribunal, namely, the SS. Poppendick joined the

SS in July 1932. He remained in the SS voluntarily throughout the war, with actual knowledge of the fact that that organization was being used for the commission of acts now declared criminal by Control Council Law No. 10. He must, therefore, be found guilty under count four of the indictment.

With reference to the nature of punishment which should be imposed under such circumstances, the International Military Tribunal has made the following recommendation:

"1. That so far as possible throughout the four zones of occupation in Germany the classifications, sanctions, and penalties be standardized. Uniformity of treatment so far as practical should be a basic principle. This does not, of course, mean that discretion in sentencing should not be vested in the Court; but the discretion should be within fixed limits appropriate to the nature of the crime.

"2. Law No. 10 * * * leaves punishment entirely to the discretion of the trial court even to the extent of inflicting the death penalty.

"The De-Nazification Law of 5 March 1946, however, passed for Bavaria, Greater Hesse, and Wuerttemberg-Baden, provides definite sentences for punishment in each type of offense. The Tribunal recommends that in no case should punishment imposed under Law No. 10 upon any members of an organization or group declared by the Tribunal to be criminal exceed the punishment fixed by the De-Nazification Law. No person should be punished under both laws."

(See *"Trial of the Major War Criminals,"* Vol. 1, p. 257.)

In weighing the punishment, if any, which should be meted out to the defendant for his guilt by reason of the charge contained in count four of the indictment, this Tribunal will give such consideration to the recommendations of the International Military Tribunal as may under the premises seem meet and proper.

CONCLUSION

Military Tribunal I finds the defendant Helmut Poppendick not guilty under counts two and three of the indictment, and finds and adjudges the defendant Helmut Poppendick guilty as charged in the fourth count of the indictment.

SIEVERS

The defendant Sievers is charged under counts two and three of the indictment with special responsibility for, and participation in, High-Altitude, Freezing, Malaria, Lost Gas, Sea-Water,

Epidemic Jaundice, and Typhus Experiments, and with extermination of Jews to complete a skeleton collection. Under count four of the indictment, he is charged with being a member of an organization declared criminal by the judgment of the International Military Tribunal, namely, the SS.

The prosecution has abandoned the charge of participation in the Epidemic Jaundice experiments, and hence, this charge will not be considered further.

Sievers is one of the three defendants who are not physicians. He joined the NSDAP in 1929 and renewed his membership in the Nazi Party in 1933. He joined the SS at the end of 1935 on the suggestion of Himmler. In this organization he attained the rank of a Standartenfuehrer (colonel).

From 1 July 1935 until the war ended, Sievers was a member of Himmler's personal staff and Reich Business Manager of the Ahnenerbe Society. According to a statute of 1 January 1939, the purpose of the Ahnenerbe was to support scientific research concerning the culture and heritage of the Nordic race. The Board of Directors was composed of Himmler as president, Dr. Wuest as curator, and Sievers as the business manager. Sievers was responsible for the business organization administration and the budget of the Ahnenerbe. The place of business was Berlin. Sievers supported and participated in the medical experiments which are the subject of the indictment, primarily through the Institute of Military Scientific Research which was established by order of Himmler dated 7 July 1942 and was administratively attached to the Ahnenerbe.

On 1 January 1942 Himmler ordered the establishment of an entomological institute; in March 1942 the Institute Dr. Rascher in Dachau; and in the first month of the year 1942, the Institute Dr. Hirt, at Strasbourg. These subsequently became part of the Institute for Military Scientific Research.

Sievers was, for all practical purposes, the acting head of the Ahnenerbe. In this capacity he was subordinated to Himmler and regularly reported to him on the affairs of this Society. The top secret correspondence of Himmler concerning the Ahnenerbe was sent to Sievers. The charter of the Ahnenerbe defines Sievers' duties as follows:

"The Reich Business Manager handles the business affairs of the community; he is in charge of the business organization and administration. He is responsible for the drawing up of the budget and for the administration of the treasury."

Sievers was responsible for the entire administrative problems of the secretary's office, bookkeeping and treasury. Besides that

he also had to manage the Ahnenerbe publishing house. In June 1943 Professor Dr. Mentzel, who among other things was Chief of the Business Managing Advisory Council of the Reich Research Council, appointed Sievers as his deputy. By this act Sievers did not become a member of the Reich Research Council but held only an honorary position.

In a letter to the defendant Rudolf Brandt, dated 28 January 1943, Sievers defines his position as Reich Business Manager of the Ahnenerbe as follows:

"My duty merely consists in smoothing the way for the research men and seeing that the tasks ordered by the Reichsfuehrer SS are carried out in the quickest possible way. On one thing I certainly can form an opinion; that is, on who is doing the quickest job."

Sievers received orders directly from Himmler on matters of research assignments for the Ahnenerbe and he reported directly to Himmler on such experiments. Sievers devoted his efforts to obtaining the funds, materials, and equipment needed by the research workers. The materials obtained by Sievers included concentration camp inmates to be used as experimental subjects. When the experiments were under way, Sievers made certain that they were being performed in a satisfactory manner. In this connection, Sievers necessarily exercised his own independent judgment and had to familiarize himself with the details of such assignments.

HIGH-ALTITUDE EXPERIMENTS

The details of these experiments are discussed in other portions of this judgment. Sievers' activities in the high-altitude experiments are revealed clearly by the evidence. Rascher, in a letter to Himmler dated 5 April 1942, states as follows:

"SS Obersturmbannfuehrer Sievers took a whole day off to watch some of the interesting standard experiments and may have given you a brief report * * * I am very much indebted to Obersturmbannfuehrer Sievers as he has shown a very active interest in my work in every respect."

Sievers admitted that he reported to Himmler about his visit to Dachau. On the basis of the reports of Sievers and Rascher, Himmler authorized Rascher to continue the high-altitude experiments in Dachau, in the course of which the evidence shows that 180 to 200 inmates were experimented upon; that 70 to 80 of them died. Rascher became associated with the Ahnenerbe in

March 1942, and during the entire time covered by the period of the high-altitude experiments, Rascher was attached to the Ahnenerbe and performed the high-altitude experiments with its assistance. On 20 July 1942, when the final report on high-altitude experiments was submitted to Himmler, Rascher's name appeared on the letterhead of the Ahnenerbe Institute for Military Scientific Research as shown by the cover letter, and the inclosed report bore the statement that the experiments had been carried out in conjunction with the research and instruction association "Das Ahnenerbe". Sievers had actual knowledge of the criminal aspects of the Rascher experiments. He was notified that Dachau inmates were to be used. He himself inspected the experiments. Sievers admitted that Rascher told him that several died as a result of the high-altitude experiments.

Under these facts Sievers is specially chargeable with the criminal aspects of these experiments.

FREEZING EXPERIMENTS

Before the high-altitude experiments had actually been completed, freezing experiments were ordered to be performed at Dachau. They were conducted from August 1942 to the early part of 1943 by Holzloehner, Finke and Rascher, all of whom were officers in the Medical Services of the Luftwaffe. Details of the freezing experiments have been given elsewhere in this judgment.

In May 1943 Rascher was transferred to the Waffen SS and then proceeded alone to conduct freezing experiments in Dachau until May 1945. Rascher advised the defendant Rudolf Brandt that Poles and Russians had been used as subjects.

The witness Neff testified that the defendant Sievers visited the experimental station quite frequently during the freezing experiments. He testified further that in September 1942 he received orders to take the hearts and lungs of 5 experimental subjects killed in the experiments to Professor Hirt in Strasbourg for further scientific study; that the travel warrant for the trip was made out by Sievers; and that the Ahnenerbe Society paid the expenses for the transfer of the bodies. One of the 5 experimental subjects killed was a Dutch citizen.

Neff's testimony is corroborated in large part by the affidavits of the defendants Rudolf Brandt and Becker-Freyseng, by the testimony of the witnesses Lutz, Michalowsky and Vieweg, and by the documentary evidence in the record. In the Sievers' diary, there are numerous instances of Sievers' activities in the aid of Rascher. On 1 February 1943 Sievers noted efforts in obtaining

apparatus, implements and chemicals for Rascher's experiments. On 6 and 21 January 1944 Sievers noted the problem of location. Rascher reported to Sievers periodically concerning the status and details of the freezing experiments.

It is plain from the record that the relationship of Sievers and Rascher in the performance of freezing experiments required Sievers to make the preliminary arrangements for the performance of the experiments to familiarize himself with the progress of the experiments by personal inspection, to furnish necessary equipment and material, including human beings used during the freezing experiments, to receive and make progress reports concerning Rascher, and to handle the matter of evaluation and publication of such reports. Basically, such activities constituted a performance of his duties as defined by Sievers in his letter of 28 January 1943 to Rudolf Brandt, in which he stated that he smoothed the way for research workers and saw to it that Himmler's orders were carried out.

Under these facts Sievers is chargeable with the criminal activities in these experiments.

MALARIA EXPERIMENTS

Details of these experiments are given elsewhere in this judgment. These experiments were performed at Dachau by Schilling and Ploetner. The evidence shows that Sievers had knowledge of the nature and purpose of these criminal enterprises and supported them in his official position.

LOST GAS EXPERIMENTS

These experiments were conducted in the Natzweiler concentration camp under the supervision of Professor Hirt of the University of Strasbourg. The Ahnenerbe Society and the defendant Sievers supported this research on behalf of the SS. The arrangement for the payment of the research subsidies of the Ahnenerbe was made by Sievers. The defendant Sievers participated in these experiments by actively collaborating with the defendants Karl Brandt and Rudolf Brandt and with Hirt and his principal assistant, Dr. Wimmer. The record shows that Sievers was in correspondence with Hirt at least as early as January 1942, and that he established contact between Himmler and Hirt.

In a letter of 11 September 1942 to Gluecks, Sievers wrote that the necessary conditions existed in Natzweiler "for carrying out our military scientific research work". He requested that Gluecks issue the necessary authorization for Hirt, Wimmer, and Kieselbach to enter Natzweiler, and that provision be made for their board and accommodations. The letter also stated:

"The experiments which are to be performed on prisoners are to be carried out in four rooms of an already existing medical barrack. Only slight changes in the construction of the building are required, in particular the installation of the hood which can be produced with very little material. In accordance with attached plan of the construction management at Natzweiler, I request that necessary orders be issued to same to carry out the reconstruction. All the expenses arising out of our activity at Natzweiler will be covered by this office."

In a memorandum of 3 November 1942 to the defendant Rudolf Brandt, Sievers complained about certain difficulties which had arisen in Natzweiler because of the lack of cooperation from the camp officials. He seemed particularly outraged by the fact that the camp officials were asking that the experimental prisoners be paid for. A portion of the memorandum follows:

"When I think of our military research work conducted at the concentration camp Dachau, I must praise and call special attention to the generous and understanding way in which our work was furthered there and to the cooperation we were given. Payment of prisoners was never discussed. It seems as if at Natzweiler they are trying to make as much money as possible out of this matter. We are not conducting these experiments, as a matter of fact, for the sake of some fixed scientific idea, but to be of practical help to the armed forces and beyond that, to the German people in a possible emergency."

Brandt was requested to give his help in a comradely fashion in setting up the necessary conditions at Natzweiler. The defendant Rudolf Brandt replied to this memorandum on 3 December 1942 and told Sievers that he had had occasion to speak to Pohl concerning these difficulties, and that they would be remedied.

The testimony of the witness Holl was that approximately 220 inmates of Russian, Polish, Czech, and German nationality were experimented upon by Hirt and his collaborators, and that approximately 50 died. None of the experimental subjects volunteered. During the entire period of these experiments, Hirt was associated with the Ahnenerbe Society.

In early 1944 Hirt and Wimmer summarized their findings from the Lost experiments in a report entitled "Proposed Treatment of Poisoning Caused by Lost." The report was described as from the Institute for Military Scientific Research, Department H of the Ahnenerbe, located at the Strasbourg Anatomical Institute. Light, medium, and heavy injuries due to Lost gas are

mentioned. Sievers received several copies of this report. On 31 March 1944, after Karl Brandt had received a Fuehrer Decree giving him broad powers in the field of chemical warfare, Sievers informed Brandt about Hirt's work and gave him a copy of the report. This is proved by Sievers' letter to Rudolf Brandt on 11 April 1944. Karl Brandt admitted that the wording of the report made it clear that experiments had been conducted on human beings.

Sievers testified that on 25 January 1943, he went to Natzweiler concentration camp and consulted with the camp authorities concerning the arrangements to be made for Hirt's Lost experiments. These arrangements included the obtaining of laboratories and experimental subjects. Sievers testified that the Lost experiments were harmful. On the visit of 25 January 1943, Sievers saw ten persons who had been subjected to Lost experiments and watched Hirt change the bandages on one of the persons. Sievers testified that in March 1943 he asked Hirt whether any of the experimental subjects had suffered harm from the experiments and was told by Hirt that two of the experimental subjects had died due to other causes.

It is evident that Sievers was criminally connected with these experiments.

SEA-WATER EXPERIMENTS

These experiments were conducted at Dachau from July through September 1944. Details of these experiments are explained elsewhere in the judgment.

The function of the Ahnenerbe in the performance of sea-water experiments conducted at Dachau from July through September 1944 was chiefly in connection with the furnishing of space and equipment for the experiments. Sievers made these necessary arrangements on behalf of the Ahnenerbe. As a result of Schroeder's request to Himmler through Grawitz for permission to perform the sea-water experiments on inmates in Dachau, Himmler directed on 8 July 1944 that the experiments be made on gypsies and three other persons with other racial qualities as control subjects. Sievers was advised by Himmler's office of the above authorization for experiments at the Rascher station at Dachau.

On 27 June 1944, Rascher was replaced by Ploetner as head of the Ahnenerbe Institute for Military Scientific Research at Dachau. Sievers, on 20 July, went to Dachau and conferred with Ploetner of the Ahnenerbe Institute and the defendant Beiglboeck, who was to perform the experiments, concerning the execution of the sea-water experiments and the availability of working

space for them. Sievers agreed to supply working space in Ploetner's department and at the Ahnenerbe Entomological Institute.

On 26 July 1944, Sievers made a written report to Grawitz concerning details of his conference at Dachau. Sievers wrote that 40 experimental persons could be accommodated at "our" research station, that the Ahnenerbe would supply a laboratory, and that Dr. Ploetner would give his assistance, help, and advice to the Luftwaffe physicians performing the experiments. Sievers also stated the number and assignment of the personnel to be employed, estimating that the work would cover a period of three weeks and designated 23 July 1944 as the date of commencement, provided that experimental persons were available and the camp commander had received the necessary order from Himmler. In conclusion, Sievers expressed his hope that the arrangements which he had made would permit a successful conduct of the experiments and requested that acknowledgment be made to Himmler as a participant in the experiments.

In his testimony Sievers admitted that he had written the above letter and had conferred with Beiglboeck at Dachau. As the letter indicates, Sievers knew that concentration camp inmates were to be used.

Sievers had knowledge of and criminally participated in seawater experiments.

TYPHUS EXPERIMENTS

Detailed description of these experiments is contained elsewhere in this judgment. Sievers participated in the criminal typhus experiments conducted by Haagen on concentration camp inmates at Natzweiler by making the necessary arrangements in connection with securing experimental subjects, handling administrative problems incident to the experiments, and by furnishing the Ahnenerbe station with its equipment in Natzweiler for their performance.

On 16 August 1943, when Haagen was preparing to transfer his typhus experiments from Schirmeck to Natzweiler, he requested Sievers to make available a hundred concentration camp inmates for his research. This is seen from a letter of 30 September 1943 from Sievers to Haagen in which he states that he will be glad to assist, and that he is accordingly contacting the proper source to have the "desired personnel" placed at Haagen's disposal. As a result of Sievers' efforts, a hundred inmates were shipped from Auschwitz to Natzweiler for Haagen's experiments. These were found to be unfit for experimentation because of their pitiful physical condition. A second group of one hundred was

then made available. Some of these were used by Haagen as experimental subjects.

That the experiments were carried out in the Ahnenerbe experimental station in Natzweiler is proved by excerpts from monthly reports of the camp doctor in Natzweiler. A number of deaths occurred among non-German experimental subjects as a direct result of the treatment to which they were subjected.

POLYGAL EXPERIMENTS

Evidence has been introduced during the course of the trial to show that experiments to test the efficacy of a blood coagulant "polygal" were conducted on Dachau inmates by Rascher. The Sievers' diary shows that the defendant had knowledge of activities concerning the production of polygal, and that he lent his support to the conduct of the experiments.

JEWISH SKELETON COLLECTION

Sievers is charged under the indictment with participation in the killing of 112 Jews who were selected to complete a skeleton collection for the Reich University of Strasbourg.

Responding to a request by the defendant Rudolf Brandt, Sievers submitted to him on 9 February 1942 a report by Dr. Hirt of the University of Strasbourg on the desirability of securing a Jewish skeleton collection. In this report, Hirt advocated outright murder of "Jewish Bolshevik Commissars" for the procurement of such a collection. On 27 February 1942, Rudolf Brandt informed Sievers that Himmler would support Hirt's work and would place everything necessary at his disposal. Brandt asked Sievers to inform Hirt accordingly and to report again on the subject. On 2 November 1942 Sievers requested Brandt to make the necessary arrangements with the Reich Main Security Office for providing 150 Jewish inmates from Auschwitz to carry out this plan. On 6 November, Brandt informed Adolf Eichmann, the Chief of Office IV B/4 (Jewish Affairs) of the Reich Main Security Office to put everything at Hirt's disposal which was necessary for the completion of the skeleton collection.

From Sievers' letter to Eichmann of 21 June 1943, it is apparent that SS Hauptsturmfuehrer Beger, a collaborator of the Ahnenerbe Society, carried out the preliminary work for the assembling of the skeleton collection in the Auschwitz concentration camp on 79 Jews, 30 Jewesses, 2 Poles, and 4 Asiatics. The corpses of the victims were sent in three shipments to the Anatomical Institute of Hirt in the Strasbourg University.

When the Allied Armies were threatening to overrun Stras-

bourg early in September 1944, Sievers dispatched to Rudolf Brandt the following teletype message:

"Subject: Collection of Jewish Skeletons.

"In conformity with the proposal of 9 February 1942 and with the consent of 23 February 1942 * * * SS Sturmbannfuehrer Professor Hirt planned the hitherto missing collection of skeletons. Due to the extent of the scientific work connected herewith, the preparation of the skeletons is not yet concluded. Hirt asks with respect to the time needed for 80 specimens, and in case the endangering of Strasbourg has to be reckoned with, how to proceed with the collection situated in the dissecting room of the anatomical institute. He is able to carry out the maceration and thus render them irre recognizable. Then, however, part of the entire work would have been partly done in vain, and it would be a great scientific loss for this unique collection, because hominit casts could not be made afterwards. The skeleton collection as such is not conspicuous. Viscera could be declared as remnants of corpses, apparently left in the anatomical institute by the French and ordered to be cremated. Decision on the following proposals is requested:

"1. Collection can be preserved.

"2. Collection is to be partly dissolved.

"3. Entire collection is to be dissolved.

"Sievers"

The pictures of the corpses and the dissecting rooms of the Institute, taken by the French authorities after the liberation of Strasbourg, point up the grim story of these deliberate murders to which Sievers was a party.

Sievers knew from the first moment he received Hirt's report of 9 February 1942 that mass murder was planned for the procurement of the skeleton collection. Nevertheless he actively collaborated in the project, sent an employee of the Ahnenerbe to make the preparatory selections in the concentration camp at Auschwitz, and provided for the transfer of the victims from Auschwitz to Natzweiler. He made arrangements that the collection be destroyed.

Sievers' guilt under this specification is shown without question.

Sievers offers two purported defenses to the charges against him (1) that he acted pursuant to superior orders; (2) that he was a member of a resistance movement.

The first defense is wholly without merit. There is nothing to show that in the commission of these ghastly crimes, Sievers

acted entirely pursuant to orders. True, the basic policies or projects which he carried through were decided upon by his superiors, but in the execution of the details Sievers had an unlimited power of discretion. The defendant says that in his position he could not have refused an assignment. The fact remains that the record shows the case of several men who did, and who have lived to tell about it.

Sievers' second matter of defense is equally untenable. In support of the defense, Sievers offered evidence by which he hoped to prove that as early as 1933 he became a member of a secret resistance movement which plotted to overthrow the Nazi Government and to assassinate Hitler and Himmler; that as a leading member of the group, Sievers obtained the appointment as Reich Business Manager of the Ahnenerbe so that he could be close to Himmler and observe his movements; that in this position he became enmeshed in the revolting crimes, the subject matter of this indictment; that he remained as business manager upon advice of his resistance leader to gain vital information which would hasten the day of the overthrow of the Nazi Government and the liberation of the helpless peoples coming under its domination.

Assuming all these things to be true, we cannot see how they may be used as a defense for Sievers. The fact remains that murders were committed with cooperation of the Ahnenerbe upon countless thousands of wretched concentration camp inmates who had not the slightest means of resistance. Sievers directed the program by which these murders were committed.

It certainly is not the law that a resistance worker can commit no crime, and least of all, against the very people he is supposed to be protecting.

MEMBERSHIP IN A CRIMINAL ORGANIZATION

Under count four of the indictment, Wolfram Sievers is charged with being a member of an organization declared criminal by the judgment of the International Military Tribunal, namely, the SS. The evidence shows that Wolfram Sievers became a member of the SS in 1935 and remained a member of that organization to the end of the war. As a member of the SS he was criminally implicated in the commission of war crimes and crimes against humanity, as charged under counts two and three of the indictment.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Wolfram Sievers guilty under counts two, three and four of the indictment.

ROSE

The defendant Rose is charged under counts two and three of the indictment with special responsibility for, and participation in Typhus and Epidemic Jaundice Experiments.

The latter charge has been abandoned by the prosecution.

Evidence was offered concerning Rose's criminal participation in malaria experiments at Dachau, although he was not named in the indictment as one of the defendants particularly charged with criminal responsibility in connection with malaria experiments. Questions presented by this situation will be discussed later.

The defendant Rose is a physician of large experience, for many years recognized as an expert in tropical diseases. He studied medicine at the Universities of Berlin and Breslau and was admitted to practice in the fall of 1921. After serving as interne in several medical institutes, he received an appointment on the staff of the Robert Koch Institute in Berlin. Later he served on the staff of Heidelberg University and for three years engaged in the private practice of medicine in Heidelberg. In 1929 he went to China, where he remained until 1936, occupying important positions as medical adviser to the Chinese Government. In 1936 he returned to Germany and became head of the Department for Tropical Medicine at the Robert Koch Institute in Berlin. Late in August 1939 he joined the Luftwaffe with the rank of first lieutenant in the Medical Corps. In that service he was commissioned brigadier general in the reserve and continued on active duty until the end of the war. He was consultant on hygiene and tropical medicine to the Chief of the Medical Service of the Luftwaffe. From 1944 he was also consultant on the staff of defendant Handloser and was medical adviser to Dr. Conti in matters pertaining to tropical diseases. During the war Rose devoted practically all of his time to his duties as consultant to the Chief of the Medical Service of the Luftwaffe, Hippke, and after 1 January 1944, the defendant Schroeder.

MALARIA EXPERIMENTS

Medical experiments in connection with malaria were carried on at Dachau concentration camp from February 1942 until the end of the war. These experiments were conducted under Dr. Klaus Schilling for the purpose of discovering a method of establishing immunity against malaria. During the course of the experiments probably as many as 1,000 inmates of the concentration camp were used as subjects of the experiments. Very many of these persons were nationals of countries other than

Germany who did not volunteer for the experiments. By credible evidence it is established that approximately 30 of the experimental subjects died as a direct result of the experiments and that many more succumbed from causes directly following the experiments, including non-German nationals.

With reference to Rose's participation in these experiments, the record shows the following: The defendant Rose had been acquainted with Schilling for a number of years, having been his successor in a position once held by Schilling in the Robert Koch Institute. Under date 3 February 1941, Rose, writing to Schilling, then in Italy, referred to a letter received from Schilling, in which the latter requested "malaria spleens" (spleens taken from the bodies of persons who had died from malaria). Rose in reply asked for information concerning the exact nature of the material desired. Schilling wrote 4 April 1942 from Dachau to Rose at Berlin, stating that he had inoculated a person intracutaneously with sporocoides from the salivary glands of a female anopheles which Rose had sent him. The letter continues:

"For the second inoculation I miss the sporocoides material because I do not possess the 'Strain Rose' in the anopheles yet. If you could find it possible to send me in the next days a few anopheles infected with 'Strain Rose' (with the last consignment two out of ten mosquitoes were infected) I would have the possibility to continue this experiment and I would naturally be very thankful to you for this new support of my work.

"The mosquito breeding and the experiments proceed satisfactorily and I am working now on six tertiary strains."

The letter bears the handwritten endorsement "finished 17 April 1942. L. g. RO 17/4," which evidence clearly reveals that Rose had complied with Schilling's request for material.

Schilling again wrote Rose from Dachau malaria station 5 July 1943, thanking Rose for his letter and "the consignment of atroparvus eggs." The letter continues:

"Five percent of them brought on water went down and were therefore unfit for development; the rest of them hatched almost 100 percent.

"Thanks to your solicitude, achieved again the completion of my breed.

"Despite this fact I accept with great pleasure your offer to send me your excess of eggs. How did you dispatch this consignment? The result could not have been any better!

"Please tell Fraeulein Lange, who apparently takes care of

her breed with greater skill and better success than the prisoner August, my best thanks for her trouble.

"Again my sincere thanks to you!"

The "prisoner August" mentioned in the letter was doubtless the witness August Vieweg, who testified before this Tribunal concerning the malaria experiments.

Rose wrote Schilling 27 July 1943 in answer to the latter's letter of 5 July 1943, stating he was glad the shipment of eggs had arrived in good order and had proved useful. He also gave the information that another shipment of anopheles eggs would follow.

In the fall of 1942 Rose was present at the "Cold Conference" held at Nuernberg and heard Holzloehner deliver his lecture on the freezing experiments which had taken place at Dachau. Rose testified that after the conference he talked with Holzloehner, who told him that the carrying out of physiological experiments on human beings imposed upon him a tremendous mental burden, adding that he hoped he never would receive another order to conduct such experiments.

It is impossible to believe that during the years 1942 and 1943 Rose was unaware of malaria experiments on human beings which were progressing at Dachau under Schilling, or to credit Rose with innocence of knowledge that the malaria research was not confined solely to vaccinations designed for the purpose of immunizing the persons vaccinated. On the contrary, it is clear that Rose well knew that human beings were being used in the concentration camp as subjects for medical experimentation.

However, no adjudication either of guilt or innocence will be entered against Rose for criminal participation in these experiments for the following reason: In preparing counts two and three of its indictment the prosecution elected to frame its pleading in such a manner as to charge all defendants with the commission of war crimes and crimes against humanity, generally, and at the same time to name in each sub-paragraph dealing with medical experiments only those defendants particularly charged with responsibility for each particular item.

In our view this constituted, in effect, a bill of particulars and was, in essence, a declaration to the defendants upon which they were entitled to rely in preparing their defenses, that only such persons as were actually named in the designated experiments would be called upon to defend against the specific items. Included in the list of names of those defendants specifically charged with responsibility for the malaria experiments the name of Rose does not appear. We think it would be manifestly unfair

to the defendant to find him guilty of an offense with which the indictment affirmatively indicated he was not charged.

This does not mean that the evidence adduced by the prosecution was inadmissible against the charges actually preferred against Rose. We think it had probative value as proof of the fact of Rose's knowledge of human experimentation upon concentration camp inmates.

TYPHUS EXPERIMENTS

These experiments were carried out at Buchenwald and Natzweiler concentration camps, over a period extending from 1942 to 1945, in an attempt to procure a protective typhus vaccine.

In the experimental block at Buchenwald, with Dr. Ding in charge, inmates of the camp were infected with typhus for the purpose of procuring a continuing supply of fresh blood taken from persons suffering from typhus. Other inmates, some previously immunized and some not, were infected with typhus to demonstrate the efficacy of the vaccines. Full particulars of these experiments have been given elsewhere in the judgment.

Rose visited Buchenwald in company with Gildemeister of the Robert Koch Institute in the spring of 1942. At this time Dr. Ding was absent, suffering from typhus as the result of an accidental infection received while infecting his experimental subjects. Rose inspected the experimental block where he saw many persons suffering from typhus. He passed through the wards and looked at the clinical records "of * * * persons with severe cases in the control cases and * * * lighter cases among those vaccinated."

The Ding diary, under dates 19 August-4 September 1942, referring to use of vaccines for immunization, states that 20 persons were inoculated with vaccine from Bucharest, with a note "this vaccine was made available by Professor Rose, who received it from Navy Doctor Professor Ruegge from Bucharest." Rose denied that he had ever sent vaccine to Mrugowsky or Ding for use at Buchenwald. Mrugowsky, from Berlin, under date 16 May 1942, wrote Rose as follows:

"Dear Professor:

"The Reich Physician SS and Police has consented to the execution of experiments to test typhus vaccines. May I therefore ask you to let me have the vaccines.

"The other question which you raised, as to whether the louse can be infected by a vaccinated typhus patient, will also be dealt with. In principle, this also has been approved. There are, however, still some difficulties at the moment about the

practical execution, since we have at present no facilities for breeding lice.

"Your suggestion to use Olzscha has been passed on to the personnel department of the SS medical office. It will be given consideration in due course."

From a note on the letter, it appears that Rose was absent from Berlin and was not expected to return until June. The letter, however, refers to previous contact with Rose and to some suggestions made by him which evidently concern medical experiments on human beings. Rose in effect admitted that he had forwarded the Bucharest vaccine to be tested at Buchenwald.

At a meeting of consulting physicians of the Wehrmacht held in May 1943, Ding made a report in which he described the typhus experiments he had been performing at Buchenwald. Rose heard the report at the meeting and then and there objected strongly to the methods used by Ding in conducting the experiments. As may well be imagined, this protest created considerable discussion among those present.

The Ding diary shows that, subsequent to this meeting, experiments were conducted at Buchenwald at the instigation of the defendant Rose. The entry under date of 8 March 1944, which refers to "typhus vaccine experimental series VIII", appears as follows:

"Suggested by Colonel M. C. of the Air Corps, Professor Rose (Oberstarzt), the vaccine 'Kopenhagen' (Ipsen-Murine-vaccine) produced from mouse liver by the National Serum Institute in Copenhagen was tested for its compatibility on humans. 20 persons were vaccinated for immunization by intramuscular injection * * * . 10 persons were contemplated for control and comparison. 4 of the 30 persons were eliminated before the start of the artificial injection because of intermittent sickness * * * . The remaining experimental persons were infected on 16 April 44 by subcutaneous injection of 1/20 cc. typhus sick fresh blood * * * . The following fell sick: 17 persons immunized: 9 medium, 8 seriously; 9 persons control: 2 medium, 7 seriously * * * . 2 June 44: The experimental series was concluded 13 June 44: Chart and case history completed and sent to Berlin. 6 deaths (3 Copenhagen) (3 control). Dr. Ding."

When on the witness stand Rose vigorously challenged the correctness of this entry in the Ding diary and flatly denied that he had sent a Copenhagen vaccine to Mrugowsky or Ding for use at Buchenwald. The prosecution met this challenge by offering

in evidence a letter from Rose to Mrugowsky dated 2 December 1943, in which Rose stated that he had at his disposal a number of samples of a new murine virus typhus vaccine prepared from mice livers, which in animal experiments had been much more effective than the vaccine prepared from the lungs of mice. The letter continued:

"To decide whether this first-rate murine vaccine should be used for protective vaccination of human beings against lice typhus, it would be desirable to know if this vaccine showed in your and Ding's experimental arrangement at Buchenwald an effect similar to that of the classic virus vaccines.

"Would you be able to have such an experimental series carried out? Unfortunately I could not reach you over the phone. Considering the slowness of postal communications I would be grateful for an answer by telephone * * *."

The letter shows on its face that it was forwarded by Mrugowsky to Ding, who noted its receipt by him 21 February 1944.

On cross-examination, when Rose was confronted with the letter he admitted its authorship, and that he had asked that experiments be carried out by Mrugowsky and Ding at Buchenwald.

The fact that Rose contributed actively and materially to the Mrugowsky-Ding experiments at Buchenwald clearly appears from the evidence.

The evidence also shows that Rose actively collaborated in the typhus experiments carried out by Haagen at the Natzweiler concentration camp for the benefit of the Luftwaffe.

From the exhibits in the record, it appears that Rose and Haagen corresponded during the month of June 1943 concerning the production of a vaccine for typhus. Under date 5 June 1943 Haagen wrote to Rose amplifying a telephone conversation between the two and referring to a letter from a certain Giroud with reference to a vaccine which had been used on rabbits. A few days later Rose replied, thanking him for his letters of 4 and 5 June and for "the prompt execution of my request." The record makes it plain that by use of the phrase "the prompt execution of my request" was meant a request made by Rose to the Chief of the Medical Service of the Wehrmacht for an order to produce typhus vaccine to be used by the armed forces in the eastern area.

Under date 4 October 1943 Haagen again wrote Rose concerning his plans for vaccine production, making reference in the letter to a report made by Rose on the Ipsen vaccine. Haagen stated that he had already reported to Rose on the results of

experiments with human beings and expressed his regret that, up to the date of the letter, he had been unable to "perform infection experiments on the vaccinated persons." He also stated that he had requested the Ahnenerbe to provide suitable persons for vaccination but had received no answer; that he was then vaccinating other human beings and would report results later. He concluded by expressing the wish and need for experimental subjects upon whom to test vaccinations, and suggested that when subjects were procured, parallel tests should be made between the vaccine referred to in the letter and the Ipsen tests.

We think the only reasonable inference which can be drawn from this letter is that Haagen was proposing to test the efficacy of the vaccinations which he had completed, which could only be accomplished by infecting the vaccinated subjects with a virulent pathogenic virus.

In a letter written by Rose and dated "in the field, 29 September 1943", directed to the Behring Works at Marburg/Lahn, Rose states that he is enclosing a memorandum regarding reports by Dr. Ipsen on his experience in the production of typhus vaccine. Copy of the report which Rose enclosed is in evidence, Rose stating therein that he had proposed, and Ipsen had promised, that a number of Ipsen's liver vaccine samples should be sent to Rose with the object of testing its protective efficacy on human beings whose lives were in special danger. Copies of this report were forwarded by Rose to several institutions, including that presided over by Haagen.

In November 1943, 100 prisoners were transported to Natzweiler, of whom 18 had died during the journey. The remainder were in such poor health that Haagen found them worthless for his experiments and requested additional healthy prisoners through Dr. Hirt, who was a member of the Ahnenerbe.

Rose wrote to Haagen 13 December 1943, saying among other things "I request that in procuring persons for vaccination in your experiment, you request a corresponding number of persons for vaccination with Copenhagen vaccine. This has the advantage, as also appeared in the Buchenwald experiments, that the test of various vaccines simultaneously gives a clearer idea of their value than the test of one vaccine alone."

There is much other evidence connecting Rose with the series of experiments conducted by Haagen but we shall not burden the judgment further. It will be sufficient to say that the evidence proves conclusively that Rose was directly connected with the criminal experiments conducted by Haagen.

Doubtless at the outset of the experimental program launched in the concentration camps, Rose may have voiced some vigorous

opposition. In the end, however, he overcame what scruples he had and knowingly took an active and consenting part in the program. He attempts to justify his actions on the ground that a state may validly order experiments to be carried out on persons condemned to death without regard to the fact that such persons may refuse to consent to submit themselves as experimental subjects. This defense entirely misses the point of the dominant issue. As we have pointed out in the case of Gebhardt, whatever may be the condition of the law with reference to medical experiments conducted by or through a state upon its own citizens, such a thing will not be sanctioned in international law when practiced upon citizens or subjects of an occupied territory.

We have indulged every presumption in favor of the defendant, but his position lacks substance in the face of the overwhelming evidence against him. His own consciousness of turpitude is clearly disclosed by the statement made by him at the close of a vigorous cross-examination in the following language:

"It was known to me that such experiments had earlier been carried out, although I basically objected to these experiments. This institution had been set up in Germany and was approved by the state and covered by the state. At that moment I was in a position which perhaps corresponds to a lawyer who is, perhaps, a basic opponent of execution or death sentence. On occasion when he is dealing with leading members of the government, or with lawyers during public congresses or meetings, he will do everything in his power to maintain his opinion on the subject and have it put into effect. If, however, he does not succeed, he stays in his profession and in his environment in spite of this. Under circumstances he may perhaps even be forced to pronounce such a death sentence himself, although he is basically an opponent of that set-up."

The Tribunal finds that the defendant Rose was a principal in, accessory to, ordered, abetted, took a consenting part in, and was connected with plans and enterprises involving medical experiments on non-German nationals without their consent, in the course of which murders, brutalities, cruelties, tortures, atrocities, and other inhuman acts were committed. To the extent that these crimes were not war crimes they were crimes against humanity.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Gerhard Rose guilty under counts two and three of the indictment.

RUFF, ROMBERG, AND WELTZ

The defendants Ruff, Romberg, and Weltz are charged under counts two and three of the indictment with special responsibility for, and participation in, High-Altitude Experiments.

The defendant Weltz is also charged under counts two and three with special responsibility for, and participation in, Freezing Experiments.

To the extent that the evidence in the record relates to the high-altitude experiments, the cases of the three defendants will be considered together.

Defendant Ruff specialized in the field of aviation medicine from the completion of his medical education at Berlin and Bonn in 1932. In January 1934 he was assigned to the German Experimental Institute for Aviation, a civilian agency, in order to establish a department for aviation medicine. Later he became chief of the department.

Defendant Romberg joined the NSDAP in May 1933. From April 1936 until 1938 he interned as an assistant physician at a Berlin hospital. On 1 January 1938 he joined the staff of the German Experimental Institution for Aviation as an associate assistant to the defendant Ruff. He remained as a subordinate to Ruff until the end of the war.

Defendant Weltz for many years was a specialist in X-ray work. In the year 1935 he received an assignment as lecturer in the field of aviation medicine at the University of Munich. At the same time he instituted a small experimental department at the Physiological Institute of the University of Munich. Weltz lectured at the University until 1945; at the same time he did research work at the Institute.

In the summer of 1941 the experimental department at the Physiological Institute, University of Munich, was taken over by the Luftwaffe and renamed the "Institute for Aviation Medicine in Munich." Weltz was commissioned director of this Institute by Hippke, then Chief of the Medical Inspectorate of the Luftwaffe. In his capacity as director of this Institute, Weltz was subordinated to Luftgau No. VII in Munich for disciplinary purposes. In scientific matters he was subordinated directly to Anthony, Chief of the Department for Aviation Medicine in the Office of the Medical Inspectorate of the Luftwaffe.

HIGH-ALTITUDE EXPERIMENTS

The evidence is overwhelming and not contradicted that experiments involving the effect of low air pressure on living human

beings were conducted at Dachau from the latter part of February through May 1942. In some of these experiments great numbers of human subjects were killed under the most brutal and senseless conditions. A certain Dr. Sigmund Rascher, Luftwaffe officer, was the prime mover in the experiments which resulted in the deaths of the subjects. The prosecution maintains that Ruff, Romberg, and Weltz were criminally implicated in these experiments.

The guilt of the defendant Weltz is said to arise by reason of the fact that, according to the prosecution's theory, Weltz, as the dominant figure proposed the experiments, arranged for their conduct at Dachau, and brought the parties Ruff, Romberg, and Rascher together. The guilt of Ruff and Romberg is charged by reason of the fact that they are said to have collaborated with Rascher in the conduct of the experiments. The evidence on the details of the matter appears to be as follows:

In the late summer of 1941 soon after the Institute Weltz at Munich was taken over by the Luftwaffe, Hippke, Chief of the Medical Service of the Luftwaffe, approved, in principle, a research assignment for Weltz in connection with the problem of rescue of aviators at high altitudes. This required the use of human experimental subjects. Weltz endeavored to secure volunteer subjects for the research from various sources; however, he was unsuccessful in his efforts.

Rascher, one of Himmler's minor satellites, was at the time an assistant at the Institute. He, Rascher, suggested the possibility of securing Himmler's consent to conducting the experiments at Dachau. Weltz seized upon the suggestion, and thereafter arrangements to that end were completed, Himmler giving his consent for experiments to be conducted on concentration camp inmates condemned to death, but only upon express condition that Rascher be included as one of the collaborators in the research.

Rascher was not an expert in aviation medicine. Ruff was the leading German scientist in this field, and Romberg was his principal assistant. Weltz felt that before he could proceed with his research these men should be persuaded to come into the undertaking. He visited Ruff in Berlin and explained the proposition. Thereafter Ruff and Romberg came to Munich, where a conference was held with Weltz and Rascher to discuss the technical nature of the proposed experiments.

According to the testimony of Weltz, Ruff, and Romberg, the basic consideration which impelled them to agree to the use of concentration camp inmates as subjects was the fact that the inmates were to be criminals condemned to death who were to

receive some form of clemency in the event they survived the experiments. Rascher, who was active in the conference, assured the defendants that this also was one of the conditions under which Himmler had authorized the use of camp inmates as experimental subjects.

The decisions reached at the conference were then made known to Hippke, who gave his approval to the institution of experiments at Dachau and issued an order that a mobile low-pressure chamber which was then in the possession of Ruff at the Department for Aviation Medicine, Berlin, should be transferred to Dachau for use in the project.

A second meeting was held at Dachau, attended by Ruff, Romberg, Weltz, Rascher, and the camp commander, to make the necessary arrangements for the conduct of the experiments. The mobile low-pressure chamber was then brought to Dachau, and on 22 February 1942 the first series of experiments was instituted.

Weltz was Rascher's superior; Romberg was subordinate to Ruff. Rascher and Romberg were in personal charge of the conduct of the experiments. There is no evidence to show that Weltz was ever present at any of these experiments. Ruff visited Dachau one day during the early part of the experiments, but thereafter remained in Berlin and received information concerning the progress of the experiments only through his subordinate, Romberg.

There is evidence from which it may reasonably be found that at the outset of the program personal friction developed between Weltz and his subordinate Rascher. The testimony of Weltz is that on several occasions he asked Rascher for reports on the progress of the experiments and each time Rascher told Weltz that nothing had been started with reference to the research. Finally Weltz ordered Rascher to make a report; whereupon Rascher showed his superior a telegram from Himmler which stated, in substance, that the experiments to be conducted by Rascher were to be treated as top secret matter and that reports were to be given to none other than Himmler. Because of this situation Weltz had Rascher transferred out of his command to the DVL branch at Dachau. Defendant Romberg stated that these experiments had been stopped soon after their inception by the adjutant of the Reich War Ministry, because of friction between Weltz and Rascher, and that the experiments were resumed only after Rascher had been transferred out of Weltz Institute.

While the evidence is convincingly plain that Weltz participated in the initial arrangements for the experiments and brought all parties together, it is not so clear that illegal experiments were planned or carried out while Rascher was under Weltz command,

or that he knew that experiments which Rascher might conduct in the future would be illegal and criminal.

There appear to have been two distinct groups of prisoners used in the experimental series. One was a group of 10 to 15 inmates known in the camp as "exhibition patients" or "permanent experimental subjects". Most, if not all, of these were German nationals who were confined in the camp as criminal prisoners. These men were housed together and were well-fed and reasonably contented. None of them suffered death or injury as a result of the experiments. The other group consisted of 150 to 200 subjects picked at random from the camp and used in the experiments without their permission. Some 70 or 80 of these were killed during the course of the experiments.

The defendants Ruff and Romberg maintain that two separate and distinct experimental series were carried on at Dachau; one conducted by them with the use of the "exhibition subjects", relating to the problems of rescue at high altitudes, in which no injuries occurred; the other conducted by Rascher on the large group of nonvolunteers picked from the camp at random, to test the limits of human endurance at extremely high altitudes, in which experimental subjects in large numbers were killed.

The prosecution submits that no such fine distinction may be drawn between the experiments said to have been conducted by Ruff and Romberg, on the one hand, and Rascher on the other, or in the prisoners who were used as the subjects of these experiments; that Romberg—and Ruff as his superior—share equal guilt with Rascher for all experiments in which deaths to the human subjects resulted.

In support of this submission the members of the prosecution cite the fact that Rascher was always present when Romberg was engaged in work at the altitude chamber; that on at least three occasions Romberg was at the chamber when deaths occurred to the so-called Rascher subjects, yet elected to continue the experiments. They point likewise to the fact that, in a secret preliminary report made by Rascher to Himmler which tells of deaths, Rascher mentions the name of Romberg as being a collaborator in the research. Finally they point to the fact that, after the experiments were concluded, Romberg was recommended by Rascher and Sievers for the War Merit Cross, because of the work done by him at Dachau.

The issue on the question of the guilt or innocence of these defendants is close; we would be less than fair were we not to concede this fact. It cannot be denied that there is much in the record to create at least a grave suspicion that the defendants Ruff and Romberg were implicated in criminal experiments at

Dachau. However, virtually all of the evidence which points in this direction is circumstantial in its nature. On the other hand, it cannot be gainsaid that there is a certain consistency, a certain logic, in the story told by the defendants. And some of the story is corroborated in significant particulars by evidence offered by the prosecution.

The value of circumstantial evidence depends upon the conclusive nature and tendency of the circumstances relied on to establish any controverted fact. The circumstances must not only be consistent with guilt, but they must be inconsistent with innocence. Such evidence is insufficient when, assuming all to be true which the evidence tends to prove, some other reasonable hypothesis of innocence may still be true; for it is the actual exclusion of every other reasonable hypothesis but that of guilt which invests mere circumstances with the force of proof. Therefore, before a court will be warranted in finding a defendant guilty on circumstantial evidence alone, the evidence must show such a well-connected and unbroken chain of circumstances as to exclude all other reasonable hypotheses but that of the guilt of the defendant. What circumstances can amount to proof can never be a matter of general definition. In the final analysis the legal test is whether the evidence is sufficient to satisfy beyond a reasonable doubt the understanding and conscience of those who, under their solemn oaths as officers, must assume the responsibility for finding the facts.

On this particular specification, it is the conviction of the Tribunal that the defendants Ruff, Romberg, and Weltz must be found not guilty.

FREEZING EXPERIMENTS

In addition to the high-altitude experiments, the defendant Weltz is charged with freezing experiments, likewise conducted at Dachau for the benefit of the German Luftwaffe. These began at the camp at the conclusion of the high-altitude experiments and were performed by Holzloehner, Finke, and Rascher, all of whom were officers in the medical services of the Luftwaffe. Non-German nationals were killed in these experiments.

We think it quite probable that Weltz had knowledge of these experiments, but the evidence is not sufficient to prove that he participated in them.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Siegfried Ruff is not guilty under either counts two or three of the

indictment, and directs that he be released from custody under the indictment when this Tribunal presently adjourns; and

Military Tribunal I finds and adjudges that the defendant Hans Wolfgang Romberg is not guilty under either counts two or three of the indictment, and directs that he be released from custody under the indictment when this Tribunal presently adjourns; and

Military Tribunal I finds and adjudges that the defendant Georg August Weltz is not guilty under either counts two or three of the indictment; and directs that he be released from custody under the indictment when this Tribunal presently adjourns.

BRACK

The defendant Brack is charged under counts two and three of the indictment with personal responsibility for, and participation in, Sterilization Experiments and the Euthanasia Program of the German Reich. Under count four the defendant is charged with membership in an organization declared criminal by the judgment of the International Military Tribunal, namely, the SS.

The defendant Brack enlisted in an artillery unit of an SA regiment in 1923, and became a member of the NSDAP and the SS in 1929. Throughout his career in the Party he was quite active in high official circles. He entered upon full-time service in the Braune Haus, the Nazi headquarters at Munich, in the summer of 1932. The following year he was appointed to the Staff of Bouhler, business manager of the NSDAP in Munich. When in 1934 Bouhler became Chief of the Chancellery of the Fuehrer of the NSDAP, Brack was transferred from the Braune Haus to Bouhler's Berlin office. In 1936 Brack was placed in charge of office 2 (Amt 2) in the Chancellery of the Fuehrer in Berlin, that office being charged with the examinations of complaints received by the Fuehrer from all parts of Germany. Later, he became Bouhler's deputy in office 2. As such he frequently journeyed to the different Gaue for the purpose of gaining first-hand information concerning matters in which Bouhler was interested.

Brack was promoted to the rank of Sturmbannfuehrer in the SS in 1935, and in April 1936 to the rank of Obersturmbannfuehrer. The following September he became a Standartenfuehrer in the SS, and was transferred to the staff of the Main Office of the SS in November. In November 1940 he was promoted to the grade of Oberfuehrer.

In 1942 Brack joined the Waffen SS, and during the late summer of that year was ordered to active duty with a Waffen SS division. He apparently remained on active duty until the close of the war.

STERILIZATION EXPERIMENTS

The persecution of the Jews had become a fixed Nazi policy very soon after the outbreak of World War II. By 1941 that persecution had reached the stage of the extermination of Jews, both in Germany and in the occupied territories. This fact is confirmed by Brack himself, who testified that he had been told by Himmler that he, Himmler, had received a personal order to that effect from Hitler.

The record shows that the agencies organized for the so-called euthanasia of incurables were used for this bloody pogrom. Later, because of the urgent need for laborers in Germany, it was decided not to kill Jews who were able to work but, as an alternative, to sterilize them.

With this end in view Himmler instructed Brack to inquire of physicians who were engaged in the Euthanasia Program about the possibility of a method of sterilizing persons without the victim's knowledge. Brack worked on the assignment, with the result that in March 1941 he forwarded to Himmler his signed report on the results of experiments concerning the sterilization of human beings by means of X-rays. In the report a method was suggested by which sterilization with X-ray could be effected on groups of persons without their being aware of the operation.

On 23 June 1942 Brack wrote the following letter to Himmler:

"Dear Reichsfuehrer:

"* * * Among 10 millions of Jews in Europe, there are, I figure, at least 2-3 millions of men and women who are fit enough to work. Considering the extraordinary difficulties the labor problem presents us with I hold the view that those 2-3 millions should be specially selected and preserved. This can however only be done if at the same time they are rendered incapable to propagate. About a year ago I reported to you that agents of mine have completed the experiments necessary for this purpose. I would like to recall these facts once more. Sterilization, as normally performed on persons with hereditary diseases is here out of the question, because it takes too long and is too expensive. Castration by X-ray however is not only relatively cheap, but can also be performed on many thousands in the shortest time. I think, that at this time it is already irrelevant whether the people in question become aware of having been castrated after some weeks or months, once they feel the effects.

"Should you, Reichsfuehrer, decide to choose this way in the interest of the preservation of labor, then Reichsleiter Bouhler would be prepared to place all physicians and other personnel

needed for this work at your disposal. Likewise he requested me to inform you that then I would have to order the apparatus so urgently needed with the greatest speed.

"Heil Hitler!

"Yours

"VIKTOR BRACK."

Brack testified from the witness stand that at the time he wrote this letter he had every confidence that Germany would win the war.

Brack's letter was answered by Himmler on 11 August 1942. In the reply Himmler directed that sterilization by means of X-rays be tried in at least one concentration camp in a series of experiments, and that Brack place at his disposal expert physicians to conduct the operation.

Blankenburg, Brack's deputy, replied to Himmler's letter and stated that Brack had been transferred to an SS division, but that he, Blankenburg, as Brack's permanent deputy would "immediately take the necessary measures and get in touch with the chiefs of the main offices of the concentration camps."

A Polish Jew testified before the Tribunal that while confined in Auschwitz concentration camp he was marched to Birkenau and forcibly subjected to severe X-ray exposure and was castrated later in order that the effects of the X-ray could be studied.

A French physician of Jewish descent who was confined at Auschwitz from September 1943 to January 1945, testified that near Auschwitz was Birkenau camp where people were sterilized by SS doctors. About 100 male Poles who had been sterilized at Birkenau were attended by the witness after the operation. Later this group was castrated by the camp physicians.

The record contains other evidence from which it is manifestly plain that sterilization by means of X-rays was attempted on groups of persons who were painfully injured thereby; and that castration followed the X-ray procedures.

Brack's part in the organization of the sterilization program with full knowledge that it would be put into execution, is conclusively shown by the record.

EUTHANASIA PROGRAM

The Euthanasia Program, which was put into effect by a secret decree of Hitler on the day that Germany invaded Poland, has been discussed at length in the judgment in the case against Karl Brandt.

Brack contends that he was basically opposed to this program

and that, on occasion, he assisted certain of his Jewish friends to escape from its consequences. But be that as it may, the evidence is that whatever sentiments Brack may have entertained toward individual members of the race, he was perfectly willing to and did act as an important administrator in furthering the Euthanasia Program. After it had gotten under way, he wrote letters to various public officials, explaining to them how to keep the matter secret and to allay the public sentiment against the program.

This much is shown by Brack's own statements. As a witness on the stand he testified that while at first he did not understand the full import of the program, he decided, after a talk with Bouhler, to collaborate in carrying out the assignment and to execute Bouhler's orders.

He participated in the initial meetings called for the purpose of placing the project in operation. He was present at meetings of the experts, as well as the administrative discussions. He often acted as Bouhler's representative, frequently making decisions which called for the exercise of personal judgment and a wide latitude of discretion.

Brack admitted that such were his activities in the program, that one might well have come to the conclusion that he was the influential man in euthanasia.

As Bouhler's deputy he addressed a meeting at Munich, where he explained the purpose of Hitler's decree and mentioned the draft of a law which was being prepared to give complete legislative sanctity to euthanasia—a law, incidentally, which was never in fact enacted. He represented Bouhler in April of 1941 at a meeting attended by Nazi judges and prosecutors. He testified that the Ministry of Justice had become considerably embarrassed because of the Euthanasia Program, and that he was present at the meeting for the purpose of imparting information concerning the salutary features of euthanasia to those who were present.

Brack gave the Tribunal considerable information concerning the method of extermination by euthanasia, stating that the program was so designed as to render the process inconspicuous and painless. In December 1939, or January 1940, Brack, Bouhler, Conti, and some other doctors were present at the administration of euthanasia to four experimental subjects. The victims were led into a gas chamber which had been built to resemble a shower room. The patients were seated on benches and poisonous gas was let into the chamber. A few moments later the patients became drowsy and finally lapsed into a death sleep without even knowing they were being executed. On the basis of this execution "Hitler decided that only carbon monoxide was to be used for killing the

patients." According to Brack these persons were not Jews, because, as Bouhler had explained to him, "the philanthropic action of euthanasia should be extended only to Germans."

The evidence is plain that the euthanasia program explained by the defendant, gradually merged into the "Action 14 f 13," which, briefly stated, amounted to an extermination of concentration camp inmates by methods and agencies used in euthanasia. One of the prime motives behind the program was to eliminate "useless eaters" from the scene, in order to conserve food, hospital facilities, doctors and nurses for the more important use of the German Armed Forces. Many nationals of countries other than Germany were killed.

Brack's direct connection with and participation in the execution of euthanasia is conclusively proved by the evidence in the record.

MEMBERSHIP IN A CRIMINAL ORGANIZATION

Under count four of the indictment the defendant Brack is charged with being a member of the organization declared criminal by the judgment of the International Military Tribunal, namely, the SS. The evidence shows that Brack became a member of the SS in 1929, and voluntarily remained in that organization until the end of the war. As a member of the SS he was criminally implicated in the commission of war crimes and crimes against humanity, as charged under counts two and three of the indictment.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Viktor Brack guilty under counts two, three and four of the indictment.

BECKER-FREYSENG

The defendant Becker-Freyseng is charged under counts two and three of the indictment with personal responsibility for, and participation in, High-Altitude, Freezing, Sulfanilamide, Sea-Water, Epidemic Jaundice, and Typhus Experiments.

The prosecution has abandoned all charges except as to high-altitude, freezing, sea-water and typhus experiments, and hence only these will be considered.

The defendant Becker-Freyseng joined the Nazi Party in 1933. In 1940 he was drafted into the Luftwaffe. In 1943 he was promoted to the rank of Stabsarzt in the Luftwaffe.

From August 1941 until May 1944 the defendant was an as-

sistant consultant to Anthony, Chief of the Referat for Aviation Medicine, Berlin. This department dealt with all questions concerning aviation medicine and reported to the Chief of the Medical Service of the Luftwaffe. When Schroeder became Chief of the Medical Service of the Luftwaffe on 1 January 1944, the defendant became the consultant for aviation medicine in Schroeder's office.

HIGH-ALTITUDE EXPERIMENTS

As shown elsewhere in the judgment, high-altitude experiments for the benefit of the Luftwaffe were conducted at Dachau concentration camp on non-German nationals, beginning in February or March 1942. These experiments had been approved, in principle at least, by Hippke, Chief of the Medical Service of the Luftwaffe. A mobile low-pressure chamber which had been in the possession of the department of aviation medicine, Berlin, was transferred to Dachau for use in the experiments. Concentration camp inmates were killed while being subjected to experiments conducted in the chamber.

During the time the experiments were conducted, defendant Becker-Freyseng was an assistant consultant to Anthony, Chief of the Referat for Aviation Medicine, Berlin. All low-pressure chambers owned by the Luftwaffe were under the general control of that office.

It is submitted by the prosecution that the record shows that Becker-Freyseng was a principal in, accessory to, aided, abetted, took a consenting part in, and was connected with plans and enterprises involving the commission of these experiments.

The evidence upon this charge is not deemed sufficient to preponderate against a reasonable doubt as to the defendant's guilty participation in the experiments here involved.

FREEZING EXPERIMENTS

It is claimed that in June 1942 Becker-Freyseng was informed from certain of his official files that a meeting to consider experiments to investigate the treatment of persons who had been severely chilled or frozen would be held in Nuernberg the following October (referred to as the "Cold Congress"). It is contended that the directive which set the experiment into motion was issued from the office of the department for aviation medicine, that the funds and equipment were supplied by that office, and that Becker-Freyseng had knowledge of the experiments, and that he admitted such knowledge.

As to all this, the proof is clear that Becker-Freyseng was

actively employed in organizing and was present at the so-called "Cold Congress." But more than the evidence discloses is needed to establish that he had any later part in or connection with the experiments themselves, or that he had any controlling relationship to their initial establishment.

TYPHUS EXPERIMENTS

The evidence is insufficient to disclose any criminal responsibility of the defendant Becker-Freyseng in connection with the typhus experiments.

SEA-WATER EXPERIMENTS

We have discussed the sea-water experiments in that portion of our judgment which deals with the case of the defendant Schroeder. As was pointed out there, two methods of making sea water drinkable were available to the Luftwaffe. One, the so-called Schaefer method, had been chemically tested and apparently produced potable sea water; the other, the so-called Berka process, which changed the taste of the sea water but did not reduce the salt content.

Becker-Freyseng, as chief consultant for aviation medicine in the office of Schroeder, arranged for a conference to be held in May 1944 to discuss the testing of these two methods. At the conference the defendant reported on various clinical experiments which had been conducted by a certain von Sirany to test the Berka process. He came to the conclusion that the experiments had not been conducted under sufficiently realistic conditions of sea distress to make the findings conclusive.

As a result of the conference it was decided that new experiments should be conducted.

We learn from the report of the meeting, which is in evidence, that two series of experiments were to be conducted. The first, a maximum period of six days, during which one group of subjects would receive sea water processed with the Berka method; a second group, ordinary drinking water; a third group no water at all; and the fourth group, such water as would be available in the emergency sea distress kits then used. During the duration of the experiment all persons were to receive only an emergency sea diet, such as provided for persons in distress at sea.

In addition to the 6-day experiment it was determined that a 12-day experiment should be run. The plan for this series reads as follows:

"Persons nourished with sea water and Berkatit, and as diet also the emergency sea rations.

"Duration of experiments: 12 days.

"Since in the opinion of the Chief of the Medical Service permanent injuries to health, that is the death of the experimental subjects, has to be expected, as experimental subjects such persons should be used as will be put at the disposal by [the] Reichsfuehrer SS."

By letter dated 7 June 1944 Schroeder requested the Reichsfuehrer SS to allow him to use concentration camp inmates for the sea-water experiments. The letter stated among other things the following:

"As the experiments on human beings could thus far only be carried out for a period of four days, and as practical demands require a remedy for those who are in distress at sea up to 12 days, appropriate experiments are necessary.

"Required are 40 healthy test subjects, who must be available for 4 whole weeks. As it is known from previous experiments that necessary laboratories exist in the concentration camp Dachau, this camp would be very suitable * * *."

When on the stand as a witness, the defendant Becker-Freyseng admitted that he prepared the substance of the letter for Schroeder's dictation and signature.

Thus with actual knowledge of the nature of the Berka process, and the fact that if used over prolonged periods it would cause suffering and death, Becker-Freyseng counselled and conferred with his chief concerning the necessity for experiments wherein the process would be used. He gave advice upon the exact procedure to be used in the 6-day and 12-day experimental series. He framed the letter to Himmler requesting the use of concentration camp inmates at Dachau for experimental subjects. He called the defendant Beiglboeck to Berlin to explain to him the details and purpose of the experiments. He issued the order under which Beiglboeck went to Dachau to begin the experiments. He received Beiglboeck's report after the experimental series had been concluded.

Throughout all stages of the affair, from its inception to its conclusion, the defendant knew of the dangerous nature of the experiments. He knew that deaths were reasonably to be expected. He knew that concentration camp inmates were to be used as experimental subjects. It is impossible to believe that he supposed that the inmates of the camps, who were to be fur-

nished by Himmler, were to be volunteers. The entire language of the letter, which was written to Himmler asking for experimental subjects, entirely refutes such implication.

The evidence shows conclusively that gypsies of various nationalities were used as experimental subjects. They were former inmates of Auschwitz who had been tricked into coming to Dachau under the promise that they were to be used in a special labor battalion. When they arrived at Dachau they were detailed to the sea-water experiments without their voluntary consent being asked or given.

During the course of the experiment many of the experimental subjects were treated brutally and endured much pain and suffering.

It is apparent from the evidence that Becker-Freyseng was criminally connected with the experiments, and that the experiments were essentially criminal in their nature. To the extent that the crimes committed by him or under his authority were not war crimes, they were crimes against humanity.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Hermann Becker-Freyseng guilty under counts two and three of the indictment.

SCHAEFER

The defendant Schaefer is charged under counts two and three of the indictment with personal responsibility for and participation in Sea-Water Experiments.

Konrad Schaefer was a scientist whose special field of research was chemical therapy. In November 1941 he was drafted into the Luftwaffe. In spring of the following year he was transferred to the Luftwaffe Replacement Depot in Salow, and from there to the Luftwaffe base at Frankfurt on the Oder. In summer of 1942 he was transferred to Berlin and assigned to the staff of the Research Institute for Aviation Medicine. His chief assignment at the Institute was to do research on the problem of sea emergency for the Luftwaffe. This included research work on various methods to render sea water potable. Schaefer remained in his position at the Institute without ever having attained officer rank.

In May of 1944 the defendant was ordered to be present at a meeting to be held at the German Air Ministry in Berlin, called to consider further research on making sea water potable. Some months previous to the meeting Schaefer had developed a process

which actually precipitated the salts from sea water, but it was thought by the Chief of the Luftwaffe Medical Service to be too bulky and expensive for military use by the Luftwaffe.

Present at the meeting were Schaefer; Becker-Freyseng, research advisor to Schroeder; Christensen, of the Technical Bureau of the Reich Ministry of Aviation; and others. The subject of discussion was the feasibility of using the Schaefer process, or of turning to another process known as the Berka Method. The latter method, while cheap, did not precipitate salts from sea water and was dangerous to health when used for a period of time—as Schaefer, previous to the meeting, had already reported to Schroeder. Nevertheless, those in command of the meeting agreed that experiments should be conducted on concentration camp inmates to determine the extent to which the Berka method might be usable.

The experiments later conducted have been described at length in dealing with the case of Schroeder. Due to his attendance at this meeting, Schaefer is sought to be held criminally responsible in connection with the sea-water experiments.

The record has received careful attention from the Tribunal.

Nowhere have we been able to find that Schaefer was a principal in, or accessory to, or was otherwise criminally involved in or connected with the experiments mentioned. In fact, the record fails to show that the defendant had anything to do with these experiments, except such as might be implied from his attendance at several meetings of the parties who were actively interested therein. Nowhere in the testimony or elsewhere is it revealed that Schaefer voted for commencement or prosecution of the experiments or in any other manner aided in their execution.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Konrad Schaefer not guilty of the charges contained in the indictment, and directs that he be released from custody under the indictment when the Tribunal presently adjourns.

HOVEN

The defendant Hoven is charged under counts two and three of the indictment with special responsibility for and participation in Typhus and other Vaccine Experiments, Gas Oedema Experiments, and the Euthanasia Program. In count four he is charged with being a member, after 1 September 1939, of an organization declared criminal by the International Military Tribunal.

Hoven joined the SS in 1934 and the Nazi Party in 1937. Soon after the outbreak of the war he joined the Waffen SS. In October 1939 he became assistant medical officer in the SS hospital at Buchenwald concentration camp. In 1941 he was appointed medical officer in charge of the SS troops stationed in the camp. He became assistant medical officer at the camp inmate hospital, and in July 1942 he became chief camp physician. He remained in the latter position until September 1943. At that time he was arrested on the order of the SS police court in Kassel for having allegedly murdered an SS noncommissioned officer who was a dangerous witness against Koch, the camp commander.

TYPHUS AND OTHER VACCINE EXPERIMENTS

The vaccine experiments with which Hoven is charged were conducted at Buchenwald under the supervision of SS Sturm-bannfuhrer Dr. Ding, alias Ding-Schuler. They have already been described at length in other portions of this judgment.

The prosecution has shown beyond a reasonable doubt that Hoven was a criminal participant in these experiments. In collaboration with the SS camp administration he helped select the concentration camp inmates who became the experimental subjects. During the course of selection he exercised the right to include some prisoners and to reject others. While perhaps not empowered to initiate new series of experiments on his own responsibility—that apparently being a power which only Ding could exercise—the defendant worked with Ding on experiments then in progress. He supervised the preparation of diary notes, fever charts, and report sheets of the experiments. Occasionally he injected some of the subjects with the vaccines. He acted as Ding's deputy in the conduct of the experiments. He was in command of experimental Block 46 in Ding's absence. During the period of Hoven's activity in the experimental station no less than 100 inmates were killed as a result of the typhus experiments. Many of these victims were non-German nationals who had not given their consent to be used as experimental subjects.

GAS OEDEMA EXPERIMENTS

It is asserted in an affidavit made by Dr. Ding-Schuler, who was in charge of Blocks 46 and 50, Buchenwald, that toward the end of 1942 a conference was held in the Military Medical Academy, Berlin, for the purpose of discussing the fatal effects of gas oedema serum on wounded persons. During the conference, Kilian, of the Army Medical Inspectorate, and the defendant Mru-gowsky reported several cases in which wounded soldiers who

had received gas oedema serum injections in high quantities died suddenly without apparent reason. Mrugowsky suspected that the fatalities were due to the phenol content of the serum. To help solve the problem Mrugowsky ordered Ding to take part in a euthanasia killing with phenol and to report on the results in detail. A few days later Hoven, in the presence of Ding, gave phenol injections to several of the concentration camp inmates with the result that they died instantly. In accordance with instructions, Ding made a report of the killings to his superior officer.

The fact that Hoven engaged in phenol killings is substantiated by an affidavit voluntarily made by Hoven himself prior to the trial, which was received in evidence as a part of the case of the prosecution. In the affidavit Hoven makes the following statement:

"There were many prisoners who were jealous of the positions held by a few political prisoners and tried to discredit them. These traitors were immediately killed, and I was later notified in order to make out statements that they had died of natural causes.

"In some instances I supervised the killings of these unworthy inmates by injections of phenol, at the request of the inmates, in the hospital assisted by several inmates. Dr. Ding came once and said I was not doing it correctly, and performed some of the injections himself, killing three inmates who died within a minute.

"The total number of traitors killed was about 150, of whom 60 were killed by phenol injections, either by myself or under my supervision, and the rest were killed by beatings, etc., by the inmates."

EUTHANASIA PROGRAM

The details of the Euthanasia Program have been discussed by us at length in dealing with the charges against certain other defendants; consequently they will not be repeated here.

In the Hoven pre-trial affidavit, portions of which were quoted while discussing gas oedema serum experimentation, the defendant gives us a partial picture of the Euthanasia Program, in the following statement:

"In 1941 Koch, the camp commander, called all the important SS officials of the camp together and informed them that he had received a secret order from Himmler that all mentally and physically deficient inmates should be killed, including Jews. 300 to 400 Jewish prisoners of different nationalities were

sent to the 'euthanasia station' at Bernburg for extermination. I was ordered to issue falsified statements of the death of these Jews, and obeyed the order. This action was known as '14 f 13'."

When the defendant Hoven took the stand in his own defense, he attempted to discredit the effects of the statements contained in his affidavit by testifying that the affidavit was taken as a result of interrogations propounded to him by the prosecution in English, and that he was not sufficiently familiar with the language to be fully aware of the inculpatory nature of the statements he was making.

The Tribunal is not impressed with these assertions. The evidence shows that prior to the war the defendant had lived for several years in the United States, where he had acquired at least an average understanding and comprehension of the English language. When he was on the witness stand, the Tribunal questioned him at length in order to ascertain the extent of his knowledge of English, and in particular, of his understanding of the meaning of the words used by him in his affidavit. As a result of this questioning the Tribunal is convinced that no undue or improper advantage was taken of the defendant in procuring the affidavit, and that at the time of his interrogation by the prosecution, Hoven knew and understood perfectly well the nature of the statements he was making.

The facts contained in the Hoven affidavit were convincingly substantiated by other evidence in the record, the only real difference being that the evidence shows the defendant to have been guilty of even many hundreds more murders than are admitted by him in his affidavit. As stated, in essence, by one of the prosecution witnesses in connection with the subject, Hoven personally killed inmates in the hospital barracks by injection. These people were mostly suffering from malnutrition and exhaustion. Hoven must have killed 1,000 of every nationality. These inmates were killed on the initiative of Hoven with no requests from the illegal camp administration or the political prisoners.

It is obvious from the evidence that throughout his entire service at Buchenwald, Hoven attempted to serve three masters: the SS camp administration, the criminal prisoners, and the political prisoners of the camp. As a result he became criminally implicated in murders committed by all three groups involving the deaths of non-German nationals, some of whom were prisoners of war and others of whom were civilians. In addition to these, he committed murders on his own individual responsibility. There

can be nothing said in mitigation of such conduct. To the extent that the crimes committed by Hoven were not war crimes, they were crimes against humanity.

MEMBERSHIP IN CRIMINAL ORGANIZATION

Under count four of the indictment the defendant is charged with being a member of an organization declared criminal by the judgment of the International Military Tribunal, namely, the SS. The evidence shows that Hoven became a member of the SS in 1934, and remained in this organization throughout the war. As a member of the SS he was criminally implicated in the commission of war crimes and crimes against humanity, as charged under counts two and three of the indictment.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Waldemar Hoven guilty, under counts two, three and four of the indictment.

BEIGLBOECK

The defendant Beiglboeck is charged under counts two and three of the indictment with personal responsibility for, and participation in Sea-Water Experiments.

The defendant Beiglboeck, an Austrian citizen, was a captain in the medical department of the German Air Force from May 1941 until the end of the war. In June 1944, while stationed at the hospital for paratroopers at Tarvis [Tarvisio], Italy, he received orders from his military and medical superior, defendant Becker-Freyseng, to carry out sea-water experiments at Dachau.

The sea-water experiments have been described in detail in those portions of the judgment dealing with defendants Schroeder and Becker-Freyseng.

The defendant Beiglboeck testified that he reported to Berlin at the end of June 1944, where Becker-Freyseng told him the nature and purpose of the experiments. Upon that trip he also reported to and talked with the defendant Schroeder. From these conversations he learned that the prime purpose of the experiments was to test the process developed by Berka for making sea water potable and also to ascertain whether it would be better for a shipwrecked person in distress at sea to go completely without sea water or to drink small quantities thereof.

It appears from the record that the persons used in the experiments were 40 gypsies of various nationalities who had been formerly at Auschwitz but who had been brought to Dachau

under the pretext that they were to be assigned to various work details. These persons had been imprisoned in the concentration camps on the basis that they were "asocial persons." Nothing was said to them about being used as human subjects in medical experiments. When they reached Dachau some of them were told that they were being assigned to the sea-water experiment detail.

Beiglboeck testified that before beginning the experiments he called the subjects together and told them the purpose of the experiments and asked them if they wanted to participate. He did not tell them the duration of the experiments, or that they could withdraw if ever they reached the physical or mental state that continuation of the experiment should seem to them to be impossible. The evidence is that none of the experimental subjects felt that they dared refuse becoming experimental subjects for fear of unpleasant consequences if they voiced any objections.

The defendant testified that pursuant to the order that had been given him, it was necessary that the subjects thirst for a continuous period; and that the question of when, if ever, they should be relieved during the course of the experiment was a matter which he reserved for his own decision.

During the course of the experiments the subjects were locked in a room. As to this phase of the program the defendant testified that "They should have been locked in a lot better than they were, because then they would have had no opportunity at all to get fresh water on the side."

At the trial the defendant produced clinical charts which he said were made during the course of the experiments and which, according to the defendant, showed that the subjects did not suffer injury. On cross-examination the defendant admitted that some of the charts had been altered by him since he reached Nuernberg in order to present a more favorable picture of the experiments.

We do not think it necessary to discuss in detail what is shown by the charts either before or after the fraudulent alterations. We think it only necessary to say that a man who intends to rely on written evidence at a trial does not fraudulently alter such evidence from any honest or worthy motive.

The defendant claims that he was at all times extremely reluctant to perform the experiments with which he is charged, and did so only out of his sense of obedience as a soldier to superior authority. Under Control Council Law No. 10 such fact does not constitute a defense, but will be considered, if at all, only in mitigation of sentence.

In our view the experimental subjects were treated brutally. Many of them endured much pain and suffering, although from the evidence we cannot find that any deaths occurred among the experimental subjects.

It is apparent from the evidence that the experiments were essentially criminal in their nature, and that non-German nationals were used without their consent as experimental subjects. To the extent that the crimes committed by defendant Beiglboeck were not war crimes they were crimes against humanity.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Wilhelm Beiglboeck guilty under counts two and three of the indictment.

POKORNY

The defendant Pokorny is charged with special responsibility for, and participation in, criminal Sterilization Experiments, as set forth in counts two and three of the indictment.

It is conceded by the prosecution that, in contradistinction to all other defendants, the defendant Pokorny never held any position of responsibility in the Party or State Hierarchy of Nazi Germany. Neither was he a member of the Nazi Party or of the SS. Formerly a Czechoslovakian citizen, he became a citizen of the Greater German Reich under the Munich Agreement of October 1938. During the war he served as a medical officer in the German Army and attained the rank of captain.

The only direct evidence bearing on the guilt of the defendant is a letter written by Pokorny to Himmler in October 1941, suggesting the use of a drug, caladium seguinum, as a possible means of medical sterilization of peoples of the occupied territories. The letter follows:

"To the Reich Commissioner for the Consolidation of German Folkdom,
SS Himmler, Chief of Police,
Berlin.

"I beg you to turn your attention to the following arguments. I have requested Professor Hoehn to forward this letter to you. I have chosen this direct way to you in order to avoid the slower process through channels and the possibility of an indiscretion in regard to the eventually enormous importance of the ideas presented.

"Led by the idea that the enemy must not only be conquered but destroyed, I feel obliged to present to you, as the Reich Commissioner for the Consolidation of German Folkdom the following:

"Dr. Madaus published the result of his research on a *medicinal sterilization* (both articles are enclosed). Reading these articles, the immense importance of this drug in the present fight of our people occurred to me. *If, on the basis of this research, it were possible to produce a drug which, after a relatively short time, effects an imperceptible sterilization on human beings, then we would have a new powerful weapon at our disposal.* The thought alone that the 3 million Bolsheviks, at present German prisoners, could be sterilized so that they could be used as laborers but be prevented from reproduction, opens the most far-reaching perspectives.

"Madaus found that the sap of the Schweigrohr (caladium seguinum) when taken by mouth or given as injection to male but also to female animals, after a certain time produces permanent sterility. The illustrations accompanying the scientific article are convincing.

If my ideas meet your approval the following course should be taken:

1. Dr. Madaus must not publish any more such articles. (The enemy listens!)
2. Multiplying the plant (easily cultivated in greenhouses!)
3. Immediate research on human beings (criminals!) in order to determine the dose and length of the treatment.
4. Quick research of the constitutional formula of the effective chemical substance in order to
5. produce it synthetically if possible.

"As German physician and Chief Physician of the Reserves of the German Wehrmacht, retired (d.R.a.D), I undertake to keep secret the purpose as suggested by me in this letter.

"Heil Hitler!

[Signed] "Dr. Pokorny

"Specialist for skin and venereal diseases.

"Komotau, October 1941."

The defendant has attempted to explain his motives for sending the letter by asserting that for some time prior to its transmittal he had known of Himmler's intentions to sterilize all Jews and inhabitants of the eastern territories, and had hoped to find some means of preventing the execution of this dreadful program. He knew, because of his special experience as a specialist in skin and venereal diseases, that sterilization of human beings could not be effected by the administration of caladium seguinum. He thought, however, that if the articles written by Madaus could be brought to the attention of Himmler, the latter might turn

his attentions to the unobtrusive method for sterilization which had been suggested by the articles and thus be diverted, at least temporarily, from continuing his program of castration and sterilization by well-known, tried and tested methods. Therefore the letter was written—so explained the defendant—not for the purpose of furthering, but of sabotaging the program.

We are not impressed with the defense which has been tendered by the defendant and have great difficulty in believing that he was motivated by the high purposes which he asserted impelled him to write the letter. Rather are we inclined to the view that the letter was written by Pokorny for very different and more personal reasons.

Be that however as it may, every defendant is presumed to be innocent until he has been proved guilty. In the case of Pokorny the prosecution has failed to sustain the burden. As monstrous and base as the suggestions in the letter are, there is not the slightest evidence that any steps were ever taken to put them into execution by human experimentation. We find, therefore, that the defendant must be acquitted—not because of the defense tendered, but in spite of it.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Adolf Pokorny is not guilty of the charge contained in the indictment, and directs that he be discharged from custody under the indictment when the Tribunal presently adjourns.

OBERHEUSER

The defendant Oberheuser is charged under counts two and three of the indictment with Sulfanilamide, Bone, Muscle and Nerve Regeneration and Bone Transplantation, and Sterilization Experiments.

The charge of participation in the sterilization experiments has been abandoned by the prosecution and will not be considered further.

The defendant Oberheuser joined the league of German Girls (BDM) in 1935 and held the rank of "block leader." In August 1937 she became a member of the Nazi Party. She was also a member of the Association of National Socialist Physicians. She volunteered for the position of a camp doctor in the women's department of the Ravensbrueck concentration camp in 1940 and remained there until June 1943. She was then given a position as assistant physician in the Hohenlychen Hospital under the defendant Gebhardt.

Regarding her connection with both the sulfanilamide and the bone, muscle, and nerve regeneration and bone transplantation experiments, the same facts are applicable as were presented in the cases of the defendants Fischer and Gebhardt. Fischer and Oberheuser were Gebhardt's active agents in carrying out these experiments. They did a great deal of the actual work. They personally committed atrocities involved in the experiments.

A few facts produced in evidence regarding the special work of defendant Oberheuser in these experiments are entitled to comment.

Oberheuser was thoroughly aware of the nature and purpose of the experiments. She aided in the selection of the subjects, gave them physical examinations, and otherwise prepared them for the operation table. She was present in the operating room at the time of the operations and assisted in the operational procedures. She faithfully cooperated with Gebhardt and Fischer at the conclusion of each operation by deliberately neglecting the patients so that the wounds which had been given the subjects would reach the maximum degree of infection.

Testimony of the witness Sofia Maczka, an X-ray technician in the camp at Ravensbrueck, is that deaths occurred among the experimental subjects. Most of these deaths could have been averted by proper post-operative care, proper treatment, or by the amputation of badly infected members.

In one instance—the case of a Krystina Dabska—small pieces of bone were cut from both legs of the subject. Witness Maczka testified that she read on the cast of the patient that on one leg periosteum had been left and on the other leg periosteum had been removed together with bone. Because she was of the opinion that the purpose of the experiment had been to check regeneration, the witness asked the defendant Oberheuser, "How do you expect to get regeneration of bone if the bones are removed with periosteum?" To this the defendant replied, "That is just what we want to check."

Nonconsenting non-German nationals were used in at least some of the experiments. Many of them died as a result of the experiments. To the extent that the crimes committed were not war crimes, they were crimes against humanity.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Herta Oberheuser is guilty under counts two and three of the indictment.

FISCHER

The defendant Fischer is charged under counts two and three with Sulfanilamide and Bone, Muscle and Nerve Regeneration and Bone Transplantation Experiments.

Fritz Fischer joined the Allgemeine SS in February 1934 and the NSDAP in 1939. In the latter year he joined the Waffen SS and was assigned to the SS unit in the Hohenlychen Hospital as a physician subordinated to the defendant Gebhardt. In June 1940 he was transferred to the SS regiment Leibstandarte "Adolf Hitler", and returned the same year to Hohenlychen as assistant physician to Gebhardt, where he remained until May 1943. He then served as a surgeon on both the eastern and western fronts and, after having been wounded in August 1944, came back to Hohenlychen as a patient. In December 1944 he was assigned to the Charity Hospital in Berlin, but returned again to Hohenlychen as Gebhardt's assistant in April 1945. In the Waffen SS he attained the rank of Sturmbannfuehrer (major).

SULFANILAMIDE EXPERIMENTS

Gebhardt, as shown elsewhere in this judgment, was in personal charge of the work being done in this field by his assistant Fritz Fischer. That the latter performed most of the sulfanilamide experimental work is not denied by him; on the contrary, he freely admits it. The defense offered in his behalf is twofold; that the experimental subjects were to have alleged death sentences, then impending, commuted to something less severe in the event they survived the experiments; and that defendant Fischer was acting under military orders from his superior officer, Gebhardt. These defenses have been considered and separately rejected in other parts of this judgment.

It is true, however, that paragraph 4 (b) of Article II of Control Council Law No. 10 reads:

"The fact that any person acted pursuant to the order of his government, or of a superior, does not free him from responsibility for crime, but may be considered in mitigation."

It is unnecessary to take up and answer all the arguments that might be presented upon whether or not Fischer is entitled to a mitigation of sentence due to the circumstances claimed as the basis of such mitigation. He acted with most complete knowledge that what he was doing was fundamentally criminal, even though directed by a superior. Under the circumstances his defense must be rejected, and he must be held to be guilty as charged.

BONE, MUSCLE AND NERVE REGENERATION AND BONE TRANSPLANTATION

These experiments have been discussed in connection with the case of the defendant Gebhardt, who was assisted therein by the defendant Fischer. Testimony and exhibits now constituting parts of the record in this case reveal that Fischer has offered no substantial defense to the charge. Indeed, criminal connection with these experiments is admitted, and the admission includes the defendant's own testimony that he personally performed at least some of the operations. It only remains for the Tribunal to hold that on the specification above-mentioned the defendant Fischer is guilty.

To the extent that the crimes committed by defendant Fischer were not war crimes they were crimes against humanity.

MEMBERSHIP IN CRIMINAL ORGANIZATION

Under count four of the indictment Fritz Fischer is charged with being a member of an organization declared criminal by the judgment of the International Military Tribunal, namely, the SS. The evidence shows that Fritz Fischer became a member of the SS in 1934 and remained in this organization until the end of the war. As a member of the SS he was criminally implicated in the commission of war crimes and crimes against humanity, as charged under counts two and three of the indictment.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Fritz Fischer is guilty under counts two, three, and four of the indictment.

[signed] WALTER B. BEALS
PRESIDING JUDGE.
HAROLD L. SEBRING
JUDGE.
JOHNSON T. CRAWFORD
JUDGE.