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M I L I T A R Y T R I B U N A L N O . I

CASE NO. 1

CLOSING BRIEF FOR  
THE UNITED STATES OF AMERICA  
AGAINST  
KARL BRANDT

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*1*  
Nurnberg,  
16 June 1947.

## INTRODUCTION

It is alleged, in essence, under Count I of the Indictment, that Karl Brandt conspired and agreed with others, pursuant to a common design, to perform medical experiments on involuntary human subjects; under Counts II and III (War Crimes and Crimes Against Humanity, respectively), that he was a principal in, accessory to, ordered, abetted, took a consenting part in, and was connected with plans and enterprises involving medical experimentation on involuntary human subjects and the execution of the so-called "euthanasia" program; under Count IV, that he was a member, after 1 September 1939, of the SS, an organization declared to be criminal by the International Military Tribunal.

The acts recognized as War Crimes and Crimes against Humanity are set forth in Paragraphs 1 (b) and (c) of Article II of Control Council Law No. 10. Membership in an organization declared criminal by the International Military Tribunal is defined as a crime in Paragraph 1(d) of the same article.

The criteria of criminality are set forth in Paragraph 2 of Article II of Control Council Law No. 10, which reads in part as follows:

"2. Any person without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in Paragraph 1 of this Article, if he was (a) 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 .....".

I. POSITIONS OF RESPONSIBILITY

The defendant Karl Brandt held positions of great power and responsibility in the state medical services of Nazi Germany.

He joined the Nazi party in January 1932 and the SS in 1934. In the latter year, at the age of 30, he became the attending physician to Adolf Hitler and retained this position until 1945. His close personal relationship to the Fuehrer explains his rapid rise to power. On the day Poland was invaded in 1939, Hitler ordered Brandt and Philipp Bouhler to carry out the so-called euthanasia program. By Fuehrer decree dated 28 July 1942, he was appointed General Commissioner of the Health and Medical Services and was directly responsible to Hitler. Brandt was the only German medical officer who had such direct responsibility. By decree of 25 August 1944 he was appointed Reich Commissioner of the Health and Medical Services, a rank equivalent to that of a Reich Minister. He attained the rank of Gruppenfuehrer (Major General) in the SS. (NO-475, Pros. Ex. 4, R. 89 et seq.). Brandt was also a member of the Reich Research Council from 1942 until the end of the war. (NO-1730, Pros. Ex. 441, R. 2091).

Aside from his personal influence and intimate connection with Hitler, Brandt's greatest power in the medical services came from his position as General Commissioner and later Reich Commissioner of the Health and Medical Services. By the decree of 28 July 1942 Hitler established for the first time a medical and health official under his direct control. This decree also commissioned the defendant Handloser as Chief of the Medical Services of the Wehrmacht while, in the field of civilian health administration, Dr. Leonardo Conti, the Secretary of State for

Health and the Reich Health Leader, was made responsible for "coordinated measures". As to Brandt, the decree stated:

"3. I empower Prof. 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.

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." (emphasis supplied) (NO-080, Pros. Ex. 5, R. 93).

Thus, Brandt was given extensive powers over both Handloser and Conti and through them over the Army, Navy, Luftwaffe, Waffen SS, and civilian medical services. He was subordinated to no one save the Fuehrer; he was the man to act for the Fuehrer in medical matters. It is also significant that the decree authorized Brandt "to intervene in a responsible manner" and directed that he be kept informed of "fundamental events". It is difficult to imagine what could be more fundamental than a policy of performing medical experiments involving torture and death on involuntary human subjects.

On 5 September 1943, Hitler issued a second decree empowering Brandt "with centrally coordinating and directing the problems and activities of the entire Medical and Health Service according to instructions". The order expressly stated that the General Commissioner's authority covered the field of medical science and research. (NO-081, Pros. Ex. 6, R. 94). However, it is apparent that this decree was issued to clarify rather than extend the powers of the General Commissioner, as Brandt had the right (and, indeed, duty) "to intervene in a responsible manner" pursuant to the decree of July, 1942.

Finally, on 25 August 1944, the Fuehrer elevated Brandt to Reich Commissioner for the Health and Medical Services and stated that in this capacity "his office ranks as highest Reich authority". He was again 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." (NO-082, Pros. Ex. 7, R. 95). See also the organization chart drawn by Brandt. (NO-645, Pros. Ex. 3, R. 88 et seq.) This decree was issued to resolve a struggle for power between Brandt and Conti. (Brandt, R. 2602). Certainly, the decree does no more than give Brandt a more august title and restate his powers, powers he had already received on 28 July 1942. Brandt testified that it merely "strengthened" his position. (R. 2602).

In this same connection, it is important to note certain provisions of the Service Regulation for the Chief of the Medical Services of the Wehrmacht issued to the defendant Handloser by Keitel on 7 August 1944. Paragraph 2 and 3 of Section II (Duties) thereof reads in part as follows:

"2. The Chief of the Medical Services of the Wehrmacht will direct the total Medical Services of the Wehrmacht as far as the special field is concerned, with regard for the military instructions of the Chief of the High Command of the Armed Forces and the general rules of the Fuehrer's Commissioner General for Medical and Health Departments.

"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." (NO-227, Pros. Ex. 11, R. 103)

Thus, we see that Handloser was ordered by this Service Regulation to follow the rules of General Commissioner Brandt and to inform him of the "basic events" in the field of the Medical Services of the Wehrmacht. This field covered the medical services of the Army, Navy,

Luftwaffe, and Waffen SS. This regulation was issued on 7 August 1944 to replace one of 28 July 1942. (R.102). On the latter date, Handloser was appointed Chief of the Medical Services of the Wehrmacht by the same Fuehrer decree which made Brandt General Commissioner; on 7 August 1944, Handloser relinquished his position as Chief of the Army Medical Inspectorate which he had held since February 1941. (NO-443, Pros. Ex. 10, R. 98). It must therefore be considered whether the Service Regulation of 28 July 1942, which is not available, also required Handloser to report to Brandt. No other conclusion can be drawn. Paragraph 5 of the Fuehrer Decree of 28 July 1942 explicitly orders that Brandt "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! Thus, as early as 28 July 1942, Brandt was the technical or medical superior of Handloser and Conti who were ordered to report to him. In Paragraph 6 of his affidavit, the defendant Handloser expressly states that after he became Chief of the Medical Services of the Wehrmacht on 28 July 1942, "Dr. Karl Brandt, General Commissioner for Medical and Health Matters, and later Reich Commissioner for Medical and Health Matters, was my immediate superior in medical affairs". (NO-443, Pros. Ex. 10, R.99). See, also the organizational chart of the Medical Services of the Wehrmacht drawn by Handloser. (NO-282, Pros. Ex. 9, R. 97).

The extensive power and authority of Karl Brandt is proved by other evidence in the record. Schroeder stated in Paragraph 8 of his affidavit that "Karl Brandt, Handloser, and Rostock were informed of the medical research work conducted by the Luftwaffe". (NO-449, Pros. Ex. 130, R. 474).

Moreover, the organizational charts of the Medical Service of the Luftwaffe drawn by Schroeder show that Brandt had supervisory authority over the Medical Service of the Luftwaffe both before 1944 when Hippke was in command and after 1944 when Schroeder was in command. (NO-418, Pros. Ex. 12; NO-419, Pros. Ex. 13, R. 105).

The same fact with respect to the Medical Service of the SS is proved by the organizational charts drawn by Krugowsky. (NO-416, Pros. Ex. 22; NO-417, Pros. Ex. 23, R. 121). His power was such that he could relieve all German physicians from the obligations of the physician-patient relationship and could order such physicians to report serious illnesses of high governmental officials to him. (NO-119, Pros. Ex. 445, R. 2586).

So much for Karl Brandt's position as General Commissioner and Reich Commissioner of the Health and Medical Services. It has been established that Brandt became a member of the Reich Research Council in 1942 (NO-1730, Pros. Ex. 441, R. 2091; Brandt, R. 2598). The purpose of the Reich Research Council was set forth in a Fuehrer decree of 9 June 1942, which reads in part as follows:

"The necessity to expand all available forces to highest efficiency in the interest of the state requires, not only in peacetime but also, and especially, in wartime, the concentrated effort of scientific research and its channellization toward the goal to be aspired.

"Therefore, I commission the Reich Marshall Hermann Goering to establish as an independent entity a Reich Research Council, which is to serve this purpose, to take over its chairmanship himself and to give it a charter.

"Leading men of science above all, are to make research fruitful for warfare by working together in their special fields." (NO-894, Pros. Ex. 38, R. 144)

Brandt was a member of the Presidential Council (Prasidialrat) of the Reich Research Council, a policy

making body of 21 members made up of cabinet ministers, high ranking military officers, and high ranking party members. (Brandt, R. 2605). Himmler, Bormann, Conti, Keitel, and Milch were co-members with Brandt. At least from the time Rostock assumed office under Brandt as head of the Office for Science and Research, (following the Fuehrer Decree of 5 September 1943), the Reich Research Council was subject to a degree of supervision by Brandt as General Commissioner. See the organization chart of Brandt's office (NO-645, Pros. Ex. 3, R. 88).

The proof has shown that the Reich Research Council supported and furthered medical experimentation on involuntary human subjects - concentration camp inmates. As early as December 1942, the Reich Research Council was asked to pass judgment by the Reichsminister of Finance on a request for research funds by Reichsarzt SS Grawitz. Dr. Mentzel of the Reich Research Council approved of this allocation of funds on 25 March 1943 saying: "As far as they, to a smaller part, are meant for the extension of scientific research possibilities they pertain exclusively to such matters which can be carried out only with the material (prisoners) accessible to the Waffen SS and therefore cannot be undertaken by any other research agency." (002-PS, Pros. Ex. 39, R.152). (Transcript is incorrect at this point and reference should be made to Document Book No. 1). The Prosecution called the Tribunal's attention to the finding of the International Military Tribunal in Case No. 1 which reads as follows:

"In connection with the administration of the concentration camps, the SS embarked on a series of experiments on human beings which were performed on prisoners of war or concentration camp inmates. These experiments included freezing to death and killing by poison bullets. The SS was able to obtain an allocation of Government funds for this kind of research on the grounds that they had access to human material not available to other agencies." (R. 153).

The activities of the Reich Research Council in criminal experimentation on involuntary human subjects were not limited to approving funds for research by the SS. Research assignments were commissioned by it, involving experiments on concentration camp inmates. Thus, in the autumn of 1943, Rascher received an assignment from the Reich Research Council to conduct dry freezing experiments, while Hirt was carrying out the mustard gas experiments in Natzweiler with its support. (NO-690, Pros. Ex. 120, R.371, et seq; Doc. NO-432, Pros. Ex. 119, R. 369). An interest was also shown in the blood coagulant developed by Rascher in Dachau, during experiments with which concentration camp inmates were shot. (NO-613, Pros. Ex. 243, R. 962). And, together with the Luftwaffe, the Reich Research Council sponsored typhus, yellow fever, and jaundice experiments by Haagen on inmates of the Natzweiler Concentration Camp. (NO-137, Pros. Ex. 169, R. 737). Such were the activities of the Reich Research Council.

There can be no doubt that Brandt was informed of these activities. Indeed, he had personal contact with the gas research on concentration camp inmates by Hirt. (infra) There were only two doctors on the Presidential Council (Brandt and Conti) and only four doctors in the scientific departments and fields of plenipotentiaries (Schreiber, Blome, Sauerbruch, and Jotten) (Brandt, R. 2607). Certainly, each of these men knew what the other was doing within the Council.

These then were the positions of responsibility of the defendant Karl Brandt: personal physician to Adolf Hitler, Gruppenfuehrer in SS, co-director of the euthanasia program, General Commissioner and Reich Commissioner of the Health and Medical Services, and member of the Presidential Council

of the Reich Research Council. Brandt used the foregoing positions, his personal influence, and his intimate connection with the Fuehrer in a manner which involved the commission of the War Crimes and Crimes Against Humanity set forth in the Indictment.

## II PERSONAL PARTICIPATION IN CRIMINAL EXPERIMENTATION

It is not to be expected that a man in the position of Brandt would stoop to performing criminal experiments himself. This was left to willing and ambitious hands at a lower level. The proof has clearly shown, however, that he personally encouraged experimentation on human beings without their consent. And what is more culpable, with full knowledge that concentration camp inmates were being systematically experimented upon by doctors of the Luftwaffe, Army, SS, and civilian health sector, he never used the tremendous power that was his to end this perversion which resulted in the murder, torture, and inhumane treatment of thousands of helpless men, women, and children.

The gravamen of the charge under Paragraph 6 of Count II (War Crimes) and Paragraph 11 of Count III (Crimes Against Humanity) is that 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 murders, brutalities, cruelties, tortures, atrocities, and other inhumane acts were committed. In Paragraph 6 the experimental subjects are alleged to have been civilians and members of the armed forces of nations then at war with the German Reich, while in Paragraph 11, German civilians and nationals of other countries. Therein, for purposes of this case, lies the only significant difference in proof of ultimate facts. A War Crime

is necessarily a Crime Against Humanity, while a Crime Against Humanity is a War Crime only if committed against a civilian from occupied territory or a prisoner of war.

Under Paragraph 6, twelve different types of experiments are particularized. Of these, Brandt is charged with special responsibility for and participation in ten, namely, the high altitude, freezing, malaria, gas, sulfanilamide, bone, muscle and nerve regeneration and bone transplantation, seawater, epidemic jaundice, sterilization and typhus experiments. In order to simplify the issues, the Prosecution has withdrawn its charge of participation in the high altitude experiments.

It is not incumbent upon the Prosecution to show that Brandt was familiar with all of the details of all of these experiments. It is sufficient to prove that he knew or should have known of the systematic use of involuntary human subjects for medical experiments by agencies over which he exercised a substantial degree of power and authority. (Application of Yamashita, 66 S.Ct. 340, 377 (1946).) This and more the Prosecution has proved.

The experiments in which there is direct evidence of participation by Brandt will be discussed first.

A. SULFANILAMIDE EXPERIMENTS (Indictment, Par. 6 (E))

Experiments with sulfanilamide were conducted in the Ravensbruck Concentration Camp from the middle of 1942 until August 1943. For a detailed statement on the criminality of these experiments see the Prosecution's brief on Gebhardt. These experiments were performed by the defendants Fischer and Oberheuser, among others, under the direction of the defendant Gebhardt. (NO-228, Proc. Ex. 206, R. 767). The experimental subjects were predominately Polish women, some of whom were active in the resistance

movement. (Brael-Later, R. 787; Karolewska, R. 816, Dzido, R. 890; Kusmierczuk, R. 857). They clearly did not volunteer. (Brael-Plater, R. 789; Karl, R. 823; Dz. R. 845; Kus. R. 861, Magzka, R. 1451). The defendants Fischer and Opperheuser admitted that at least three persons died as a result of the experiments. (NO-477, Pros. Ex. 207, R. 778; NO-487, Pros. Ex. 208, R. 780). Other evidence, however, proves that five of the subjects died as result of the experiments and six were executed later. (Dz. R. 845; Kus, R. 862).

A full report on the sulfanilamide experiments was given by Gebhardt and Fischer in the Third Meeting of the Consulting Physicians of the Wehrmacht, held from 24 to 26 May 1943 at the Military Medical Academy in Berlin. Karl Brandt was one of the honored guests at this meeting and he heard the lectures by Gebhardt and Fischer. (Brandt, R. 2368). Gebhardt testified that he insisted on making a complete report on these experiments at the meeting; that there was considerable discussion about the content of the lecture with the person in charge of the program for the meeting; that he remembered this person to have been the defendant Rostock but that since Rostock denied it, it might have been Schreiber; that the program for the meeting listed his lecture under the title "Special Experiments", that this indicated he was trying to show something unusual; and that the whole subject was discussed with Rostock or Schreiber during the arrangements for the meeting of May 1943 (R. 4103-6). There had been continuous correspondence concerning the experiments between Gebhardt, Grawitz, and Rostock or Schreiber. Grawitz had a complete report on the experiments when he negotiated with Rostock or Schreiber. (R. 4107). Gebhardt testified quite clearly to the effect that he was opposed to any camouflage and that he was

Anxious to bring the whole subject of these experiments into the open. When he gave the introduction to the lecture by Fischer, he specially stated that the experiments had been carried out on human beings. (R.4109). Gebhardt does not definitely remember, according to his testimony, whether he said the experimental subjects were concentration camp inmates. The defendant Fischer has stated that this was made clear. (NO-472, Pros. Ex. 243, R. 941;cf., Fischer R. 4365). Gebhardt stated that the clinical details of the experiments were explained in great detail. The meeting was told that 75 persons had been experimented on, that the infections had been artificially induced, that various drugs had been used in treating the infections, that surgical treatment was used, and that three persons died. (Gebhardt, R. 4109-10).

Brandt was informed about the sulfanilamide experiments even before the meeting in May 1943. Gebhardt testified that on an occasion prior to the meeting he met Rostock and Brandt in a railroad station, and that he discussed publication of the results of the experiments with them. (R. 4222). Gebhardt affirmed that during an interrogation of 5 November 1946, he stated that:

"I am sure I once told Brandt, without any order, that this anonymity of the whole matter is rather nonsensical. Now, he claims he cannot remember though, and I once told Rostock, 'Do you realize what we are reporting? I do not know what Grawitz wrote to you. I am telling you Himmler ordered this, and that concerned the question of sulfanilamide that is being done. These experiments are to be performed, but I give the scientific advice only because German science can make use of it.'"

Gebhardt was asked during the same interrogation whether it was made clear to Rostock and Brandt that the experiments were being made on prisoners and he replied, "Evidently". (R. 4222).

Having acquired knowledge, Brandt was not privileged to remain silent; he was under a duty to act. Brandt did nothing. He did not investigate the experiments; he did not voice any objection at the meeting; he did not ask for a report from the SS; he did not report to the Fuehrer. He took a "consenting part" in this criminal use of helpless concentration camp inmates. In view of his personal experience with German justice, he now admits that hundreds of thousands of concentration camp inmates were unjustly incarcerated. (R. 2622). Concentration camp conditions were not strange to Brandt as he concedes having visited Sachsenhausen, Oranienburg, Mauthausen, and Natzweiler. (R. 2622).

Even though it be assumed that the experiments were completed at the time Brandt obtained knowledge, his inactivity constitutes him an accessory after the fact. But such was not the case. As late as August, 1943, six Polish women were experimentally operated on by force in the bunker at Ravensbruck. (NO-864, Pres. Ex. 229, R. 923). These persons could have been saved torture and mutilation if one man of authority had objected at the meeting in May, 1943. Moreover, an investigation of the sulfonilamide experiments would have brought to light the bone, muscle, and nerve experiments (Indictment, Par. 6(F) conducted by the same persons at the same place. Instead, four days later, Brandt was requesting concentration camp inmates for epidemic jaundice experiments. (See, infra.).

**B. EPIDEMIC JAUNDICE EXPERIMENTS (Indictment, Par. 6 (H))**

Following the attack on Russia, epidemic jaundice (hepatitis epidemica) became a disease of major proportions in the German Wehrmacht. (Gutzeit, R. 2707). In some units,

casualties up to 60% were reported from this disease. (NO-010, Pros. Ex. 187, R. 735). Accordingly, an intensive effort was made to discover the causes of and inoculations against epidemic jaundice. Dohmen and Gutzeit of the Army Medical Inspectorate and Haagen of the Medical Service of the Luftwaffe were among the doctors working on this subject.

Dohmen was one of the first to isolate a virus which was claimed to be the cause of jaundice. This was accomplished by inoculating animals with germs taken from human beings suffering from the disease. (Gutzeit, R. 2695). However, considerable divergence of opinion still existed as to whether jaundice was caused by bacteria or a virus. (Gutzeit, R. 3045). On 1 June, 1943, Grawitz - Reich Physician of the SS -asked Himmler's consent to placing concentration camp inmates at the disposal of Karl Brandt for jaundice research. He stated in his letter that Brandt was supporting the work of Dohmen and it was thought necessary to infect human beings with a jaundice virus cultivated in animals. Grawitz advised that cases of death among the experimental subjects were to be anticipated. (NO-010, Pros. Ex. 187, R. 735). Considerable stress by the defense has been put on the contention that jaundice is not usually a fatal disease. Be this as it may, Grawitz did not state whether the deaths were to be brought about for purpose of performing autopsies (as in the case of the high altitude experiments) or whether they were to be expected from the disease itself (as in the case of the typhus experiments).

Himmler consented to the use of 8 Polish Jews who had been condemned to death in the Auschwitz Concentration Camp. (NO-011, Pros. Ex. 188, R. 737). The experiments were carried out by Dohmen in the Sachsenhausen Concentration

Camp, and some of the victims died as a result. (NO-371, Pros. Ex. 186, R. 733). Even the defense witness Gutzeit admitted that Dohmen worked in Sachsenhausen, but states that this was merely a ruse to avoid turning over the jaundice virus to Grawitz and, in reality, no infection experiments were performed. It was not explained by the witness why his collaborator Dohmen, who was not a member of the SS and in no way subordinated to Grawitz, should have engaged in such ridiculous scientific "horse play". (Gutzeit, R. 2758).

Moreover, Brandt was implicated in the jaundice experiments by Haagen and Dohmen in 1944. These are described in the Prosecution's brief on Handloser. At a meeting with representatives of the Wehrmacht and Reich Research Council on 26 August 1944, Rostock as Chief of the Office for Science and Research designated as "urgent" the research of Haagen on hepatitis epidemica. (NO-692, Pros. Ex. 457, R. 3408).

C. TYPHUS EXPERIMENTS (Indictment, Par. 6 (J))

The attack against Russia in 1941 gave rise to many military medical problems, not the least of which was typhus. The disease reached serious proportions in the fall of 1941 and typhus vaccine was so scarce that only doctors, nurses, and other personnel in exposed positions could be given protective inoculations. (Schmidt, R. 3160-1).

To alleviate the shortage of vaccine, Handloser, as Army Medical Inspector, recommended that production be placed in the hands of the large scale pharmaceutical industry. (NO-1323, Pros. Ex. 452, R. 3082). Two basic types of vaccine were produced on a substantial scale: The Weigl vaccine from the intestines of lice by the

Typhus and Virus Institute of the OKH at Cracow (and later Lemberg) and the Cox, Gildemeister, Haagen vaccine from cultures in chicken eggs by the Behring works of I.G. Farben at Marburg and the Robert Koch Institute in Berlin. The Weigl vaccine had long since proved its value but the efficiency of the egg vaccine was not established. (NO-732, Pros. Ex. 451, R. 3060). At a conference on 29 December 1941 participated in by Handloser, Conti, Gildemeister, and Mrugowsky, it was decided to determine the effectiveness of the egg vaccine by experiments on human beings. (NO-265, Pros. Ex. 287, R. 1134; compare Handloser's statement, NO-732, supra).

As a result of this decision, the experimental station in the Buchenwald Concentration Camp was established and experiments to test the effectiveness of various vaccines by artificially infecting inmates, without their consent, were performed from January 1942 until early in 1945. (Kogon, R. 1154 et seq.).

The problem of typhus vaccine production and allocation was obviously a matter within the jurisdiction of Brandt after his appointment as General Commissioner by the Fuehrer Decree of 28 July 1942. A clearer case of coordination of material cannot be found. Handloser, had primary control over vaccine distribution. (Handloser, R. 3074, 3090; compare the testimony of Schroeder, R. 3642, 3643). Both Handloser and Conti were required to report on basic events to Brandt. Since production of the egg vaccine was dependent on research to determine its effectiveness, the two cannot be divorced.

The Buchenwald experiments were reported on by Dr. Ding-Schuler at the meeting of the Consulting Physicians of the Wehrmacht in May 1943. (NO-923, Pros. Ex. 436, R. 2063).

Brandt admitted his presence at this meeting. (Brandt, R. 2367-8). While Brandt may not have heard the report itself since it was delivered to the section on hygiene, there can be no reasonable doubt that he heard of it. Rose raised objections to the character of the Buchenwald experiments and this was surely a matter which went beyond the walls of the lecture room. Kogon testified that Ding was furious about Rose's attack. (Kogon, R. 1176). Moreover, the affiant Arthur Dietzsch, kapo in the experimental station at Buchenwald, stated that Ding told him that Brandt had visited Buchenwald. (NO-1314, Pros. Ex. 433, R. 2040).

Dr. Eugene Haagen, Hygienist for Air Fleet "Reich" and a medical officer of the Luftwaffe, also conducted typhus experiments on inmates of the Natzweiler Concentration Camp. (Schmidt, R. 1368 et seq.). These experiments were carried out for the Luftwaffe and the Reich Research Council. (NO-129, Pros. Ex. 308, R. 1403; NO-137, Pros. Ex. 189, R. 737). Rostock admitted that the office for Science and Research received a copy of Haagen's report to the Reich Research Council, which was Doc. NO-138, Pros. Ex. 300. (Rostock, R. 3311). The typhus research of Haagen was classified urgent at a meeting of the Office for Science and Research in August 1944 attended by Rostock and members of the Reich Research Council and the Wehrmacht. (NO-692, Pros. Ex. 457, R. 3408; Rostock, R. 3409). Brandt was a member of the Reich Research Council and chief of Rostock (supra). See also the affidavit of Rudolf Brandt, (NO-370, Pros. Ex. 294, R. 1385).

D. Gas Experiments (Indictment, Par. 6 (D))

The treatment of wounds caused by chemical warfare agents was of considerable interest in military medical circles of Germany. On 1 March 1944, the Fuehrer gave Karl Brandt broad powers in the field of chemical warfare. (NO-012, Pros. Ex. 270, R. 1038). The decree itself is not available, but there is no dispute that Brandt's jurisdiction extended to pharmaceutical products to treat gas wounds. So much he admits. (R. 2629). This necessarily involved a determination of the most effective method of treatment. That the decree included medical research on gas wounds can also be concluded from the fact that copies of the decree which Brandt sent to Himmler (NO-012, Pros. Ex. 270, R. 1038) were forwarded to Grewitz and Sievers who had previously worked on this problem. (NO-013a, Pros. Ex. 271, R. 1038; NO-013b, Pros. Ex. 272, R. 1039).

In any event, on 31 March 1944, Sievers reported to Brandt about the research activities of Hirt. (NO-015, Pros. Ex. 275, R. 1039). Hirt had been experimenting on inmates of the Netzeiler Concentration Camp since November 1942. (NO-098, Pros. Ex. 263, R. 1028). For a detailed description of Hirt's experiments, see the brief against Sievers. Brandt admitted that Sievers gave him the written report by Hirt, which was introduced as Prosecution Exhibit 268 (NO-099, R. 1035), and that this report shows on its face that experiments on human beings were performed by him. (Brandt, R. 2626). It is significant to note that the report speaks of heavy, medium, and light wounds caused by Lost. Moreover, Brandt admitted he talked to Hirt in Strassbourg in April after the meeting with Sievers. (R.2610). Approximately 220 inmates of Russian, Polish, Czech, and German nationality were experimented on with gas, of whom about 50 died. They did not volunteer (Holl, R. 1052, 1057). Hirt continued his gas experiments

at Natzweiler during the summer of 1944. (Holl, R. 1058). His gas research was classified "urgent" by Rostock in August 1944. (NO-692, Pros. Ex. 457, R. 3408).

In addition to his participation in the gas experiments of Hirt, Karl Brandt personally furthered the criminal experimentation of Otto Bickenbach. Brandt testified that the gas experiments of Bickenbach came to his attention in the fall of 1943 on the occasion of a visit to Strassbourg to see a cyclotron; that later he helped him to arrange a laboratory; that he assisted him in obtaining experimental animals; that Bickenbach did not conduct experiments on human beings; that he helped him in 1944 after he had established this laboratory. (R. 2619, 2620).

The Sievers' Diary for 1944 contains the following entry under 2 February:

"Met Prof. Bickenbach in Karlsruhe, and he advises that he has put his research work under the control of General Commissioner Prof. Dr. Brandt.

"Discussion with SS Hstuf. Hirt:  
1. Prof. Dr. Bickenbach, without instructions from Hirt and Prof. Stein, contacted General Commissioner Prof. Dr. Brandt concerning the Phosgene experiments and was in Natzweiler with him. Commission is to be withdrawn, for our part Natzweiler is to be closed." (3546-PS, Pros. Ex. 123, R. 2629).

Phosgene is a chemical warfare agent. (Brandt, R. 2630). Brandt admits he was in Natzweiler, but insists that only animal experiments were conducted. (R. 2630). This is in direct contradiction to statements contained in an official war crimes report of the Government of the Netherlands. (NO-1063, Pros. Ex. 328, R. 1498, see the statements of Nales and Roessingh). Josef Kramer, former camp commander at Natzweiler, also stated that Bickenbach experimented on prisoners. (NO-807, Pros. Ex. 185, R. 732).

Brandt testified that he later assisted Bickenbach in establishing a laboratory in Fort Franzeky, which is near Strassbourg, and that he saw animal experiments there. (R. 2630). Bickenbach was a professor at the University of Strassbourg with Hirt and Haagen. (R. 2631).

The Bickenbach reports sent to Karl Brandt not only prove that Bickenbach and his collaborators Helmut Ruhl and Fritz Letz carried out phosgene experiments on 40 Russian prisoners of war, but that four of the subjects were killed as a result. (NO-1852, Pros. Ex. 456, R. 3406). This document completely destroys the credibility of the defendant Brandt.

These reports on the phosgene experiments are designated top military secret and are numbered 2, 3, 4, 5, 6, and 7. They are all addressed to Commissioner General Brandt. These reports obviously cover the same series of experiments which culminated in experiments on 40 prisoners detailed in the 7th report. They were found in the apartment of Professor Bickenbach by French authorities. The purpose of these experiments was to determine the effectiveness of a drug called hexamethylentetramin against phosgene poisoning. Certain preliminary studies are detailed in the 4th report, dated 11 August 1944, and mention is made of tests carried out on a "nervous Russian prisoner of war, who could not be calmed down because of language difficulties.."

The 7th report, which is undated, concerns experiments carried out shortly after 11 August 1944 (the date of the 4th Report) as Strassbourg was over-run by the Allies a few months later. These experiments were performed on "40 prisoners on the prophylactic effect of hexamethylentetramin in cases of phosgene poisoning. Twelve of those were protected orally, 20 intravenously and 8 were used as controls." On the basis of the 4th report, it can only

be concluded that the 40 prisoners referred to were Russian prisoners of war. The experimental subjects are further described as being "persons of middle age, almost all in a weak and underfed condition. On principle, the healthier were used as control, only control number 39 (J. Kei.) and the orally protected experimental subject No. 37 (A. Kei.) had a localized cirrhotic productive tuberculosis of the lungs. With the others, no pulmonary disease could be found." (R. 3401).

The experimental persons were subjected to phorgene poisoning with resulting death to no less than four subjects. (See Table II and III attached to the 7th Report, R. 3404). Other subjects suffered severe lung oedema.

Defense counsel for Karl Brandt urged the possibility that this report was not received by him. Assuming arguendo that the report was not mailed to Brandt, and, if received, not read, the fact remains that the experiments were performed by Bickenbach and his collaborators, whose work was directly controlled by Brandt. (Supra). Were there no other evidence on this point, the circumstance of the report having been addressed to Karl Brandt is sufficient proof of his responsibility. Moreover, the research of both Bickenbach and Hirt was classified urgent by Brandt's Office for Science and Research under Rostock. (NO-692, Pros. Ex. 457, R. 3408).

The continued interest of Brandt in research on chemical warfare agents and his knowledge of experiments on concentration camp inmates is shown by the report dated 31 March 1945 concerning experiments at the Neuengamme Concentration Camp. (NO-154, Pros. Ex. 446, R. 2638). Water decontamination experiments were carried out there on inmates. The report states that the "third series of experiments was carried out with an agent of the Lost group, the asphyxiating

gas Lost, in accordance with the suggestion made by Oberstarzt Dr. Wirth at the conference on 4 December 1944 with Reichkommissar Dr. Brandt."

E. Other Experiments

The proof shows that other experiments on concentration camp inmates were performed with the knowledge of the defendant Karl Brandt.

(1) Sterilization Experiments (Indictment, Par. 6 I)).

By 1941, it was the accepted policy of the Third Reich to exterminate the Jewish population of Germany and the occupied countries. (I.M.T. Judgment, R. 16920 et seq). The defendant Brack describes this as an "open secret" in high party circles. (NO-426, Pros. Ex. 160, R. 527). Trained killers from the euthanasia stations were sent to the East to assist in the program. Indeed, the program itself was used in part to exterminate Jews in Germany. (See infra, under Euthanasia). Because of the pressing need for workers, sterilization of Jews and other so-called undesirable elements was considered as an alternative to outright extermination. X-ray sterilization was proposed to Himmler by Brack. Dr. Horst Schumann, formerly of the Grafeneck euthanasia station, was sent to the Auschwitz Concentration Camp to conduct experiments. Brack states that this could not have been done without the knowledge of Brandt, who was jointly responsible with Bouhler for the euthanasia program. (NO-426, Pros. Ex. 160, R. 527; see also the affidavit of Rudolf Brandt, NO-440, Pros. Ex. 141, R. 507). Moreover, Brandt admits visiting Grafeneck in 1940, although he does not expressly remember meeting Schumann. (Brandt, R. 2480-1). That X-ray sterilizations were actually carried out in Auschwitz is established by the heart-rending testimony of the young Polish Jew, Chaim Balicki, who, after being

subjected to severe X-ray burns, was castrated. (R. 541).

(2) Freezing and Malaria Experiments (Indictment, Par. 6 (B) and (C)).

The Prosecution relies primarily on the position of the defendant Brandt in connection with the charge of responsibility for the freezing and malaria experiments. The malaria experiments were conducted in Dachau from February, 1942 until 1945 by Dr. Klaus Schilling, formerly of the Robert Koch Institute and one of the most famous German scientists on tropical medicine. Over 1000 prisoners were used in these experiments and several hundred died as a result. (NO-856, Pros. Ex. 125, R. 392). It is not to be expected that such a matter went unnoticed in higher medical circles.

The cruel and murderous freezing experiments in Dachau were the subject of two frank reports by Holzloehner, who conducted the experiments with Rascher and Finke, to large groups of military physicians. The first occasion was at a meeting in Nurnberg on cold problems held on 26 and 27 October 1942. This meeting was sponsored by the Luftwaffe, but representatives of other branches of the Wehrmacht were present. (NO-401, Pros. Ex. 93, R. 309). The report by Holzloehner caused something of a sensation as it was made clear that concentration camp inmates were used as subjects and some of them died. (Lutz, R. 272). The second lecture by Holzloehner on the freezing experiments was given at the meeting of Consulting Physicians of the Wehrmacht, called by the defendant Handloser, held at the Military Medical Academy from 30 November to 3 December 1942. Handloser heard Holzloehner speak as the report submitted in evidence shows that he commented on the lectures on cold problems. (NO-922, Pros. Ex. 435, R. 2059). He was under a duty to report such "basic events" to Brandt. (supra).

(3) Seawater Experiments (Indictment, Par. 6 (G)).

As to the seawater experiments conducted by the Luftwaffe in Dachau in 1944, it is sufficient to refer to Schroeder's statement that Brandt, Rostock, and Handloser were informed of medical research carried out by the Luftwaffe. (NO-449, Pros. Ex. 130, R. 471).

(4) Miscellaneous.

Other documents prove that the defendant Brandt not only knew of the systematic use of concentration camp inmates for medical experimentation, but even suggested such experiments himself. His request for inmates for jaundice experiments has already been discussed. On 26 January 1943, he wrote to SS-Obergruppenfuehrer Wolff, chief liaison officer between Himmler and the Fuehrer's headquarters, and asked if it were not possible to carry out nutrition experiments in concentration camps. (NO-1419, Pros. Ex. 447, R. 2641).

On 30 September 1943, Grawitz wrote to Himmler stating that Karl Brandt had requested him to test a new ointment for the treatment of phosphorous burns. Grawitz asked permission to test the drug by artificially creating burns on experimental inmates in Sachsenhausen (Oranienburg). Testing the drug on German civilians burned in air raids was considered too slow. Consent for these experiments was given on 7 October 1943. (NO-1620, Pros. Ex. 449, R. 2646).

It is not without significance that the experiments during which inmates were burned with phosphorous from an incendiary bomb were carried out in Buchenwald beginning on 19 November 1943. (NO-265, Pros. Ex. 287, R. 1127; Kogon, R. 1187-90). There is little doubt that the situs of the experiments proposed by Brandt was changed from Sachsenhausen to Buchenwald. The experimental victims suffered excruciating pain. (Kogon, supra).

On 4 February 1944, the defendant Rudolf Brandt wrote to a member of Himmler's personal staff in Berlin (Baumert) stating that Karl Brandt had asked for 10 prisoners at Oranienburg to test a certain medicine. Karl Brandt had discussed these experiments with Grawitz. The prisoners were made available. (NO-1382, Pros. Ex. 448, R. 2644).

Finally, the proof shows that medical experiments on concentration camp inmates was carried out on such a broad scale that it had come to the ears of Keitel, Chief of the High Command of the Wehrmacht. A memorandum dated 23 February 1944, signed by Klieve of the Army Medical Inspectorate, shows that experiments on human beings were proposed by the defendant Blome in connection with biological warfare. The memorandum states that: "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." (NO-1309, Pros. Ex. 326, R. 2615). It hardly lies in the mouth of the defendant Brandt to deny knowledge of such experimentation when it was known to Keitel himself. The same document shows that Brandt was assisting Blome with the institute at Posen, where the experiments were carried out. See the Prosecution's brief on Handloser for a description of the biological warfare experiments.

III. THE EUTHANASIA PROGRAM (Indictment Par. 9 and 14).

A. Procedure

On 1 September 1939, Hitler charged the defendant Karl Brandt and Reichsleiter Bouhler with the execution of the Euthanasia Program. The letter of appointment stated:

"Reichsleiter Bouhler and Dr. Brandt are charged with the responsibility for 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 the most careful diagnosis of their condition of sickness, be accorded the mercy death." (630-PS, Pros. Ex. 330, R. 1516).

This document in no way limited the application of euthanasia to insane persons but included anyone who might be designated as "incurable".

The witness Monnecke testified that the program was carried out in the following way:

Every German mental institution received form questionnaires from the Reichs Ministry of the Interior which were to be completed on each inmate of the institution and to be sent back to the Reichs Ministry of the Interior. Then experts had to examine the questionnaires after they had been photostated. They had to express their medical opinion on them and had to return them, with their opinion, to the Reichsarbeitsgemeinschaft (Reichs Association). (R. 1872, 1873).

This Reichsarbeitsgemeinschaft cooperated with the "Stiftung", (Charitable Foundation for Institutional Care), and the Patients Transport Corporation. The "Stiftung" was in charge of the financial side of the program, while the Patients Transport Corporation was used when

patients were moved from one institution to another in order to bring them closer to the euthanasia institutions and, finally, into the euthanasia institutions themselves. These three organizations, Reichsarbeitsgemeinschaft, "Stiftung", and Patients Transport Corporation, were in fact camouflaged names for the operation of the Euthanasia Program and were under the supervision of one management. They did not work independently but together. (R. 1874).

As to the questionnaires, three experts received photostated copies and, independently of each other, they expressed their opinion on individual cases. Then so-called top experts expressed their opinion. A list was made up of the patients who were judged subject to euthanasia and the patients were removed from the institution to so-called collecting points and from there were transferred to euthanasia institutes. (R. 1877, 1878). Non-German nationals and Jews were subjected to euthanasia as well as Germans. (R. 1881, 1923).

The activities of the experts were extended, in early Summer of 1940, to inmates of concentration camps. A Doctors Commission, which consisted of doctors and officials from the Euthanasia Program, filled out the questionnaires on inmates from among those who had been preliminarily selected by the camp doctors. Numerous concentration camps were visited, some of them twice, in the period between 1940 and the end of 1941. (R. 1882, 1883.) Dr. Mennecke, who visited a number of concentration camps to select inmates, received the orders for these activities from the top experts in the Euthanasia Program and from the defendant

Brack. (R. 1882). Announcements about these trips were made from the Berlin agency of the Program to the individual concentration camps. (R. 1885). Non-German nationals and Jews, who were inmates of concentration camps, were subjected to the Euthanasia Program in extensive numbers. (R. 1887).

Another function of the Euthanasia Program was the killing of mentally and bodily deficient children. The witness Walter Schmidt testified that the agency which handled this part of the Program was called the Committee for Research on Hereditary and Constitutional Diseases. (Reichsausschuss zur Erforschung Erb-und Anlagebedingter Schwerer Leiden). The questionnaires were filled out by the Health Departments, the Chief of Children's Clinics, physicians, doctors, midwives and hospitals, etc., and reports were made to Dr. Linden's office in Berlin. Linden was a member of the Ministry of Interior. There a committee of chief experts, on the strength of these reports, decreed euthanasia through so-called authorizing orders in the form of a photostatic copy of the report, which had been approved in writing. These activities continued until 1944. (R. 1834). Schmidt himself was in charge of a special department for the killing of such deformed children. (R. 1833).

Workers from the occupied Eastern territories who had become unfit for labor were executed pursuant to the Euthanasia Program. Buses belonging to the Patients Transport Corporation, which were operated by the personnel of the Patients Transport Corporation, took these victims to the extermination center of Hadamar, where they were killed. (Schmidt, R. 1842-1845; U. S. v. Klein, et al., NO-1116, Pres. Ex. 415, R. 1781).

This evidence on the method of carrying out the program is corroborated by the affidavit of the defendant Brack (NO-426, Pros. Ex. 160, R. 527); the affidavit of Pauline Kneissler (NO-470, Pros. Ex. 332, R. 1534), the chart drawn by Brack NO-253, Pros. Ex. 331, R. 1523), as well as numerous other documents in the record.

The evidence concerning the activities of the top experts and experts of the Euthanasia Program in the various concentration camps is corroborated by the affidavit of the camp doctor of the Dachau Concentration Camp, Dr. Muthig, (NO-2799, Pros. Ex. 497, R. 7710), who states that in the Fall of 1941, Prof. Heyde, as leader of a commission of four psychiatrists, came to the Dachau Concentration Camp. This doctors' commission selected inmates unable to work for extermination by gas. Heyde was the first top expert of the Euthanasia Program. (Brandt, R. 2495). The affidavit of Dr. Gorgass reveals that he and Dr. Schumann, both of whom were active in the Euthanasia Program, visited the Buchenwald Concentration Camp in June 1941. Gorgass states explicitly that the purpose of this trip was to acquaint himself with the assignment of concentration camp inmates to euthanasia institutions. This visit was made on the order of Brandt, which was transmitted by the defendant Brack. (NO-3010, Pros. Ex. 503, R. 7734).

B. Non-German Nationals and Jews

Non-German nationals and Jews, who were inmates of the concentration camps, were victims of the Euthanasia Program which operated in these camps under the code name "14 f 13". (NO-429, Pros. Ex. 281, R. 1083).

A few documents submitted by the Prosecution on one "14 f 13" action in Gross-Rosen show how the Euthanasia Program operated in concentration camps. The list of concentration camp inmates of the Gross-Rosen Concentration Camp who were sent to the Euthanasia Station Bernburg for extermination, contains many names of non-German nationals and non-German Jews. (NO-158, Pros. Ex. 410, R. 1724, 1725). Jews in protective custody, Poles in protective custody, Jews who were habitual criminals, Jews who were "shirkers", Jews who defiled the race, Czech "shirkers", and Czechs in protective custody, were among the inmates selected by the camp physicians for "examination" by the experts. (1151-PS, Pros. Ex. 411, R. 1733).

By comparing the names on the lists contained in Doc. NO-158 and 1151-PS, it is proved that, of the 240 names listed for extermination in the Euthanasia Station Bernburg, at least 51 were of Polish or Czechoslovakian nationality. How many of the Jews listed were of non-German nationality cannot be ascertained from these documents, but a substantial number of them were born in countries other than Germany, as the list contained in Doc. NO-158 shows, and it is therefore apparent that a further substantial number of the inmates selected for extermination were of non-German nationality. (NO-158, Pros. Ex. 410; 1151-PS, Pros. Ex. 411, R. 1735-1739).

On 17 March 1942, 70 inmates were transferred to Bernburg for extermination. (NO-1873, Pros. Ex. , R. ). Of these, 27 of the non-Jewish prisoners on the transport list were of Czech or Polish nationality. (Compare transport list with list of inmates originally selected in Gross-Rosen,

1151-PS, Pros. Ex. 411, R. 1725). On 19 March 1942 an additional 57 inmates arrived at Bernburg from Gross-Rosen. (NO-158, Pros. Ex. 410, R. 1723). Of these, 15 of the non-Jewish prisoners of the transport list were of Czech or Polish nationality. Thus, of the total of 127 inmates proved to have been sent to Bernburg in March 1942, at least 42, or one-third of the total, were non-German citizens forcibly detained in an enemy country. That all of these inmates were exterminated in Bernburg is conclusively proved by the laconic report from Gross-Rosen to the Economic and Administrative Main Office that "special treatment of 127 prisoners was concluded on 2 April 1942." (1234-PS, Pros. Ex. , R. ).

This evidence as to Action 14 f 13 is amplified by the testimony of the witnesses Neff (R. 600-605), Kogon (R. 1210-13), Roemhild (R. 1634-37, 1641), and Holl (R. 1060).

Non-German nationals and Jews other than those in concentration camps were not exempt from the program, and many of them were killed. Beside the evidence cited under sub-section A above, there is ample proof that non-German nationals were subjected to extermination from the beginning of 1940 through the war, (NO-1135, Pros. Ex. 334, R. 1543; NO-818, Pros. Ex. 373, R. 1609). Jews of German and Polish nationality and Stateless Jews were also subjected to the program. (NO-1310, Pros. Ex. 337, R. 1550). Polish and Russian nationals and other non-German nationals were subjected to the program. (NO-720, Pros. Ex. 366, R. 1591-2).

The questionnaires had a space provided for "race", being defined: German or similar blood (of German blood), Jew, Jewish mixed breed Grades 1 or 2, negro (mixed breed). (1696-PS, Pros. Ex. 357, R. 1574). This question would have

been completely unnecessary if non-Germans were exempted from the program. Questionnaires had to be filled out about all patients who were not of German nationality or German related blood, indicating their race and nationality. (NO-825, Pros. Ex. 358, R. 1578). These questionnaires had to be processed by the experts. (Mennecke, R. 1881). Those who were active in euthanasia never received an order that non-German nationals were to be excluded from the program. (NO-817, Pros. Ex. 368, R. 1595). The witnesses Mennecke (R. 1877, R. 1922) and Schmidt (R. 1860-1) also testified to this effect. Hugo Suchomel, LLD, the highest official after the Minister in the Austrian Federal Ministry of Justice, says in his affidavit that when Brack, as representative of the defendant Brandt, gave a lecture on euthanasia in the Ministry of Justice in 1942, he enumerated, as the classes of persons who were exempted from the program, the war wounded and persons who had become insane as a result of air attacks. Foreigners and Jews were not mentioned among the groups of persons who were excluded. (NO-2253, Pros. Ex. , R. ) Brack admits having held the lecture. (R. 7589).

As early as 1939 inmates of insane asylums in occupied Poland were killed. (3816-PS, Pros. Ex. 370, R. 1598). In the Autumn of 1940, funds for the evacuation of 1558 inmates of mental institutions of East Prussia and approximately 250 to 300 insane Poles were made available by the defendant Brack, who was the administrative executive of the Euthanasia Program. As these transfers were carried out by a special department (Sonderkommando) of the infamous SD, which was used for special tasks, there is no doubt that

these insane Poles were killed. (NO-2909, Pros. Ex. 500, R. 7721; NO-2911, Pros. Ex. 501, R. 7722). In September 1941, an order was issued that the inmates of the insane asylums in Russia, in the occupation zone of the German Army Group "Nord", were to be killed. (NO-1758, Pros. Ex. 444, R. 2545):

Eastern workers were also dealt with. (NO-1430, Pros. Ex. 429, R. 1950-1); NO-1436, Pros. Ex. 430, R. 1941). Eastern workers, who had been forcibly brought into Germany, who were no longer able to work, and who were considered a burden on the mental institutions of Germany, were brought together in a collecting institution and, unless they could be discharged in a matter of six weeks, they were exterminated under the Euthanasia Program. (NO-891, Pros. Ex. 414, R. 1779; NO-1116, Pros. Ex. 415, R. 1781). Half Jewish healthy children (NO-1427, Pros. Ex. 431, R. 1952) and adult Gypsies (3882-PS, Pros. Ex. 371, R. 1602) were also killed.

C. Inadequate Examination and Lack of Supervision

The selection and examination of the persons who were subjected to euthanasia was criminally negligent and inadequate.

The defendant Karl Brandt testified that the doctors in the Euthanasia Program were given enormous responsibility (R. 2425). He, together with Bouhler, had authority over the physicians who were participating in the program. (Brandt, R. 2408). He admitted however, that he did not make observation in, or visits to, insane asylums. He was only once in the Insane Asylum Bethel and visited a special clinic in Kassel. He admitted having no expert knowledge in the field of psychiatry. (R. 2470). He, the doctor of the

two persons who were charged by Hitler with the execution of euthanasia (Buhler was not a doctor), authorized the doctors to administer euthanasia. He did not make investigations as to the medical abilities of these men. (R. 2476). He does not know one single name of the total of ten to fifteen doctors who, according to his testimony, were charged with the execution of euthanasia. (R. 2478-9). Brandt testified that he only visited one of the extermination stations, Grafenek, in 1940, one time (R. 2480) and never went to an observation station. (R. 2481). In winter 1939/1940, however, he visited, together with the defendant Brack, Buhler and Conti, the Euthanasia Station Brandenburg, where the first gas chamber was set up. The purpose of this visit was to observe a test experiment in which four insane persons were gassed. (Brack, R. 7645-6).

Victims of euthanasia were condemned to death by so-called top experts who had never so much as seen the patient. The victims were only superficially examined on the basis of questionnaires. (NO-470, Proc. Ex. 332, R. 1535-6). Pfannmueller, an expert, received no less than 159 shipments of questionnaires, averaging between 200 and 300 questionnaires each, prior to 15 April 1941, for judgment as to life and death. (NO-1129, Proc. Ex. 355, R. 1572; NO-1130, Proc. Ex. 355, R. 1572). Since his main occupation was that of manager of an insane asylum, his judgment of the questionnaires was only a secondary activity. In a period of 18 days, this same expert passed judgment on no less than 2,058 questionnaires. (NO-1129, supra; cf. Pfannmueller, R. 7384).

Questionnaires on patients who were in an asylum for as short a time as one month were filled out and formed the basis for judgment as to whether the particular inmate should be killed. (NO-825, Pros. Ex. 358, R. 1577-8). Many of these questionnaires were inadequately completed so that it was impossible in any event to form a clear medical opinion. Experts were also exposed to pressure to induce them to give positive opinions. (Mennecke, R. 1881). Unanimous opinion of the experts was not necessary to bring about a positive judgment which would condemn the patient to be killed. The dissenting opinion of one expert did not suffice to save the life of the patient. (Mennecke, R. 1907-8).

In a concentration camp 105 Aryans were "examined" by the expert Mennecke in an afternoon. The "examination" of 1200 Jews, which consisted in the transcription of the reason for their arrest from the files to the reports, took only a few days. In a letter to his wife, Mennecke himself put the word "examination" in quotation marks. It is impossible that any kind of mental examination of the patients was carried out. (Mennecke, R. 1892; NO-907, Pros. Ex. 412, R. 1747). In fact, these Jews were mentally and physically healthy. (Mennecke, R. 1893). It was impossible for Dr. Heyde and his doctors' commission, which was active in the Dachau Concentration Camp, to examine the great number of inmates selected in the short time they spent there. The examination consisted solely in the cursory study of personal records in the presence of the inmate. (NO-2739, supra). Doctors Schumann and Gorgass screened approximately 100 concentration camp inmates during a one day's visit in the

Concentration Camp Buchenwald. (NO-3010, supra).

It was not the degree of insanity which was the decisive factor in the decision as to whether or not the inmates should be killed, but rather their usefulness for work. The manner of employment, the value of work, if possible compared with average performance of healthy persons, had to be carefully filled out in the questionnaires. (1696-PS, Pros. Ex. 357, R. 1575). Valuable workers were not sent to euthanasia stations. (3865-PS, Pros. Ex. 365, R. 1589). Patients who had arteriosclerosis, tuberculosis, cancer and other disabling illnesses were included in the Program. (3896-PS, Pros. Ex. 372, R. 1608). "Useless eaters" were starved to death. (3816-PS, Pros. Ex. 370, R. 1599; 1600; NO-823, Pros. Ex. 399, R. 1697). Persons who no longer had any value to the State were considered "useless eaters". It was pointed out that during the war healthy people had to give up their lives while these severely ill people continued to live and would continue to live unless euthanasia was carried out. In addition, it was stated the lack of food and nursing personnel justified the elimination of these people. (Mennecke, R. 1906). Concentration camp inmates were examined as to their capacity for work and their political reliability and were selected accordingly for euthanasia. (NO-2799, supra). Questionnaires were completed on concentration camp inmates who were not insane. (NO-3010, supra). Prior to 27 April 1943, Action 14 f 13 encompassed the execution not only of insane persons, but persons suffering from tuberculosis, bedridden individuals, and others unfit for manual work. (NO-1007, Pros. Ex. 413, R. 1753). Only inmates who were no longer fit for work were

to be brought before the examining commission. (NO-1151, Pros. Ex. 411, R. 1744).

In the case of killing of children, a previous consultation with the parents or relatives did not take place. (3864-PS, Pros. Ex. 367, R. 1593). The defense witness Pfannmueller testified that, after having received authorization to kill the individual child, he invited the relative to visit the child because it was sick. However, he never notified the parents or guardians that he was going to kill the child as this was a top secret matter. (Pfannmueller, R. 4394). From the documents submitted by the defendant Brack, it is clear that the parents were deceived about the purpose of the transfer of the children to institutions where they were to be killed. It was the business of the medical officers to induce the parents to send their children to such institutions. To accomplish this, the parents were told that in the case of individual diseases there was a possibility of achieving certain successes with treatment. (Brack Doc. 52, Brack Ex. 43, R. 7678, cf. Brack, R. 7717). The parents were told that the best care would be taken of the child in such institutions and everything possible in the way of modern therapy would be carried out. (Brack Doc. 51, Brack Ex. 42, R. 7678). From these documents it is clear that the parents and relatives were not only not asked for their consent in the case of killing of children, but were deceived in order to make the transfer to a euthanasia institution possible. A letter from the Reichs Committee for Research on Hereditary and Constitutionally Severe Diseases to the Eichenberg Sanatorium shows on its face that, in the case of euthanasia of children, the consent of the parents was not

sought. (NO-890, Pros. Ex. 443, R. 2540-1). This evidence is corroborated by the affidavit of Dr. Suchomel (NO-2253, supra). The defendant Brack testified that the consent of the parents to the killing of children was an absolute prerequisite. The medical officers who made the arrangements for the transfer of the children to the killing stations were allegedly charged with the task of informing the parents and requesting their consent. This statement is in contradiction to Brack's own documents, which clearly show what the parents really were told, as well as the top secret character of the program. The proof has further shown that Pfannmueller himself was one of the doctors who had, according to the decree of the Minister of the Interior of 18 August 1939, to report deformed and deficient children. (NO-3355, Pros. Ex. , R. ). He himself testified that he never informed the parents about the fate their children had to expect. (supra). Brandt admitted that in the case of killing of insane adults, the consent of the relatives was not requested and their opinion not heard. (R. 2427-8).

There is abundant proof that the German public was horrified by euthanasia and the manner of its execution. A police report stated:

"The wildest scenes imaginable are reported to have taken place as some of these people did not board the bus voluntarily and were therefore forced to do so by the accompanying personnel. There were people who were imbeciles and feeble minded and were said to have other epileptic illnesses as well, and whose upkeep the State and other Public Bodies up till now had to provide for completely, or at least for the greater part. People went so far as to formulate and disseminate more or less the following assertion: 'The State must be in a bad way now or it could not

happen that these poor people should simply be sent to their death solely in order that the means which until now have been used for the upkeep of these people are made available for the prosecution of the War." (D-906, Pros. Ex. 376, R. 1619-21).

D. General Extermination of the Jews

Personnel active in the Euthanasia Program also took part in the extermination of the Jews in the East, from about 1941 until the liberation of the Eastern Territories. Some time in the second half of 1941 a part of the personnel, who were until then executing the Euthanasia Program in Germany, was sent to Lublin and put at the disposal of SS Brigadefuehrer Globocnik in order to assist in the mass extermination of the Jews which was then common knowledge in the higher circles of the NSDAP. Among the doctors who assisted in the extermination of the Jews were Dr. Eberle and Schumann, both of whom had been previously active in the Euthanasia Program in Germany. All of this Brack admitted in his pre-trial affidavit:

"The order to send these men to the East could have been given only by Himmler to Brandt, possibly through Bouhler."  
(NO-426, Pros. Ex. 160, R. 531).

The connection between the "Stiftung" (Charitable Foundation for Institutional Care) and the extermination camps in Lublin was also known to the lower employees of the Euthanasia stations. (NO-470, Pros. Ex. 332, R. 1537). The witness Gorgass stated in his affidavit that Police Captain Wirth told him late in the Summer of 1941 that he had been transferred by The Foundation for Institutional Care (which was one of the code names under which the Euthanasia Program operated) to a euthanasia institute in the Lublin Area. (NO-3010, supra). The SS Judge, Dr. Morgen, who in-

investigated the Jewish extermination program in Lublin, testified before the International Military Tribunal that Wirth, having previously carried out the task of removing the incurably insane, was a specialist in mass destruction of human beings. The office from which Wirth obtained his orders was Berlin Tiergartenstrasse and among the people who were connected with this operation was Blankenburg. (NO-2614, Pros. Ex. 504, R. 7735-7737). Brack admitted that Wirth was an official of the Euthanasia Station Brandenburg. (Brack, R. 7733). Brandt visited Brandenburg in the winter of 1939-40. (Brack, R. 7645-6). The central office for the Euthanasia Program was set up in Tiergartenstrasse 4, and Blankenburg was Brack's deputy in the Euthanasia Program. (Brack, R. 7563, R. 7707).

The defendant Brack reported to Himmler about these activities on June 23, 1942, as follows:

"On the instructions of Reich-Leader Bouhler I placed some of my men - already some time ago - at the disposal of Brigadefuehrer Globocnik to execute his special mission. On his renewed request I now transferred additional personnel. On this occasion Brigadefuehrer Globocnik stated his opinion that the whole Jew-action should be completed as quickly as possible so that one would not get caught in the middle of it one day if some difficulties should make a stoppage of the action necessary. You yourself, Reichsfuehrer, have already expressed your view, that work should progress quickly for reasons of camouflage alone ..." (NO-205, Pros. Ex. 183, R. 533) ✓

The affidavit of Kurt Gerstein which also mentions Wirth, gives a vivid description of the horrible way in which the victims were killed by the thousands on order of Globocnik. (1553-PS, Pros. Ex. 428, R. 1799-1807).

In October 1941, Brack, the administrative head of the Euthanasia Program, forwarded plans whereby Jews who were unable to work should be exterminated by gas. He declared his readiness to send some of his assistants and especially his chemist, Kallmeyer, to the East where the necessary gassing apparatus could be easily manufactured. Eichmann, whom Hitler had charged with the extermination of the Jews, was in agreement with these plans. Consequently, there were "no objections to doing away with those Jews who are unable to work with the Brack remedy". (NO-365, Pros. Ex. 507, R. 7744). Kallmeyer, who was charged with the manufacture of the gassing apparatus and equipment (supra), had been trained for this task in the Euthanasia Program. Previously he had been responsible for the proper operation of the gas chambers of the different euthanasia institutions. (Brack, R. 7743). According to Eichmann's own estimate, four million Jews were killed in extermination institutions. (NO-2737, Pros. Ex. 505, R. 7740).

#### E. LEGALITY

The evidence outlined above makes it clear that the Euthanasia Program can only be described as mass murder. This Tribunal is not called upon to define with juridical nicety what a State may lawfully legislate with respect to euthanasia. The Prosecution asks only that this Tribunal find, as other tribunals have already held, that there was no valid law in the Third Reich permitting euthanasia and that the execution of persons under the guise of euthanasia with the connivance and assistance of certain defendants in this dock, constituted the crime of murder - a War Crime and a Crime Against Humanity.

The first and foremost authority on the legality of

euthanasia as practiced under the Nazis is in the Judgment of the International Military Tribunal. It States:

"Reference should also be made to the policy which was in existence in Germany by the summer of 1940, under which all aged, insane, and incurable people, 'useless eaters', were transferred to special institutions where they were killed, and their relatives informed that they had died from natural causes. The victims were not confined to German citizens, but included foreign laborers, who were no longer able to work, and were therefore useless to the German war machine. It has been estimated that at least some 275,000 people were killed in this manner in nursing homes, hospitals and asylums, which were under the jurisdiction of the defendant Frick, in his capacity as Minister of the Interior. How many foreign workers were included in this total it has been quite impossible to determine." (R.1514,1515; Pages 16916-7, Official English Transcript of the I.M.T).

\*\* \*\*\*\*

"During the war nursing homes, hospitals, and asylums in which euthanasia was practiced as described elsewhere in this Judgment, came under Frick's jurisdiction. He had knowledge that insane, sick and aged people, 'useless eaters', were being systematically put to death. Complaints of these murders reached him, but he did nothing to stop them. A report of the Czechoslovak War Crimes Commission estimated that 275,000 mentally deficient and aged people, for whose welfare he was responsible, fell victim to it." (R. 1515; Page 17007, Official English Transcript of the IMT.)

These findings draw no distinction between German nationals executed under the Program and non-German nationals. These executions are described with word "murders" and constitute War Crimes and Crimes Against Humanity under the Charter and Control Council Law No. 10. This was one of the principal crimes which led to the judgment of guilty and the sentence of death against Frick.

The Review of the Deputy Theater Judge Advocate in the case of the U.S. vs. Klein, Wahlman, et al, held at Wiesbaden, Germany from 8 through 15 October 1945 is a clear precedent that the execution of non-German nationals pursuant to the Euthanasia Program was a crime. (NO-1116, Pros. Ex. 415, R. 1781). The defendants were there charged with the execution of some 400 persons of Polish

and Russian nationality, alleged to be suffering from incurable tuberculosis, at the Hadamar Euthanasia Station between July 1944 and April 1945. They were not charged with murdering German nationals and that issue was not considered. After taking judicial notice of the fact that foreign laborers were impressed for service in Germany, the Reviewing Authority held that the killings in issue were a violation of the international laws of war and of Article 46 of The Hague Convention. Three of the seven defendants were sentenced to death.

According to German law, euthanasia was nothing other than murder. Paragraph 211 of the German Criminal Code, in its old form read:

"Whoever kills a person wilfully will be punished by death for murder if the killing was premeditated."

In the new form, which was in effect from 4 September 1941 on, the section stated:

"The murderer will be punished by death.

"A murderer is one who kills a person out of sheer desire to murder, for the satisfaction of the sexual instincts, for covetousness or other vile motives; one who kills another maliciously or cruelly or by publicly dangerous means or to create the preconditions for another punishable action or to conceal such an action.

"Certain exceptional cases where capital punishment is not appropriate will be punished by life sentence."  
(NO-705, Doc. Book 16, p. 122).

For expert commentaries on the legality of euthanasia, see NO-708, Doc. Book 16, p. 134, and NO-706, *ibid.*, p. 123.

The defense witness Hans Lammers, a German legal expert, testified that the Hitler letter to Bouhler and Brandt was not a law and that official legislation was necessary to legalize euthanasia. (R. 2672, 2679). The Reichs Minister of Justice, Guertner, on 24 July 1940, wrote a letter to Lammers informing him that, as the Fuehrer had refused to issue a law, it was necessary to discontinue immediately

the secret extermination of insane persons. (NO-832, Pros. Ex. 393, R. 1679). A copy of this letter was sent to Bouhler on 27 July 1940. (NO-833, Pros. Ex. 394, R. 1679, 1680).

During Brack's lecture in the Ministry of Justice, referred to in sub-section B above, the legal authorities present were completely misinformed about the extent of the program. From the remarks of the speaker, the impression was obtained that only a very limited circle of persons, at the utmost several hundred, throughout Germany, Austria and the Protectorate Bohemia and Moravia would be affected. The opinion created was that only very dangerous patients and delirious maniacs who might injure themselves would be subjected to the program. (NO-2253, supra). This obviously was done to quiet the misgivings of the persons present. Brack, when questioned as to whether, during the lecture, he gave an approximate number of persons who would be subjected to euthanasia, could or would not give any answer. Contrary, to the impression created during the conference in the Ministry of Justice, the defendants Brandt and Brack now admit that about 50 to 60 thousand people were killed in the Euthanasia Program in Germany and Austria alone. (Brandt, R. 2465; Brack, R. 7610).

Since the end of the war, German and Austrian courts have repeatedly held that the killing of persons of any nationality under the guise of euthanasia was in violation of the German Criminal Code and punishable as murder. The witnesses Schmidt and Mennecke who testified before this Tribunal had themselves been convicted by a German court for participation in the euthanasia program and sentenced to life imprisonment and death, respectively.

Before the District Court for Criminal Cases in Vienna, in July 1946, Dr. Ernst Illing was sentenced to death by hanging and Dr. Marianne Tuerk to ten years in the penitentiary for the putting to death of psychopathic children or children who were afflicted with hereditary diseases (so-called euthanasia). It is stated in the decision that Dr. Illing took over his job on July 1, 1942 with the order to take over the execution of the tasks put by the Reichs Committee. Both defendants admitted having participated in the death of about 2,000 cases in the period between July 1, 1942 and April 1945. Defendant Illing testified that he was called up by Hefelmann from the Chancellery of the Fuehrer and was given a typewritten sheet signed by Adolf Hitler to read, according to which the defendant Brandt had to put into effect and to work out administrative regulations for the painless killing (euthanasia) of incurable idiotic children. After examination and decision by a scientific medical committee, Dr. Brandt or the deputy designated by him would give the order in each individual case. Brandt was personally responsible to Hitler. The findings said then that such an order by Hitler would never have had the power of a law:

"It is true that Adolf Hitler on the decision of the 'Greater German Reichstag' (Grossdeutschen Reichstages) on 26 April 1942 was authorized to do everything 'which would serve to win the victory or to assist in winning it' (das zur Erringung des Sieges dient oder dazu beitraegt); particularly he was given the right to force, if necessary, every German to do his duty with all means which seemed appropriate to him and in case of violation of these duties to inflict the appropriate penalty without regard to any consideration that was merit especially to relieve such people of their office, rank, or position without taking the prescribed legal proceedings against them.

"Aside from the fact that these powers entrusted to the Chief of government in the light of its entire formulation was to refer to military matters only, the transfer of such a power to the chief of government is nothing

new in the history of the last decades. So, the Viennese Gemeinderat, for instance, on 22 September 1914, empowered the Mayor to issue all ordinances and regulations necessary for the administration on his sole responsibility, since a regular functioning of the Gemeinderat in view of the state of war was unthinkable (Richard Kralik, History of the City of Vienna / Geschichte der Stadt Wien, 2nd edition, page 524).

"According to the opinion of the court such an order of Hitler - apart from military matters - could never have the power of a law. The problem of Euthanasia is as old as medical science itself. Just in the last decades all all civilized states have been concerned with this problem, and physicians and legal men have agreed that the solution of this problem must be left to legislation alone. ✓

"Besides the first defendant seems to have been aware of the illegality of his actions, otherwise he would not have sworn his collaborators, including the nursing personnel, to secrecy. The same must be true for the Reich Committee in Berlin, otherwise the directive would not have been issued in January 1945 to destroy the entire correspondence which had been carried on between Vienna and the Reich Committee in Berlin."

.....  
"As regards the legal side of this so-called order under which Dr. Illing maintains to have been, the following is to be said: there is no such a thing as an order for the commitment of a punishable act. This, on the one hand, results from the general code of ethics which is part of the law and, on the other hand, from the application of other laws. So for instance paragraph 47 of the German Military Penal Code decrees as follows 'if by the execution of an order in matters of duty a penal law is being violated, the superior issuing the order is solely responsible. The obeying subordinate will however be sentenced for participating in the case of his knowing that the order of a superior involved an action which intended a general or military crime or offense.....'. Similar stipulations are contained in paragraphs 535 and 560 of the special regulations for active members of the army (law of 15 July 1929, Penal Code Gesetz No. 323). ✓

"The defendant Illing is therefore not in a position to use the subterfuge that he was under an order 'having the power of law', because this order had not the power of law, quite apart from the fact that an order issued does not exculpate. (Paragraphs 1 and 5 of the War Criminals Act.)

"If, however, the two defendants offer as a reason for their actions the fact that they ordered Euthanasia only when all children were to be delivered from their suffering the defendants having ascribed this motive also to the Reich Committee the following is to be stated:

"According to the previous activities of the first defendant, especially with a view to his scientific research of hereditary diseases, the court has come to the conclusion that Euthanasia of children is to be considered as on the same level as the killing of adult mentally ill persons and the extermination of the Jews. Here a saying of Hitler which prefaced sterilization manuals comes to mind:

'What is not of good race in this world, is chaff.'

"The first defendant, Dr. Illing, admitted without hesitation on the occasion of his first interrogation before the Russian captain having euthanized those children only who 'were of no value at all for the German people' (Bl. Zl 15), that is, in other words, the national socialist slogan of the 'purification of the German people'. It is however absolutely wrong to suppose that the Reich committee was motivated in its decrees of 'treatment' by feelings of compassion, on the contrary it will be sufficient to point to the fact that compassion did not exist at all in the Third Reich."

.....  
"Summarily it is therefore to be stated that the actions of both defendants did not only offend against the general penal law but also against the general moral code and the medical ethics. The task of the physician is, of course, to cure and not to kill. And last but not least one can point to the fact that especially children, of whom it is a question here, are in any case particularly protected by the law, (par. 21 General Civil Code." (NO-317, Doc. Book 16, p.64).

The court of Assizes in Berlin, at the session on 25 March 1946, found the defendants Hilde Wernicke and Helene Wiczorek guilty of murder and sentenced them to death. Both were active in the Meseritz-Obrawalde sanatorium for the mentally ill. Both defendants had to sign certificates stating that they engaged themselves not to reveal anything about the contents of the legal directive and oral request to kill all incurable mentally ill persons. The selection of the persons who were to be killed was carried out in such a way that the defendant Wernicke read the case histories and "looked" at the patients concerned.

About 600 persons were killed between 1943 and 1944 by scopolamine and morphine injections. Also some children were killed. The Court of Assizes found further:

"The right of administering euthanasia has not been recognized so far by the law. But even if euthanasia should not be excluded on principle for humanitarian reasons, such medical 'help' could be allowed only in very exceptional cases, for instance, if the problem were whether an intolerably painful and in all likelihood protracted illness were to be ended by a painless death. The case at hand however did not require a further discussion of this much discussed problem. The defendant Wernicke, according to her own statement, did not make her selection from humanitarian motives at all. Rather, the persons indicated by name on the lists submitted to her for her decision were considered from the beginning as insane persons, who should be killed as a matter of principle." (NO-445, Doc. Bk. 16, p. 86).

The Court of Appeals in the same case rejected the appeals of both defendants. The following quotations from the Reasons may be of interest:

"In the spring of 1943, the administrative director of the institution, Grabowski, told the defendants that a law - subsequently also called by him a Fuehrerbefehl - had been issued, according to which incurable insane had to be killed in order to shorten their sufferings, and emphasized in this connection: 'Laws must be obeyed. You must do your duty.'"

.....

"The objection against the application of the material law culminates in the assertion, that the defendants had acted without being conscious of any illegality.

"This objection also met with no success.

"No law existed which prescribed the killing of incurably insane persons no longer capable of work. This is also established by information obtained as a precautionary measure from the American prosecutor in the Nuernberg trial, Dr. Kempner, who conducted the case against Frick, - a case which was also based on the

· killing of insane persons. The law mentioned to the defendants, by the administrative director Grabowski, was no law at all, if only because it was not only not published, but the strictest secrecy was enjoined on everyone who knew of it, under threat of imprisonment or death. Nor did the defendants act at all according to this alleged law. For according to Grabowski's information this law prescribed the killing of mental patients in order to shorten their sufferings. The assize court, however, has established that the decisive consideration in the killings effected by the defendants was by no means the shortening of the patient's sufferings, but, apart from their incurability, the incapacity of the patients to perform labor."

.....

"In this connection, the appellars use the term 'euthanasia' in a wider sense which includes the destruction of life unfit to live. In the real meaning of the word, euthanasia has the sense of helping someone to die. The soothing hand of the doctor helps the doomed, suffering patient to cross the threshold of death. So far, as the assize court has correctly pointed out, euthanasia has not been accepted even in this more restricted sense as legal justification for killing, let alone in the wider sense of the destruction of life unworthy to live. To destroy the lives of the incurably insane because they are no longer capable of work violates the universally-acknowledged moral law. The attempts made by appellars to justify this destruction as the result of serious research in this direction which has been carried on for a comparatively long time - and therefore as not originating entirely in national-socialist concepts - are futile. The thesis by Binding and Hoche in 1920 - the authors being a jurist and a psychiatrist of international reputation - which the appellars also regard as the standard work on this subject and which deals with the right to destroy life unworthy to live, by no means asks for the right to kill all incurable mental patients no longer capable of working, but only suggests the killing of incurable imbeciles in accordance with some formal legal procedure implemented with every possible guarantee; because these imbeciles have the will neither to live nor to die, and are unable to give any real consent to their being put to death, while on the other hand, putting them to death does not involve breaking down their will to live. ✓

On the contrary, the authors say that the will to live of even those who are most seriously ill, suffer most gravely and are of least use, should be fully respected. It is a matter of common knowledge that e.g. the large group of schizophrenic lunatics includes many patients whose incurable condition is not always recognizable as such by the layman and who most certainly are not lacking in the will to live. But this suggestion, even when restricted to incurable idiots as urged by Binding and Hoche has by no means been universally approved. The former Attorney-General (Oberreichsanwalt) Ebermayer, whom the appellars also quote, raises serious objections in the essay which he published in 1920 'The Physician and the Law' ('Der Arzt im Recht') and concludes with a remark characteristic of the attitude existing towards this problem a few years before the so-called seizure of power viz, that the problem was not of any immediate importance and could hardly become so in the near future. ✓

"As to destroy the life of the incurably insane from the point of view of their permanent complete unfitness for work is to violate a universally acknowledged moral law, the defendant's guilt is not excluded by the possibility that they were unconscious of any illegality and considered their acts as lawful."

.....

"The Court believes that nobody can invoke an opinion contrary to the universally acknowledged moral law in order to justify the lack of any consciousness of illegality."

.....

"Officials or employees need not obey a criminal order or a criminal regulation. They are not only entitled, but they are also in duty bound to examine whether order or regulations violate penal laws. .... They have 'approved, in their minds, the measures and the requirements of Grabowski'. Thus they have considered as right and lawful the killing of incurably insane persons who were no longer fit to work. Even if this was the contents of an order the fact does

excuse them. .... No subordinate can justify himself by the plea that he considered as lawful an order implying the killing of human beings, and violating a universally acknowledged moral law."

.....

"In the application of art. 211 new version, the court of assizes has sentenced the defendants, without judicial error, for murder, because they have killed from unworthy motives and maliciously. As the court of assizes has established, the defendants have not submitted to an order contrary to their inner conviction. Neither have they been moved by pity for the patients but by the conviction, that the latter should be destroyed as useless members of the community owing to their unfitness for work. Moreover, an act which has been committed against so many people - and indeed continuously - and which violates universally acknowledged moral principles so deeply cannot but be considered as having been committed out of base motives."

.....

"It is an abuse of the power of life and death over unconscious patients or such who cannot be expected, owing to lunacy, to be able to discuss their illness pertinently if this power is used in killing such patients by means of a shot harmless to the person administering it, and out of unworthy motives, as has been established."

.....

"It cannot be mistaken that the defendants Wernicke and Wiczorek are only the last links of a long chain, and that they are preceded by persons whose guilt is still greater." (NO-447, Doc. Bk. 16, p. 108).  
(Emphasis added)

Thus, it is established that euthanasia was murder according to German law.

In connection with this question, it is again pointed out that the whole program was kept completely secret. Hitler's letter of 1 September 1939 (R. 1516)

was marked Top Secret, was never published, and the Minister of Justice only received a copy of it one year after its issuance. (630-PS, Pros. Ex. 330, R. 1516). Transfers of inmates of insane asylums to euthanasia stations were allegedly carried out by the order of the Reichs Defense Commissioner. (NO-1133, Pros. Ex. 335, R. 1546). The officials active in the Program had to sign a written oath of secrecy. (NO-1312, Pros. Ex. 338; NO-1311, Pros. Ex. 339, R. 1551-2). The doctors who performed euthanasia were warned that they would be severely punished if they sabotaged the work. (R. 1894). The whole program of Euthanasia was to be kept secret as they were told from the beginning that it was a top secret matter. The reason given was to avoid unrest among the population. Breach of secrecy was considered sabotage. (Mennecke, R. 1923). Others had to sign a written oath binding them to secrecy. It was known that the result of breach of this oath was confinement in a concentration camp. (Schmidt, R. 1826).

F. Personal Responsibility of Karl Brandt

Brandt was put in charge of the program, together with Bouhler, by the above-quoted letter of Hitler of 1 September 1939. His position as highest authority in the Euthanasia Program is outlined in the affidavit of Dr. Boehm, one of the oldest members of the NSDAP. When, in November 1940, Boehm approached Martin Bormann with the request to obtain an audience with Hitler to complain about the execution of the Euthanasia Program, Bormann referred him to Brandt as the responsible authority for the execution

of euthanasia. As a result, Boehm had a discussion with Brandt and when he complained, among other things, that the Euthanasia Program was not regulated by law and should not be carried out in a secret manner, Brandt admitted that the Minister of Justice, Guertner, had also urged legislation. From his conversation with Bormann and Brandt, Boehm was sure that Brandt was the leading personality in the Program. (NO-3059, Pros. Ex. , R. ). Brandt admitted that it was necessary to set up a special organization to carry out euthanasia. (R. 2407).

He, together with Bouhler, had authority over the physicians who were participating in this Program, and furthermore he had to keep Hitler informed from the medical point of view (English translation is garbled on this point and reference should be made to the German transcript, R. 2420) and had to maintain contact with Bouhler. (Brandt, R. 2408). He further admitted that authorizations for the killing of children were submitted to him and Bouhler. (R. 2544),

He stated that he resigned his job some time in 1942. (R. 2433). While this is of no material significance, it is established that he held his position as the leading figure in the program until 1944. Dr. Ludwig Sprauer, in his affidavit, stated:

"I heard the name of Prof. Dr. Karl Brandt for the first time at a conference in the middle of 1941 in Berlin. At this conference I learned that Karl Brandt and Philipp Bouhler are the leading figures in the Euthanasia Program. The conference was

called by Dr. Linden on behalf of the Department of the Interior and problems of institutions and asylums were submitted. Dr. Linden directed the proceedings.

"To the best of my knowledge and belief, Phillip Bouhler as well as Prof. Dr. Karl Brandt were the leading figures in this so-called Euthanasia Program from 1941 to the collapse of Germany.

"The connection between the Department of the Interior and Prof. Karl Brandt, in the framework of the Euthanasia Program, was that Karl Brandt gave orders to Conti and Linden, which were passed on by these persons on behalf of the Department of the Interior. Brandt was the dominating figure without doubt." (NO-818, Pros. Ex. 373, R. 1608).

The witness Wesse said in his affidavit that Brandt was in charge of the Euthanasia Program (killing of mentally ill adults who were unfit for work and killing of mentally inferior and asocial children) at least until March 1944. (NO-1428, Pros. Ex. 432, R. 1953).

The witness Mennecke testified that he learned in the beginning of 1941 that the defendant Brandt was active in the Euthanasia Program. (R. 1874). He further testified:

"When, in 1944, I was treated as a patient in the Army hospital at St. Blasien, I found out through conversations with officers, that Prof. Brandt had an essential part in the collection of insane persons in the area of Lublin, Poland." (R. 1903).

He further testified, in connection with this Lublin action, that it must have taken place up to 1944 and that it was said that insane persons and Jews were collected in Lublin in large numbers. (R. 1904).

The witness Schmidt testified that Prof. Brandt had the medical direction of the Program and only in 1944 was he told that Brandt had left the Program. (R. 1825). He

also knew that Brandt played the leading part in the task which had to be accomplished (Euthanasia Program), that he (Brandt) was to accomplish this task. (Schmidt, R. 1847).

Both witnesses, Schmidt and Mennecke, also testified that the chart (NO-253, Pros. Ex. 331, R. 1518), which shows Brandt in the center of the Program, is correct. (Schmidt, R. 1833, Mennecke, R. 1876).

The evidence shows further that Brandt gave orders in the Euthanasia Program as late as July 1943. In a letter from the General Patients Transport Corporation, dated 20 July 1943, to the Mental Institution Hadamar -- which was, as documents and testimony show, an extermination station -- the following sentences are found:

"I order transfer of insane persons to your Institution also, this by order of Prof. Brandt, the Commissioner General of the Fuehrer for Medical and Health Service. You will get, on 26 July 1943, 150 insane women from the Mental Institution Warstein if the Reichsbahn will furnish the necessary cars, as requested." (NO-892, Pros. Ex. 442, R. 2536).

Brandt was the person who had to be approached if one were to save a child from euthanasia. In a letter from the Reichs Committee for Research on Hereditary and Constitutionally Severe Diseases, dated November 16, 1943, to Dr. Schmidt's sanatorium Eichberg (as the evidence shows, a killing station for deficient children), we find the sentence:

"On the basis of a letter directed to Professor Dr. Brandt concerning the above mentioned I request an elaborated diagnosis about the mentioned Anna Gasse who is reported to be at your institution at present."

and, further:

"If from a medical point of view such release is warranted, one could take into consideration whether one should not perhaps comply with such request in the interest of the good reputation of the institution." (NO-890, Pros. Ex. 443, R. 2540-1).

That the defendant Karl Brandt was in a position to issue instructions and assign tasks to insane asylums in Germany is further corroborated by the affidavit of the defendant Rose, who said that in 1943 Brandt put an insane asylum in Thuringen at his disposal and made arrangements that this Institution would not be converted into a general hospital and further that in 1944, Brandt made arrangements for the better feeding of inmates of this Asylum in order to enable Rose to proceed with his malaria therapy.

(R. 1717). If this statement in itself has nothing to do with euthanasia, it shows the scope of influence and power Brandt still commanded over insane asylums in 1943 and 1944. (NO-872, Pros. Ex. 408, R. 1716).

According to his own testimony, Brandt was in charge of euthanasia until 1942. (R. 2433, R. 2532). There is no proof, other than his own statement, that he resigned his commission at that time. On the contrary, the proof has shown that he was active in this field until some time in 1944. In any event, the program was criminal in its inception. The murder of concentration camp inmates pursuant to euthanasia began as early as 1940. Non-German nationals were included in substantial numbers. Healthy Jews were exterminated without examination. Trained killers from euthanasia stations were sent to the East as early as 1941

to aid in the mass murder of Jews. Persons whose only crime was physical inability to work were subjected to euthanasia from the very beginning. Indeed, the elimination of "useless eaters" was the principal rationale of the whole program.

Brandt stated that an order existed which exempted non-German nationals, but he was unable to give any explanation as to how this order operated, who received it, and why, if such an order existed, questionnaires for foreign nationals were filled out at all. (R. 2499-2503). The proof has shown that non-German nationals were never exempted and were killed in large numbers. There is nothing to be said in mitigation for Brandt.

#### IV. CONCLUSION

Karl Brandt, as General and later Reich Commissioner of the Health and Medical Services, held the position of highest authority in the medical services of the Third Reich. His task was to coordinate the activities of all the medical services, both military and civilian. He was directly responsible to Hitler. He was Hitler's attending physician and a Gruppenfuhrer (Major General) in the SS.

Brandt, together with Rostock, was informed of the sulfanilamide experiments by Gebhardt before the meeting in May 1943. He was one of the honored guests at that meeting and the reports by Gebhardt and Fischer described the experiments in complete detail.

Four days after this meeting Brandt asked for concentration camp inmates, through Grawitz, to be used in epidemic jaundice experiments. Cases of death were anticipated. Eight Polish Jews were experimented on, some of whom died.

The typhus experiments in Buchenwald were also reported on in the meeting of Consulting Physicians in May 1943, which Brandt attended. It is inconceivable that he did not hear of the objections raised to those experiments. Moreover, Handloser and Conti were informed of these experiments and both were required to report on "basic events" to Brandt. Haagen's typhus experiments in Natzweiler were supported by the Luftwaffe and the Reich Research Council. Brandt was a member of the Reich Research Council. In August 1944, Rostock's Office for Science and Research, under Brandt, classified Haagen's typhus research as urgent.

Brandt received plenary powers from Hitler in the field of chemical warfare in March 1944. He met with Sievers and Hirt and received a report of the murderous gas experiments in Natzweiler. These experiments continued after March 1944. Hirt's gas research was classified urgent by the Office for Science and Research.

Brandt personally supported the gas experiments by Bickenbach. He helped him establish a laboratory. He visited Bickenbach in the Natzweiler Concentration Camp where he conducted gas experiments on inmates. Reports by Bickenbach sent to Brandt prove that 40 Russian prisoners of war were experimented on with phosgene and at least four of them were killed. Brandt was also connected with experiments on inmates

to test the decontamination of water poisoned with gas.

Sterilization experiments were performed by Schumann, a doctor active in the euthanasia program under Brandt.

Brandt's knowledge of, and participation in, the systematic experimentation on concentration camp inmates without their consent is further proved by his repeated requests for such experiments. In January 1943, he wrote to SS-Obergruppenfuehrer Wolff and asked if it were not possible to carry out nutrition experiments in concentration camps. In September 1943, he asked Grawitz to test a new ointment for burns. Permission was given by Himmler to conduct such experiments on inmates who were to be artificially burned. In February 1944 Brandt, after a discussion with Grawitz, requested 10 inmates for the purpose of testing a medicine. The prisoners were made available.

Brandt, together with Reichsleiter Bouhler, was in charge of the euthanasia program which involved the ruthless murder of hundreds of thousands of helpless men, women, and children. This was no altruistic program to ease the pains of an impending and unavoidable death. It was rather a program for the extermination of those who were considered a burden on the State, who were unable to work, who consumed without producing. No law gave it a superficial legality. It was illegal in its inception and operation. Judgment was passed by so-called experts as to life or death of a patient on the basis of questionnaires without the expert so much as having examined the patient. It encompassed the murder of Germans and citizens of occupied countries alike. It extended to concentration camp inmates of non-German nationality forcibly detained in Germany. It included healthy Jews and forced laborers from the East. Scientific killers trained in the gas chambers of the euthanasia stations were sent to Poland to assist in the mass murder of Jews.

The Prosecution submits that the evidence proves that Karl Brandt was a principal in, accessory to, ordered, abetted, took a consenting part in, and was connected with plans and enterprises involving medical experimentation on human subjects without their consent, in the course of which experiments murders, brutalities, cruelties, tortures, atrocities, and other inhumane acts were committed, and the execution of the so-called "euthanasia" program, in the course of which hundreds of thousands of human beings were murdered, and that his guilt has been established under Counts I, II, III, and IV of the Indictment.