DEPUTY THEATER JUDGE ADVOCATE'S OFFICE
WAR CRIMES BRANCH
UNITED STATES FORCES, EUROPEAN THEATER

UNITED STATES

v

Alfons Klein, Adolf Wahlmann, Heinrich Ruoff, Karl Willig, Adolf Merkle, Irmgard Huber, and Philipp Blum, all German Nationals

1 February 1946

REVIEW AND RECOMMENDATIONS OF THE DEPUTY THEATER JUDGE ADVOCATE

1. TRIAL: The accused were tried at Wiesbaden, Germany, from 8 October 1945 through 15 October 1945, before a Military Commission appointed by paragraph 18, Special Orders No. 265, Headquarters, Seventh U. S. Army, Western Military District, 22 September 1945, as amended by paragraph 2, Special Orders No. 270, 27 September 1945, and paragraph 1, Special Orders No. 276, 3 October 1945, same headquarters.

2. FINDINGS: The offense involved was:

CHARGE: VIOLATION OF INTERNATIONAL LAW. ETO#-12-449

Specification: In that ALFONS KLEIN, ADOLF WAHLMANN, HEINRICH RUOFF, KARL WILLIG, ADOLF MERKLE, IRMGARD HUBER, and PHILIPP BLUM, acting jointly and in pursuance of a common intent and acting for and on behalf of the then German Reich, did, from on or about 1 July 1944 to on or about 1 April 1945 at Hadamar, Germany, wilfully, deliberately and wrongfully, aid, abet and participate in the killing of human beings of Polish and Russian nationality, their exact names and number being unknown but aggregating in excess of 400, and who were then and there confined by the then German Reich as an exercise of belligerent control.

	Pleas to the Charge and Specification	FINDINGS As to the Charge and Specification
Klein, Alfons	NG	G
Wahlmann, Adolf	NG	G
Ruoff, Heinrich	NG	G
Willig, Karl	NG	G
Merkle, Adolf	NG	G
Huber, Irmgard	NG	G
Blum, Philipp	NG	Of the Specification, Guilty, except the words "1 April 1945" and "400," substituting therefor the words "23 August 1944" and "70," of the excepted words Not Guilty, of the substituted words Guilty, of the Charge, Guilty.

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Name	Sentence
Klein, Alfons	To be hanged by the neck until dead
Ruoff, Heinrich	To be hanged by the neck until dead
Willig, Karl	To be hanged by the neck until dead
Wahlmann, Adolf	To be confined at hard labor for life
Merkle, Adolf	To be confined at hard labor for 35 years
Blum, Philipp	To be confined at hard labor for 30 years
Huber, Irmgard	To be confined at hard labor for 25 years

The sentences of accused Wahlmann, Merkle, Huber, and Blum were upheld upon review by the Reviewing Authority on 21 December 1945, and Bruchsal Prison, Bruchsal, Germany, was designated as the place of confinement as to each. The record of trial has been examined as to each of said accused, and has been found legally sufficient as to each. The sentences as to accused Klein, Ruoff, and Willig were upheld upon review by the Reviewing Authority on 21 December 1945, but the method of execution thereof was changed to prescribe death by shooting. The record of trial has been forwarded to the Commanding General, United States Forces, European Theater, for final action as to accused Klein, Ruoff, and Willig (Letter, Headquarters, United States Forces, European Theater, AG 250.4, 23 August 1945, subject: "Military Commissions"). In the following review, reference will be made to the participation by accused Wahlmann, Merkle, Huber, and Blum, in the offenses charged, only insofar as it is necessary to explain the guilt of accused Klein, Ruoff, and Willig, whose sentences require confirmation by the Commanding General, United States Forces, European Theater.

4. DATA AS TO ACCUSED: All accused are German civilians. Additional personal data as to each will be set forth in paragraph 6 (c), in connection with the defense raised by each, and in paragraph 9, in connection with the discussion of clemency.

5. RECOMMENDATIONS: That the action of the Military Commission and of the Reviewing Authority, as to those sentences imposing the death penalty, be confirmed, but that the method of execution be designated to be by hanging, in conformity with the original sentence of the Commission.

6. EVIDENCE:

The evidence shows that for many years before 1944 there had been operated at the town of Hadamar, Germany, a small sanatorium for the care of the mentally ill. It was a state institution, and during the time in which the events which are the subject of this trial took place, it was under the jurisdiction of the provincial administration, located at Wiesbaden. It was subordinate to this provincial administration, in that all policies were decided by and all important orders came from Landesrat (administrator councilor) Fritz Bernotat at Wiesbaden, who was in turn a subordinate of Gauleiter Jakob Springer (R 156-159; Pros. Exs. 16-1, -2; Ex. 21).

It is also shown by the evidence that between January of 1941 and some time in the middle of 1944, as many as 10,000 Germans, alleged to be mentally ill, were admitted to Hadamar and there put to death. At first the bodies of these were cremated. Later they were killed by means of "medications and injections", and, apparently, buried in the institution's cemetery (R 159-161; Pros. Exs. 16, 17-1). The record contains considerable testimony in which it is attempted to be shown that there existed a German law or decree authorizing and directing such disposition of the insane (R 240-247, 277-282). Inasmuch, however, as the accused were not tried for the deaths of those people, and since most if not all of such deaths took place prior to the time of the acts for which all of the accused were tried, it is not deemed necessary to do more than state the above facts as a prelude to the important elements of the present case.

It is clearly established that between 5 or 6 June 1944 and 13 March 1945 there took place numerous shipments of Polish and Russian men, women, and children to Hadamar, from various other institutions and camps in German or German-occupied territories (R 21, 24, 25, 35, 73, 87, 91, 92, 266,

267, 298, 301; Pros. Exs. 16, 17). Their number totaled 476, and all were killed within one or two days, if not hours, after their arrival at the institution, either by hypodermic injection of morphine or scopolamine, or derivatives thereof, or by doses of veronal or chloral (R 24, 40, 97, 217, 325-330, 337-339; Pros. Exs. 17-1, 19). It is repeatedly testified that all were killed, and there is no evidence that any who arrived avoided death, except for one woman who escaped from the institution (R 212, 325, 331; Pros. Exs. 8, 9).

The reason given by the officials and employees at Hadamar who directed and actually gave the fatal injections, was that all of the victims were incurably ill from tuberculosis (R 183, 202, 228, 356). There is also some evidence that they had been told and believed that the Poles and Russians came under the provisions of the German law or decree which required such disposition of German insane (R 81, 167, 205, 251, 254). One witness testified that they had not been so instructed (R 35). The defense was unable to prove the existence of any such decree, much less its real or purported application to the non-German victims (R 245-47, 257). An exhumation and autopsy by a qualified American pathologist of the bodies of six of the Poles and Russians showed that at least one of the victims had not suffered from tuberculosis, and that in none of them was the disease in such an advanced stage that death from it was reasonably to be expected within a short period of time (R 108, 109, 116-119). There is uncontroverted evidence that the incoming Poles and Russians were neither examined nor treated for tuberculosis by the one doctor on the institution's staff, who was actually an alienist or psychiatrist, and not a pathologist (R 202, 298).

There were at Hadamar none of the customary facilities for treatment of tuberculosis (R 123). The cause of the deaths was the injection of excessive doses of narcotic drugs,

(R 119, 120, 126-129). The victims were induced to receive the injections and to take the drugs by assurances that they werebeing treated for the disease from which they allegedly suffered, or that they were being inneculated against communicable diseases (R 70, 86). Perfunctory examinations were made by hospital personnel to determine whether the victims were in fact dead, after which they were hurriedly buried in mass graves in a portion of the institution's cemetery (R 334, 365).

Upon their arrival at the institution, records were properly made out of their names, sex, nationality, and other data. The records of their deaths, however, were always falsified as to dates and causes of death, so that neither the fact that they died as a result of overdoses of narcotics, nor the fact that death always occurred within an exceedingly short period of time after arrival, was shown (R 42, 43, 55).

Accused Alfons Klein was the chief administrative officer of the institution, in charge of records, food, housing, and reports, both of employees and inmates (R 360). He knew of the deaths of the Poles and Russians, and, in fact, received the original orders from Bernotat and Springer requiring them to be received and put to death, and transmitted such orders to other institution personnel. One accused stated that accused Klein "gave all (the) orders" (Pros. Ex. 20-1).

Accused Adolf Wahlmann was the institution's doctor through the period of time covered by the deaths (Pros. Ex. 16-5). As has previously been stated, he was primarily an alienist and a psychiatrist. He became chief physician (and, as far as may be determined from the record, the only doctor at the institution) in August of 1942 (R 208). He was present at a conference at the hospital with Bernotat, and Klein, before any of the Russians and Poles arrived, in which conference it was determined that these "patients" were to be killed by the

and the amount of the drug to be given to each prospective victim (Pros. Exs. 17-2,-3), although there is also some testimony that he left this task to his chief nurses (R 306). The pharmacy from which drugs were obtained was in his office (R 169, 322). He requisitioned the drugs which were used in the killings, entered the alleged causes of death on the patient's history chart (R 203, 322; Pros. Ex. 16-5), and signed the death certificates (R 300, 304, 307; Pros. Ex. 17-2).

Accused Heinrich Ruoff began working as chief male nurse at the asylum in 1926. About two months after the program of extermination began, he took an active part in administering the fatal injections. He estimated that Willig and he "gave injections to two or three hundred Poles and Russians, but it could have been 400 or 500, too" (Pros. Exs. 16-4, 17-1, 18-1; R 323-330).

Accused Karl Willig was a male nurse at Hadamar. He had been so employed since 1941 (R 336). He participated equally with Ruoff in the killings, from the first shipment of workers, by means of administering hypodermic injections of narcotics, and also by orally given doses of veronal and chloral (R 337, 340; Pros. Exs. 10-2, 17-2). He later helped in the burial of some of the dead (R 338; Pros. Ex. 10-2). He attended daily morning conferences with Wahlmann and Huber when Ruoff did not; in these meetings plans were made for further disposal of inmates (Pros. Ex. 17-2).

Accused Irmgard Huber was the chief female nurse at the institution, carrying out the orders of Doctor Wahlmann and overseeing the duties of the seven other female nurses (R 212). She knew beforehand of the arrival of the first transport, and made preparations for housing the victims (R 168). There is some evidence that the female nurses actually gave injections (Pros. Ex. 17-1). It is, at least, well established that accused Huber took part in daily morning conferences at

which Wahlmann signed death certificates (R 343; Pros. Ex. 17-2). She obtained narcotics from the pharmacy in Wahlmann's office for Ruoff and Willig (R 329), and she was actually present on at least one occasion when fatal injections or dosages were given to patients, and when false death certificates were made out (R 227; Pros. Ex. 16-1).

Accused Adolf Merkle began working at Hadamar in 1943 (R 355). He was primarily the institution's bookkeeper, both for the registering of incoming patients and for purposes of recording dates and causes of death. He knowingly made false entries as to the dates and causes of death of all the victims (R 348, 349; Pros. Exs. 16-2-2,-5, 17-1, 19-1). Merkle is said by Ruoff to have been thoroughly familiar with what went on at the institution (Pros. Ex. 17-2). On the witness stand he steadfastly denied that he knew the true state of affairs, that he gave injections, or saw any dead bodies (R 350, 357). He believed that the patients died of tuberculosis or pneumonia (R 358).

Accused Philipp Blum is accused Klein's cousin. He had been a doorman and telephone switchboard operator at the hospital since before 1940, served for a short period of time in the Luftwaffe, and returned to Hadamar in 1941. Due to shortage of personnel after January, 1943, he became chief caretaker of the cemetery, until he was again drafted in August, 1944 (R 264, 265). Probably only the first shipment of Poles and Russians occurred during his presence at Hadamar (R 266). Some bodies he buried without the approval of Doctor Wahlmann, on his own belief that they were dead (R 268). He supervised the burial in mass graves of 100 bodies, "more or less", of Russians and Poles (R 273). He knew beforehand that the transport was to arrive, and what was going to be done (Pros. Ex. 19-1). He was in the ward in which the victims were put to bed, received injections, and died, and he waited

them (R 277-279; Pros. Ex. 16-3). He took the signed death certificates to the City Hall, where they were entered in the registry of deceased persons (Pros. Ex. 16-5). There is also in the record one statement by Ruoff that Blum helped administer the poisons which brought about deaths (Pros. Ex. 18-1). His own pre-trial statement indicates a full knowledge on his part of what was intended, and what actually did take place, and although his part in the killings was perhaps secondary, it is clear that he was consciously an important link in the chain of actors who dealt with the victims from their arrival to their complete disposal (Pros. Ex. 20).

(b) Since accused Wahlmann, Huber, Merkle, and Blum received sentences which do not require confirmation by the Commanding General, United States Forces, European Theater, it is not necessary for this office to pass upon the legal sufficiency of the record as to them. It is sufficient to say that the record does contain evidence which, if believed by the Commission, warrants the findings as to each that they did wilfully, deliberately and wrongfully aid, abet, and participate in the killings of in excess of 400 Poles and Russians. The foregoing expositions of the parts played by them have been included herein so that the killings may be understood for what they were, a wholesale disposal of innocent foreign nationals who were of no further use to the German war machine, in a manner which required the coordinated efforts of the staff of a hospital ostensibly devoted to healing rather than murder. There remains only to discuss in some detail the defenses interposed by those accused whose sentences require confirmation, to-wit: Klein, Ruoff and Willig.

(c) Accused Klein was employed at Hadamar from August, 1934 until May, 1937, and from 1938 until it was overrun by the Americans in March of 1945. His last official position was that of chief administrator inspector or "deputy adminis-

superiors were Landesrat Bernotat, who was the head of the office of the chief president, and Springer, the chief president, or Gauleiter (R 156). Klein was an employee at the institution between October of 1940 through July 1942, while 10,000 or more mentally diseased Germans were put to death there (R 156-158; Pros. Ex. 16-1). In 1944 he was responsible for the business supervision of the institution, and was also its cashier (Pros. Ex. 21-1). "In July or August, 1944" (Note: the record of shipment of Poles and Russians to Hadamar begins in June, so the conference must have actually been prior to July), he attended a conference with Bernotat and Springer in which he was informed that transports of incurable tubercular laborers would arrive at Hadamar (R 159, 160, 191; Pros. Ex. 16-2). At a later conference he was instructed that these workers were to be killed under the same law, and in the same way, as the German insane patients had been killed. Klein protested both the fact that they were being sent to Hadamar and that they were to be killed, but to no avail (R 160, 164, 323, 332; Pros. Ex. 16-2). He had no authority over their admission or disposition (Pros. Ex. 21-1). Accused feared that if he disobeyed these orders he would have been sent to a concentration camp (R 160).

The method used to kill and dispose of the patients has already been described. At one point in his testimony Klein denied that he himself ever ordered an injection to be given, or that he ever gave one. He was often present, however, when they were given (R 161, 182). Upon cross-examination he admitted that he had given orders for injections, but maintained that he "merely transmitted (to the personnel) the order which Bernotat gave me through the Gauleiter" (R 190). Other orders given by him, for reception of Russians and Poles, and their subsequent burial, were "purely administrative" (R 180, 181). Accused never saw the law or decree which pur-

to take an oath not to reveal anything which happened there (R 162). Several former employees who had talked of what went on were "picked up by the Gestapo", and taken to concentration camps, and one died there (R 163). Accused, however, never threatened the personnel in any way (R 164).

Accused admitted in his testimony that in his pre-trial statement he had said that personnel were entirely free to leave Hadamar at any time (R 168; Pros. Exs. 16-5,-6). He qualified this by testifying that he had said so because he was told before he made the pre-trial statement

> "That the personnel..... made statements......, that I had always given orders when the Russians and Poles arrived to have them killed, and that I had threatened them every time with a concentration camp if the work was not done.............." (R 168, 173, 176, 196, 204)

and by the assertion that as an "official", rather than an "employee", he himself could not leave (R 174). Affairs at Hadamar eventually became such that even employees could not leave, because of shortage of personnel (R 174, 176). Then, too, in his pre-trial statement, he had not mentioned the probable drastic consequences to any employee if that employee left Hadamar (R 176, 192). He knew that what was being done at Hadamar was "wrong" (R 193).

In a closing statement to the Commission the accused Klein said that he examined the medical papers of all the imported laborers "specifically"; that they showed the Poles and Russians to have been treated for varying periods of time at other hospitals for tuberculosis without effect; that upon personal examination he found that "more than half of these diseased people had tuberculosis"; and that because of the sufferings they were undergoing and the danger of infection of other people by them, the killings should not be considered violations of international law, because it was "cruel....... if one would let them live longer" (R 368).

Accused Heinrich Ruoff had worked at Hadamar since August of 1926. He was first employed as a male nurse. In 1936 he became chief male nurse. His assistant during "the last days" was accused Willig (R 321, 332, 335). Ruoff and Willig were under the immediate supervision of the accused Klein. They were told by Klein and Bernotat that the Polish and Russian patients were to be treated as German insane patients - which meant that they were to be killed - and that if they complained about their tasks they would "end up in concentration camp" (R 322, 325; Pros. Exs. 17-1,-2). They obtained the drugs from Doctor Wahlmann and, in obedience to the orders from Klein and Bernotat, administered injections which resulted in the deaths of the Polish and Russian victims. Accused Ruoff was unable to estimate how many he had put to death (R 325), except in his pre-trial statement, in which he said "two or three hundred Poles and Russians, but it could have been 400 or 500 too" (Pros Ex. 17-1). He "presumed" that all the Russians and Poles were ill, because of their appearances, and also because he "saw many diagnoses of the doctors" (R 167, 331). Upon Klein's instructions, accused Ruoff gave Merkle some names of Poles and Russians "every now and then", to be reported "with the Office of Vital Statistics". This was done alphabetically (R 365, 366). He made several efforts to leave Hadamar, but his requests were always refused (R 332; Pros. Exs. 17-1,-2). In his statement prior to trial, however, accused Ruoff made no mention of efforts to leave. He did state that in 1940 Bernotat and Klein "forced me to sign a declaration, under oath, that under all circumstances we would have to keep everything secret which we see and shall do and hear, or go to the concentration camp" (Pros. Ex. 17-2).

Accused Karl Willig had been a male nurse at Hadamar since 1941, his immediate superior being accused Ruoff, and, above Ruoff, accused Klein and Wahlmann (R 336, 337). He ad-

previously been described (R 337, 340; Pros. Ex. 19-1). He testified that together with Ruoff and accused Blum, he was told by Klein that they were to receive incurably tubercular Russians and Poles who "were to be killed just like.......... German mentally diseased" (R 337; Pros. Ex. 19-1). After Blum left Hadamar accused also took over the burial supervision (R 338, 339). He, too, believed that all the Russians and Poles were incurably tubercular, had been told that there was a law which provided for their deaths, and had attempted unsuccessfully to leave Hadamar (R 343, 344, 346). The orders to kill the victims came from Klein (R 346).

In his statement prior to trial, accused said the following:

> "Nobody has ever threatened me with concentration camp if I leave my job at Hadamar. I had no other working place anywhere. I never tried to be dismissed. Once I asked to be transferred into a different institution, but I was refused. I could not ask to be dismissed because I would have lost my pension and probably had been locked up." (Pros. Ex. 19-2).

(d) Further evidence will not be set forth here, but the recapitulation contained in the review of the Staff Judge Advocate, Seventh U. S. Army, which is attached to the record, is adopted in its entirety.

7. JURISDICTION:

(a) The Military Commission which heard this case was properly constituted in accordance with letter, Headquarters, United States Forces, European Theater, AGO 250.4 JAG-AGO, 25 August 1945, subject: "Military Commissions", and AGWAR Messages WX-16901, 19 June 1945, and WX-25769, 2 July 1945. The latter messages specifically authorize the trial in occupied Germany by military commission of persons charged with war crimes committed "before or after occupation.... and regardless of nationality of victim". The accused by motion challenged the exercise of jurisdiction by the Commission

commission and, secondly, because the accused had committed no offense against the United States or its citizens, and could not, therefore, under international law, be tried by a military commission of the Army of the United States. It is not a sufficient answer to the questions of jurisdiction thus raised merely to cite the authorizations contained above and to assert that the occupying power, having acquired complete jurisdiction over the vanquished people by the very fact of occupancy, may impose its will regardless of precedent and the established law of nations. If jurisdiction is co-extensive with power there is no question requiring an answer. Our heritage of rule by law and a due regard for the judgment of history, make it mandatory that, regardless of the power to do otherwise, we assume jurisdiction only in accordance with the conditions and limitations imposed by international law.

(b) We are, therefore, here concerned with whether the military commander of the occupying forces may, within the limits defined by international law, place the accused upon trial before a military commission for the offense charged. The answer depends, first, upon whether the alleged offense was a violation of international law, and, secondly, assuming the offense to be such a violation, whether the military commission had jurisdiction to try the offenders The charge alleges a violation of "international law". It is believed that a violation of the "laws of war" could have been charged with more exactness and with equal efficacy. The term "laws of war" is included within the meaning of the term "international law", and is somewhat loosely used by writers to connote violations of international law committed by military personnel or other individuals, and having some undefined relation with the waging of war (Oppenheim, International Law, 6th Ed., Vol. II, p 451, et seq). In the following discussion we shall consider whether assumption of jurisdiction by the Commission was justified be-

No opinion is expressed herein whether the offense was a violation of international law independently of its character as a war crime. It should also be understood that in the following discussion we are concerned with the question of the existence of an international law of war and not of a German law or administrative decree. If the offense alleged was a violation of the international laws of war, the question of the existence of a German law becomes immaterial. No domestic law may nullify a rule of international law or render acts legitimate in derogation thereof (Fraenkel, Military Occupation and the Rule of Law (1944), p 188-189).

(c) Did the alleged offenses constitute violations of the international laws of war? Unfortunately, the record does not affirmatively disclose whether the victims were forcibly deported to Germany from their native countries to work as slave laborers, or whether they went voluntarily on the promise of better pay and better living conditions. The Commission could reasonably have taken judicial notice of the fact that hundreds of thousands of Polish and Russian nationals were forcibly deported to Germany during the war to relieve an acute labor shortage therein, and to replace German workers to be released for the front; that such deportations were war measures; and that the labors of such deportees had a direct relation to the "total warfare" then being waged by the German Reich (Lemkin, Axis Rule in Occupied Europe (1944), pp 21, 22, 67-69, 72-73, 83). Deportation of inhabitants of an occupied country is itself a war crime (Pitt Cobbett's, Leading Cases on International Law, 5th Ed., Vol. 2 (1937), p 171; Feilchenfeld, "The International Economic Law of Belligerent Occupation" (1942), p 91; Oppenheim, International Law, Vol. II, Sixth Ed., Rev. Sec. 170, p 345), and contrary to the spirit of Article 46 of the Hague Convention, which enjoins the obligation to respect "family honor and rights", and "the lives of persons". In this connection

War Criminals of the European Axis", creating the International War Crimes Tribunal, presently meeting at Nürnberg, Germany, specifically lists (Article 6 c) "deportation to slave labor or for any other purpose of civilian population of or in occupied territory" as a "War crime". It is self-evident that the belligerent occupant is not any the less bound to respect the lives, honor and rights, and to refrain from ill-treatment of such deportees after the unlawful act of deportation than it was before. In the instant case it may be reasonably assumed that some, if not all, of the victims consisted of such impressed foreign laborers. It is equally reasonable to assume that their subsequent alleged illnesses rendered them a burden on the economic system and a liability in the prosecution of the war, and that their deaths were ordered and carried out in consequence thereof and in furtherance of the "total war" effort. There is some intimation of this in the testimony of the accused Wahlmann (R 303). The health and work of the victims appear to have had a military relevance and their deaths to have been motivated by military expediency. Modern war is "not only military but economic and social" (Fraenkel, supra, p 189), and it does no violence to the traditional meaning of the term "laws of war" to construe the organized killings in the instant case to be acts in violation of such laws of war. It is concluded, on the basis of such reasoning, that the unlawful killings of the victims did have some relation to the waging of war by the German Reich, and therefore constituted violations of the laws of war.

(d) The question remains whether a properly constituted military commission, meeting in occupied enemy territory, may try and punish civilian nationals of a belligerent enemy power for violations of the international laws of war committed during the pendancy of the state of war, but prior to occupation, and against nationals of allied nations. It is well established

other appropriate tribunal, individuals who commit violations of the laws of war against its own citizens, army or territory (Pars. 346 c, 347, FM 27-10, Rules of Land Warfare; British Manual of Military Law, CH. XIV, Sec. 441; Ex Parte Quirin, 317 U.S., 1, 26-28 (1942); Dig. Op. JAG, 1912, p 1067, SPJGW 1943/3-29, 26 Feb. 1943, Bull. JAG Vol. II, No. 2, pp 51, 54; Winthrop, Military Law and Precedent (2nd Ed. 1920), pp 793, 838; Oppenheim, International Law (6th Ed, 1940), p 451; Speight, War Rights on Land (1911), pp 280, 462; Garner, International Law and the World War (1920), Vol. II, pp 469, 476; Hall, International Law (8th Ed., 1924), sec. 135). Whether a belligerent may try and punish individuals who commit violations of the laws of war which are not directed against its own citizens, army, or territory is considerably les. clear. There are some general statements by writers on international law tending to affirm the existence of such jurisdiction, although many of these authorities found such jurisdiction upon the broad basis of the existence of a "law of nations", or, "law of humanity", rather than on the narrower basis of a violation of the laws of war. As early as 1612, Grotius stated:

> "The fact must also be recognized that kings, and those who possess rights equal to those kings, have the right of demanding punishments not only on account of injuries committed against themselves or their subjects, but also on account of injuries which do not directly affect them but excessively violate the law of nature or of nations in regard to any person whatsoever" (Grotius, De Jure Belli Ac Pacis Libri Tres (1612) Carnegie Trans. 1925, p 504).

Wheaton, in his "Elements of International Law" (6th Ed., Vol. I, 1929, p 269), declares that the judicial process of every independent state extends to the punishment of "offenses against the common law of nations, by whomsoever and wheresoever committed". Hall, in his "Treatise on International Law" (8th Ed., 1924, Sec. 135), states that a belligerent possesses "the right of punishing persons who have violated the laws of war if they afterward fall

is a well-recognized principle of international law. It is a right of which he may effectively avail himself after he has occupied all or part of enemy territory and is thus in the position to seize war criminals who happen to be there" (Oppenheim, International Law, 6th Ed., Rev. Vol II, 1944, Sec. 257 a). There are few adjudicated cases where jurisdiction has been assumed by military tribunals in cases where the victim was not a national of the punishing state and where the offense occurred before occupation of the place of the crime. Eight such United States cases (seven of which appear to have been war crimes and one murder by a civilian) have been summarized in a recent exhaustive study by a member of the Judge Advocate General's Department (Cowles, Universality of Jurisdiction over War Crimes, 33 Calif. Law Review, p 281), wherein it is stated: "These cases show that when it is a matter of doing justice in places where ordinary law enforcement is difficult or suspended, the military tribunals of the United States.....have acted on the principle that crime should be punished because it is crime. They had had no concern with ideas of territorial jurisdiction.... No evidence has been found that any of the decisions just discussed were the subject of protest by the governments of the accused persons. Certain it is that in none of these United States cases is there any evidence of a consciousness on the part of the courts of any duty not to assume jurisdiction." The author then argued that "while the state whose nationals were directly effected has a primary interest, all civilized states have a very real interest in the punishment of war crimes", and that "an offense against the laws of war, as a violation of the law of nations, is a matter of general interest and concern". He concluded that "every independent state has jurisdiction to punish war criminals in its custody regardless of the nationality of the victim, the time it entered the war, or the place where the offense was committed".

regardless of any direct interest of the punishing state, assumption of jurisdiction may be equally well defended on the narrower theory that the United States did have a direct interest in punishing the perpetrators of the offense, inasmuch as the victims were nationals of allies engaged in a common struggle against a common foe. There is authority for this contention in a recent opinion of the Judge Advocate General (SPJGW 1943/17671, 13 Dec. 1943) where the question was considered whether German soldiers who had executed without trial, in violation of the laws of war, certain Italian civilians accused of transmitting information to United States forces in combat with the Germans, could be, upon capture, tried by a military tribunal of the United States. At the time of the offense the Italian government was a co-belligerent of the United States. The Judge Advocate General, in holding that either a tribunal of the Italian government or a military tribinal of the United States would have jurisdiction to try and punish the offenders, employed the following language: "The right to punish for such an offense against an ally proceeds upon the well-established principle that allies or co-belligerents constitute but a single side of an armed struggle". The opinion pointed out that the right of the United States to take jurisdiction was especially strong in the case under discussion because it had the physical custody of the accused and because "the offenses appear to be directly related to our military operations." Such language is a clear enunciation of the theory that jurisdiction may be based upon the "interest" of the punishing state. The opinion, however, then proceeds to state a much broader theory of jurisdiction. After quoting an earlier opinion of the Judge Advocate General (SPJGW 1943/14216, 30 Oct. 1943) to the effect that jurisdiction in cases of offenses against the law of war is personal rather than territorial and is largely "determined by physical custody of

broad language: "Where cobelligerency exists, jurisdiction to punish offenses against the laws of war may thus be concurrent. The fundamental and all important fact is that the persons involved are suspected of having committed crimes of an international character in violation of the international laws of war. An offense against the laws of war is a violation of the law of nations, and a matter of general interest and concern. Whether committed by their own forces or those of the enemy, all civilized belligerents have an interest in the punishment of offenses against the laws of war. War crimes are now being especially recognized as of general concern to the United Nations, which states in a real sense represent the civilized world. In the present situation the United States has jurisdiction because it has the physical custody of the accused and as its military courts have jurisdiction over such offenses." It is concluded that, in the instant case, although the offense alleged is not as directly connected with the military operations of the punishing power as was the offense in the cited case, the United States may properly assume jurisdiction, both on the theory that the United States has a direct interest in punishing offenses against nationals of its allies committed, as here, subsequently to our entry into the war, and on the broader theory that the punishment of war criminals is a matter of general interest and concern to all nations. In view of the opinions above expressed, it is unnecessary to decide herein whether the asserted facts constitute a violation of international law independently of their character as a war crime (See the "Agreement...for the Prosecution and Punishment of the Major War Criminals of the European Axis" (Article b, c), for the latest assertion of the existence, as part of international law, of "crimes against humanity" as distinguished from "war crimes"), and no opinion is expressed thereon.

8. DISCUSSION:

The three accused whose sentences require confirmation frankly admit the commission of the acts alleged by the prosecution. There is no doubt that Klein ordered and that Ruoff and Willig committed the killing of 476 Polish and Russians at Hadamar Sanitarium between June of 1944 and March of 1945. The factual allegations of the Specification of the Charge are fully met by the proof adduced in the record of trial, and it remains only to discuss the defenses raised by counsel for accused.

Throughout their testimony before the Commission, each of the three accused sentenced to death reiterated the claim that he was unable to leave Hadamar for fear of the consequences to him if he did so. The implication is that each remainded and continued to take his part in the wholesale killings because he had no alternative. From evidence contained in pre-trial statements the Commission would have been justified in concluding that this alleged fear was not a significant factor in the minds of these accused at the time they committed their acts, but that it has been raised since their arrest and especially during their trial, as an afterthought and as a desperate defense measure on their part (R 208, 238). Assuming, however, for the sake of a brief argument, that such a fear did exist, it is believed that it does not afford a valid defense to the charge of murder, either as legal justification or in mitigation of the offense. The fear of the consequences to the accused if they left Hadamar is roughly analagous to the fear of the consequences of obeying an immediate military or administrative order, and may be considered, as an asserted defense in this case, as comparable to a defense of obedience to superior orders.

Section 345.1, Rules of Land Warfare, FM 27-10, C 1, 15 November 1944, states the liability of offending individuals

> accepted laws and customs of war may be punished therefor. However, the fact that the acts complained of were done pursuant to order of a superior or government sanction may be taken into consideration in determining culpability, either by way of defense or in mitigation of punishment. ****" (Underscoring supplied).

It has previously been held by this office that obedience of military orders which are obviously and flagrantly illegal does not constitute a defense to a criminal charge which arises out of such obedience (cf. United States v. Dominikus Thomas; United States v. Albert Bury and Wilhelm Hafner; Case of Dithmar and Boldt (Llandovery Castle), 16 American Journal of International Law, p 708, reprinted at p 767, The Law of Nations, by Herbert W. Briggs). *A fortiori* the same rule applies with added force to orders from other administrative or governmental bodies. Likewise, and as will be discussed hereinafter in connection with a defense raised under provisions of the German Penal Code, there was no immediate compulsion to commit the acts. No superior stood over accused with loaded gun and forced them against their wills. The picture presented is much more of men who for years had been killing without right to do so, and in almost incomprehensible numbers. They were so deeply entangled in a web of built that they had no longer an incentive to escape. There was nothing for them to do but go on with their deeds. They could not cut themselves off from their bloody pasts. In the face of this situation, the fear of the consequences upon which they now seek to rely, becomes a monster of their own creation. They killed because they had long been killing. What moral scruples they may once have had against murder had vanished. The defense which is implied in the wording of the paragraph of the Field Manual above quoted, if applied to a situation such as this, puts a premium upon the magnitude of such offenses. "Accused should, therefore, have refused to obey (the orders.) As they did not do so, they must be punished." (Case of Dithmar and Boldt, loc. cit. supra, p 773).

insane German nationals be put to death by euthanasia. The existence of such a law or decree was not satisfactorily proved by the defense. The most satisfactory evidence adduced was that there was probably an "administrative order", issued from Hitler's office, which permitted it (R 240-247). It is clear that this order was understood by the witness who best established its existence (the former Chief Prosecutor of Wiesbaden) not to relate to any persons other than Germans who were incurably insane (R 245). As such, it could certainly offer no protection to the accused. They are charged with the murder of Poles and Russians, who were not incurably insane and who obviously do not come within the wording or the intention of such an order. It is not meant to imply that were there in the record any proof that the order actually had been extended to direct the deaths of non-Germans, it would provide a defense, for it is extremely difficult to conceive how the German authorities could have the right so to legislate or decree effectively with respect to nationals of an opposing belligerant involuntarily under their control. As for the alleged belief of the accused that the decree had been extended to permit disposition of non-Germans under its terms, it is sufficient to say that accused acted at their own peril. Ignorance of the law or misapprehension of it in an instance so grave as this, should not be heard as a defense to such crimes. Actually, there is no showing that any extension of the decree ever was made.

There is testimony - mostly their own - that accused feared the concentration camp if they ran away from the scene of their mass murders. Although there is reliable evidence that the prohibitions of which they spoke were upon talking about what they had seen and done at Hadamar, rather than upon their leaving and taking up jobs and residences elsewhere, there may have been <u>some</u> fear in the minds of the accused. The Commission was not bound to believe their testimony in this respect. In sup-

and in fear of possible banishment to a concentration camp, civilian defense counsel in his argument to the Commission quoted Sections 52 and 54 of the German Criminal Code (see: "Military Government of Germany", Technical Manual for Legal and Prison Officers, 2nd Edition, pp 117, 118) to the effect that

> "No criminal deed is committed if the actor was compelled to perform the deed by irresistible force or by a threat which was coupled with immediate danger to life or limb to himself or a relation, which was not otherwise to be averted"

and that

> "No criminal deed is committed if the act is committed in order to rescue the actor or a relative from present danger to life or limb in an emergency other than self-defence, not caused through the former and not otherwise to be averted".

It is not meant to suggest that domestic law has any bearing in a case involving violations of the laws of war. But, assuming for the sake of argument that accused were actually guided by these provisions of the German law, it is difficult to see wherein they are benefited. From the aspect of immediate compulsion upon them to commit their acts, the problem has already been disposed of in the discussion of the question of superior orders. Nowhere does it appear that accused were under any immediate compulsion or irresistible force. And if there was a present danger to life and limb, within the wording of the second quoted paragraph, it is fair to say both that it could have been averted by their running away, and that they themselves were legally responsible for their actions when the time came for them to kill the Poles and Russians. As will be shown in discussing their requests for clemency, all three accused, Klein, Ruoff, and Willig, were Nazis. They held their posts under a regime which as party members they had helped to establish and continued to maintain. And it is plain that their hapless victims did not. When this case is reduced to its barest essentials, and every other consideration is put to one side, the salient fact remains that accused were willing

[illegible] regime. As such they took the lives of those who were its victims. They now claim that the regime held them in its toils, and that they knew no way to escape, save by obeying orders to take innocent lives. Some one should and must make retribution therefor. Between accused and their victims, the choice is clear.

The identity and exact number of the victims of the institution's methods of disposing of foreign laborers were not alleged in the Specification of the Charge. While the proof adduced now shows that it might have been possible to do so, it is clear that accused were not prejudiced thereby. In the final analysis, their offenses were more than just mere murders of individuals. Their crime was the unlawful operation of an institution for the mass extermination of great numbers of human chattels of the political and military regime for which the accused worked. They were in no way misled or prejudiced by the form of the Specification, nor, in fact, did they complain of it.

It is likewise clear that the statements obtained from each of the accused prior to trial, which were introduced against them, were entirely voluntary. In fact, each of the accused reiterated from the stand practically everything contained in his pre-trial statement. The only material changes sought to be made by each of them were in efforts to explain why they had omitted from such statements any reference to their alleged fear of attempting to leave Hadamar.

Each of the accused whose sentence requires confirmation was represented by civilian counsel of his own choosing, as well as the regularly appointed military defense counsel. In addition, specially appointed military defense counsel represented accused Klein. Two interpreters were available. The right of cross-examination was extended throughout the case. Each accused was summoned by the Commission as a witness for the

each chose to testify under oath. Under the order appointing it, the Commission was empowered so to act, and its action in this case was in every respect fair and in the actual interest of the accused. Even without their testimony, the Commission could not have found otherwise than it did as to Klein, Ruoff and Willig, and an analysis of the record shows that it was their own testimony which probably saved the other accused from death sentences.

The Commission was properly constituted, and, as has previously been set forth, had jurisdiction over the subject matter and the accused. It was authorized to impose the death penalty. Both the findings and the sentences were approved by a two-thirds vote of the members of the Commission present. There were no irregularities in the proceedings or trial which prejudiced any substantial rights of the accused, and, in fact, it is obvious from the record that the trial was conducted with exceptional skill and fairness to all concerned. The accused received a trial thoroughly consistent with Anglo-American concepts of justice, and there exists no doubt as to the full guilt of any of them.

9. CLEMENCY:

All accused were found guilty of the commission of war crimes, which are subject to the death penalty, although a lesser penalty may be imposed (Par. 357, FM 27-10, Rules of Land Warfare). In this particular instance, four of the accused did receive sentences of less severity, while Klein, Ruoff and Willig were sentenced to death, and such sentences require confirmation by the Commanding General, United States Forces, European Theater.

(a) Accused Alfons Klein is 36 years of age and married. He joined the National Socialist Party in October 1930, and had been a member of the Sturm Abteilung since even before that. He was block leader and administrative local group leader of the National Socialist Peoples' Welfare Organization from

treasury comptroller for the Party (R 185, 187; Pros. Ex. 16).
His position in the Hadamar institution and his responsibility
for what took place there have already been set forth. When
the Americans overran Hadamar in March of 1945 he attempted to
go under the assumed name of "Alfons Klen", and carried a forged
identity card to that effect (R 183, 184; Pros. Ex. 22), but soon
had to admit his true identity. The record of trial, contains
a petition for clemency from his wife, Marga Klein, to General
of the Army Eisenhower, which the Staff Judge Advocate, Seventh
United States Army, states has already been considered by the
Reviewing Authority. Accompanying the record of trial is a
petition written by Klein himself, in which accused requests
clemency. The purport of his testimony during trial, of his
statement to the Commission, and the petitions for clemency, is
that not he, but Springer and Bernotat above him, and Doctor
Wahlmann, his co-worker, were responsible for the murders at
Hadamar, and that, after all, they had really only relieved in-
curably ill and suffering patients from the agonies of a long
drawn out death. There is no evidence of any honest regret for
or revulsion at what he had done, but only self-pity and a frantic
attempt at justification. Since the receipt of the record of trial
there has also been received in this office another petition from
Mrs. Klein, addressed to the Commanding General, Seventh United
States Army, in which she alleges that accused Wahlmann had ad-
mitted to her and to an American guard that he had lied on the
witness stand with respect to his responsibility for prescribing
the fatal doses of narcotics. It is not deemed necessary to re-
consider the evidence in the light of this evidence, even if it
were true. The responsibility of accused Klein rests upon a
broader basis than the mere administration of the poisons to the
victims. Neither the record nor the petitions disclose any valid
reason for the exercise of clemency. It is recommended that the
sentence of death be executed as to accused Klein.

Ex. 17-2). His part in the killings needs no further exposition. While his age and other facts concerning him are not found in the record, it does appear that he is married and has three children, and he described himself during the trial as ".....a sick man, aged man (who has) always been honest. I never did anything wrong." A petition from his wife, Katharina Ruoff, directed to General of the Army Eisenhower, is attached to the record of trial. A similar petition, directed to General McNarney, accompanies the record. The salient characteristic of Ruoff's defense is that he was "only a little man", and that all his acts were those of someone who merely carried out orders and who feared for his life if he did not. The fact cannot be escaped, however, that with his own hands he caused the death of half of the foreign workers brought to Hadamar. He knew what he did was wrong, and if he is not to pay the penalty for his terrible deeds, then there can be found in all Germany few men truly deserving of the gallows. It is recommended that the sentence of death be executed as to accused Ruoff.

(c) Accused Karl Willig's statements and testimony do not disclose many facts concerning his life. It does appear that he is 52 years of age and is married. Clemency petitions written by his wife to the American defense counsel, the Trial Judge Advocate, and the President of the Military Commission, which are attached to the record of trial, show he joined the National Socialist Party in 1932, "in order to get a situation and bread". He held no offices in the Party. His two older sons fought in the German army. One suffered the amputation of a leg, the other is known to be wounded, and is missing. His own petition for clemency, directed to the Commading General, Seventh United States Army, also is attached to the record. A letter from accused to General Eisenhower has been received since the completion of the record, and is among the accompanying papers. It discloses that in addition

accused was also one of the "little men," that he feared the consequences to him and his family if he left his job, and that he did as he was ordered to do. It is probably true that of the three accused who were sentenced to die, Willig was the least guilty, if such an expression is a fitting one in an instance of such heinous mass murders as were perpetrated at Hadamar. It is impossible, however, for any person with a sense of justice to say that there is any proper punishment less than death for men who have stained their hands as these men have done. For that reason no clemency is recommended for accused Willig.

(d) The Reviewing Authority, for reasons not set forth in his action or elsewhere, changed the method of execution from hanging to shooting. Death before a firing squad is generally imposed for the commission of a purely military offense. Accused's crimes bear no relationship whatever to military offenses. They were murder, pure and simple, and on a scale so great that the most ignominious death conceivable under our system of punishment should be their penalty. It is therefore suggested that hanging is the most appropriate method of execution of their sentences.

10. CONCLUSION:

It is accordingly believed that the sentences of the Commission should be confirmed, and the method of their execution as to accused Klein, Ruoff, and Willig should be by hanging, as originally prescribed by the Commission. Forms of action to accomplish this result are attached hereto.

SAMUEL SONENFIELD,
Captain, JAGD

JAMES D. MURPHY,
Captain, JAGD

Having examined the record of trial,
I concur.