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**United States Army Investigation
and Trial Records
of War Criminals
*United States of America v.
Franz Auer et al.*
November 1943-July 1958**



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UNITED STATES ARMY INVESTIGATION AND
TRIAL RECORDS OF WAR CRIMINALS
UNITED STATES OF AMERICA v. FRANZ AUER ET AL.
NOVEMBER 1943-JULY 1958

On the 13 rolls of this microfilm publication are reproduced the records of case 000-50-136, the Mühldorf Concentration Camp war crimes case (*United States of America v. Franz Auer et al.*), which was tried by a general Military Government (U.S. Army) court at Dachau from April 1 through May 13, 1947. In this trial, 14 individuals associated with the administration and operation of five Dachau subcamps, known as the Mühldorf Group, were prosecuted under the general charge of having violated the laws and usages of war by having participated in the operation of the camps, which operations included "wrongful and unlawful" subjection of prisoners of war to "killings, beatings, tortures, starvation, abuses, and indignities." The inclusive dates of the records are November 1943 through July 1958, with a few documents dated as early as 1928.

Included in this publication are German- and English-language pretrial investigation records; orders of appointment of tribunal and counsel; a charge sheet; trial transcripts; prosecution and defense exhibits; sentence reviews and recommendations; clemency petitions; and prison records that were filmed to supplement the trial record. Some prison records were not filmed because of personal privacy considerations. While the majority of records are in English or are accompanied by English translations, a small number of Polensky and Zöllner (PZ) construction firm business records have not been translated.

Background

Jurisdictions and Cases

In Europe, the United States participated in war crimes trials under three jurisdictions: that of the International Military Tribunal (IMT), that of the U.S. military tribunals at Nuernberg, and that of U.S. Army courts. General authority for the proceedings of all three jurisdictions derived from the Declaration of German Atrocities (Moscow Declaration), released November 1, 1943, which expressed Allied determination to arrest and bring to justice Axis war criminals.

International Military Tribunal

The IMT tried 24 major war criminals and a number of organizations in 1945 and 1946. Specific authority for U.S. participation in the IMT is found in Executive Order 9547 of May 2, 1945, which authorized Supreme Court Justice Robert H. Jackson to represent the United States in war crimes matters and to act as Chief of Counsel; the London Agreement of August 8, 1945 (as amended by

the Berlin Protocol of October 6, 1945), in which the United States, France, the United Kingdom, and the Soviet Union agreed to hold the IMT; and the IMT Charter (an annex to the London Agreement), which outlined the rights and obligations of defendants, judges, and prosecutors.

U.S. Military Tribunals at Nuernberg

From 1946 to 1949, U.S. military tribunals at Nuernberg tried 185 individuals in 12 separate proceedings grouped according to type of crime or organization as follows:

<u>Case No.</u>	<u>United States v.</u>	<u>Popular Name</u>	<u>No. of Defendants</u>
I	<i>Karl Brandt et al.</i>	Medical Case	23
II	<i>Erhard Milch</i>	Milch Case (Luftwaffe)	1
III	<i>Josef Altstoetter et al.</i>	Justice Case	16
IV	<i>Oswald Pohl et al.</i>	Pohl Case (SS)	18
V	<i>Friedrich Flick et al.</i>	Flick Case (Industrialist)	6
VI	<i>Carl Krauch et al.</i>	I. G. Farben Case (Industrialist)	24
VII	<i>Wilhelm List et al.</i>	Hostage Case	12
VIII	<i>Ulrich Greifelt et al.</i>	RuSHA Case (SS)	14
IX	<i>Otto Ohlendorf et al.</i>	Einsatzgruppen Case (SS)	24
X	<i>Alfried Krupp et al.</i>	Krupp Case	12
XI	<i>Ernst von Weizsaecker et al.</i>	Ministries Case	21
XII	<i>Wilhelm von Leeb et al.</i>	High Command Case	14

Specific authority for the U.S. tribunals, which tried these 12 cases, is found in Allied Control Council Law 10 of December 20, 1945, which outlined trial procedures patterned after those of the IMT; Executive Order 9679 of January 16, 1946, which authorized the establishment of U.S. military tribunals; Office of Military Government for Germany (U.S.) (OMGUS) Ordinances 7 and 11 of October 18, 1946, and February 17, 1947, respectively, which spelled out details of trial procedures outlined by Allied Control Council Law 10; and United States Forces, European Theater (USFET), General Order 301 of October 24, 1946, which appointed Brig. Gen. Telford Taylor as Chief of Counsel for War Crimes for the 12 U.S. military tribunals at Nuernberg.

U.S. Army Courts

From 1945 to 1948, U.S. Army courts (military commissions and special or general Military Government courts) tried 1,672 individuals in 489 proceedings. Specific authority for these proceedings is found in Joint Chiefs of Staff Directive 1023/10

of July 8, 1945, which placed responsibility for certain war crimes trials in Germany on the Commander, USFET. The Commander, in turn, empowered the commanding general of the Western Military District (territory occupied by the U.S. 3d Army (Bavaria)) to appoint military courts, predominantly at the site of the former concentration camp Dachau, for the trial of war criminals not heard at Nuernberg. This was done in a letter on the subject of "Trial of War Crimes and Related Cases" of July 16, 1945. The commanding general of the Eastern Military District (territory occupied by the U.S. 7th Army (Hesse, Baden-Wuerttemberg, and Bremen)) was similarly authorized to commence war crimes trials, mainly at Ludwigsburg. In order to streamline operations, the Commander, USFET, revoked this division of authority in a letter of October 14, 1946, and assigned responsibility to prosecute war criminals to the Deputy Judge Advocate for War Crimes, USFET. Henceforth, all cases were tried at the site of the former concentration camp Dachau because centralization of war crimes activities appeared necessary in view of the large body of cases and investigations.

The 489 cases tried by the U.S. Army in Germany can be divided roughly into four categories: main concentration camp cases, subordinate concentration camp cases, flier cases, and miscellaneous cases. The first category comprises 6 cases with about 200 defendants, mainly staff members and guards of Dachau, Buchenwald, Flossenburg, Mauthausen, Nordhausen, and Muehldorf concentration camps. The second category includes about 250 proceedings against approximately 800 guards and staff members of the outcamps and branch camps of the major camps. The third category encompasses more than 200 cases in which about 600 persons, largely German civilians, were prosecuted for the killing of some 1,200 U.S. nationals, mostly airmen. The fourth category consists of a few cases including the Malmedy Massacre Trial, in which more than 70 SS men were tried for murdering large groups of surrendered U.S. prisoners of war; the Hadamar murder factory case (see National Archives and Records Service Microfilm Publication M1078), in which a number of Hadamar Asylum staff members stood trial for the killing of about 400 Russian and Polish nationals; and the Skorzeny case, in which some members of the German Armed Forces were charged with wearing U.S. Army uniforms while participating in the Ardennes offensive.

On March 28, 1947, the Muehldorf Concentration Camp case was referred for trial by the Deputy Judge Advocate for War Crimes to the general Military Government court that had been appointed under the authority of Special Order 1, paragraph 11, dated March 15, 1947, Headquarters, European Command (EUCOM; formerly USFET).

The Muehldorf Concentration Camp Case

Muehldorf Concentration Camp derived its name from the nearby city; it was also known as M I Lager and as Mettenheim. The Muehldorf Concentration Camp was composed of four sub-camps:

Waldlager V and Waldlager VI (two camps adjacent to each other and counted as one camp, also referred to as the Forest Camp), Mittergars Lager (also known as Cone Lager), Thalheim Lager, and Gendorf Lager. The inmate population of Mühldorf was between 2,500 and 3,000--Waldlager having between 1,500 and 2,000 and Mittergars between 200 and 300. Thalheim had only about 100 civilian inmates and a few prisoners of war. Gendorf also had very few inmates and did not figure prominently in the case. This group of camps was known as the Mühldorf Ring or Mühldorf Group or the Mühldorf Concentration Camp.

Approximately 8,300 inmates were confined in these camps between July 1944, when construction of an underground factory for use in connection with the assembly or manufacture of airplanes began, and April 1945. The inmates were Hungarian, Polish, Greek, Czech, Yugoslav, Lithuanian, Italian, Dutch, French, and Russian nationals. Some of the Russian, Polish, and Italian inmates were prisoners of war. The majority were political prisoners or "voluntary" workers.

The War Crimes Investigating Team #6827 reported that beatings, overwork, unsanitary living conditions, exposure to the elements without adequate clothing and shelter, a starvation diet, and a patent disregard for medical needs resulted in the death of about 1,800 inmates. The team pathologist stated that overwork combined with a starvation diet was the chief cause of death at these camps.

Organization Todt (OT), a Nazi government construction and engineering agency, was assigned general responsibility for the construction project at Mühldorf. OT at all times remained a planning and supervisory agency that subcontracted the construction work to various firms, primarily the firm of Polensky and Zöllner (PZ). The Schutzstaffel (SS), the elite guard of the Nazi Party, managed the Mühldorf Concentration Camp and the inmate work crews, which were supplied by the SS to the OT and PZ.

The following 14 defendants were indicted and listed on the formal charge sheet:

Franz Auer, SS Technical Sergeant (SS Hauptscharfuehrer):
labor commitment official, responsible for supplying
required number of laborers.

Karl Bachmann, Director of Munich Office, Polensky & Zöllner:
responsible for use and direction of concentration camp
prisoners.

Wilhelm Bayha, SS Staff Sergeant (SS Oberscharfuehrer):
construction detail leader, responsible for special guard
details.

Heinrich Engelhardt, SS Technical Sergeant (SS Hauptscharfuehrer): Acting Adjutant, responsible for executive duties.

Erika Flocken, Dr., OT civilian employee: OT chief physician and responsible for all medical matters.

Karl Gickeleiter, PZ civilian employee: construction engineer for PZ, chief PZ representative at construction site.

Hermann Giesler, OT official: director in charge of all phases of OT activities at the level of OT Group Number 6.

Daniel Gottschling, SS Corporal (SS Unterscharfuehrer): food supply official, responsible for issuing food.

Wilhelm Griesinger, OT official: construction chief and principal technical supervisor of construction at main construction site, responsible for enforcement of contract.

Wilhelm Jergas, SS Technical Sergeant (SS Hauptscharfuehrer): roll call leader, Waldlager V-VI, responsible for getting out details of laborers and in charge of SS Guards at main construction site.

Anton Ostermann, SS Captain (SS Hauptsturmfuehrer): in command of guards at Waldlager V-VI.

Jakob Schmidberger, SS First Sergeant (SS Scharfuehrer): detail leader, Waldlager V-VI, responsible for guard details.

Herbert Spaeth, SS Technical Sergeant (SS Hauptscharfuehrer): guard and clerk responsible for issuing food at SS level.

Otto Sperling, PZ civilian employee: supervisor of cement mixing at main construction site.

Eight officers were appointed to the court: Col. Andrew G. Garner, president; Maj. Devalson S. Purl, legal member; Col. James G. Watkins; Col. Clarence M. Tomlinson; Lt. Col. Jules V. Sims; Lt. Col. Carlisle B. Irwin; Lt. Col. Walter C. Dickey; and Lt. Col. Ottmar W. Eichmann. Mr. Morton Roth served as chief prosecutor and Capt. Robert Bachman as his associate. Mr. Robert Welch served as chief defense counsel and Lt. Paul Hughes as his associate. Dr. O. H. Leiling was special defense counsel.

All of the defendants pleaded "not guilty" to the general charge and particulars. The first motion made by the defense was that the court try the defendants who belonged to the SS, those who belonged to the OT, and those who belonged to the firm

of PZ separately because of prejudices to the individual cases that would result from trying them simultaneously. The court denied this motion.

The defense argued that the construction of a bomb-proof factory for manufacturing pursuit planes at Mühldorf was requested by SS Reichsleader Heinrich Himmler. Defense agreed that OT had general supervision of the construction and was responsible for the physical care of OT personnel working on the main construction site. They argued that the OT met its responsibilities by providing adequate housing and that OT personnel made reports at one or possibly two weekly meetings of department heads to the effect that inmates were not receiving sufficient food for the type of work they were required to perform. However, food supplies were scarce and remained scarce throughout the duration of construction. Defense also argued that it was not company policy to overwork workers because labor costs were calculated according to an efficiency factor based upon expected production of the various kinds of laborers. In view of the construction contract terms, the profit to the contractor would not have been increased by a policy of overwork. To counter the high death rate accusation, the defense pointed to the example of the volunteer Italian workers, a group whose death rate was particularly low in comparison to other nationalities represented at the site. The defense also argued that the SS interfered with the medical treatment of the inmates of the Mühldorf Ring and that OT made two formal complaints concerning SS negligence. Defense pointed out that in the fall of 1944 the chief of the medical department of OT, Berlin, ordered that medical supplies from the OT depot at Schwindegg be sent to the SS officials in Mühldorf. As a result, a large supply of bandages and medicines was shipped from the depot; however, the SS diverted these supplies from the inmates to an SS unit. Concerning transport of seriously ill prisoners to Dachau, defense argued that some food was sent along on the trains and that an additional supply was expected to be picked up en route.

On May 13, 1947, the court announced its findings and sentences. Two of the defendants, Bachmann and Ostermann, were acquitted. Auer, Flocken, Jergas, Spaeth, and Sperling were found guilty and were sentenced to death by hanging. Engelhardt and Giesler received life imprisonment. Gickeleiter, Griesinger, and Schmidberger were sentenced to 20 years imprisonment, Gottschling to 15 years, and Bayha to 10 years. Those sentenced to serve time did so at War Criminal Prison No. 1, Landsberg, Germany, including Auer, who was executed there on November 26, 1948. The death sentences of defendants Flocken, Jergas, Spaeth, and Sperling were commuted to life imprisonment when reviewed in May 1947. Subsequently, their sentences were reduced further, along with those of the remaining defendants.

Bayha was released on February 24, 1952. Engelhardt's life sentence was reduced to 25 years on May 6, 1948, and further reduced to 15 years on August 10, 1951. He was released on parole on December 23, 1953, and discharged on June 16, 1955. Flocken's sentence was further reduced to 38 years on August 16, 1956. She was released on parole on April 29, 1957, and discharged on July 13, 1958. Gickeleiter's sentence was reduced to 10 years on August 10, 1951, and further reduced to time served on July 19, 1952. Giesler's life sentence was reduced to 25 years on May 6, 1948, and further reduced to 12 years on July 7, 1951. He was discharged on October 18, 1952. Gottschling's sentence was reduced to 10 years on July 18, 1951, and he was discharged on January 11, 1952. Griesinger's sentence was reduced to 10 years on July 7, 1951, and he was released on February 28, 1952. Jergas' sentence was further reduced to 30 years on August 10, 1951, and to 25 years on July 19, 1954. On April 13, 1955, Jergas was released on parole and obtained a final release on April 9, 1958. Schmidberger's sentence was reduced to 10 years on May 31, 1950, and he was discharged on December 14, 1951. On August 10, 1951, Spaeth's sentence was further reduced to 15 years. He was released on parole on January 28, 1954, and was discharged on July 4, 1957. Sperling's sentence was further reduced to 20 years on July 7, 1951. He was released on parole on February 5, 1954, and was discharged on July 20, 1957.

Records Description

The Mühldorf Concentration Camp Case

Most records of the Mühldorf case, including prison records, are part of Records of United States Army Commands, 1942- , Record Group (RG) 338. These records were created and originally maintained by the War Crimes Group, Judge Advocate General's Office, European Command. Records of the Office of the Judge Advocate General (Army), RG 153, contain the few microfilmed records that were originally maintained by the War Crimes Branch, Judge Advocate General's Office, Washington, D.C. The records are identified by record group number in the table of contents and on each roll of film.

The Mühldorf trial authorization documents are filmed at the beginning of roll 1. Included are the principal documents authorizing the U.S. Army courts. Filmed with these documents is European Theater Operations United States Army (ETOUSA; predecessor of USFET) Organization Order 270, which organized War Crimes Investigating Team #6827 (the team assigned to the Mühldorf case) on April 24, 1945.

Two finding aids--a witness testimony index (an alphabetical list of defense and rebuttal witnesses that also provides an index to their testimony) and a trial record table of contents (a chronological or daily list of trial exhibits and witness testimony)--are filmed after the authorization documents.

Records of the Mühldorf Concentration Camp trial comprise three groups filmed in the following order: pretrial records, trial transcripts and trial exhibits, and posttrial documents. Within these groups, the records are arranged and filmed chronologically, except for certain numbered pretrial exhibits and posttrial clemency records that are arranged and filmed alphabetically by defendant and either numerically or chronologically thereunder. File folder covers are filmed preceding the records in the folders in all instances where they provide identifying information. Target sheets have been prepared and are filmed in place of folder covers in all instances where the covers provide no information. The English-language version precedes the German-language version in cases where both were available, unless they were reversed as part of a numerical sequence, in which case the numerical sequence is maintained. Duplicate copies of records were omitted before filming began.

Records making up the pretrial documents include eight volumes of witness interrogation reports, lists of suspects, investigation reports, pretrial exhibits, camp maps, photographs of witnesses, prisoner transfer requests and authorizations, preliminary prosecution briefs, internal routing slips, and German-language business records of the PZ construction firm. The business records document the use of inmate laborers by the firm, as well as personnel, procurement, billing, administrative, and construction activities. Court and attorney appointment documents and a charge sheet make up the remainder of the pretrial documents.

The trial transcripts are in English and are arranged chronologically in 23 volumes. Each volume covers a day of the trial and is preceded by transcript covers and cover sheets that contain the names of the chief prosecutor and defense counsel, interpreters, and court reporters, together with a daily listing of testimony, witness statements, and exhibits. The text of the transcript is numbered sequentially from page 1 through 1596. It contains the arraignment and plea of each defendant, opening and closing statements of defense and prosecution, the judgment, and sentences. Following page 1596 of the final volume, individual defendant's commitment forms are arranged alphabetically by defendant surname.

Prosecution exhibits are numbered sequentially, 1 through 87, and are contained in six volumes, each with a table of contents. Other than affidavits, the exhibits consist of charts, diagrams, atrocity photographs, prisoner transport lists, and hospital death records. Not all prosecution exhibits were accepted as evidence by the court. The following exhibits or parts of exhibits are missing from the records: Photographs 11 and 17 in exhibit 13; photographs 9, 10, and 23 in exhibit 40; exhibit 43, PZ records in a hard cover binder; exhibits 53-55, medical requisitions; exhibit 42, PZ records; exhibit 45, Death Book of the Forest Camp (V-VI); exhibits 78 and 79, hospital

death books, exhibit 80, a folder of transport lists, and exhibit 81, transfer lists (the originals were withdrawn; however, samples of each were retained as part of the file and are filmed in numerical sequence); exhibit 83, a letter from the SS camp surgeon at Dachau; and exhibit 86, a request for travel funds for Giesler.

Defense exhibits consist of one volume containing a table of contents that gives document number and description. The exhibits are numbered sequentially, 1 through 44, and include affidavits, a pamphlet on conditions of work under OT, newspaper clippings, and photographs of the construction project.

The posttrial material includes three categories of records: sentence reviews and related documents, clemency petitions and related documents, and parts of the prison files. The first category contains petitions for review in 1947 for defendants Flocken, Gickeleiter, Giesler, Griesinger, and Sperling; the "Review and Recommendations" of the Acting Deputy Judge Advocate for War Crimes of 1948; miscellaneous records, 1948-50, consisting of correspondence, extracts, and summaries of the trial proceedings, sentence review forms signed by Gen. Lucius D. Clay, Commander in Chief, Headquarters, European Command (EUCOM), certificates of execution of sentences, and petitions for review; and reports of actions in 1951 and 1952 by the War Crimes Modification Board, which was appointed under General Order 106, Headquarters, EUCOM, and amended by General Order 19, Headquarters, EUCOM.

Clemency petitions and related documents are arranged alphabetically by defendant's surname. The case review folders are arranged numerically and include an index in memorandum form from the War Crimes Branch, Judge Advocate Division, EUCOM, to EUCOM War Crimes Modification Board. Additional files of miscellaneous petitions are included for some defendants. These are arranged chronologically. Included are German-language clemency petitions and letters of appeal with English translations by or on behalf of defendants, petition acknowledgments, and periodic review and recommendation forms. Files do not exist for Bachmann and Ostermann, the two defendants who were acquitted.

The prison records filmed in this publication comprise a number of items selected to document more fully the outcome of the trial and to portray the evolution of the legal process. They are arranged alphabetically by defendant's surname and chronologically thereunder. Files do not exist for Auer and for Bachmann and Ostermann.

Certain posttrial records are not filmed because of personal privacy considerations. Material so restricted has been removed and replaced by a charge card providing a description of the removed document. Each charge card is filmed in place of the document. Also not filmed are several language class notebooks from prison-sponsored classes attended by Flocken during the time of her imprisonment.

Related Records

Microfilm publications of related records in RG's 153 and 338 include:

United States of America v. Alfons Klein et al. (Case Files 12-449 and 000-12-31), October 8, 1945-October 15, 1945, M1078;

United States of America v. Kurt Andrae et al. (and Related Cases), April 27, 1945-June 11, 1958, M1079;

German Documents Among the War Crimes Records of the Judge Advocate Division, Headquarters, United States Army, Europe, T1021.

The Mühldorf trial records are closely related to microfilmed records in National Archives Collection of World War II War Crimes Records, RG 238, specifically:

Prosecution Exhibits Submitted to the International Military Tribunal, T988;

Records of the Office of the United States Chief of Counsel for War Crimes, Nuernberg Military Tribunals, Relating to Nazi Industrialists, T301;

Records of the United States Nuernberg War Crimes Trials:

NOKW Series, 1933-1947, T1119;

NG Series, 1933-1948, T1139;

NM Series, 1874-1946, M936;

NP Series, 1934-1946, M942;

WA Series, 1940-1945, M946;

Guertner Diaries, October 5, 1934-December 24, 1938, M978;

Records of the United States Nuernberg War Crimes Trials, United States of America v.:

Karl Brandt et al. (Case I), November 21, 1946-August 20, 1947, M887;

Erhard Milch (Case II), November 13, 1946-April 17, 1947, M888;

Josef Altstoetter et al. (Case III), February 17, 1947-December 4, 1947, M889;

Oswald Pohl et al. (Case IV), January 13, 1947-August 11, 1948, M890;

Friedrich Flick et al. (Case V), March 3, 1947-December 22, 1947, M891;

Carl Krauch et al. (Case VI), August 14, 1947-July 30, 1948, M892;

Wilhelm List et al. (Case VII), July 8, 1947-February 19, 1948, M893;

Ulrich Greifelt et al. (Case VIII), October 10, 1947-March 10, 1948, M894;

Otto Ohlendorf et al. (Case IX), September 15, 1947-April 10, 1948, M895;

Alfried Krupp et al. (Case X), August 16, 1947-July 31, 1948, M896;

Ernst von Weizsaecker, et al. (Case XI), November 4, 1947-April 13, 1949, M897;

*Wilhelm von Leeb, et al. (Case XII), November 28, 1947-
October 28, 1948, M898;*

Records of the United States Nuernberg War Crimes Trials Interrogations, 1946-1949, M1019.

In addition, the record of the IMT at Nuernberg has been published in *Trial of the Major War Criminals Before the International Military Tribunal*, 42 vols. (Nuernberg, 1947). Excerpts from the subsequent proceedings have been published as *Trials of War Criminals Before the Nuernberg Military Tribunal Under Control Council Law No. 10*, 15 vols. (U.S. Government Printing Office, 1950-53). Detailed finding aids with computer-assisted indexes for the microfilmed records of the Ohlendorf Case (Special List 42) and the Milch Case (Special List 38) have also been published. The National Archives and Records Service holds motion pictures and photographs of many sessions of the IMT and of the 12 U.S. Nuernberg proceedings as well as sound recordings of the IMT proceedings only.

Karen D. Paul arranged the records of the Muhlendorf case for microfilming and wrote these introductory remarks.

CONTENTS

<u>Roll</u>	<u>Description</u>	<u>Inclusive Dates</u>
1	<u>Finding Aids</u>	
	Documents of Authorization	Nov. 1, 1943-Nov. 1, 1946
	Witness Testimony Index (RG 338)	
	Trial Record Table of Contents (RG 338)	
	<u>Preliminary Investigation and Other Pretrial Documents</u> (RG 338)	
	Vol. 1	Apr. 24-July 23, 1945
	Vol. 2	June 3-July 18, 1945
2	Vol. 3	May 2, 1945-Mar. 3, 1947
	Vol. 4	Mar. 27, 1944-Apr. 30, 1946
3	Vol. 5	May 3, 1944-Nov. 8, 1946
	Vol. 6	Oct. 3, 1944-Dec. 27, 1945
4	Vol. 7	Aug. 1-Nov. 8, 1946
	Vol. 8	June 22, 1945-Dec. 27, 1946
	<u>Court and Attorney Appointment Documents</u> (RG 338)	Mar. 2-28, 1947
	<u>Charge Sheet</u> (RG 338)	Feb. 27, 1947
	<u>Trial Transcripts</u> (RG 338)	
	Vol. 1 (p. 1-49)	Apr. 1, 1947
	Vol. 2 (p. 50-102)	Apr. 2, 1947
	Vol. 3 (p. 103-156)	Apr. 3, 1947
	Vol. 4 (p. 157-229)	Apr. 4, 1947
	Vol. 5 (p. 230-308)	Apr. 8, 1947
	Vol. 6 (p. 309-393)	Apr. 10, 1947
	Vol. 7 (p. 394-473)	Apr. 11, 1947
	Vol. 8 (p. 474-551)	Apr. 14, 1947
	Vol. 9 (p. 552-629)	Apr. 15, 1947
	Vol. 10 (p. 630-718)	Apr. 17, 1947
	Vol. 11 (p. 719-796)	Apr. 18, 1947
	Vol. 12 (p. 797-859)	Apr. 21, 1947
	Vol. 13 (p. 860-914)	Apr. 22, 1947
5	Vol. 14 (p. 915-976)	Apr. 24, 1947
	Vol. 15 (p. 977-1057)	Apr. 28, 1947
	Vol. 16 (p. 1058-1121)	Apr. 29, 1947
	Vol. 17 (p. 1122-1206)	May 1, 1947
	Vol. 18 (p. 1207-1272)	May 2, 1947

<u>Roll</u>	<u>Description</u>	<u>Inclusive Dates</u>
	Vol. 19 (p. 1273-1339)	May 5, 1947
	Vol. 20 (p. 1340-1413)	May 6, 1947
	Vol. 21 (p. 1414-1475)	May 7, 1947
	Vol. 22 (p. 1476-1580)	May 12, 1947
	Vol. 23 (p. 1581-1596)	May 13, 1947
	<u>Prosecution Exhibits (RG 338)</u>	
	Vol. 1, Exhibits 1-7	
6	Vol. 2, Exhibits 8-13	
	Vol. 3, Exhibits 14-25	
	Vol. 4, Exhibits 26-43	
	Vol. 5, Exhibits 44-68	
	Vol. 6, Exhibits 69-87	
	<u>Defense Exhibits (RG 338)</u>	
	1-44	
7	<u>Sentence Reviews and Related Documents</u>	
	Petitions for Review (RG 338)	July 28, 1947
	Review and Recommendations (RG 338)	Feb. 1, 1948
	Miscellaneous Review Records (RG 338)	Mar. 15, 1948-Dec. 26, 1950
	Modification Board Actions (RG 153)	May 19, 1950-Oct. 21, 1952
	<u>Clemency Petitions and Related Documents</u> (RG 338)	
	Franz Auer	May 21, 1928-Nov. 18, 1948
	Wilhelm Bayha	May 21, 1947-Feb. 28, 1952
8	Heinrich Engelhardt	May 29, 1947-Oct. 28, 1953
	Erika Flocken	Apr. 4, 1947-Aug. 6, 1955
9	Erika Flocken	Aug. 6, 1955
10	Erika Flocken	Aug. 6, 1955-June 21, 1956
	Karl Gickeleiter	Mar. 4, 1947-Aug. 9, 1952
11	Hermann Giesler	Feb. 5, 1947-Oct. 31, 1952
	Daniel Gottschling	June 27, 1947-Jan. 11, 1952
12	Wilhelm Griesinger	June 17, 1947-Mar. 7, 1952
	Wilhelm Jergas	May 13, 1947-Feb. 16, 1951
	Jakob Schmidberger	Sept. 15, 1947-Nov. 27, 1951
	Herbert Spaeth	May 28, 1947-June 10, 1953

<u>Roll</u>	<u>Description</u>	<u>Inclusive Dates</u>
13	Otto Sperling	Apr. 24, 1945-Apr. 21, 1953
	<u>Prison Records</u> (RG 338)	
	Wilhelm Bayha	June 9, 1945-Feb. 24, 1952
	Heinrich Engelhardt	July 11, 1946-July 16, 1955
	Erika Flocken	June 4, 1945-July 15, 1958
	Karl Gickeleiter	Feb. 13, 1947-July 19, 1952
	Hermann Giesler	Sept. 20, 1945-Oct. 25, 1952
	Daniel Gottschling	July 10, 1946-Jan. 11, 1952
	Wilhelm Griesinger	Feb. 17, 1947-Feb. 28, 1952
	Wilhelm Jergas	May 2, 1945-Apr. 28, 1958
	Jakob Schmidberger	July 8, 1946-Dec. 14, 1951
	Herbert Spaeth	July 10, 1946-Aug. 15, 1957
	Otto Sperling	July 9, 1945-Sept. 25, 1957

* United States Government Printing Office:1981--338-389/8063